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ALTER-EU assessment of Barroso II Commission:

'Talking the talk, but not walking the walk' on lobbying transparency and ethics reform

Introduction

As the only EU institution that can propose new laws, the European Commission is a tremendously powerful player and therefore also the focus of strong lobbying pressures. Robust and well-enforced transparency and ethics rules to prevent undue influence are therefore essential. The record of the Barroso II Commission on key problem areas like lobbying secrecy, 'revolving door', industry-dominated advisory groups and access to information has been very disappointing. The approach of Commission President José Manuel Barroso and 'transparency commissioner' Maroš Šefčovič has been passive and reactive, more concerned about defending the status quo than about taking effective action to secure the European citizens' right to know and ensuring accountability ie. talking the talk, but not walking the walk. Only after scandals and when pressure from MEPs, NGOs and the media for better rules threatened to cause public relations disasters, Barroso introduced limited measures that have failed to tackle the wider problems. The next European Commission, taking office after the summer, must change course and embrace an ambitious and pro-active approach which is needed to increase public trust. The [Alliance for Lobbying Transparency and Ethics Regulation](#) and its [Politics for People](#) campaign have set out such an agenda; key issues are reviewed below.

Lobby transparency register: political will needed

The [EU's Transparency Register](#) exists to enable EU citizens to see who is lobbying to influence EU decision-making, but in practice the register fails to deliver a complete and reliable overview. The register, set up in 2008 following years of strong pressure from civil society and the European Parliament, continues to suffer from at least three types of serious shortcomings.

Firstly, the register is voluntary, which leaves companies and lobby groups free not to sign up – and many indeed do not.¹ A study by Corporate Europe Observatory, ÖGB Europabüro (Brussels office of the Austrian Trade Union Federation), and AK EUROPA (Brussels office of the Austrian Chamber of Labour) in April 2014 found that 450 out of 700

1 “Rescue the Register! How to make EU lobby transparency credible and reliable”, <http://www.alter-eu.org/documents/2013/06/rescue-the-register>

(or two thirds) of lobby groups, banks and financial industry companies that are lobbying to influence the EU in the area of finance and banking reform are not in the EU's lobby transparency register.² This includes major players like Goldman Sachs, HSBC, UBS, Royal Bank of Scotland (RBS), Banco Santander and many more.

Secondly, disclosure requirements are very limited, so even if lobbies are registered they are not required to give a comprehensive picture of their lobbying. The register, for instance, does not include a full list of names of lobbyists working for a particular organisation (only of those with a permanent access pass to the European Parliament).

Finally, there is only very limited oversight of the information reported in the register, which is therefore often unreliable and outdated. Many industry lobbies are found to under-report on their lobby expenses (preferring to appear small) and the register is also riddled with errors (such as companies accidentally reporting their turnover and total staff numbers instead of lobby expenses).³

During the last four years there have been two key moments where these problems could have been solved. In 2010 Commissioner Maroš Šefčovič negotiated the merging of the lobby register run by the Commission and the Parliament's lobby register. During these talks, it was MEPs that pushed for ambitious lobby transparency (including mandatory registration), while the Commission insisted on using its own voluntary approach without too many changes. The joint register, launched in June 2011, was a step forward, but mainly because the Parliament unilaterally made registration a condition for lobbyists receiving Parliament access badges. This has helped to increase registration rates substantially.

The Commission, on the other hand, has failed to take any strong measures to make registration *de facto* mandatory. For instance, unregistered firms and lobby groups are still able to get meetings with Commissioners and other Commission officials. Goldman Sachs, which continues to boycott the register, had at least three meetings with Commissioner Olli Rehn (European Commission Vice-President, and Commissioner for Economic and Monetary Affairs) in 2011-12. In fact, as a snapshot, 62 per cent of the meetings that Rehn held between January 2011 to February 2012, were with unregistered bodies.⁴ This hardly gives the impression that the Commission is very serious about lobby transparency.

The Commission's lack of political will to fix the shortcomings of the lobby register again became clear when the review of the register was to start in early 2013. The Commission

2 "The fire power of the financial lobby - A survey of the size of the financial lobby at the EU level", Corporate Europe Observatory, April 2014. <http://corporateeurope.org/financial-lobby/2014/04/fire-power-financial-lobby>

3 "Rescue the Register! How to make EU lobby transparency credible and reliable", <http://www.alter-eu.org/documents/2013/06/rescue-the-register>

4 "Commission gives warm welcome to unregistered lobbyists". Corporate Europe Observatory. 5 November 2012: <http://corporateeurope.org/lobbycracy/2012/11/commission-gives-warm-welcome-unregistered-lobbyists-dalli-not-alone-ignoring>

first tried hard to avoid a broad review, including discussions about moving to a mandatory register, and instead limit it to more minor and technical issues. Only after criticism from transparency NGOs and MEPs, the Commission agreed to a broader review process.

