



Lessons from Dalligate

MEETING MINUTES

The Alliance for Lobbying Transparency and Ethics Regulation (ALTER-EU), with the support of MEP Dr. Inge Gräßle, hosted a working meeting on 'the Lessons from Dalligate'.

Thursday 21 February, 13:30 to 15:15, ASP 3F383, European Parliament.

Moderator: **Monika Kosinska** (Secretary General of EPHA)

Welcome and opening statement by MEP Dr. Ingeborg Gräßle

Speech

Four months after the forced resignation of the Maltese health Commissioner John Dalli, the number of inconsistencies and puzzles in this case is manifold. In the meantime the disclosure of the OLAF-report by the Public Prosecutor in Malta or the President of the European Parliament could have easily shed some light on the matter. Until now there are 8 lessons I have learnt from this incident:

- 1) The accusation itself – that the Commissioner would have accepted money in exchange for the European-wide admission of a tobacco product, whose ban has been confirmed years ago by the European Court of Justice, even though the Commissioner was not the competent person to lift the ban, by himself – could not be proven true. Thanks to the judicial proceedings in Malta however we know that the decisive meeting, at which the bribe, allegedly, was asked for, never took place. Insofar, the Commissioner's version has been confirmed.
- 2) We have seen, until now, that the Commission as well as the tobacco industry refuses to give real answers to our urgent questions. But it now also seems the European Parliament refuses to contribute to give insight into the affair.
- 3) Inconsistencies do not lead to a loss of credibility. The plaintiff waited 2.5 months to report the bribery to the Commission. Nevertheless the firm sees itself as the victim, despite having negotiated further with the persons concerned. The tobacco firm did everything it could to identify persons who had private contacts with the Commissioner; they mandated them as lobbyists, without registering them as such in Brussels. Thereafter, illegal tapes of phone conversations were produced - the question remains, as to how far the Anti-Fraud Office itself was involved in the recording. Several sources allege that OLAF pressurized the lobbyists to produce the tapes. We do have rules but they are not followed.
- 4) It seems that having contacts with the tobacco industries (outside the UN-FCTC guidelines) is common practice in the Commission – direct contacts of officials, or Commission staff that have previously been employed by the tobacco industry, or the other way around (revolving door). The most prominent example is the former chief of the legal service of the Commission, Michel Petite, who since 2009 chairs the Ethics Committee of the European Commission, which decides on future lobbying rules for Commissioners. Also, in 2004, he negotiated an agreement with Philip Morris concerning payments of the industry to the EU and its member states - since his retirement in 2008, his firm operates as a lawyer and lobbyist for Philip Morris.

- 5) Although an OLAF investigation against the Commissioner had been going on for two months – concerning the lifting of the ban on snus against money – the Secretary General asked DG SANCO, in her letter of the 25th July 2013, expressively to lift the ban on snus.
- 6) Transparency is a hard and time consuming business. 154 questions have been posed by the European Parliament's Budgetary Control Committee to the Commission and the Anti-Fraud Office - the answers defy the description: 77 questions had been posed to the concerned tobacco firm and lobby group, 5 have been answered.
- 7) The Maltese elections are more important than the clarification of the case. The Maltese judiciary proceedings are put on hold till at least March 10th, 2013. After that new reasons will be found not to disclose the OLAF report.
- 8) We learnt - thanks to an OLAF interview with the involved Maltese lawyer in Portugal – that a lot of people in Malta know each other even better than they should.

Short introduction to 'Dalligate', the lobbying scandal - Rachel Tansey (campaigner Corporate Europe Observatory)

Summary

- October 16th 2012 - Commissioner Dalli resigns suddenly, following an investigation by EU fraud agency OLAF, into a cash-for-influence scandal relating to the revision of the Tobacco Products Directive.
- OLAF's investigation followed a complaint by tobacco company Swedish Match, about a personal contact of Dalli's - Maltese "entrepreneur" Silvio Zammit - requesting €60 million in exchange for getting Dalli to lift the ban on Swedish oral tobacco product "snus".
- OLAF concluded there was unambiguous circumstantial evidence that Dalli was aware Zammit was making these 'indecent proposals'. The OLAF report remains secret.
- Dalli says his resignation was "explicitly demanded" by Commission President Barroso, but the Commission says Barroso and Dalli agreed it was "politically untenable" for Dalli to stay and that he should step down in order to better defend his reputation and that of the Commission.
- On 24 December 2012, Dalli took the Commission to the EU's General Court, asking that they annul his Oct. 16 "termination of office," on the grounds that it wasn't a valid resignation and didn't allow him to defend himself against allegations.
- A court case against Zammit is ongoing in Malta.

