

ALTER-EU Briefing on the Code of Conduct for Lobbyists



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Introduction: Why does the lobbyist's Code of Conduct need revising?

The Joint Transparency Register for Interest Representatives - the European Parliament and European Commission's voluntary lobby register - came into being in June 2011. All groups or individuals who sign up to the register agree to a Code of Conduct for lobbyists. ALTER-EU believes that the experience of the lobby register's first two years, as well as other policy developments, demonstrate that the code needs to be revised, as part of the up-coming Transparency Register two-year review process.

Firstly, the Code of Conduct for lobbyists, which registrants of the Joint Transparency Register sign up to, needs to be revised in light of the new Code of Conduct for MEPs, which was introduced on January 1st 2012. The MEP Code of Conduct was introduced after the Joint Transparency Register came into being (June 2011) and therefore the lobbyist Code of Conduct must be updated in order to be compatible with this.

Secondly, the Code of Conduct for lobbyists, in its current form, is weak and vaguely worded. The cash-for-influence tobacco lobby scandal that led to the resignation of ex-Health and Consumer Affairs Commissioner, John Dalli, demonstrated that there is nothing in the Code of Conduct for lobbyists which does not allow the employment of unregistered lobbyists. This, and other areas that lack clarity - such as "inappropriate behaviour" for lobbyists - alongside the absence of monitoring and enforcement, have resulted in the code being treated as merely a 'tick box' exercise for most registrants. The code requires an overhaul in order to become an enforceable, comprehensive and effective ethics code for lobbyists.

Several of the main issues with the code, and why they require change, are illustrated below.

1. Lobbyists should respect a cooling-off period before hiring high-level public officials

The risk of actual or apparent conflicts of interests that arise through the revolving door - when when EU officials leave their EU job and go straight into lobby jobs for big business, often in the same policy area - can be significantly reduced by requiring that lobbies cannot hire former Commissioners or other high-level Commission officials for 3 years after they leave office.

The revolving door, when not properly monitored and regulated, enables industry to gain inside-knowledge, vital contacts, and above all, powerful influence over the policy-making process. This results in the interests of the *regulator* merging with the interests of the *regulated*, i.e. making Brussels even more business-dominated and remote from the public interest, as demonstrated by 73% of EU citizens expressing concern that lobbyists representing the business sector have too much influence on EU decisions.¹ It is urgent that a cooling-off period is respected, from both sides, in order to improve public trust in the EU institutions and to help clean up the image of Brussels as a place where corporate lobbyists and policy-makers merge into one.

2. Lobbyists must not employ or pay MEPs or their assistants

To curb the scope for conflicts of interest in the European Parliament, contractual relationships between lobbyists and MEPs or their assistants should be forbidden outright. The current code requires only that lobbyists get the prior permission of MEPs before hiring their assistants, which is little or no guarantee of preventing the risk of conflicts of interest arising from dual roles in policy-making and representing or being contracted by lobby groups. MEPs or their assistants should under no circumstances be paid or employed by lobby groups.

¹ EU citizens poll, January 2013, see <http://www.eu-citizens.org/noticia10.php>

3. Clarity needed over “inappropriate behaviour”

The reference to inappropriate behaviour, and undue influence, in point b of the code is not elaborated on or clarified in any way, making it unclear what would constitute a breach of this rule. **ALTER-EU has invited all MEPs to take part in an anonymous survey to identify what they have experienced as unethical or aggressive lobbying, which they would like to see covered in the revised Code of Conduct for lobbyists.**

The results of this survey will provide additions to the following non-exhaustive list of inappropriate lobbying behaviour or undue influence, which is based on examples that ALTER-EU has come across. ALTER-EU suggests that point b is amended to list examples including, but not limited to, actions or activities by lobbyists which:

- **infringe on the private sphere or personal life of a policy-maker** in attempts to exercise influence or for political gain, for example, send gifts to or phone their home residence, or seek out and contact their personal acquaintances;
- circumvent the rules of the transparency register about client and financial disclosure, by **employing unregistered lobbyists or other “middlemen”** to engage in lobbying activities on their behalf;... *et al.*

4. Open discussion about cash-for-access/influence

The Dalligate tobacco lobby scandal highlighted a lack of clarity about what is and what is not a “normal lobbying relationship” when it comes to cash-for-access/influence.² Giovanni Kessler, Director of OLAF, indicated that it was the size of the sum that the Maltese entrepreneur Silvio Zammit (accused of asking tobacco company Swedish Match for 60 million euros in exchange for setting up meetings with Commissioner Dalli, with the aim of influencing the Tobacco Products Directive) asked for that made the case problematic. Kessler stated that “What started as a normal lobbying relationship ended up being ‘vitiated’ when instead of a normal fee, the businessman asked for an enormous amount of money.”³

It is therefore clear that there is a need for open discussion about when, and why, a fee charged for arranging a meeting, through informal contacts with a public official, jumps from being a normal part of the political process to the subject of a fraud investigation. Or if cash-for-influence should be unacceptable outright. The result of this discussion should provide input for appropriate changes to the code of conduct for lobbyists, to provide some clarity on this issue.

5. Better monitoring and enforcement

As well as vital changes to the wording of the lobbyist's Code of Conduct, there is also an urgent need for better monitoring and enforcement of the code. As far as ALTER-EU is aware, since the inception of the Joint Transparency Register, no lobbyist has faced any sanctions for breaching the Code of Conduct. This indicates the need for better monitoring and enforcement. Moreover, the only sanction currently envisaged for breaching the code, is the removal of the registrant from the *voluntary* transparency register – which, as far as sanctions go, is extremely weak. If EU policy-makers only met with registered lobbyists for example, this would already be a much more powerful sanction.

The issues of monitoring and enforcement of the Code of Conduct for lobbyists therefore also need to be considered and improved, as part of the wider review of the Transparency Register.

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² ALTER-EU, *Lessons from Dalligate*, <http://www.alter-eu.org/sites/default/files/ALTER-EU%20Lessons%20from%20Dalligate.pdf>

³ Giovanni Kessler, *OLAF press briefing*, 17/10/2012, <http://ec.europa.eu/avservices/video/player.cfm?sitelang=en&ref=89025>