During three months of negotiations with MEPs, the Commission's line was consistently to challenge and block proposals from MEPs for larger and smaller improvements of the register. The result is that improvements will be limited, mainly due to the Commission lacking the political will needed to move to a high-quality lobby transparency register.⁵ Commissioner Šefčovič “has approached this review with a real lack of ambition and this is reflected in the final outcome,” ALTER-EU concluded.⁶ The register will remain voluntary, but the European Parliament has called upon the Commission to launch a legislative proposal for a mandatory register before the end of 2016.⁷ The new Commission should act urgently on this demand, but in any case it would take a number of years before agreement is reached with member state governments on a mandatory register, but steps could be taken in the interim to make registration *de facto* mandatory. The Parliament has announced a number of new measures it will take to make it harder for lobbyists to avoid registration and has called upon the Commission to follow this example.

European Ombudsman Emily O'Reilly has echoed these demands, commenting that: “Ordinary citizens who take an interest in these matters will continue to be baffled as to why the EU does not support, more directly, their right to know which interests are lobbying the EU institutions and for which purposes. As the current voluntary register does not fulfill this role sufficiently, it should be given teeth. For example, the Commission could instruct its officials not to discuss policy with unregistered lobbyists.”⁸

Commissioner Šefčovič has taken the positive initiative of creating an [online transparency portal](#), enabling citizens to more easily access the different transparency registers maintained by the Commission (lobby register, expert groups, funding recipients, etc., most of which were introduced during the previous Commissioner, Siim Kallas).⁹ This positive move, however, does not change the conclusion that progress towards a high-quality lobby transparency register has been disappointingly slow and meager during Šefčovič's years as 'transparency commissioner'.

ALTER-EU's [Politics for People](#) campaign sets out the need for the speedy introduction of

5 See ALTER-EU's scorecard on the review of the EU Transparency Register" Alliance for Lobbying Transparency and Ethics Regulation (ALTER-EU), January 2014. <http://www.alter-eu.org/press-releases/2014/01/27/alter-eu-verdict-on-review-of-lobby-register>

6 “Parliament issues strong call for EU lobby transparency register to become mandatory”, April 15 2014. <http://www.alter-eu.org/press-releases/2014/04/15-0>

7 More information available here: <http://www.europarl.europa.eu/committees/en/afco/reports.html?linkedDocument=true&ufolderComCode=AFCO&ufolderLegId=7&ufolderId=15071&urefProcYear=&urefProcNum=&urefProcCode=#menuzone>

8 "Ombudsman calls on Member States to back EU Transparency Register", Press release no. 11/2014, 16 April 2014. <http://www.ombudsman.europa.eu/en/press/release.faces/en/54096/html.bookmark>

9 http://ec.europa.eu/transparency/index_en.htm

a mandatory lobby register. The Commission should also move away from their often far too narrow interpretation of access to documents legislation and provide online transparency about meetings between Commission officials and lobbyists.

With a poll of EU citizens in January 2013 showing that three quarters (73 per cent) of EU citizens quizzed were concerned that lobbyists representing the business sector have too much influence on EU policy-making, and that four in five (80 per cent) believe that there should be mandatory regulation of lobbying in the European Union, it appears that this would be a popular policy for the incoming Commission.¹⁰

Closing the revolving door between the European Commission and industry lobbies

Many of our laws originate in Brussels and with the EU, and it is very important that these policies work in the interests of people and environment, and not just big business. Yet some of the most important people making decisions about our lives, including the EU's top politicians (European commissioners) as well as the officials working for the various European institutions, are too-cosy with big business. In recent years, a significant number of commissioners and EU officials have walked through the 'revolving door' meaning that they have started working for big business or lobby consultancies; alternatively, lobbyists have passed through the revolving door into the EU institutions. When this happens, big business gains huge opportunities to access inside-knowledge, vital contacts, and above all, powerful influence over the EU's policy-making process.

