



Lessons from Dalligate

Dalligate: a brief history

- European Commissioner for Health and Consumer Affairs, John Dalli, is forced to resign following a tobacco industry cash-for-influence scandal.
- Tobacco company Swedish Match claims it had been asked for tens of millions of euros by an unregistered lobbyist, Silvio Zammit, linked to Dalli, in exchange for influencing EU tobacco policy.
- With new tobacco legislation in the pipeline, fears arise that Dalli may have been caught in a tobacco industry set-up, designed to delay changes they don't want.
- Nobody knows what really went on, because the European Commission is refusing to put the facts on the table, or admit that the scandal happened because current EU rules around contacts with lobbyists are too weak.
- The Commission believes that the Dalli case shows that the system worked 100%: the company reported the dodgy offer, the Commission told OLAF, OLAF investigated.
- But the real lessons are not about whether the procedures to respond to the scandal were followed but whether the system was able to prevent the lobby scandal and resulting mess. The lack of clarity around what Dalli did wrong, that required his resignation, also indicates that the rules are too vague.
- The existing transparency and ethics system couldn't prevent Dalligate, and without change, it won't stop other lobby scandals.

Why the Commission thinks there are no lessons to be learnt from Dalligate

In response to a letter from the Alliance for Lobbying Transparency and Ethics Regulation (ALTER-EU)ⁱ about the lessons from the Dalli scandal, the Commission replied:

“We do not believe that you have made a case for “far stricter transparency and ethics rules” and would recall that, in this case, an independent investigation was immediately launched by OLAF and that the Commission decision making procedure has not suffered. As planned, Mr Borg's proposal is already going ahead in accordance with the Commission's internal rules.”ⁱⁱ

What the Commission is failing to acknowledge is that **the lessons to be learnt are not about how to react to a scandal, but how to prevent one.**

Why there are lessons to learn

The lessons we must learn from the still unravelling Dalli scandal concern *why* the EU's transparency and ethics system is conducive to lobby scandals like Dalligate, and *what* elements, if they were part of the EU's lobby transparency and ethics system, would have prevented a scandal such as Dalligate, or made the continued mystery surrounding it possible to avoid.

The following elements, which are lacking in the existing ethics and transparency system, would have helped prevent a scandal like Dalligate from happening:

- If the **EU lobby registry** were **mandatory** then there would not have been such an abundance of “unregistered lobbyists” - lobbyists allowed to choose not to register, reveal their clients or their spending – to meet with in the first place.
- If Commissioner's **pro-actively published all meetings** and contacts with lobbyists, the mystery and appearance of corruption that comes from undeclared, behind-closed-doors meetings with tobacco lobbyists would not have been possible, but instead open to public scrutiny.
- If, even with the current voluntary register, it was Commission **policy and practice not to meet with unregistered lobbyists**, then the scandal - involving unregistered lobbyists acting as middlemen and contact providers – would have been far less likely.
- If there was a legally **enforceable, comprehensive and concrete ethics code for lobbyists**, then lobbyists would not be able to put officials in situations of real or apparent conflicts of interest, and if they did, appropriate sanctions would be enforced.
- If the **Code of Conduct for Commissioners** had **more detailed rules** about what is and is not ethically appropriate behaviour for a Commissioner, it would have been clear to Dalli that having meetings arranged by personal acquaintances and middlemen was not acceptable.

What the Commission thinks transparency is

The Commission has repeatedly denied that it has not been sufficiently transparent about the events leading up to and surrounding the resignation of ex-Commissioner Dalli. According to the Commission, “allegations of a lack of transparency on the part of the Commission are not founded as it appears from the fact that a large set of documents related to this issue have actually been released by the Commission under regulation 1049/2002 ”. ⁱⁱⁱ

What real transparency would be

The European institutions are obliged to interpret their obligation of transparency in the broadest possible way. Article 10.3 of the Treaty of the European Union states that “Decisions shall be taken as openly and as closely as possible to the citizen.” The requirement to be as open as possible has not been met by releasing a trickle of documents, whilst withholding others,^{iv} in response to access to information requests that have arisen as a reaction to a high-level and public scandal. It is clearly possible to be more open - by pro-actively publishing lists of lobby meetings and correspondence online. This is possible at a technical and a political level, evidenced by the fact that some departments already do publish lists of lobby meetings.^v

What the lessons are for the EU institutions

Lesson 1) Stronger conflicts of interest rules to prevent undue influence, and clearer procedures for enforcing such rules

The Dalli case shows clearly that the current vaguely-worded ethics rules are inadequate.^{vi} The Commission should develop a pro-active and consistent approach to preventing undue influence, starting with tightening its existing rules and procedures. This requires an overhaul of the Code of Conduct for Commissioners, for instance spelling out clearly that Commissioners should not agree to meetings set up by acquaintances acting as lobby consultants or middlemen.

