



# Lobbying: Sweet Smell of Success?

A case study on the transparency of lobbying around sugar regulation in the European Union and Spain

## 1. Introduction

It is essential that government decision making be transparent in order for citizens to participate in such processes, and to hold our representatives and public officials accountable.

Working with Spanish civil society, Access Info Europe discovered that there was, and still is, a significant lack of information publicly available related to lobbying around the EU regulation for food labelling in Member States.

In 2014, Veterinarios Sin Fronteras (VSF) launched the [‘25 grams’ campaign](#), directed at the control and advertising of sugar. As part of this campaign, Access Info was invited to investigate how transparent decision making was around certain decisions related to the consumption of sugar in Spain and Europe. In order to do this, Access Info followed the decision-making process of Regulation Act 1169/2011 of the European Parliament and Council regarding food information offered to consumers.



We specifically decided to analyse the evolution of the proposal to adopt a colour-coded (referred to as “traffic light”) labelling system which would classify fat, saturated fat, salt and sugar contents by means of a green, yellow or red sign, depending on how recommendable they are for the consumer’s health. This proposal was rejected during a plenary session of the European Parliament in June 2010, after having been present in debates in March that same year.

The [allegations](#) made by some of the MEPs who were involved in the legislative process - that an extremely aggressive lobby campaign from the food industry aimed to stop the proposal - led some to believe that traffic-light labelling never saw the light of day precisely because of this pressure.

Whilst civil society is aware of the problems regarding the lack of transparency around EU-level lobbying activities, there is much less information at the national level and comparatively between the EU and Member States. [An opinion poll carried out in January 2013](#), showed that 73% of citizens claim to feel worried about the extensive influence of corporate lobbies on the decision-making process in Brussels.

In this context, Access Info took on the mission of analysing the legislative process for traffic light labelling, with the aim of discovering the state of lobbying transparency and to produce recommendations to improve access to information around lobbying activities.

### **The case of Jack Straw**

The case of the ex-Minister of Home Affairs for the UK, adds weight to such allegations of aggressive lobbying; who while still holding his seat, [he claimed he helped modify sugar regulation in Europe on behalf of ED&F Man](#), one of the UK’s largest dealers in the sweet stuff.

## 2. Recommendations

From our investigation into the transparency around lobbying on the decision-making process of Regulation Act 1169/2011 of the European Parliament and Council regarding food information offered to consumers, Access Info recommends that the European Union commit to ensure:

- » **The EU must broaden the application of Regulation 1049/2001 to include all documents drawn up, received and handled by MEPs during their term in office**, not only the documents that MEPs provide to the institution's archive as part of the legislative process, in order to ensure complete transparency of one of the core institutions of the EU.
- » **The European Union must guarantee comprehensive documentation of decision-making processes**, and ensure the information is easily searchable and well maintained in order to enable maximum transparency.
- » **The EU institutions must create and improve upon their current lobby transparency regime, in particular by establishing a legally-binding lobby register** which require detailed information covering lobby activities aimed at the three main European institutions.

Following an analysis at the national level, Access Info recommends the Spanish government commit to ensure:

- » **Transparency rules must fully apply to decision-making processes in order to meet international standards**. It is essential, in order for citizens to hold public officials to account, firstly to bring together documentation to produce legislative footprints in order to guarantee complete information about who, how, when, where and why decisions are made that concern the public; and secondly, making these documents available for the public – both proactively and reactively with the aim of guaranteeing the full exercise of the right of public access to information.

## 3. Legal situation

### 3.1 Access to information

As established by international standards, transparency laws should recognise that all information in the hands of public institutions is open by default and access should only be limited where, if published, and following a public interest test, it could harm a legitimate interest such as a person's privacy or national security.

Transparency around lobbying activities, such as the correspondence and documents received by public institutions from third parties around decision-making processes, should be guaranteed by rules regulating the right of access to information.

The European Union treaties as developed in Regulation 1049/2001 guarantee the right of access to documents held by EU institutions, albeit with limited exceptions to access. Whilst not perfect, the rules establish a base for transparency in the EU: the Global Right to Information Rating awards it [96 points of a possible 150](#).