[Günter Verheugen](#) was the former European commissioner for enterprise and industry who, upon leaving the Commission in 2010, immediately set-up the European Experience Company, a consultancy firm which offers to design “the best strategy for your success in dealing with European institutions”, together with his former head of cabinet [Petra Erler](#). Meanwhile, [Charlie McCreevy](#) was the European commissioner for the internal market until 2010 and played a key role in developing the EU response to the early years of the financial crisis. Yet in 2011, he joined the board of bank BNY Mellon, as well as Ryanair. [Jörgen Holmquist](#) was director-general (the highest rank of EU civil servant) at DG internal market. He then became a member of the European Commission's task force for Greece, retiring from the Commission in 2012. Four months later he started as an advisor at Brussels lobby consultancy Interel's financial services practice. These and [many other revolving door cases](#) illustrate the seriousness of the EU's revolving door problem.

The European Commission has taken several steps in the past few years to try to tackle the problem of the revolving door, but the rules remain inadequate to the task. In 2011, following the Verheugen and McCreevy scandals, negative media comment and a petition

¹⁰ EU citizens' opinion poll of transparency, ethics and lobbying in the EU. January 2013: http://www.access-info.org/documents/Access_Docs/Advancing/EU/Infographics_EU_citizens_Opinion_Poll_ENGLISH_ONLINE.pdf

organised by ALTER-EU, the Commission finally gave in to pressure from MEPs and civil society and reviewed the commissioners' code of conduct and tightened up some of the revolving door rules. The [new code](#) introduced a ban on former commissioners taking up lobby jobs in the 18 months after they have left office. Yet loopholes remain.

In January 2014, ALTER-EU wrote to President Barroso to set out our proposals for a revised code of conduct for commissioners.¹¹ We consider that the current 18 month ban on former commissioners undertaking lobbying activities should be extended to three years. We also think that the ban on lobbying should include both direct and indirect lobbying such as the provision of lobbying advice, and should cover all policy areas upon which commissioners have taken collective and individual decisions. The Commission should overhaul the current *ad hoc* ethical committee (which advises on commissioners' revolving door moves) and replace it with a professional and fully independent ethics committee which would be responsible for the assessment of commissioners' proposed new roles, as well as other ethics issues across the Commission.

For EU officials, the rule book which includes revolving door regulations was revised in 2012-13. The Commission itself neglected to make proposals to tighten up the rules but MEPs did introduce amendments which improved the rules slightly. In particular, senior EU officials are now banned from lobbying for one year after they leave office, and officials are banned from taking lobby jobs if they go on sabbatical during their EU career.¹²

Yet major loopholes remain within these rules too. For EU civil servants, the ban on lobbying should be further extended. And the rules must be tightened to include a large category of officials (those on temporary contracts), who are largely excluded at the moment, and who, as a result, are able to move back and forth between the EU institutions and the private sector with little official oversight. And as Transparency International's EU office recently reported: "When it comes to ensuring senior decision-makers comply with ethics rules, such as 'cooling-off' periods when they leave office, self-regulation, rather than independent monitoring, is the norm."¹³

Industry-dominated advisory groups: Commission backtracking on promises

The Commission's advisory groups, formally known as expert groups, play an important role in drafting new EU legislation. The advisory groups are considered by industry as one of the most effective ways to influence policy and legislation. Worryingly, during the last

11 "Stop 2014 being the year of the revolving door, say transparency campaigners" ALTER-EU. 21 January 2014: <http://www.alter-eu.org/press-releases/2014/01/21/stop-2014-being-year-of-revolving-door>

12 Review of the revolving door rules in the Staff Regulations. ALTER-EU. 11 April 2013: <http://www.alter-eu.org/documents/2013/04/review-of-revolving-door-rules-in-the-staff-regulations>

13 The EU Integrity System report. Transparency International EU office. 24 April 2014: <http://www.transparencyinternational.eu/european-union-integrity-system-study/the-euis-report-latest-news/>

decade or so many of the most politically and economically important groups have been dominated by industry lobbyists.