There should be a public consultation on European Commission ethics rules, as a first step in preparing an overhaul of both the Code of Conduct for Commissioners and the ethics rules in the Staff Regulations that apply to Commission and EU agency staff. This should include the possibility of establishing an independent ethics committee, with a broader and better defined mandate than the existing ad hoc ethical committee, which deals primarily with post-employment issues. This committee must be fully independent and composed of experts on public administration ethics.

There should also be stricter and mandatory ethics rules for lobbyists, replacing those laid out in the code of conduct connected to the voluntary Transparency Register.^{vii} A mandatory code of conduct for lobbyists should include that public affairs firms and others involved in lobbying should not hire former Commissioners or high-ranking Commission officials during a three year period after they have left the Commission. As part of securing a mandatory register, the code should forbid the employment of any unregistered lobbyists - or “middlemen” - to assist in interest representation activities. As follow-up from Dalligate, moreover, the code should be revised in order to clarify in how far and within which limits paying for, or selling, the arrangement of meetings with decision-makers are an appropriate lobbying tactic.

Lesson 2) High-quality, mandatory lobbying transparency register, and pro-active transparency on Commission meetings with lobbyists

The Commission and Parliament’s weak and voluntary Transparency Register must be replaced with a mandatory lobby transparency system that enables EU citizens to see who is influencing EU decision-making, on which issues, on whose behalf, and with what budgets.^{viii} The review of the Transparency Register, scheduled for mid 2013, is already under way, and provides the perfect opportunity to begin the transition towards a mandatory system with far more stringent disclosure requirements. But so far the review appears to be envisioned as a technical, behind-closed-doors process; it is vital that MEPs get involved now, to ensure that space is allowed for political discussion, substantive review, and far-reaching change.

In the meantime, the Commission should act to make the register de facto mandatory by refusing to meet with unregistered lobbyists. Dalli was not the only Commissioner to meet with numerous unregistered lobbyists.^{ix} This gives the impression that lobbying transparency is not a priority for the Commission.

In addition to overhauling the Transparency Register, the European Commission should provide comprehensive information online about all meetings between Commission officials

and lobbyists. This is already common practice in, for example, UK government departments.^x A number of Commissioners, including Commission President Barroso, have refused upon request to disclose which meetings they have had with lobbyists.^{xi} The Dalli case highlights just how important it is for information about such meetings to be in the public domain.

UN WHO Framework Convention on Tobacco Control (FCTC), Article 5.3: Rules on contacts with lobbyists

Following decades of deceptive lobbying by the tobacco industry and attempts to undermine tobacco control efforts, the United Nations World Health Organisation agreed a treaty that includes strong principles designed to limit interactions between lawmakers and the tobacco industry, and ensure their transparency.^{xii} The EU is a signatory to this UN treaty.

Article 5.3 of the FCTC, and the accompanying guidelines, makes it clear that “in setting and implementing their public health policies with respect to tobacco control, Parties shall act to protect these policies from commercial and other vested interests of the tobacco industry.”

The guidelines urge governments to raise awareness among government officials about the risks of tobacco industry interference, and “ensure that any interaction with the tobacco industry on matters related to tobacco control or public health is accountable and transparent.” Parties must “Establish measures to limit interactions with the tobacco industry and ensure the transparency of those interactions that occur.”

Since 2011, as part of implementing FCTC Article 5.3, DG SANCO has listed the meetings it has with tobacco industry representatives and published the minutes of these meetings online.

Whilst there is some way to go to ensure the completeness of this list, and that other Commission departments also publish lists of their tobacco lobby meetings,^{xiii} DG SANCO's practice is welcomed as furthering the transparency of the decision-making process.

Moreover, this represents a more general precedent for pro-active lobby transparency by the Commission. Attempts by industry to undermine public-interest regulation are rife across all sectors, from environment to finance, and lobbying attempts by vested interests should, and as this example shows, could, be made fully transparent.

Conclusion

Contrary to the Commission's claims, the Dalli case is not closed. Many issues remain unresolved, but the real lessons that need to be drawn are not about how we react to a scandal, but what we must change in order to prevent future lobbying scandals.

There is an urgent need for more rigorous measures to avoid undue influence, and far stricter transparency and ethics rules around contacts with lobbyists, which are stringently enforced. MEPs must continue to exert pressure for the full facts around Dalligate, and show leadership in strengthening rules and procedures to curb undue influence over EU decision-making.

