



Code of Conduct for Lobbyists

ALTER-EU believes that the experience of the lobby register's first two years, as well as the introduction of the MEP Code of Conduct in 2012, which the lobbyist's code must be compatible with, demonstrate that the Code of Conduct for lobbyists requires revision. In its current form, the lobbyists' code is weak and vague, and combined with an absence of proper monitoring and enforcement, it is 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.

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 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 changing the code of conduct for lobbyists to require lobbies not to hire former Commissioners or other high-level Commission officials for three years after they leave office.

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 being contracted by lobby groups. Lobby groups should, under no circumstances, pay or employ MEPs or their assistants.

Clarity needed over "inappropriate behaviour": Point B of the existing code prohibits "inappropriate behaviour" and "undue influence", but this is not elaborated on or clarified in any way, making it unclear what would constitute a breach of this rule. ALTER-EU suggests that point B is developed to include, but not limited to, actions or activities by lobbyists which:

- **infringe upon the private sphere or personal life of a policy-maker** in attempts to exercise influence or for political gain eg. send gifts to, or phone, home residences; or seek out and contract 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.

Open discussion about cash-for-access/influence: The Dalligate tobacco lobby scandal has once again highlighted a lack of clarity about what is acceptable when it comes to cash-for-access/influence.¹ OLAF chief Giovanni Kessler, referring to the alleged demand from lobbyists for 60 million euros in exchange for setting up meetings with a Commissioner, with the aim of influencing a proposed Directive, stated that "*What started as a normal lobbying relationship ended up being 'vitiating' when instead of a normal fee, the businessman asked for an enormous amount of money.*"² This makes it clear that 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 is unacceptable outright. ALTER-EU believes that an open discussion on this issue should be conducted, in order to provide input for appropriate changes to the Code of Conduct for lobbyists.

Better monitoring and enforcement: As well as vital changes to the wording of the lobbyists' Code of Conduct, there is also an urgent need for better monitoring and enforcement of the code. As far as ALTER-EU is aware, no lobbyist has faced any sanctions for breaching the code, which indicates the need for better monitoring and enforcement. Moreover, the only sanction currently envisaged for breaching the code is very weak: the removal of the registrant from the *voluntary* Transparency Register. Instead, a much more powerful sanction could be if EU policy-makers were discouraged from meeting unregistered lobbyists.

¹ ALTER-EU, 'Lessons from Dalligate', <http://www.alter-eu.org/sites/default/files/ALTER-EU%20Lessons%20from%20Dalligate.pdf>

² Giovanni Kessler, *OLAF press briefing*, 17/10/2012, <http://ec.europa.eu/avservices/video/player.cfm?sitelang=en&ref=89025>

Transparency Register Complaint Mechanism

One of the most worrying aspects of the Transparency Register is the very weak oversight and lack of investigatory capacity within the institutions. Erroneous and incomplete data routinely appear in the register, and there are few sanctions or penalties for improper or misleading disclosures. The review of the register is an opportunity to ensure proper compliance, including through a better functioning complaints mechanism.

No exceptionalism for lobbying law firms: Despite the high volume of inaccurate entries in the register (more than half, according to register's first annual report in November 2012³) there have been a very small number of complaints. Only five complaints were handled between March 2012 and November 2012. This means that extensive conclusions about the complaints process cannot be drawn. Despite this, the 2012 annual report presents a conclusion, on behalf of law firms, which suggests the opposite: *“Due to the independence of their profession, law firms feel that their professional representative associations should handle complaints regarding an alleged violation of conduct codes and decide relative sanctions on their account.”* ALTER-EU is concerned to ensure that the narrow interests of law firms offering interest representation services do not have a disproportionate impact on the development of EU lobbying disclosure. Law firms should receive equal treatment for equal activities (ie. lobbying), and they should not be treated differently if complaints are made about their lobbying activities breaching the code of conduct.

Lessons from ALTER-EU's experience: ALTER-EU's own experience of using the complaint mechanism (six of our complaints have been handled) has shown us that delays, sometimes very extensive delays, are common, and the investigation of complaints has often resulted in a *continued* lax implementation and weak interpretation of the rules.⁴ In order for the register, designed to enable public scrutiny, to foster genuine respect for transparency among lobbyists and within the EU institutions, those responsible for administering the register and dealing with complaints must avoid this *laissez-faire* approach, and be provided with sufficient means to properly monitor, investigate and act on complaints. ALTER-EU therefore makes the following recommendations for the review of the complaints mechanism:

- Registrants who do not comply with the rules must **not be allowed to simply create their own justifications for non-compliance** and ignore the standards that apply to others in the register (see *Association of European Airlines example in “Transformation needed in transparency” attachment*);
- Registrants who fail to disclose who they are lobbying for should **not be allowed to remain** in the lobby register merely **by stating that they do not actually lobby** (see *Linklaters example in attachment*)
- Registrants who do not want the rules to apply to them should not be able to simply withdraw from the register when challenged over non-compliance, and continue to lobby anyway. Compliance can only be accomplished with a **mandatory, properly enforced lobby register.**

'Alerts' vs complaints: The 2012 annual report shows that the register secretariat is treating complaints about incomplete, misleading or out-of-date entries (ie. breaches of point D of the code) as 'alerts' rather than complaints. As complaints about 'unintentional' breaches of point D were deemed most common, the secretariat concluded that *“while the formal complaint mechanism is a necessary tool, it is clear that on an everyday basis, it is essential to use a lighter 'alert mechanism' in order to react more quickly to rectify misinformation contained in the TR”,* whereas formal 'complaints' will be understood as those *“about intentional breaches of the Code of Conduct by TR registrants.”*⁵ ALTER-EU cautions against the assumption that breaches of point D are unintentional and merely due to an inadequate understanding of the rules. Registering in the wrong section or under-reporting financial information can be a strategic choice for a lobby group, in order to benefit from, for example, the varying disclosure requirements for different categories or the differing perceptions of different categories of lobbies. For example:

- **European Privacy Association (EPA):** EPA registered as the more neutrally-perceived category of **think tank, when it is funded by, and represents, industry.**⁶
- **PGNiG:** PGNiG did not originally register its financial relationship with the lobby group **Citizens Coalition towards Responsible Energy (CC-RE).**⁷

(See attachment for further information on how complaints are handled by the register secretariat.)

Furthermore, by setting the bar for formal complaints as those showing 'intentional' breaches of the code, the evidence burden is too high. The existence of intent often cannot be properly determined by third parties.

³ Annual Report on the operations of the Transparency Register – 2012: http://ec.europa.eu/transparencyregister/info/openFile.do?fileName=transparency_register_report_20121029_en.pdf

⁴ More details about the complaints can be found in Chapter 4 of ALTER-EU's June 2013 report “Rescue the Register! How to make EU lobby transparency credible and reliable”, http://www.alter-eu.org/sites/default/files/documents/Rescue_the_Register_report_25June2013.pdf

⁵ Section 1.3.2.3. Alerts in 2012 Transparency Register annual report

⁶ See 'Section 4.4 European Privacy Association' of the June 2013 ALTER-EU 'Rescue the Register' report

⁷ See 'Section 4.3 PGNiG' of the June 2013 ALTER-EU 'Rescue the Register' report