Other areas of ambiguity in the scandal

Middlemen: Zammit thought he was just a lobbyist (he is not in the Transparency Register); the Commission said Dalli had to go because of his 'unofficial contacts' with industry, through a private intermediary, without 'any discernible or legitimate reasons to involve this intermediary'. But Dalli defended the role of middlemen. Actually there is nothing in the rules banning meetings with unregistered lobbyists or using middlemen.

Cash-for-influence: Giovanni Kessler, Director of OLAF, said it was the size of the sum that made the case problematic – it began as a normal lobbying relationship. But what is a 'normal' sum!? There's nothing in the current rules defining what fee to arrange a meeting is a normal part of the political process and what fee would be subject of a fraud investigation.

Inappropriate lobbying behaviour: Conspiracy theories say that Dalli is the victim of a tobacco industry set up, designed to delay changes they don't want. Whether or not this is true – the code of conduct for lobbyists, which Swedish Match is party to as a signatory of the Transparency Register, bans trying to obtain information or decisions via inappropriate behaviour. But what is inappropriate behaviour? Employing unregistered lobbyists? Deliberately looking for access to persons with private contact with a policy-maker? Travelling to a policy-makers home country to “learn about the domestic political situation”, and to make contacts that could help them in their “interest representation” there? These were all lobbying tactics pursued by Swedish Match.

WHO lobbying rules are not implemented properly: Tobacco lobbying is subject to particular rules, set out in Article 5.3 of the UN World Health Organisation's Framework Convention on Tobacco Control (FCTC), and implementing guidelines. The rules require that decision-makers limit interaction with the tobacco industry only to when strictly necessary to enable them to effectively regulate them, and that where necessary, interactions must be conducted transparently. The Dalli lobby scandal has revealed the Commission is not implementing its UN obligations on tobacco lobbying. DG SANCO keeps an online list of meetings with tobacco lobbyists – which is incomplete – whilst the rest of the Commission does nothing to implement the WHO rules.

Revolving door has facilitated tobacco lobby meetings: Michel Petite, former head of the Commission's Legal Service now working for lobbying-law-firm Clifford Chance (which represents Philip Morris), was re-appointed as a member of the Commission's ad hoc ethical committee, charged with advising on Commissioner's moves to the private sector, i.e. the revolving door!

Lessons from Dalligate: ALTER-EU's proposals for improved rules around lobbying - Koen Roovers (coordinator of ALTER-EU)

Summary (The comprehensive position of ALTER-EU can be found in the document ‘ALTER-EU Lessons from Dalligate’)

Barroso's office's response to criticism of their handling of the Dalli case has been that they were fully equipped to respond to this scandal. We disagree, but the main point is that they were clearly not able to *prevent* the scandal. ALTER-EU has developed a detailed set of recommendations for stricter rules around lobbying; lessons from Dalligate in terms of how to prevent scandals. This includes:

1. **Stronger conflicts of interest rules to prevent undue influence, and clearer procedures for enforcing such rules.**
 - a. Overhaul of the Code of Conduct for Commissioners
 - b. Public consultation on European Commission ethics rules
 - c. Establishment of an independent ethics committee
 - d. Stricter and mandatory ethics rules for lobbyists
2. **High-quality, mandatory lobbying transparency register, and proactive transparency on Commission meetings with lobbyists**
 - a. The voluntary Transparency Register must be replaced with a mandatory lobby transparency system
 - b. 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.
 - c. In the meantime, the Commission should act to make the register de facto mandatory by refusing to meet with unregistered lobbyists.
 - d. Comprehensive information should be available online about all meetings between Commission officials and lobbyists.

