

Lessons from a Lobbyocracy: Transformation for Transparency and Rules for Revolving Door



ALTER-EU Public Debate

Thursday 11 April 2013

Rachel Tansey

Lobbyocracy Campaigner at Corporate Europe Observatory

Speech

A worrying number of officials go through the 'revolving door', which means leaving their EU job to work for big business and lobby groups, often in the same policy area. Or vice versa. Big business gains **inside-knowledge, vital contacts**, and above all, **powerful influence**. This helps to make Brussels even more business-dominated and remote from the public interest, demonstrated by a recent EU citizens poll showing **73%** are concerned that **lobbyists representing the business** sector have **too much influence** on EU decisions.

More than half of the laws in EU countries come from Brussels, so it is vital that these decisions work in the interests of people and environment. But an unfettered revolving door between public service and private profit enables the blurring of the interests of the *regulator* with the interests of the *regulated*. This is particularly worrying when it comes to reform of an unstable and unfair financial sector, or rules on fossil fuels and harmful environmental practices.

So, for the sake of public interest policy-making, the revolving door must be **monitored, regulated and subject to public scrutiny**. This does not mean that if you work as a public official, we want to stop you getting new jobs. But let's be clear – not all jobs are lobby jobs! And moreover, the inside knowledge and expertise you gain as a public official is not yours to cash in on – that is what being in 'public service' means. So if you move to a job for a private company or lobby firm, which seeks to influence legislation in its own business interests, then appropriate restrictions, and if necessary cooling-off periods, should be enforced.

Rules do exist that are supposed to regulate conflicts of interest from the revolving door - but they are currently too weak and poorly implemented.

The **Staff Regulations**, which govern the EU institutions, contain provisions which should ensure that staff are scrutinised for conflicts of interest, both when entering and leaving their position. For two years after leaving, staff must inform the Commission of new jobs. If such jobs relate to the work they did as an official, and could lead to a conflict with "the legitimate interests of the institution", the Commission can forbid it, or approve it subject to appropriate conditions or restrictions. Yet the Commission repeatedly fails to ensure staff are aware of, or that they comply with, their obligations, it inadequately scrutinises new jobs, and fails to impose appropriate restrictions.

Last October, several ALTER-EU groups submitted a **complaint** to the **European Ombudsman** based on 10 well-documented revolving door cases showing that the Commission is failing to properly implement its own revolving door rules. For example;

- **Derek Taylor**, after 25 years in the commission's DG Energy, dived straight into energy lobby consultancy work, including on carbon-capture-and-storage. He applied for permission two years late, but faced no restrictions or sanctions from the commission.
- **Petra Erler**, head of cabinet for former Enterprise and Industry Commissioner Günter Verheugen, set up an EU lobby consultancy with Commissioner Verheugen. She applied for permission four months late, but the commission, ignored the concerns of its staff - who advised against it - imposed only very minimal restrictions.

In February, the Ombudsman launched an **investigation** into the Commission, based on our complaint. Because we believe our 10 cases show evidence of a **systemic failure** by the

Commission, the Ombudsman has demanded from the Commission a list of all cases dealt with during the **past three years** under the Staff Regulation's revolving door rules - Article 11a and Article 16.

This is an important step, because such a list has always been **denied to us** on the grounds that **no central record** is kept. Whilst we know that the revolving door is very **lucrative** - studies show **share prices of lobby firms jump** when they announce a former public official has been employed - this list will show how seriously the Commission takes the revolving door, on a routine basis.

Unfortunately, the signs aren't promising. The Commission's inability to take the revolving door seriously has recently been illustrated with the case of **Michel Petite**.

In December, the Commission reappointed Petite to the **ad hoc ethical committee**, which advises on conflicts of interest when Commissioners go through the revolving door. But Petite himself went through the revolving door five years ago, from head of the Commission's legal service to lawyer specialising in 'government relations' and EU public policy – synonyms for **lobbying services** - for a corporate law firm that **refuses to sign up to the transparency register**. The Commission reappointed him after it was revealed, in the wake of the tobacco lobby scandal that led Commissioner **Dalli's** resignation, that Petite had been **meeting with** his former legal service **colleagues** to present views **on controversial tobacco legislation** - whilst having tobacco giant **Phillip Morris as a client**.

The Petite problem illustrates what the Commission repeatedly fails to grasp - conformity with rules and avoidance of conflicts of interest are not in themselves sufficient: there must also be the appearance of propriety. The **Ombudsman** is now **investigating** the Petite case, following another complaint by ALTER-EU groups. For when it comes to an ethics advisory body, whose integrity and transparency are paramount to public trust in the commission - it is the **appearance** of conflicts of interest that is paramount.

There is however a **glimmer of hope** - the **Staff Regulations** are currently under **review**, and after a long delay should soon enter tripartite negotiations between the Parliament, Commission and Council. This is a critical moment to ensure that tougher revolving door rules make it through negotiations. The European Parliament's Legal Affairs committee agreed last spring on amendments that go some way to strengthening the revolving door rules, and it is important that these are not lost.