After the financial crisis in 2008, the Commission pulled together an advisory group headed up by well-known banker Jaques De Larosière and full of the same financial institutions who contributed to the crisis in the first place: Goldman Sachs, Lehman Brothers, BNP Paribas, Citigroup. Unsurprisingly, the group's recommendations, which then shaped the Commission's response to the crisis, never questioned the root causes like banking self-regulation or breaking up banks that were too-big-to-fail.¹⁴ Equally, the capture of key expert groups by the arms industry has seen weapons manufacturers awarding themselves EU research funding.¹⁵

ALTER-EU has been working with civil society groups and MEPs from across the political spectrum to tackle the problem for more than six years, but it took the Parliament freezing the expert group budgets in November 2011 to make the Commission really committed to take action. Four conditions were set for the freeze to be lifted:

- an end to industry-dominated expert groups;
- no lobbyist could sit in a group as an independent expert;
- all calls for applications for membership of new groups would be made public and the criteria made clear;
- all groups would be transparent, with all documents published.

The Commission agreed to the conditions in September 2012 and [the budget was lifted](#), launching an 'informal dialogue' between the two institutions to ensure the conditions were applied. However, results have been very mixed.

Research by ALTER-EU one year after the budget freeze was lifted shows the Commission has gone back on its promise: many groups created since continue to be dominated by industry, while lobbyists continue to sit in groups in a personal capacity.¹⁶ The worst offender was DG Taxation and Customs, with almost 80 per cent of new members representing industry, compared to three per cent from small businesses. Worryingly, second worst was the Secretariat General itself, the powerful department in charge of overseeing improvements across the Commission, with 64 per cent of its new experts representing industry and more than 70 per cent of its 'independent' experts actually linked to big business!

Some departments are actively trying to ensure fair representation of all stakeholders in their groups, for example DG Enterprise and Industry (although admittedly finding it very

14 ALTER-EU (2009) *A Captive Commission: the role of the financial industry in shaping EU regulation*, available at <http://www.alter-eu.org/sites/default/files/documents/a-captive-commission-5-11-09.pdf>

15 ALTER-EU (2012) *Who's Driving the Agenda at DG Enterprise and Industry?*, available at http://www.alter-eu.org/sites/default/files/documents/DGENTR-driving_0.pdf

16 ALTER-EU (2013) *A Year of Broken Promises: Big business still put in charge of EU Expert Groups, despite commitment to reform*, available at http://www.alter-eu.org/sites/default/files/documents/Broken_Promises_web.pdf

difficult), but the latest messages coming from the Commission appear to be a major step backwards: Šefčovič and the Secretariat General now [deny any agreement was reached](#) with the Parliament and they claim they have done what is expected of them.

With the opportunity to change the rules for all expert groups arriving in 2015, this makes it all the more important for incoming MEPs to show the Commission this is an area where backsliding is not acceptable. One way is to re-freeze the expert group budgets and insist that not only should incoming commissioners take action, but the 2015 rules must reflect the Parliament's four conditions.

ALTER-EU's [Politics for People](#) campaign is asking future MEPs to commit to taking action in this area. MEPs should be helped by the new European Ombudsman Emily O'Reilly, who has announced her own investigation into the progress made by the Commission since the informal dialogue with the Parliament was launched, following the 2013 publication from ALTER-EU.

Time for a rights-based approach to access to EU documents

In the five years since the Lisbon Treaty recognised access to EU documents as a fundamental human right, there has been no change in the European legal framework to reflect this nor has there been a measurable positive change in transparency practice by the European Commission. In fact rather the opposite has happened. Over the last five years, rather than taking the lead to ensure compliance with new treaty provisions, the Barroso II Commission has dug its heels in and resisted withdrawing a 2008 proposal to restrict the rules on access to EU documents (*Regulation 1094/2001 on access to documents*).

This 2008 proposal by the Commission includes provisions that:

- narrow the definition of a “document” to include only those “formally transmitted to one or more recipients or otherwise registered”;
- insert new exceptions to the right of access to documents to exclude court submissions, ongoing investigations and selection procedures;
- remove the public interest test from some of the exception such as legal advice so that it becomes harder to access these types of documents, thereby undoing jurisprudence of the European Court of Justice.

Debate on the proposed reforms reached a stalemate between the Council and the Parliament during 2012 and has remained blocked since. What the Commission could have done and should now do is withdraw the 2008 proposal and keep only an additional proposal made in 2011 to ensure compliance with the Lisbon Treaty by extending the right of access to documents to all EU bodies.

Indeed, even the 2011 “Lisbonising” proposal does not go far enough: to ensure that the right of access to documents is respected in line with international law and instruments such as the Convention on Access to Official Documents, the Commission should propose that a public interest test apply to all exceptions.