In Spain the situation is in a far sorer state. Spain's 'Transparency, Access to Public Information and Good Governance Law' ranks in [position 71 out of 105](#) access to information laws analysed by the Global Right to Information Rating. Far from meeting international standards, this law excludes a lot of information from public access; for example, all information which does not adhere to administrative law; information which is in the process of being developed or of being generally published; information of auxiliary or a supportive nature, such as that found in notes, drafts, opinions, summaries, communications and internal reports as well as between bodies and administrative organisations.

### 3.2 Regulation of lobbying

A key mechanism in the [regulation of lobbying activities](#) includes registering all natural persons and legal entities which attempt to exercise influence on decisions that affect public institutions. For these registers to be useful and carry out their function effectively they must be enforceable, require information on lobbyists' identity, the fields they lobby on, the resources invested in exercising pressure, and what specific legislation have taken part in and how. There are [international standards that help to define further how lobbying should be regulated](#).

In Spain and the European Union however, these basic standards do not match the reality in practice.

Whilst the EU has a lobby register, it is voluntary: for a lobbyist to meet with EU representatives it is not necessary for them to be included in the register, unless they wanted to meet with senior officials such as Commissioners or General Directors. Moreover, it is an incomplete register, as its scope is limited to lobbying that is directed to the European Parliament and Commission, but not to the Council of the European Union.

Spain is also two steps behind in lobby regulation matters. At the moment there is no obligation required of public institutions or lobbyists to declare who they meet with to discuss public matters.

We will now analyse how this affects the regulatory framework in practice when we investigated the decision-making process around food labelling.

## 4. Transparency in practice

As part of this investigation, we sent requests to institutions in the EU and Spain on the regulation of food labelling. Below we explain the paths taken and the results obtained following these requests.

### 4.1 Requesting information from the EU

In 2008, the European Union started to draw up a new regulation for nutritional labelling at the European level, the "Proposal for Regulation of the European Parliament and of the Council on the provision of food information to consumers".

Two years after the start of these negotiations, in March 2010, what would be [the most controversial proposal](#) was put up for discussion: the possibility of establishing a colour-coded format, known as the 'traffic lights as a labelling' system. This system was greatly [supported](#) by civil society organisations as well as European consumer organisations, and since 2006 has been common practice in the United Kingdom.

The proposal to include this system came from the European Parliament Committee on the Environment, Public Health and Food Safety (ENVI Committee), responsible for leading the Parliament's negotiations; but after intense debates, it was rejected during a vote in the European Parliament plenary session on 15 June 2010, ignoring many of the warnings about the [aggressive lobbying campaign](#) carried out by the food industry in favour of dropping the proposal.

Access Info Europe requested, through [AsktheEU.org](#), a series of documents relating to this decision-making process with the objective of clarifying the situation. The requests were addressed to the [European Parliament](#), the [Council of the European Union](#), and the [European Commission](#).

#### 4.1.a Requesting access to the European Parliament's documents

The [request](#) to the European Parliament asked for access to the minutes of meetings of the ENVI Committee in which the traffic light labelling proposal was discussed; the position papers (internal and third party) given to the speaker and to alternative speakers; and finally, all of the amendments presented by members of the European Parliament to each of the relevant committees which added or eliminated references to traffic light labelling.

The Parliament replied with more than 40 documents including minutes of meetings, agendas, reports, amendments and voting results, clarifying the development of the proposal at the core of the ENVI Committee and its progression in the plenary voting.

At first the information showed a strong polarisation of opinions in the Committee regarding the proposal to include traffic light labelling, evidenced in registered opinions and multiple amendments that had been proposed and rejected. Furthermore, the documents revealed rapporteur for the Regulation, Renate Sommer (Germany, European Popular Party group) as a key figure at the head of those who rejected the food labelling system.

However, the **exclusion of key information in the Parliament's response, such as the position documents presented by third parties such as lobbyists**, made it

impossible to come to specific conclusions on whether the refusal of this labelling system was motivated and/or directed by the food industry and, if so, to what extent.

Further contact with three members of the European Parliament who had worked on the Regulation, and continuing in their post in the European Parliament, did however, facilitate an understanding of up to what point the members of European Parliament were pressured by the food industry.

The answer given by MEP Glenis Willmott (UK, Progressive Alliance of Socialists and Democrats group) provided Access Info with a list of 115 pressure groups which contacted her with regards to the regulation in question, and is specifically worth mentioning. Willmott stated that the **European Parliament automatically eliminates MEPs' correspondence at the end of their term in office**, making it impossible for her to provide us with the original emails; we made do with only a list of names.

