



27 February 2017

ALTER-EU submission to public consultation on “Practical guidelines for public officials’ interaction with interest representatives”

This document contains the submission by the Alliance for Lobbying Transparency and Ethics Regulation (ALTER-EU) to the European Ombudsman public consultation on “Practical guidelines for public officials’ interaction with interest representatives”.

ALTER-EU is a coalition of over 200 public interest groups and trade unions concerned with the increasing influence exerted by corporate lobbyists on the political agenda in Europe.

Growing public concern over the imbalance of interactions and lack of transparency of lobbying activities directed at the European Union institutions makes it ever more urgent that there be clear guidelines for public officials’ interactions with lobbyists.

We therefore welcome the European Ombudsman initiative to produce these guidelines just as the three institutions prepare to enter the negotiations on the Inter-Institutional Agreement on EU lobby transparency reform.

Below, we comment upon the Ombudsman’s proposals, make suggestions for improvement, and recommend further DO’s and DONT’s for consideration:

Key: Underlined and italic text – Ombudsman suggestion | Green text – additions | Red strikethrough text – deletions

DO’s

1. Verify that interest representatives have registered in the EU ~~(or equivalent national)~~ Transparency Register before meeting them or accepting an invitation to an event.

1a. Do encourage unregistered lobbyists to join the EU Transparency Register

1b. Commit publically to not meet tobacco industry lobbyists

- All interest representatives looking to lobby at the EU level should be registered in the EU Transparency Register regardless of their registration in national registers, in order to ensure a complete picture and public oversight of lobbying at the European Union level.

If interest representatives are unregistered, then you should encourage them to join the EU Transparency Register and reject any meeting until they do so.

Public officials should avoid meetings and contacts with the tobacco industry lobby as far as possible. Public officials are bound by World Health Organisation guidelines on tobacco-related public health policies, which seek to limit regulators' contacts with the tobacco industry lobby in almost all circumstances. The World Health Organisation Framework Convention on Tobacco Control requires, in Article 5.3, that all parties "act to protect these [tobacco-related] policies from commercial and other vested interests of the tobacco industry in accordance with national law". The WHO's accompanying guidelines stipulate that decision-makers "should interact with the tobacco industry only when and to the extent strictly necessary to enable them to effectively regulate the tobacco industry and tobacco products."

The guidelines state "where interactions with the tobacco industry are necessary, Parties should ensure that such interactions are conducted transparently".

2. *Prepare well and conduct basic research to check what interests they represent and who is funding them. Ask for further information, if needed.*

2a. *Seek a wide range of input from all sectors of society, ensuring a democratic and transparent participation.*

- Before meeting with a lobby group, public officials should check various sources of information to learn more about the group and to ensure that they are well briefed. Such sources might help identify front groups or other deceptive lobbying tactics. For example, some lobby organisations use seemingly neutral names to imply that they are independent or grassroots in nature, when they are in fact set-up and funded by lobby firms or big business.

We recommend that public officials actively reach out to citizens for guidance on EU decision-making and don't rely on paid lobbyists for all information. Public officials should open up channels for citizen participation and ensure that they seek multiple viewpoints and sources of information in order to be better placed to balance the different interests seeking to influence decision-making processes.

3. *Ensure that interest representatives ~~Request interest representatives to~~ disclose, in writing and in advance, the meeting purpose, participants' names, the issue for discussion and any relevant background information, and on the condition that this information will be made available to the public.*

- Any lobby meeting should be agreed to on the condition that in principle, the information provided by the interest representative, including their name, issue under discussion, and any other background information be made available to the public proactively, or at least via access to EU documents requests.

4. Inform your hierarchy prior to meetings with interest representatives and debrief them afterwards. *Keep a record of this.*

- A clear record of this should be kept and made publically available proactively or via access to EU documents requests.

5. Assess *and avoid* any risk of conflicts between your private interests and the public interest and how your interaction might be perceived.

- All possible conflicts of interest should be avoided at all times. Public officials should not provide privileged access to private interests in general, and should seek to ensure a balance in their interactions with stakeholders.

6. Err on the side of caution. If in doubt, consult as appropriate and if you decide to go ahead, add a note to the file explaining.

- All lobby meeting information should be made transparent and available to the public. Lobby meetings conducted in secret, especially those in which there is doubt (due to possible conflicts of interest etc), only fuels public mistrust in the EU decision-making process and risks negatively impacting the decision-making process with excessive lobbying by private interests.

7. Invite interest representatives to substantiate statements or presentations in writing after meetings or telephone calls *with the understanding that this information will be made publically available.*

- This information, such as documents submitted by lobbyists, should be available to the public proactively online (such as in a legislative footprint), or via access to EU documents requests.

8. Maintain good record keeping habits, including the meeting date/location, names of participants and issues discussed. Remember that you should use your institution's official file management system, *with a view to making this publically available.*

- All meetings should be noted, recorded, and made transparent. This will ensure accountability of the process and the possibility for citizens, journalists and civil society organizations to play their essential public watchdog role in democratic society.