A further essential move which the incoming Commission should make is to move transparency and accountability issues from the “inter-institutional affairs” portfolio to a more appropriate DG for fundamental rights, such as Directorate General for Justice, Fundamental Rights and Citizenship.

According to the Commission’s own data, around 74.5 per cent of requests for documents resulted in the release of information in 2012, the last year for which data is available. This is a drop from 84.2 per cent in 2009. A range of practical hurdles are being thrown up that make the citizens’ access to documents more difficult (see box).

The next European Commission should address these issues and take seriously the need to improve EU transparency in law and practice consistent with the right to documents being a fundamental right. This would permit public participation and accountability of the European Commission and would also serve to increase the legitimacy of the EU institutions in the eyes of the public. The [Politics for People](#) campaign is calling for future MEPs to support citizens’ ‘right to know’ and participatory democracy by releasing ‘legislative footprint’ reports, ensuring that EU documents and information are pro-actively published and that citizens are involved in all stages of the decision-making process.

Transparency in practice

In 2009 Access Info Europe, and ALTER-EU steering committee member, raised concerns about the Commission's online forms for requesting documents because it requires personal details to be filled in before sending, even though Regulation 1049 does not anticipate that requesters should have to provide this information. Nothing has been done to address these concerns.¹⁷ The launch of the web platform www.asktheEU.org in 2011 has now simplified the process so that requests can be submitted by email but requesters using this platform have recently been facing various difficulties. For example, the Commission has introduced a policy of refusing to register requests which it believes, *prima facie*, will be refused unless the requester provides their postal address, in order that the legal notification of the refusal be delivered by registered mail. Apart from the concern that an immediate initial judgement is being made about whether or not a request will be refused, this is entirely the wrong direction to be moving in the digital era and is a further obstacle for citizens.

Conclusion

It seems clear that the Barroso II Commission has lacked the political will to significantly improve the lobbying transparency and ethics policy and practice during its time in office. Too often Vice President Maroš Šefčovič and the Commission has 'talked the talk but not walked the walk' when it comes to introducing serious reform. The [Dalligate scandal](#) which engulfed the Commission in October 2012 exemplified the problem.

Dalligate revealed numerous problems with how the Commission conducts itself in the matter of ethics and transparency, and in several areas, the European Ombudsman has backed NGO criticisms. Dalligate showed:

- The Commission withholding key documents from public scrutiny (which the European Ombudsman has now said should be released, following an NGO complaint¹⁸);

¹⁷ Indeed the Secretariat General's form rather menacingly states that "We reserve the right to refuse registration of your request in case of incomplete or incorrect data in the above electronic form" and "We reserve the right to ask for the transmission of a valid identity document, in case of doubts regarding your identity." None of these requirements is consistent with respect for a human right which can be exercised by anybody.

¹⁸ "The European Ombudsman urges the Commission to release hidden document on Dalligate scandal". Corporate Europe Observatory. 11 April 2014: <http://corporateeurope.org/pressreleases/2014/04/european-ombudsman-urges-commission-release-hidden-documents-dalligate-scandal>

- A lawyer working for Big Tobacco and lobbying the Commission simultaneously leading up the Commission's ad hoc ethics committee (the Commission only replaced Michel Petite after the European Ombudsman proposed to release a critical ruling on this matter following an NGO complaint¹⁹);
- Commissioners holding meetings with unregistered lobbyists and the code of conduct for lobbyists is not effectively enforced;
- Staff Regulations found to be inadequate to tackle the problem of EU staff who lobby the EU institutions whilst on sabbatical.

It is vital that the next Commission takes these issues far more seriously and gives them the attention that they deserve. In the coming months and years, ALTER-EU's [Politics for People](#) campaign will work with newly-elected MEPs to hold the Commission to account and to demand action to implement improved ethics and transparency rules.

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ALTER-EU is a coalition of about 200 civil society groups, trade unions and academics campaigning against the increasing influence exerted by corporate lobbyists on the political agenda in Europe. ALTER-EU campaigns on a number of areas: lobby transparency, ethics regulation, balanced expert groups and the revolving door. ALTER-EU is in the EU Transparency Register, number 2694372574-63.

Politics for People is coordinated by ALTER-EU.

19 “NGOs welcome replacement of controversial Michel Petite”. Corporate Europe Observatory, LobbyControl and Corporate Accountability International. 18 December 2013: <http://corporateeurope.org/pressreleases/2013/12/ngos-welcome-replacement-controversial-michel-petite-commission-needs-far>