

Lobbying Law Firms – Unfinished Business

SCHRÖDINGER'S LOBBYING

"IF WE LOBBY BUT WE ARE
NOT IN THE REGISTER, DOES
IT STILL COUNT?"



@CARTOONRALPH

Lobbying Law Firms – Unfinished Business

| Introduction

In summer 2014 the incoming Commission President Jean-Claude Juncker announced he would deliver a mandatory lobby transparency register to include all those who lobby EU institutions.¹ However, it soon became clear that the promised mandatory lobby register would only be based on an interinstitutional agreement (IIA), rather than a legal act, and would therefore only be de-facto mandatory at best.

Without a legal base, the register will continue to be voluntary for lobbyists. Sanctions for violating the rules of the EU lobby register (officially: EU transparency register), such as refusing to register or posting misleading information, cannot be levied on lobbyists, even under a de facto mandatory register (how the commission calls its model); instead lobbyists can only be incentivised to sign-up. This remains a major barrier to ensuring that all lobbyists sign up to the register and provide full and accurate information.

Law firms that carry out lobbying or advocacy, on behalf of themselves or clients, but which continue to boycott the EU's lobby transparency register, illustrate well the limitations of a register that lacks a legal base.

In the US, law firms offering lobby services are very common, and are obliged to register in the US lobby register. As Brussels has evolved into the lobby capital of Europe, many international law firms, alongside thousands of other lobby players, have come to Brussels and opened up offices with expertise in EU law. The negotiations for a Transatlantic Trade and Investment Partnership (TTIP) have also encouraged the establishment of more law firms in Brussels. As a New York Times article showed in 2013, several US based law firms are interested in the “wave of lucrative lobbying and legal work in Brussels and in Washington for firms, which charge up to US\$1,000 an hour.”²

As the EU Transparency Register is voluntary, it is not known how many law firms also offer lobbying services in Brussels. The combination of legal advice and lobbying support, known to be offered

by at least some law firms, can be very useful for clients. Often specialising in certain legal topics such as competition, anti-trust, or intellectual property, law firms understand the technical details of upcoming directives and, on behalf of fee-paying clients, can discuss them with officials, draft suitable amendments for EU parliamentarians, or use their connections formed as members of EU advisory groups. There is a grey area when it comes to the question of where legal advice ends and advocacy or lobbying begins and many law firms argue that they cannot join the lobby register because either their work does not constitute lobbying or because they would not be able to disclose their clients because of legal client confidentiality. But of course, while client confidentiality applies to legal clients, it does not apply to clients who pay for lobbying services.

In this short analysis we will present nine big law firms, who we consider are carrying out activities which are covered by the EU lobby register, but are unregistered. There are strong indications that there are many other law firms which also lobby in the shadows and which are not registered. These firms use the weakness of the voluntary transparency regime and its lack of real enforcement capacity and powers to refuse to disclose their clients or any other information about their lobbying activities.

While the total number of law firms on the register has slowly risen from 43 in 2012 to 104³ today, the information provided remains very poor. While many small law firms with one or two clients appear on the register, only very few of the big law firms with a Brussels office can be found. All in all, we have strong doubts that the register gives a realistic picture of lobbying law firms in Brussels.

¹ http://europa.eu/rapid/press-release_SPEECH-14-567_en.htm, accessed May 12, 2016

² http://www.nytimes.com/2013/10/19/world/europe/lobbying-bonanza-as-firms-try-to-influence-european-union.html?_r=0, accessed May 12, 2016

³ <http://ec.europa.eu/transparencyregister/public/consultation/statistics.do?locale=de&action=prepareView>, last accessed 27 May 2016

| Who's on the Register...⁴

The guidelines are explicit that any law firm engaging in activities covered by the EU lobby register on their own behalf, or on behalf of clients, must register. This includes all activities that are aimed directly or indirectly at influencing policy-making, policy implementation and decision-making of the EU institutions.⁵ If they lobby on behalf of clients, they have to name all their clients and the respective revenue earned, as well as an estimate of the overall annual turnover attributable to activities covered by the register.

In January 2015, ALTER-EU showed that many law firms on the register refused to give the names of their clients, simply stating “N/A” or “Confidential”, or other similar expressions.⁶ Since then, and perhaps thanks to ALTER-EU raising this issue with the lobby register secretariat, this particular way of refusing to reveal clients is not used any more.