- i Letter to José Manuel Barroso, President of the European Commission , from Alliance for Lobbying Transparency and Ethics Regulation (ALTER-EU), re: Lessons from Dalli scandal - Commission needs stronger ethics and transparency rules , November 5, 2012, see: around lobbying www.alter-eu.org/sites/default/files/documents/Letter%20to%20Barroso%20on%20Dalli%20scandal%20November%202012%20Nov%205.pdf
- ii Letter from Commission to ALTER-EU, 6 December 2012, in response to ALTER-EU letter of 5 November 2012, see: www.alter-eu.org/sites/default/files/documents/Re%20Mr%20Wesselius.pdf
- iii *ibid.*
- iv European Commission withheld information on its contacts with Swedish Match, CEO, January 21, 2013, see: <http://corporateeurope.org/blog/european-commission-maintains-dalligate-document-secrecy-contacts-swedish-match>
- v DG SANCO lists a record of meetings with the tobacco industry on its website. This is in fact a legal requirement based on the UN WHO Framework Convention on Tobacco Control, Article 5.3, see: http://ec.europa.eu/health/tobacco/events/index_en.htm#anchor4
Whilst omissions have been found in the list (see e.g. <http://corporateeurope.org/news/commission-shabby-implementation-un-rules-tobacco-lobbying>) and it only relates to one industry's lobbying efforts, it is an indisputable example that it is possible to pro-actively publish a record of meetings with lobbyists online.
- vi The current Conduct for Commissioners fails to explicit ban acquaintances of Commissioners – or lobby consultants more generally - from setting up meetings with Commissioners on a for-profit basis. Also far stricter rules to close the revolving door – Commissioners and Commission officials moving into industry lobby jobs - are urgently needed. For more on ALTER-EU's recommendations for stricter ethics rules in the Code of Conduct, see “Half measures will not end revolving doors scandals around former EU Commissioners” (January 2011): http://www.alter-eu.org/sites/default/files/documents/alter-eu_comment_on_draft_code_of_conduct_commissioners.pdf
- vii The current Code of Conduct for interest representatives is very short and generally worded and lacks teeth. The text is heavily based on the codes developed by the interest groups of Brussels-based commercial lobbyists SEAP and EPACA. The code is online here: http://europa.eu/transparency-register/about-register/code-of-conduct/index_en.htm
- viii The acquaintance of Mr. Dalli was active as a lobby consultant without being registered in the Commission and Parliament's Transparency Register. This is yet another example of the inadequacy of the current, voluntary register. In an in-depth report published in June 2012 (with an update in September), ALTER-EU has shown how a large number of Brussels' lobbyists remain unregistered and that the information disclosed in the Transparency Register is often incomplete and unreliable. The report “Dodgy Data: time to fix the EU Transparency Register” (June 2012) is online here: <http://www.alter-eu.org/sites/default/files/documents/Dodgy-data.pdf>
See also: “Transparency Register remains opaque and poorly scrutinized” (September 2012): http://www.alter-eu.org/sites/default/files/documents/Transparency%20Register%20remains%20opaque%20and%20poorly%20scrutinised_FULL%20ARTICLE.pdf
- ix Ex-Commissioner John Dalli knowingly met with lobbyists who were not registered in the European Commission and European Parliament's Transparency Register. This is not an isolated case: other Commissioners are regularly meeting with unregistered lobbyists. Research by Corporate Europe Observatory highlights the example of European Commission Vice-President, and Commissioner for Economic and Monetary Affairs, Olli Rehn. No less than 62% of the meetings with lobbyists that Commissioner Rehn had between January 2011 to February 2012 were with unregistered lobbyists. See “Commission gives a warm welcome to unregistered lobbyists: Dalli not alone in ignoring transparency”, Corporate Europe Observatory, 5 November 2012. <http://corporateeurope.org/blog/commission-gives-warm-welcome-unregistered-lobbyists-dalli-not-alone-ignoring-transparency>
- x ALTER-EU calls upon the Commission to embark on a policy of pro-active transparency, starting with posting lists of meetings with lobbyists on its website. The UK Government has been doing this for several years: a list of meetings with lobbyists is made available per government department, updated quarterly. For more information on the UK example, see <http://data.gov.uk/whoslobbying>
- xi See: “Transparency lacking about Commissioner calendars”, Friends of the Earth Europe, 1 May 2011. <http://www.foeeurope.org/transparency-lacking-Commissioner-calendars-010512>
- xii Framework Convention on Tobacco Control, WHO, 2003. See http://www.who.int/fctc/text_download/en/index.html and, Guidelines for implementation of the WHO FCTC, 2011. See: http://www.who.int/fctc/protocol/guidelines/adopted/guidel_2011/en/index.html
- xiii The Commission's shabby implementation of UN rules for tobacco, CEO, 14 December 2012, see: <http://corporateeurope.org/news/commission-shabby-implementation-un-rules-tobacco-lobbying>