

EUROPEAN COMMISSION
SECRETARIAT-GENERAL

Directorate B
 Administrative Policies
 The Director

Brussels, **06 DEC. 2012**
 SG/B/HSZL/DCB/WF/ARES(2012)

Mr. Erik Wesselius
 Director, ALTER-EU
 Rue d'Edimbourg 26
 1050 Brussels

Dear Mr Wesselius,

I have been asked to respond to your letter of November 5th addressed to President Barroso. I should mention at the outset that the President does not share your views about the Commission decision-making process. Please be assured, that the collegial procedures in place provide a solid framework protecting the decision-making process from undue influence.

Regarding your remark that there is a contrast between the wealth of material regarding the resignation of Mr Dalli which has appeared in the media, and the paucity of the hard information which has been put out by the Commission, you will certainly admit that such a contrast is not out of the ordinary. The Commission does not make a point of commenting on rumours which appear in the media and has already clearly stated that Mr Dalli decided to resign because it had become politically untenable for him to continue in office. Your allegations of 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, including four requests introduced by members of Alter EU.

As the Commission has already explained, in particular to the European Parliament, the European Anti-Fraud Office's report has been transmitted to the Maltese Authorities and is now part of judicial proceedings in Malta. It is covered by the rules regarding secrecy of investigations and it cannot be released without the prior consent of the Maltese authorities. With reference to your questions concerning possible other similar cases, the Commission has not been informed of any other situation in which undue influence on the Commission decision-making mechanisms would have allegedly been offered by the acquaintance or family of a Member of the Commission.

There are many lobbyists established in Brussels, representing all kinds of interest; while the vast majority of these operations never engage in inappropriate behaviour, the Commission is not in a position to assess the business practices of each and every one of

them. However, a large and constantly increasing number of them are bound by the common code of conduct related to the Transparency Register and are thus subject to its complaint mechanism, which can be activated by any citizen in case of suspicions of breach of the code substantiated by material evidence.

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.

The guarantees which protect European affairs against "undue influence" feature in Art 1 and 3 of the Treaty TEU which foresee the strict obligations for Commissioners to promote the general interest of the Union and to be completely independent, and also in the collegiate nature of Commission decision-making. These fundamental obligations are also developed in the Code of Conduct for Commissioners. It is not clear that adding more detailed rules and guidelines would bring significant marginal benefits, nor that it might be advisable or even possible to regulate for every imaginable eventuality. It is interesting to note, that countries relying on clear ethical principles, rather than formalistic compliance, manage best to eradicate inappropriate behaviour from public life.

You also refer to the rules to prevent conflict-of-interest situations. The new Code of Conduct for Commissioners, which the Commission adopted on 20 April 2011, has reinforced the restrictions imposed upon former Commissioners with regard to their post-office activities, especially when those might involve contacts with the Commission. The provisions contained in the new Code of Conduct for Commissioners correspond to comparative best-practice at government and international level (cf. for example OECD study of 2010 on "Post-Public Employment: Good practices for preventing conflict of interest", ISBN 978-92-64-05670-1).

Finally, there is the issue of the registration of "lobby consultants" in the transparency register. The provisions have an in-built review schedule and this process is due to start already in 2013.

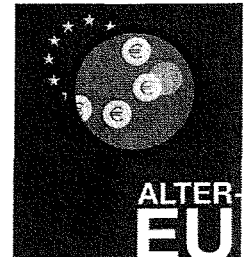
Yours sincerely,



Hubert Szlaszewski

CC: Mr J. Laitenberger, Head of cabinet of the President
Mr J. Nociar, Head of cabinet of Vice-President Sefcovic
Ms Day, Secretary General of the Commission

From:
ALTER-EU
Alliance for Lobbying Transparency and Ethics Regulation
Rue d'Edimbourg 26
1050 Bruxelles



Brussels, November 5, 2012

To: José Manuel Barroso, President of the European Commission

Re: Lessons from Dalli scandal - Commission needs stronger ethics and transparency rules around lobbying

Dear Commission President,

We write to you to express our deep concerns about the many unanswered questions around the resignation of John Dalli, EU Commissioner for Health and Consumer Policy. The Commission has released so little information in the two weeks since the scandal broke, that it has in effect raised more questions than it has provided answers. At the same time a wealth of information has appeared in the media, much of which contradicts the Commission's version of the events.

The case revolves around an acquaintance of Mr. Dalli, who - operating as a lobby consultant - allegedly offered a tobacco industry lobby group access to Dalli as well as influence over the EU Tobacco Products Directive; in return for a payment of up to €60 million. This 'middleman' - who was involved in lobbying but who was not registered in the Commission's voluntary Transparency Register - is said to have asked for part of this money to be paid to Commissioner Dalli. A second theory has also gained ground which argues that the tobacco industry may have filed the original complaint against Mr. Dalli which led to the case coming to light, with the intention of delaying, or even derailing, EU decision-making on the Tobacco Products Directive.

Based on the information that is currently in the public domain, neither theory can be verified, nor be ruled out. The fact is that it remains unclear exactly why Mr. Dalli had to leave. We therefore call on the Commission to end the secrecy around the case and release the full facts about this scandal, including the European Anti Fraud Office's report.

Whatever emerges as the real reason for Mr. Dalli's resignation, this situation raises serious questions about privileged access of industry lobbyists to, and influence over, European Commission decision-making. Has the Commission investigated whether the attempts to sell access and influence were limited to Mr Dalli or whether other Commission departments were approached? Also, has the Commission assessed whether there might be other cases in recent years where acquaintances of Commissioners or lobby consultants have set up meetings with Commissioners on a for-profit basis?

The Commission urgently needs to use more rigorous measures to avoid undue influence, introducing far stricter transparency and ethics rules around its contacts with lobbyists, and ensure these rules are stringently enforced. This must include:

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.[1] 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.

We encourage you to urgently launch 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 Regulation that apply to Commission and EU agency staff. As part of this we encourage you to consider establishing an independent ethics committee, with a broader and better defined mandate than the existing *ad hoc* ethics 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.[2] This 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.

2) A 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.[3] The review of the Transparency Register, scheduled for mid 2013 provides the perfect opportunity to begin the transition towards a mandatory system with far more stringent disclosure requirements. In the meantime, the Commission should act to make the register *de facto* mandatory by refusing to meet with unregistered lobbyists. Dalli is not the only Commissioner to have met with numerous unregistered lobbyists.[4] 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.[5] We note that a number of Commissioners, including yourself, have refused upon request to disclose which meetings they have had with lobbyists.[6] The Dalli case highlights just how important it is for information about such meetings to be in the public domain.

In summary, for ALTER-EU and for many others concerned with EU decision-making, contrary to the claims made by the Commission at recent press conferences, the Dalli case is not closed and the lesson that should be taken from the whole affair is that the system is not working. We call upon you to act now to make the full facts around the case public, and to show leadership in strengthening rules and procedures to curb undue lobbying influence over EU decision-making.

Yours sincerely,



Erik Wesselius (Corporate Europe Observatory)

On behalf of the ALTER-EU Steering Committee:

Helen Darbshire (Access Info Europe);
Paul de Clerck (Friends of the Earth Europe);
William Dinan (University of the West of Scotland & SpinWatch);
Marc Gruber (European Federation of Journalists);
Nina Katzemich (LobbyControl);
Katrina Perehudoff (Health Action International Europe);
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Notes

1: 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

2: 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

3: 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

4: 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>

5: 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>

6: See: "Transparency lacking about Commissioner calendars", Friends of the Earth Europe, 1 May 2011. <http://www.foeeurope.org/transparency-lacking-Commissioner-calendars-010512>