But this does not mean that today we can learn a lot about law firms' clients: 17 law firms indicate a turnover attributable to activities covered by the register, but no clients. They also fail to provide a reasonable explanation for this, as the register guidelines require.⁷

And the rest? It looks like most of the registered law firms that reveal clients are rather small ones. Of the 110 law firms registered on 29 March 2016, 81 law firms indicate a turnover attributable to activities covered by the register. Forty eight of these choose the lowest bracket of lobby turnover, below €99,999. Forty six of the 81 do not reveal more than two clients and 31 of these 46 reveal only one client. Although there are some major, international law firms amongst them, the majority of these 48 law firms appear to be small, including only a few with an office in Brussels and / or which declare only one full-time equivalent lobbyist. These law firms originate from all over Europe: Hungary, Germany, Italy, Sweden, Spain and elsewhere. This implies that, in contrast to the commonly-used argument by law firms against registering, revealing lobby clients seems perfectly possible for law firms based in different European countries, without violating confidentiality protection for legal clients.

At the top end of lobby turnover declared by law firms, only five of all law firms indicate a client turnover of more than one million euros, and three indicate a lobby turnover of between €500,000 – €999,999. Such low numbers are very surprising, given that many big law firms specialising in international and/or European law have offices in Brussels. Brussels Legal, a “platform of the legal community working with international and European Union

law in Brussels”, lists 78 such law firms, including many US-firms which actively lobby in Washington DC.⁸ This can either mean that the majority of these law firms do not provide lobbying services in Brussels, or it means that many of them still ride on the back of the voluntary register and lobby without being registered. Below are nine examples of unregistered law firms which we consider are actively lobbying in Brussels.

It should be noted that of the eight law firms with a turnover of more than €500,000, four entries did not make obvious sense when we checked them and we wrote to all eight asking for clarification. One corrected its entry, the others did not react. This shows that even those law firms which do decide to register do not always ensure that their entry gives a realistic picture of their work. The secretariat does not actively check entries.

| ... and who's not:

In this section, we look at nine law firms which are not only giving legal advice in Brussels, but who we think are also actively contributing to shape EU policy and who we consider should therefore be part of the lobby register – but are not.

| Hogan Lovells

The US legal service provider Hogan Lovells was formed through a merger between the US law office Hogan & Hartson and the European law firm Lovells in 2010.

Hogan Lovells does not make a secret of its lobbying activities. On its website, it states: “Working at the intersection of business and government, we offer a unique approach to identifying emerging policy risks and opportunities. And to shaping legislation, policy, and government decisions to your advantage.”⁹ And furthermore: “Step into a collaborative environment where lawyers are more than legal advisers — they are policy wonks and business professionals alike. From developing legislative strategy and lobbying legislators, to advising on the status of legislation, you can expect best-in-class service. You can count on us for your legislative needs.”¹⁰

Clearly it is also lobbying the European institutions. The law firm gives some examples of its work in the field of “government relations and policy advocacy” on its website, among them: “Lobby-

⁴ For this chapter, the lobby register entries were checked on 29 March. At this point of time, there were 110 law firms in the Transparency Register, whereas on 30 May it were only 104.

⁵ http://ec.europa.eu/transparencyregister/public/staticPage/displayStaticPage.do?locale=en&reference=WHOS_IS_EXPECTED_TO_REGISTER, last accessed 27 May 2016

⁶ <http://alter-eu.org/documents/2015/01>, last accessed 27 May 2016

⁷ <http://ec.europa.eu/transparencyregister/public/staticPage/displayStaticPage.do?reference=GUIDELINES&locale=en#en>, last accessed 27 May 2016

⁸ http://www.brusselslegal.com/article/display/2984/Law_Firms, last accessed 27 May 2016

⁹ <http://www.hoganlovells.com/en/service/government-relations-and-policy-advocacy>, last accessed 27 May 2016

¹⁰ <http://www.hoganlovells.com/en/service/government-relations-and-policy-advocacy>, last accessed 27 May 2016

ing the European Commission, European Parliament, and the EU Member States on behalf of a major U.S. trade association on EU REACH-related issues.”¹¹

Hogan Lovells has recently, in mid-April 2016, revamped its website. The old website, a copy of which still exists, was a bit more elaborate about past lobbying successes. One was able to read how Hogan Lovells scored a big success back in 2013, when its lobbying activities helped a US semiconductor corporation to receive special status within EU environmental law, enabling it to continue using a potentially hazardous chemical substance.¹²