Making the information detailed enough and publically available online, such as via a legislative footprint report, would show citizens how a piece of legislation was shaped, and

by whom. Ideally, this information would be published in a timely manner, so that citizens can follow the 'live' decision-making process in detail, and not after it is already adopted. It is worth noting that many legislative or policy proposals do not lead to the adoption of a piece of legislation. In fact, some lobbying activities can kill such proposals, meaning that legislation or policy is not enacted. This is why it is so important to routinely provide information about lobby contacts.

9. Respect the applicable *proactive disclosure requirements such as details of meetings with interest representatives, and expand this to cover all EU public officials, for example, at EU level, disclose details of meetings between interest representatives and Commissioners, Cabinet members and Commission Directors-General.*

- Despite the limited obligation of the November 2014 Decision by Commission President Juncker, to proactively publish information on the lobby meetings of top Commission officials, all public officials should proactively publish information on their meetings with interest representatives.

While this is not yet an all-encompassing requirement, all public officials must adopt the best practices possible, for instance, keeping detailed records and disclosure of all encounters with interest representatives.

To be most effective, such proactive transparency systems should be updated as regularly as possible and should be published online in a way that allows members of the public to download, export and compare the data. At a minimum, such information should be disclosed in full following access to EU documents requests if it is not possible to publish this proactively.

10. Report unacceptable lobbying practices.

- It is the duty of EU public officials to report unethical lobbying practices.

DONT's

1. Meet interest representatives not registered in the EU ~~(or equivalent national)~~ Transparency Register ~~without asking them to register.~~ Make clear, ~~if appropriate,~~ that *registration this is a prerequisite.*

1a. Meet with tobacco lobbyists

- All interest representatives looking to lobby at the EU level should be registered in the EU Transparency Register regardless of their registration in national registers, in order to ensure a complete picture and public oversight of lobbying at the European Union level.

As mentioned previously, public officials are bound by World Health Organisation guidelines on tobacco-related public health policies. The World Health Organisation Framework Convention on Tobacco Control requires, in Article 5.3, that all parties “act to protect these [tobacco-related] policies from commercial and other vested interests of the tobacco industry in accordance with national law”.

The WHO’s accompanying guidelines stipulate that decision-makers “should interact with the tobacco industry only when and to the extent strictly necessary to enable them to effectively regulate the tobacco industry and tobacco products.”

2. *Be misled or overlook the motives of those who seek meetings or invite you to events. Lobbying can be done by a range of professions, including lawyers, ~~and~~ consultants, think tanks, and NGOs.*

2a. *Proactively seek meetings for input or feedback from private interests or industry lobbyists outside of the appropriate and transparent channels for seeking input.*

3. *Accept any invitations to meetings or events which could put your institution in a delicate situation, where you know you will be approached by unregistered interest representatives or which may constitute or be perceived to constitute a clear conflict of interest.*

4. *Interact with ~~only~~ a particular interest representative without considering offering other groups a similar opportunity.*

As stated before, public officials should actively reach out to citizens and civil society organisations for guidance on EU decision-making and don’t rely on industry lobbyists for all information. Public officials should open up channels for citizen participation and ensure that they seek multiple viewpoints and sources of information in order to be better placed to balance the different interests seeking to influence decision-making processes.

5. *Accept or arrange meetings outside office hours, official premises, and without the presence of another colleague.*

5a. *Stay silent when lobbyists ~~conduct~~ behave inappropriately ~~behaviour~~ or when colleagues break transparency and ethics rules.*

Public officials should ensure that lobbying activities directed at them are fully transparent.

We also strongly recommend that public officials speak out if they see unethical or inappropriate lobbying taking place. Always report such behaviour.

The Code of Conduct for lobbyists, which is part of the EU lobby register, states that lobbyists should “not obtain or try to obtain information, or any decision, dishonestly, or by use of undue pressure or inappropriate behaviour”.

We consider that unethical or inappropriate lobbying includes actions or activities by lobbyists that infringe upon the private sphere or personal life of a policy-maker in an attempt to exercise influence. Examples that have been provided to us by MEPs include unsolicited phone calls to home residences or private numbers (when the MEP has not proactively shared these numbers); seeking-out personal acquaintances in a bid to access decision-makers; or employing “middlemen” to engage in lobbying activities so that it is not clear which interests are being represented.

You should always report when interest representatives offer gifts or financial rewards, when you received employment offers while still at public office, or if interest representatives refuse to register in the EU’s Transparency Register.

6. Share information you are not authorised to share or misuse confidential information.

7. Do or say anything which could be viewed as granting an interest representative preferential treatment.

8. Give the impression to an interest representative that any particular advice, idea or information could or will be decisive in the decision-making process.

9. Accept hospitality from an interest representative without careful consideration and unless it is in line with the applicable rules.

Hospitality offers (from dinners and cocktail parties to all-expenses-paid trips funded by external parties) can be attempts by wealthy interests to influence public officials and for this reason we recommend that a cautious and critical approach be taken when considering such invitations. Public officials should adopt full transparency around hospitality and travel regardless of whether or not the cost was greater than €150.

10. Delay in disclosing information on any gifts and hospitality received.