Discussion

MEP Dr. Ingeborg Gräßle: The Code of Conduct for Commissioners is not easy to reform where it comes to the implementation of a cooling-off period, because of the salary/ transitional allowance issue – if we don't pay them a substantial proportion of their salaries during the cooling-off period (now they are entitled to 3 years of transitional allowance (ranging up to 60% depending on additional income) they won't accept it as part of the rules. Yet, as the rules currently stand, only one Commissioner from the entire previous College of Commissioners did not move into an industry job at the end of their term!

Rachel Tansey: The cooling-off period would not be for all jobs, just lobby jobs or other private sector jobs which create the risk of conflict of interests. There would still be many other jobs they could go for, including in their area of expertise, which means the 100% of salary as transitional allowance during a cooling-off period is not a strong argument.

- The voluntary transparency register doesn't work – it needs improving, to become mandatory and with more information.
- Until a mandatory register is introduced, Commission practice should be to *only* meet with registered lobbyists).

David Drui, adviser to MEP Michèle Rivasi: 60% pay is more than enough (still approximately 15 thousand euros/month – 15 times the minimum wage in France!)

MEP Dr. Ingeborg Gräßle: Nevertheless, we won't get enough support to secure a cooling-off period for Commissioners without 100% of salary.

- We will be facing a new wave of revolving door cases soon as the term of the current college of Commissioners ends.

- Michel Petite: no-one spoke up the first time he was appointed onto the ad hoc ethical committee, as they were trying to get the Code of Conduct for Commissioners through. It is regrettable that nothing was done the first time – but it's ridiculous that he has been appointed for a second time. The issue is about credibility, so why not put someone else there instead of Petite?

Olivier Hoedeman (CEO): We need pro-active transparency from the Commission – to publish online lists of meetings with lobbyists, as, e.g. ministries do in the UK.

Catherine Hartmann, Secretary General of the European COPD Coalition: Prior to a recent meeting with the new Health and Consumer Affairs Commissioner Tonio Borg, his office requested that they send CVs and an organisational brief. However, the meeting wasn't in his official agenda and there were no minutes published.

David Drui, adviser to MEP Michèle Rivasi: MEPs are also part of problem (and therefore the solution) – so we need to make demands on MEPs too.

MEP Bart Staes: There was a proposal (not yet passed) that Parliamentary Rapporteurs put an appendix listing all lobbyists met with during process. This should be pursued.

Machteld Velema, assistant to MEP Dennis De Jong: Also involved in trying to raise the possibility of this kind of legislative footprint.

David Drui, adviser to MEP Michèle Rivasi: Agendas of all MEPs could easily be made available.

MEP Dr. Ingeborg Gräßle: Not in favour of a legislative footprint for MEPs, does not want to reveal all the people she's meeting with, her information sources.

Monika Kosinska: The WHO rules exist because the tobacco lobby is far worse than other industry sectors, with a long and proven record of manipulative lobbying and PR. This is why they, in particular, shouldn't be treated the same way as other industries.

MEP Dr. Ingeborg Gräßle: We need to get hold of the report by OLAF's Supervisory Committee on the Dalli investigation, so MEPs can read it. Must keep up the pressure for the disclosure of both the OLAF report and the report of its supervisory committee.

- Dallygate is extremely important: "if everything is done like in the Dalli case, then I am very worried about the future of the EU".

- Calls for a **workshop** for MEPs, in 2-3 months time, to see how to better implement WHO guidelines.

Closing Statement: Monika Kosinska (EPHA)

Summary of the points of agreement and other action points:

- 1) Increase the pressure for the truth about Dallygate to be made public (disclosure of OLAF reports, etc.);
- 2) Use the review of the Transparency Register to secure a mandatory register with more comprehensive and reliable information;
- 3) Use the review of the Staff Regulations (Article 11a and 16) to introduce stricter regulation of conflicts of interest that arise through the revolving door, ideally including a cooling-off period for EU officials wanting to go into lobby jobs;
- 4) Demand that Michel Petite is replaced on the Commission's ad hoc ethical committee;
- 5) Increase the pressure on the Commission to take its implementation of the WHO FCTC rules for contacts with tobacco lobbyists seriously.
- 6) Explore the feasibility of a public EP calendar to 'lead from the front' in terms of transparency in EU policymaking
- 7) Revive the proposal to include an annex of meetings with the rapporteur(s)
- 8) Explore the conditions for ex-Commissioners in relation to cooling off periods and % of remuneration