Hogan Lovell’s consultant Hugo Paemen, formerly Deputy Director General for External Relations at the European Commission, holds a leading position at the Transatlantic Business Council, one of the biggest supporters of the Transatlantic Trade and Investment Partnership (TTIP).^{13, 14}

While Hogan Lovells is not registered in the EU lobby register, it does make an entry in the legally-binding Transparency Register in the US, which reveals that lobbying is a big part of its services. In 2015 it declared a total lobby income of US\$12,610,000. Its 84 listed clients include big business players like Nissan North America and Airbus Group.¹⁵

We wrote to Hogan Lovells and it told us that it will register soon: “In line with the views of the Law Society of England & Wales and our professional obligations in the various jurisdictions where we practice, we have taken some time to consider our position and whether we are able to register in compliance with those obligations. We have now decided that we can register, and are taking steps to do so (22 April 2016).” At the time of writing (30 May 2016), Hogan Lovells is not in the EU lobby register.

| Bird & Bird

The law firm Bird & Bird, founded in London in 1846, today operates 28 offices around the globe. Bird & Bird was listed in the EU lobby register until Spring 2015, declaring a massive lobby revenue of € 10,000,000 and up to 30 lobbyists, although it refused to re-

veal any clients, stating they were ‘confidential’.^{16, 17} Bird & Bird was automatically removed from the register on 28 May 2015 for not updating its data,¹⁸ rather than for withholding information on clients. Bird & Bird still has not re-registered although it openly promotes its lobbying abilities on its website, stating its practice involves “developing and presenting strategic, regulatory and policy views in legislative procedures and lobbying at a national and EU level.”¹⁹ More generally the law firm states on its German site that “its advisory services also include lobbying data protection authorities and legislative bodies.”²⁰

Today, the law firm employs several former employees of the Commission. Of Counsel Serge Durande of the Brussels office worked within the Directorate General for Competition for 26 years, including working directly with Commissioners Monti and Kroes, prior to his position at Bird & Bird.²¹ Belgian partner Efthymios Bourtzalas also worked at DG Competition before joining Bird & Bird in 2014.²²

The case of Bird & Bird helps to demonstrate the poor state of the register. It shows that a law firm can drop in and out of the register at whim, violate the guidelines by concealing its clients, all while maintaining its lobbying.

We have asked Bird & Bird about its lobby activities, but received no answer.

| Keller and Heckman

Keller and Heckman is based in Washington DC and works in the areas of regulatory law, litigation, and business transactions. The website emphasises that maintaining close government relationships is “integral to an effective global business strategy.” It promotes its services as “combined legislative and political experience as well as significant regulatory and industry expertise.”²³

For its Brussels office, Keller and Heckman stresses: “Our team of attorneys, scientists, legal and regulatory affairs experts have built and maintained close contacts with European and national authorities to promote regulatory approaches that serve the interests of

¹¹ <http://www.hoganlovells.com/en/service/government-relations-and-policy-advocacy>, last accessed 27 May 2016

¹² <http://corporateeurope.org/blog/secret-lobbying-law-firms-shows-need-mandatory-transparency-register>, accessed 27 May 2016

¹³ <http://www.transatlanticbusiness.org/about-us/board-of-directors/>, last accessed 27 May 2016

¹⁴ https://lobbypedia.de/wiki/Trans-Atlantic_Business_Council, last accessed 27 May 2016

¹⁵ <https://www.opensecrets.org/lobby/firmsum.php?id=D000059877>, last accessed 27 May 2016

¹⁶ <http://alter-eu.org/two-steps-forward-one-step-back-for-eu-lobby-transparency>, last accessed 27 May 2016

¹⁷ <http://archive.lobbyfacts.eu/explore/data/fd133b49d1e0457d876c5b81c0eff6c7>, last accessed 27 May 2016

¹⁸ E-Mail from the Transparency Register Secretariat from May 11, 2016

¹⁹ <http://www.twobirds.com/en/our-lawyers/ffeyo-sickinghe1>, last accessed 27 May 2016

²⁰ <http://www.twobirds.com/de/practice-areas/privacy-and-data-protection>, last accessed 27 May 2016

²¹ <http://www.twobirds.com/en/our-lawyers/s/serge-durande2>, last accessed 27 May 2016

²² <http://www.twobirds.com/en/our-lawyers/e/efthymios-bourtzalas>, last accessed 27 May 2016

²³ <http://www.khlaw.com/showarea.aspx?Show=200>, last accessed 27 May 2016

both our clients and the general public.”²⁴ Government relations is named as one of their practice areas, others are Food and Drug (including Packaging) and the REACH-Directive.