But as case of Michel Petite revealed, the revolving-door can have far-reaching and long-lasting effects. ALTER-EU believes that stronger rules and better implementation remain urgently needed. These should include a **mandatory cooling-off period on lobby jobs**, closing loopholes including on temporary contracts, sufficient resources for investigating and monitoring, as well as online transparency about revolving door cases.

OK, now i've taken you on a whirlwind tour of the revolving-door, **lets look at some lessons for lobby transparency**.

In a democratic system, citizens have a **right to know** who is trying to influence their lawmakers, on behalf of whom, on what topics, and with what budgets. That is why lobby transparency is so important. But the idea of **voluntary lobby transparency** contains an **inherent contradiction** - those who wish to be transparent can be, but those who don't can carry on lobbying in the shadows. This is demonstrated by the incomplete and inconsistent data the voluntary joint transparency register has consistently offered since its inception in June 2011.

Prominent corporate lobby players in Brussels are still **missing** from the register, including Monsanto, HSBC, Deutsche Bank and Goldman Sachs, as well as big tobacco lobby players. Many of those who are the biggest spenders on EU lobbying according to the register, are in fact very minor players or may not even be lobbying at all. There is widespread **under-reporting** by many large lobbying entities. Law firms continue to evade disclosure by not signing up or **failing to disclose clients**. And many registrants have taken a very **lax approach** to the accuracy, quantity and quality of their declarations. To compound these problems, the register is **not properly audited**

or monitored.

But what's even worse is that **ALTER-EU attempts to challenge** inaccurate data or incomplete entries – by highlighting errors and complaining to the register secretariat - have actually led prominent **law firms** that offer lobbying services, such as Reed Smith, to **jump ship**, rather than meet the transparency requirements on disclosing lobby clients.

Luckily for us, there is a **review scheduled** for the two year mark of its launch, which will be this June. This review is crunch time for the parliament and commission – the time to live up to their democratic duties by making the 2008 and 2011 parliamentary resolutions for a **mandatory lobby register into a reality**, and to respect the will of the 80% EU citizens who want mandatory regulation of EU lobbying.

Despite degrees of self-congratulation by the register secretariat and its overseers at the Commission, the register is manifestly **NOT "de facto mandatory"**, as Commissioner Sefcovic has suggested. Those who wish to avoid disclosure whilst aggressively lobbying can easily do so, as the role of **unregistered lobbyists** – middlemen like Silvio Zammit and Gayle Kimberly - in the **Dalligate** tobacco lobby scandal has illustrated.

The review is also a crucial time to improve financial **disclosure requirements**, including on funding sources, as well to shed light on the **revolving door** by requiring registrants to disclose if their lobbyists have previously worked as public officials. And until a mandatory system can be put in place, there's nothing to stop the review from requiring Commission staff **not to meet with**, and MEPs not to host events with, **unregistered lobbyists**.

Furthermore, the **code of conduct for lobbyists**, which registrants must sign up to, is in urgent need of updating - both to be compatible with the **Code of Conduct for MEPs**, which came into being 6 months after the register, and because it is currently weak and vaguely worded, amounting to little more than a **tick-box** exercise.

An updated lobbyist code of conduct could achieve great progress by **banning lobbyists from employing or paying MEPs** or their assistants, stopping lobbies from immediately employing high-level public officials, and clarifying what **"inappropriate behaviour"** – which the existing code forbids – actually is. To aide in this, ALTER-EU has invited MEPs to identify what they have experienced as unethical or aggressive lobbying. The results of this can input into the review, alongside some clear lessons from Dalligate. Namely, that inappropriate lobbying includes infringing on the **private sphere or personal life** of a policy-maker, e.g. by seeking out their personal acquaintances, or attempting to circumvent transparency by employing unregistered lobbyists or other **"middlemen"**.

For the review of the transparency system to be meaningful and effective, it clearly must be conducted in an open and democratic manner, allowing all stakeholders to be involved.

As a final point, the knee-jerk reaction from opponents of mandatory lobby transparency is that there is no legal basis for a mandatory register. However, ALTER-EU has commissioned a new legal study into the potential legal basis for a mandatory register. The findings of this study, which will be released next month, are very promising, indicating a strong legal competence.

I would add that there is an element of political will in the search for and interpretation of legal basis, and it is this – as much as anything else – that is the Commission is lacking.

Both the review of the transparency register and of the revolving-door rules in the staff regulations show us that the time to act is now. They offer a critical opportunity to ensure that democracy – government by the people – is able to triumph over the slippery slope to a lobbyocracy – government by the narrow economic interests that are most successful at lobbying.

More information: <http://www.alter-eu.org/documents/2013/04/lessons-from-a-lobbyocracy>