The second MEP contacted, who at the time was a speaker in the regulation, Renate Sommer, claimed not to have kept the documents regarding the exchange of information with lobbyists concerning the food labelling proposals. The third MEP, Gerben-Jan Gerbransy (Netherlands, Alliance of Liberals and Democrats for Europe Group), did not reply to our requests.

Following the requests made to the European Parliament, Access Info concluded that **the inability to access documents held by MEPs represented a serious obstacle to the right of access to information** because only documents which are formally presented as part of a decision-making process go on to be part of the European Parliament archive and are thus covered by the EU transparency rules.

This clouds part of the decision-making process which takes place through the work of the individual MEP. As a consequence, requesters currently have no other option but to rely on the MEPs' will, when it comes to requesting information about their activities and parliamentary work. This is especially serious if we consider the role of MEPs as the only representatives democratically elected by citizens of the 28 EU Member States.

In addition, contrasting the list obtained thanks to MEP Willmott with the EU's lobby register helped prove **the lack of accurate and updated information in the European Union's Transparency Register**. More than 60 of the 115 organisations which appear on the MEP's list did not even form part of the register at the time of searching. This proves a voluntary system is not rigorous enough in its collection and maintenance of data from lobbyists.

## **Recommendations**

- » **The EU must broaden the application of Regulation 1049/2001 to include all documents drawn up, received and handled by MEPs during their term in office**, not only the documents that MEPs provide to the institution's archive as part of the legislative process, in order to ensure complete transparency of one of the core institutions of the EU.
- » **The European Union must improve upon its current lobby transparency regime, in particular by establishing a legally-binding lobby register** requiring detailed information covering lobby activities aimed at the three main European institutions.

#### 4.1.b Requesting access to documents held by the Council of the EU

Our access to EU documents [request](#) to the Council of the European Union asked for the minutes of meetings of the Council's working group concerning foodstuffs in which the proposal of traffic light labelling was discussed; the position papers given to the working group, in particular those in which Member States presented their opinions and position regarding traffic light labelling; and the documents containing names, posts, and ministries of the Spanish representatives who participated in the negotiations.

Access Info received more than 200 documents in total which enabled a clarification of Spain's position in the debate. The Spanish representatives, according to the information received, showed big opposition to traffic light labelling from the start of the process. While advocating for a system as coordinated as possible, Spain even opposed – once the original proposal had been refused in Parliament – the possibility of including this system as a voluntary option for Member States that wished to implement it as a complement to the existing labelling system. The efforts to defend a system that was not traffic light labelling led them, from their position holding the Council Presidency at the time, to [support the elimination](#) of a reference to the consumer's health and nutritional labelling.

**We were not given the names of Spain's representatives in these meetings** due to protection of personal data, according to the Council, after the representatives in question were consulted and had refused to allow their names to be published.

The Council's response evidenced **considerable omissions in the documentation and maintenance of a legislative footprint**, which implies a serious impediment to access to information. In its answer, the Council claimed that the minutes of meetings of the working group that were requested did not exist. It also claimed that the **documents that contained the names of the Spanish representatives had been destroyed** in order to protect personal details.

The lack of documentation, which is crucial when wanting to participate in decision-making processes, prevents public watchdogs from monitoring, understanding, and holding public representatives accountable for their decisions.

#### Recommendation

- » **Public institutions must guarantee comprehensive documentation of decision-making processes**, and ensure the information is easily searchable and well maintained in order to enable maximum transparency.

#### 4.1.c Requesting access to documents held by the European Commission

The access to EU documents [request](#) to the European Commission asked for access to the minutes of meetings of the Directorate General for Health and Consumer Affairs in which the proposal for traffic light labelling was discussed, as well as all the documents exchanged by the European Commission, the European Parliament and EU Council as part of the tripartite meetings in which traffic light labelling was mentioned.

The Commission argued in their response that it "never had to take up a stance" concerning the proposal for traffic light labelling, as this was turned down in Parliament in June of 2010, thus implying that **the documents requested never existed**.

## 4.2 Requesting information in Spain

From the answer given to our request by the Council of the EU, we received enough information to understand where this decision took shape in the Spanish government and from which ministries Spain had sent representatives to discuss the proposal to create colour coding for foodstuffs; the Ministry of Health and the Ministry of Agriculture.

We sent access to information requests to the two ministries, asking for names and posts of those present in the negotiations, the positions defended by them and the documents received by third parties on which these positions were based.