Keller and Heckman clearly advertises its lobbying successes on the website. With regards to the REACH directive, it successfully lobbied for amendments regarding substances to be exempted from registration; and it influenced amendments made to the Technical Guidance Document on substances in Articles “as regards requirement to register substances in semi-finished products”.²⁵

In our view, some of Keller and Heckman’s activities in Brussels clearly constitute lobbying and it should be part of the lobby register. We have written to Keller and Heckman LLP and asked why they are not registered, but have received no answer.

| Sidley Austin

The law firm Sidley Austin operates offices in America, Europe and the Asia-Pacific area. According to the description on its website, Sidley Austin combines characteristics of both law firm and lobby company.²⁶

For its Brussels office, the website states: “Sidley’s Brussels office is a leader in helping companies, industry associations and governments navigate and shape EU rules.”²⁷ While work to “navigate EU rules” could be understood as legal advice, surely work to “shape EU rules” involves amending, steering and discussing policy positions with policy-makers, and trying to reach the optimum outcome for a client’s or the law firm’s own needs.

Moreover, Sidley Austin participates actively in the ongoing debate about the Transatlantic Trade and Investment Partnership (TTIP). The law firm is already active in controversial ISDS cases in the framework of other trade agreements or bilateral investment treaties, for example on behalf of tobacco giant Philip Morris International.²⁸ It is conceivable that Sidley Austin therefore has an interest in maintaining the mechanism in the TTIP agreement. Sidley Austin was an event partner of an EU-US-trade conference organised by Forum Europe, a professional organiser of political events in Brussels. At the conference, which had the free trade agreement as its main topic, EU trade commissioner Cecilia Malmström and

Anthony L. Gardner, US ambassador to the EU, gave speeches. Unsurprisingly, the conference concentrated on the advantages for corporations of the planned TTIP agreement. The event was an opportunity for companies to interact with public officials and to present their perspectives and interests.²⁹

Being a partner at this event would be enough to require an entry in the EU lobby register. In the section “Do I have to register?” the register guidelines state: “It is recommended to register if your organisation performs one or more of these activities: (...) – Organises events, or forums dealing with EU policies/processes, invitations to which have been sent to Commissioners, MEPs and their assistants or EU officials.”³⁰

We have asked Sidley Austin why they are not registered, but the law firm did not reply.

| Gibson, Dunn & Crutcher

The US-based law firm with offices in Europe, Asia, South America and the Middle East was founded in 1872.³¹ In the US, Gibson Dunn clearly offers lobbying activities in Congress, as promoted on its website: “The practice group offers a „policy plus“ approach that blends traditional lawyering and business skills with the capabilities of a top-flight lobbying firm.”³² It is not completely clear if this also applies to the EU; the website states: “Gibson, Dunn & Crutcher’s Public Policy Practice Group promotes and protects client interests before the U.S. Congress as well as federal, state, local and international government entities.”³³

On the website of its Brussels office it states: “In conjunction with our Antitrust and Competition Practice in the United States, and our London, Munich and Paris offices, we provide expert advice on all aspects of European Union and EU national competition law, including competition advocacy. (...) Our team is well-known for its insight, technical skills and knowledge of the complex Brussels decision-making process and legal environment.”³⁴ While providing expert advice on EU and competition law is something which can be interpreted as either lobbying and/ or legal work, the expression „competition advocacy“ must surely be interpreted as engaging decision-makers to create a competition-friendly climate, which we think would constitute lobbying.

