


Joint Transparency Register Secretariat
c/o European Commission
Rue de la Loi 200
B-1049 Brussels

Sent only by email to: SG-TRANSPARENCY-REGISTER-COMPLAINT@ec.europa.eu

8 July 2019

Dear ,

Your Ref: TR-C-2019-85 and TR-C-2019-87

We refer to your letter of 21 June 2019 regarding the two Transparency Register complaints (ref: TR-C-2019-85 and TR-C-2019-87) (the “**Complaints**”), and specifically that FTI Consulting may have breached section (b) of the Transparency Register Code of Conduct (the “**Code of Conduct**”). As requested, we set out below our response to the Complaints. In summary, we contest that FTI Consulting has breached the Code of Conduct and strongly believe that we have acted in accordance with the Code of Conduct and any other applicable ethical standards.

Background

1. FTI Consulting was mandated on behalf of its client Eurogas, which represents the European gas wholesale, retail and distribution sectors, to undertake a perception audit regarding stakeholders’ perception of Eurogas and their public affairs activities (the “**Audit**”).
2. We approached 201 potential respondents in respect of the Audit, including MEPs and NGOs which we anticipated would have relevant feedback to provide. One proposed respondent was Xavier Benito Ziluaga MEP, one of the complainants. The other 200 potential respondents apparently did not have any concerns that the Code of Conduct may have been breached.
3. We enclose of a copy of the email sent to MEP Ziluaga regarding the Audit on 25 March 2019. It is confirmed that our client Eurogas offered to make a donation of €50 to UNICEF for every respondent who participated in the Audit.
4. We understand that perception audits like the Audit are commonplace among agencies such as ours, as well as their clients and corporations, and we are regularly engaged to undertake such audits on behalf of our clients. By participating in a perception audit, we recognise that we are asking the respondent to give up their own time. The modest charitable donation is merely a way of recognising that the respondent has made that effort, without conferring any direct or indirect benefit to the respondent or providing any financial inducement for them to participate.
5. The charitable donation does not constitute any breach of the Code of Conduct for MEPs with respect to financial interests and conflicts of interest (as set out in Annex 1 of the European

Parliament's Rules of Procedure for MEPs¹). This is explicitly confirmed by the Joint Transparency Register Secretariat (the "JTRS") in its letter of 21 June 2019 where it states (in the third paragraph on page 3) that the complaint is not admissible on the ground of **point g)** of the Code of Conduct that deals with inducements of MEPs to contravene rules and standards of behaviour applicable to them. Indeed, if the acceptance of a charitable donation breached the Code of Conduct for MEPs, the offering of such donations would violate **point g)** of the Code of Conduct. We agree with the JTRS that this is not the case.

6. Furthermore, the practice of offering a modest charitable donation in this way is commonplace among agencies similar to ours and has been a practice for over a decade. Moreover, it is our understanding that it was MEPs themselves who originally suggested the granting of charitable donations in this way in recognition that the MEP has given up some of their own time to participate in, for example, a perception audit. As such, we did not, and do not, consider the manner in which we conducted the Audit as amounting to inappropriate behaviour for the purposes of section (b) of the Code of Conduct.

The Complaints

7. Section (b) of the Code of Conduct prohibits us obtaining, or trying to obtain, information *"dishonestly, or by use of undue pressure or inappropriate behaviour"*. There is no suggestion in your letter that FTI Consulting has acted dishonestly. As is clear from our email to MEP Ziluaga, we were open and transparent about who we are, who we represent, the nature of the Audit, what we wished to speak to MEP Ziluaga about and why, and the charitable donation that Eurogas would make. Accordingly, it is common ground that we did not act dishonestly in connection with the Audit.
8. The only remaining question is therefore whether we acted in conformity with the other two elements of section (b) of the Code of Conduct (i.e. undue pressure or inappropriate behaviour).
9. As a preliminary point, we would like to recall the purpose of the Transparency Register and the associated the Code of Conduct. These are based on the 2014 Interinstitutional Agreement on a mandatory Transparency Register between European Parliament, the Council of the European Union and the European Commission (the "**Interinstitutional Agreement**"). The Transparency Register covers activities *"carried out with the objective of directly or indirectly influencing the **formulation or implementation of policy and the decision-making processes of the EU institutions...**"*.²
10. The Audit clearly did not intend to influence the formulation or implementation of policy or the decision-making processes of EU institutions. Its purpose was merely to examine the perception that a wide group of stakeholders (including MEPs) has of our client Eurogas. This falls outside the category of activities that the Transparency Register and the associated the Code of Conduct aim to address.

¹ <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+RULES-EP+20190325+0+DOC+PDF+V0//EN&language=EN>

² Paragraph 7 of the Interinstitutional Agreement. Emphasis added.

11. Furthermore, and more importantly, we did not exert any pressure nor behaved inappropriately in any other way:

- a. As is apparent from the email we sent to MEP Ziluaga, we did not exert *any* pressure whatsoever – undue or otherwise. MEP Ziluaga was free to decline our invitation or to ignore it altogether, and nothing in our email sought to exert pressure or create any sense of obligation or duty on the respondent to participate in the Audit.
- b. As regards “*inappropriate behaviour*”, for the reason set out in paragraph 4 above, we do not believe that there was any improper behaviour in the way we conducted the Audit for the purposes of section (b) of the Code of Conduct. The charitable donation was not intended to, and nor did it, confer any benefit on the respondent, nor does it amount to a “financial inducement” being given to a MEP for the purpose of the EPACA Code of Conduct or SEAP Code of Conduct as referred to in your letter.

12. We note that the other complainant, Friends of the Earth, queried Eurogas’s choice of charity. Eurogas deliberately chose UNICEF as a large, global charity with interests that were very different from those of its own, in order to eliminate any appearance or allegation of impropriety or of showing undue bias towards a particular charitable cause or interest that any potential respondents might support or endorse. Thus, the choice for UNICEF did not create any confusion as to the purpose of the Audit, which was clearly explained in the email requesting respondents to participate in the Audit, but rather avoided any such confusion.

Please do not hesitate to contact me should you wish to discuss any element of the above or if you require any clarification or further information. On behalf of FTI Consulting, I would like to emphasise that we take our obligations under the Code of Conduct, the EPACA Code of Conduct and the SEAP Code of Conduct extremely seriously, as they are at the heart of what we do as public affairs professionals. If the JTRS is of the view that the common gesture of offering a modest charitable contribution in recognition of an interviewee’s time as described above is no longer appropriate or not in line with the Code of Conduct, we will cease such practices without hesitation and would welcome any comment or clarification from the JTRS on this topic. In that event, we respectfully request the JTRS to inform all professional consultancies registered in the Transparency Register of this view, as the offering of modest charitable donations has been common practice for such consultancies for over a decade and this has never been challenged before.

Yours sincerely



For and on behalf of FTI Consulting Belgium S.A.