### **The request to the Spanish ministries**

*"I am writing you in order to request information about the negotiations that took place in the EU Council in which Spain participated, specifically representatives of your Ministry, as we were informed by the European Union's own Council.*

*During the negotiations on the proposed Regulation by the European Parliament and the Council of the European Union regarding the information provided to consumers ('Proposal for a Regulation of the European Parliament and of the Council on the provision of food information to consumers') at the core of the foodstuffs working group, the positioning regarding the possibility of including or not a traffic light labelling was debated.*

*With respect to this specific issue, I would like to know:*

*The names and posts of those present at the negotiations representing Spain – The position these persons defended*

*The documents on which this position was based"*

In its reply, the Ministry of Agriculture refuses to answer the request as the information was not held by them (Article 18.1.d of Spain's Transparency Law), and instead we were directed to another body: the Spanish Food Safety, Nutrition and Consumer Agency (AECOSAN), which answers to the Ministry of Health.

AECOSAN's reply however, **did not facilitate neither the names of the representatives, nor the documents on which Spain's position had been based.** It did provide access however, to the position Spain defended as part of the negotiations.

According to the [stance in this document](#), Spain demonstrated full opposition to the possibility of allowing alternative nutritional labelling systems in the Member States that wished to put them in place, stating that:

*"The possibility of using additional forms of expression and presentation in nutritional labelling is problematic and does not imply better information for the consumer." These alternative labelling systems "represent a fracture risk in the internal market with consequences on competitiveness."*

*"As the only mechanism to achieve a high level of information for consumers, Spain would have preferred to harmonise these matters."*

According to this document, Spain defended this position throughout the legislative process.



It is important to highlight however, that **the document disclosed by AECOSAN was part of those facilitated by the Council of the EU through the AsktheEU.org request**, as it had been drawn up by – and thus belonged to the archives of – this institution.

The response by the Ministry of Health turned out to be highly insufficient when it came to providing any information about how the Spanish government (and who in it) had represented its citizens during the legislative process in question.

The fact that in their answer they did not include any documents that could help clarify the criteria representatives had based their negotiating position on or if these opinions had been formed in an informed manner, in the public's best interest, or in a contrary way, illustrates **a problem in Spain of documenting a legislative footprint in a clear and solid manner** on which to guarantee citizens' and civil societies' participation and permit holding public representatives to account.

### **Recommendation**

- » **Transparency rules must fully apply to decision-making processes in order to meet international standards.** It is essential, in order for citizens to hold public officials to account, firstly to bring together documentation to produce legislative footprints in order to guarantee complete information about who, how, when, where and why decisions are made that concern the public; and secondly, making these documents available for the public – both proactively and reactively with the aim of guaranteeing the full exercise of the right of public access to information.

## 5. Conclusion

By exercising the right of access to information, our investigation found that there was a lack of information available to the public on decision-making and lobbying activities in the European Union and Spain.

Spain's Transparency Law proved to be highly insufficient in guaranteeing minimum levels of transparency of decision-making processes. It revealed to us that **despite wanting to obtain information from the national level, citizens might find it easier to be provided information via the European Union instead.**

At the European Union level, we were able to confirm that documents drawn up, received and handled by MEPs during their term in office are not covered by the scope of the EU transparency rules, and as such, it is very difficult to find out how MEPs are influenced during decision-making processes.

Yet, the information that was disclosed by some MEPs and the Council allowed us to work out the progression of a proposal which many experts in consumer health considered recommendable, but which, nevertheless, was rejected. We were also able to establish who were the key supporters and opposers of the proposal, as well as confirm the high pressure those in charge of passing it were subjected to by the food industry. Lastly, we were able to find out that Spanish representatives from the start full-on opposed the possibility of including – even as a voluntary option – this proposal in the Regulation.

The lack of information on lobbying activities in the EU also meant it was difficult to follow who had tried to influence MEPs before and during debates on the foodstuffs labelling regulation. In this respect, the EU institutions must create and improve upon their current lobby transparency regime, in particular by establishing a legally-binding lobby register which require detailed information covering lobby activities aimed at the three main European institutions.

By correcting these limitations to accessing information held by public bodies and representative, and by creating stronger frameworks to regulate and make transparent lobbying activities, will governments be able to guarantee a much more open legislative process that can increase participation and better hold public officials to account.