²⁴ <http://www.khlaw.com/EU-Offices>, last accessed May 27 2016

²⁵ <http://www.khlaw.com/showarea.aspx?Show=2108>, last accessed 27 May 2016

²⁶ <http://www.sidley.com/en/services/government-strategies>, last accessed 27 May 2016

²⁷ <http://www.sidley.com/en/locations/brussels>, last accessed 27 May 2016

²⁸ See for example <http://www.iareporter.com/articles/first-hearing-in-philip-morris-v-australia-arbitration-is-pushed-into-2014-as-new-zealand-reveals-it-is-awaiting-outcome-of-australian-cases/>, accessed 27 May 2015

²⁹ http://eu-ems.com/agenda.asp?event_id=248&page_id=2184, accessed 27 May 2016

³⁰ <http://ec.europa.eu/transparencyregister/public/staticPage/displayStaticPage.do?locale=en&reference=GUIDELINES>, accessed 27 May 2016

³¹ <http://www.gibsondunn.com/about/pages/ourstory.aspx>, last accessed 27 May 2016

³² <http://www.gibsondunn.com/practices/pages/PPY.aspx>, last accessed 27 May 2016

³³ <http://www.gibsondunn.com/practices/pages/PPY.aspx>, last accessed 27 May 2016

³⁴ <http://www.gibsondunn.com/offices/Brussels>, last accessed 27 May 2016

The law firm has an impressive number of staff recruited from the EU institutions. One of them is Of Counsel Angelika Niebler, Member of the European Parliament since 1999. She joined Gibson Dunn in September 2015. Previously she had practiced with Bird & Bird (2004-2015), and Hogan Lovells (1991-1997).³⁵ For the Brussels office, there are 18 attorneys and advisers registered on their website, of whom nine worked in European Union institutions before joining Gibson, Dunn & Crutcher, some of them for over ten years. Particularly remarkable is the fact that seven were employed with DG Competition.³⁶ According to its website, “Gibson, Dunn & Crutcher’s Brussels office is the hub of our competition law practice in Europe”.³⁷

In January 2015, representatives of the firm had a meeting with employees of the Commission’s Directorate General for Financial Stability, Financial Services and Capital Markets Union to discuss Iceland’s Capital Control.³⁸ „This demonstrates the ease with which law firms are able to hold meetings with lower-level EU officials, who are not bound by the Commission’s restrictions on only meeting with organisations on the EU lobby transparency register.“

We contacted Gibson Dunn & Crutcher. Peter Alexiadis, one partner of Gibson Dunn located in Brussels, replied that his own activities “do not extend to any „lobbying“ activities which require my registration under the Transparency Register.” He did not know about the meeting with DG Fisma and admitted after a second inquiry that “the story varies with each individual partner, depending on the nature of their business. (...) The vast majority of my partners would not envisage taking on such activities.” The law firm did not reply about its lobbying in Brussels more generally.

Clifford Chance

Founded in 1987 in the City of London, Clifford Chance has offices on five continents. On its website it states: “Our practice groups that specialise in anti-trust, state-aid and regulatory matters are well known for their high-profile work. They have long-standing working relationships with key EU institutions, know the technicalities and practicalities of the relevant EU laws (...)”³⁹. As it was unclear whether this description covers lobbying, we asked the firm and it

replied: “Our legal work does not include lobbying activities.” But it did not answer our further enquiry regarding activities of their Of Counsel lawyer Michel Petite, who is known to have met with the Commission’s legal service while Clifford Chance had Philip Morris International as client.⁴⁰

Petite headed the Commission’s legal service from 2001 to 2007 and then went through the revolving door to Clifford Chance.⁴¹ In December 2012, an official Commission response to parliamentary questions about the circumstances that led to the resignation of Commissioner John Dalli in October 2012 showed that Petite had been lobbying his former colleagues.⁴² Nevertheless, in December 2012 Petite was reappointed as member to the Commission’s ad hoc ethical committee which advises on ex-Commissioners new roles.⁴³ As is still true today, Clifford Chance was not in the EU lobby register at that time.

This reveals a fundamental difference of opinion about what constitutes lobbying or “interest representation” in the context of the register. The Commission, in an effort to defend the meetings at the time, said they were not “lobbying” but only discussions on legal issues. But in our view, setting out views on proposed tobacco legislation to former colleagues in a Commission department, whilst your employer has a tobacco firm as a client falls under the definition of “interest representation.”⁴⁴ As the Ombudsman said on this matter, “it is not disputed that [Petite] has contacted the Commission’s services „representing“ the interests of private parties before the Commission.”⁴⁵ In our view, the Commission should not seek to redefine lobbying so as to exclude such meetings.

Interestingly, Clifford Chance is to find on the U.K. Register of consultant lobbyists.⁴⁶ This clearly is inconsistent. Asked by the European Edition of the News Magazin “Politico” for the reason, Clifford Chance argued to be “uncertain about whether they qualify as lobbyists and whether they are ethically allowed to reveal their clients. Any inconsistency (...) is a result of that lack of clarity.”⁴⁷ The Law Society of England & Wales certainly permits law firms to register in the EU transparency register when they lobby.⁴⁸

According to an ALTER-EU analysis of the lobby register in January 2015,⁴⁹ while Clifford Chance previously detailed its ‘political

³⁵ <http://www.gibsondunn.com/news/Pages/European-Parliament-Member-Angelika-Niebler-Joins-Gibson-Dunn-in-Munich.aspx>, last accessed 27 May 2016

³⁶ <http://www.gibsondunn.com/lawyers/Pages/default.aspx#FindLawyers>, accessed 27 May 2016

³⁷ <http://www.gibsondunn.com/offices/Brussels>, last accessed 27 May 2016

³⁸ <http://www.asktheeu.org/en/request/2149/response/7973/attach/5/20150929%20100515%20events%20v5%2002092015.pdf>, last accessed 27 May 2016

³⁹ http://www.cliffordchance.com/people_and_places/places/europe/belgium.html, last accessed May 27 2016

⁴⁰ <http://corporateeurope.org/revolvingdoorwatch/cases/michel-petite>, last accessed 27 May 2016

⁴¹ <http://corporateeurope.org/revolvingdoorwatch/cases/michel-petite>, last accessed 27 May 2016

⁴² <https://www.lobbycontrol.de/wp-content/uploads/121209-Antworten-Kommission-auf-154-Fragen-Dalli.pdf>, last accessed 27 May 2016

⁴³ <http://corporateeurope.org/revolvingdoorwatch/cases/michel-petite>, last accessed 27 May 2016

⁴⁴ <http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32014Q0919%2801%29&from=de>, last accessed 27 May 2016

⁴⁵ <http://www.ombudsman.europa.eu/de/cases/decision.faces/de/52934/html.bookmark>, last accessed 27 May 2016

⁴⁶ https://registerofconsultantlobbyists.force.com/CLR_Public_Profile?id=0012400000DKNA2AAP, last accessed 27 May 2016

⁴⁷ Politico Brussels Influence Newsletter: Grand Duchy of lobbyists – Lawyers list – O’Reilly branding, 23 May 2016

⁴⁸ <http://www.lawsociety.org.uk/support-services/advice/practice-notes/the-eu-transparency-register/>

⁴⁹ <http://www.ombudsman.europa.eu/en/cases/decision.faces/en/52934/html.bookmark>, last accessed 27 May 2016

advocacy strategy' department which offered clients assistance in "shaping law and policy as it evolves,"⁵⁰ all reference to explicit lobbying services seem to have now been removed from its revamped website.

| Van Bael & Bellis

The Belgian law firm Van Bael & Bellis is based in Brussels and has a second office in Geneva dedicated to World Trade Organisation (WTO) matters. The firm promotes its legal expertise alongside its lobbying skills. On one webpage dedicated to the aviation sector, it states: "We actively intervene on behalf of our clients in EU decision-making processes through the presentation of position papers and other lobbying activities, and we assist our clients in obtaining access to EU and national decision-makers."⁵¹ In the practice area of Trade, WTO & Custom Laws, the law firm also sells its "unique ability to coordinate lobbying and defence strategies on all trade law issues."⁵² And on a leaflet published in 2015 about its expertise on product safety and consumer protection, Van Bael & Bellis states its past assignments including "preparing position papers and holding discussions with EU Commission officials and members of the European Parliament [and] lobbying the European Commission and European Parliament on healthcare legislation."⁵³

Van Bael & Bellis' self-portrait reveals their lobbying of the EU institutions on various issues on behalf of their clients. We wrote to the law firm asking why they are not registered in the EU lobby register, but received no reply.

| White & Case

The New York-based law firm operates through 39 offices in 26 countries. For its Brussels office, White & Case states: "We are particularly experienced in anticipating, monitoring and analysing developments regarding specific regulations that can affect our clients. We do not just apply the law, we help to shape it."⁵⁴

White & Case is also a member of EFILA, the European Federation of Investment Law and Arbitration. Registered as an NGO in the EU lobby register, the group was set up as a reaction to the massive civil society protest against the investor-state dispute settlement

(ISDS) mechanism in Europe which came up in the framework of the TTIP debate. EFILA's founders are law firms which have clear vested interests in the current investment arbitration system, like White & Case. In the register, EFILA states that it "will serve as a platform for a merit-based discussion on European and international investment law."⁵⁵

White & Case was previously on the lobby register, but after a complaint by ALTER-EU member Corporate Europe Observatory (CEO) in June 2012, the register secretariat suspended the law firm as it had violated the rules and did not disclose its clients. In the field intended for disclosing lobby clients, the law firm entered: "All client information is confidential and protected by bar rules and regulations."⁵⁶ Although the suspension was only for eight weeks, pending appropriate amendment of their entry,⁵⁷ White & Case have not re-registered. We wrote to the law firm asking why it is not registered, but received no answer. Though clearly offering lobbying services, the voluntary lobby register has no ability to compel organisations to join.

| K&L Gates

The US law firm states on its website: "The K&L Gates policy group operates at the intersection of public policy, law, and business. Founded over four decades ago, at a time when few law firms had lobbying practices, the policy group has grown from a single lobbyist to become the largest of any fully integrated global law firm."⁵⁸ And later on: "Members of our Public Policy group join forces with our Global Government Solutions® practice and together, provide a uniquely effective set of capabilities to help clients deal with governments around the world."

On the Brussels website, K&L announces that its "lawyers provide strategic advice on policy matters relevant to EU legislation and regulation," which is an activity covered by the register as soon as it is intended to influence the EU institutions.⁵⁹ The same goes for providing "substantive and strategic counsel with regard to proposals from the European Commission, the Council of the European Union, the European Parliament."⁶⁰

Regarding its activities in international trade matters, K&L Gates states: "We have extensive experience in both the legal and political

⁵⁰ https://web.archive.org/web/20131110040230/http://www.cliffordchance.com/legal_area/public_policy/political_advocacy_strategy.html, last accessed 27 May 2016

⁵¹ <http://www.vanbaelbellis.com/en/fiches/practice-areas/regulated-industries/aviation.cfm>, last accessed 27 May 2016

⁵² <https://www.vanbaelbellis.com/en/fiches/practice-areas/trade-and-customs-law/trade-wto-and-customs-law.cfm>, last accessed 27 May 2016

⁵³ <http://www.vanbaelbellis.com/site/download.cfm?SAVE=10165&LG=1>, last accessed 27 May 2016

⁵⁴ <http://www.whitecase.com/law/western-europe/belgium>, last accessed 27 May 2016

⁵⁵ <http://ec.europa.eu/transparencyregister/public/consultation/displaylobbyist.do?id=877607714842-74>, last accessed 27 May 2016

⁵⁶ <http://www.alter-eu.org/sites/default/files/documents/Dodgy-data.pdf>, p.13, last accessed 27 May, 2016

⁵⁷ http://www.alter-eu.org/sites/default/files/documents/Transparency%20Register%20remains%20opaque%20and%20poorly%20scrutinised_FULL%20ARTICLE.pdf, last accessed 27 May 2016

⁵⁸ <http://www.klgates.com/public-policy-and-law-practices/>, last accessed 27 May 2016

⁵⁹ Interinstitutional agreement Agreement between the European Parliament and the European Commission on the Transparency Register for organisations and self-employed individuals engaged in EU policy-making and policy implementation: <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014Q0919%2801%29&from=en>, (heading „Activities not covered“, number 10), last accessed 27 May 2016

⁶⁰ <http://www.klgates.com/public-policy-and-law-practices/>, last accessed 27 May 2016

elements of regional and bilateral free trade agreements, and can provide governments and private clients with comprehensive counsel in all aspects of negotiations and implementation. Our team integrates lobbying and regulatory implementation, thus providing clients with a full perspective on the political and legal implications of existing and pending trade legislation and assisting them in developing successful strategies to address these implications.”⁶¹

K&L Gates is a member of the Transatlantic Business Council (TABC),⁶² one of the most active business lobby groups on TTIP. In statistics by the non governmental organisation Corporate Europe Observatory on the number of external meetings held by DG Trade, the TABC ranks second in the period between January 2012 and February 2014.⁶³ Its mission according to its own mission statement is, among others, to “foster discussion and the exchange of ideas among business and government leaders(...)”.⁶⁴ TABC member groups are regularly invited to receptions and events with the EU and US TTIP negotiators giving them the opportunity to talk to them directly.⁶⁵ The on-going TTIP negotiations are of high significance for K&L Gates themselves as they are one of the most active law firms in international arbitration and could benefit highly if ISDS makes it into the agreement.⁶⁶

We have written to K&L Gates asking why they are not registered in the EU lobby register, but the law firm did not react.

Conclusion: A legally binding register is the only solution

As long as law firms lobbying the EU institutions can decide to absent themselves from the lobby register, the register cannot provide an accurate picture of who is influencing EU decision-making, on which issues, on whose behalf, and with what budgets.

Many law firms claim that they are obliged to provide client confidentiality. This is true of course when it comes to defending clients in court cases, but obviously not when it concerns lobbying.

However, in recent years bar associations in some countries (for example in France and Belgium) have acknowledged that client confidentiality should not be applied to lobbying services. The Council of Bars and Law Societies of Europe has also expressed its view that law firms which lobby should register. But all these organisations ask for a legally binding register – not the incentive-based approach the commission is promoting. Only a legally binding register, they argue, can create a level playing field, remove any lingering doubts and enable them to clearly communicate the duty to register towards clients.

In the US, the lobby register was voluntary until 1995, when lawmakers opted for a legally-binding register, precisely because law firms continued to refuse to sign up under the voluntary model. Today, according to the US lobby data-crunching website Open-secrets.org, 8 of the 20 top lobbying firms are actually law firms, including the biggest three.⁶⁷ The unacceptably low level of participation in the EU’s voluntary lobby register by law firms should give the Commission and the European Parliament every reason to follow the US example and put in place real legally-binding lobbying disclosure rules.

Interestingly, many of the law firms we highlighted in this short survey are from the US and are registered in the lobby register back home. It is surely plausible that in Europe they will wait to register until they are obliged to do so by law.

We have strong doubts that the plans of the Commission for a de facto mandatory register based on an inter-institutional agreement instead of EU law will oblige law firms to register. What makes us sceptical, among other things, is that more than one year after the Commission has implemented its strongest incentive (Commissioners and their cabinets, plus directors-general, should only meet with registered lobbyists) law firms like the ones described above still are not registered. Others which have registered, still do not provide complete entries. Presumably, those unregistered law firms which require face-to-face meetings with Commission officials are content to meet those lower-level officials who are not covered by this rule. So, what we would like to know from Commission President Juncker and Vice President Timmermans is: How will you ensure lobbying law firms register, and provide full declarations, if not by a real mandatory register with a legal base?

⁶¹ <http://www.klgates.com/public-policy-and-law-practices/> (International Trade), last accessed 27 May 2016

⁶² <http://www.transatlanticbusiness.org/about-us/member-companies/>, last accessed 27 May 2016

⁶³ http://corporateeurope.org/sites/default/files/attachments/regulatoryduet_en021.pdf view page 18 for the involvement of the Transatlantic Business Council in TTIP

⁶⁴ <http://www.transatlanticbusiness.org/about-us/history-mission/>, last accessed 27 May 2016

⁶⁵ <http://corporateeurope.org/international-trade/2014/07/tabc-invite-cocktail-bavarian-representation-brussels>, last accessed 27 May 2016

⁶⁶ <http://corporateeurope.org/international-trade/2015/07/law-firms-most-underrated-lobbyists>, last accessed 27 May 2016

⁶⁷ <https://www.opensecrets.org/lobby/top.php?indexType=l&showYear=2015>, last accessed 27 May 2016

| About ALTER-EU:

The **Alliance for Lobbying Transparency and Ethics Regulation** (ALTER-EU) is a coalition of over 200 public interest groups and trade unions concerned with the increasing influence exerted by corporate lobbyists on the political agenda in Europe. Visit us on

www.alter-eu.org

| Imprint

Alliance for Lobbying Transparency
and Ethics Regulation (ALTER-EU)
Mundo B
Rue d'Edimbourg 26
B-1050 Brussels
Tel: +32-2-8931062
E-mail: info@alter-eu.org
ALTER-EU is registered in the EU
Transparency Register under number:
2694372574-63.

Published by:

Alliance for Lobbying Transparency
and Ethics Regulation (ALTER-EU)

May 2016

Written by:

Nina Katzemich / LobbyControl with contributions
by Vicky Cann / Corporate Europe Observatory

Thanks to:

The valuable support of Denise Walke, Mareike
Biesel, Inga Müller; as well as the ALTER-EU
steering committee members for valuable
feedback

Titelcartoon:

@ cartoonralph

Design by:

blickpunkt x, Köln