

**ALTER-EU**

Alliance for Lobbying Transparency and Ethics  
Regulation  
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**José Manuel Barroso**

President of the European Commission  
Rue de La Loi  
B-1049 Brussels  
Belgium

Brussels, 21 November 2012

**Re: Complaint in relation to the chairmanship of the High-Level Group on Administrative Burdens**

Dear Mr Barroso,

We are writing to you in relation to the chairmanship of the High-Level Group on Administrative Burdens. We are concerned that Mr Edmund Stoiber, the chairman of the Group, might have exceeded his mandate as well as the related rules for the High Level Groups (HLG) of Independent Stakeholders on Administrative Burdens, set up by the European Commission (EC). Thereby we would like to ask you to clarify several issues concerning potential breaches of the rules and to provide full transparency around the functioning of the group.

On 26 October, Brussels-based media outlet Euractiv reported that Mr Stoiber used a recent High-Level Group meeting with former European Commissioner for Health and Consumer Policy John Dalli, about health issues, for lobbying purposes in relation to the Tobacco Products Directive.<sup>1</sup> It is alleged in the Euractiv article that Mr Stoiber dedicated fifteen minutes of the High-Level experts' meeting to raise the specific concerns of a Bavarian snuff producer regarding the upcoming piece of regulation. According to a Commission spokesperson, this was not reported in the minutes of the meeting. If, however, the Euractiv report is correct, this would mean that Mr Stoiber might have overstepped his mandate in several ways - including by operating as a lobbyist and providing privileged access to a high-level EU decision-maker on an upcoming piece of legislation - and this would require the President to take appropriate measures.

We have questions – and see possible breaches of the rules –in three areas:

<sup>1</sup>

<http://www.euractiv.com/future-eu/tobacco-lobby-focus-switches-sto-news-515682>

**1) Did the Commission make a written request for advice to the group on this piece of regulation?**

The rules applying to the group foresee a possibility for the chairperson to advise the Commission that it is desirable to consult the group on a specific question, stating that “the group shall not provide such advice unless being requested in writing by the Commission” (article 3.2). On the basis of the information currently available to the public, it is not clear whether Mr Stoiber was indeed asked by the Commission, in writing, to provide input and comments in relation to the Tobacco Products Directive or if he took this initiative by himself. Even if he was asked for advice, it is questionable whether addressing the issue in a meeting with the responsible Commissioner, without making notes of that discussion, is the appropriate way to provide it. Considering the reported comments<sup>2</sup> by another member of the HLG, it seems that this advice was not discussed and shared by the full group but rather that it was the result of Mr Stoiber’s own initiative.

**We would like to ask you to clarify:**

- **Whether the Commission made such a request in relation to the agenda of the meeting, and if so, to publish the related document.**
- **Whether Mr Stoiber has provided the Commission with specific written advice in relation to this issue and, if so, if that was on behalf of the HLG.**
- **What the content of the message and /or input that Mr Stoiber gave to Commissioner Dalli was.**

**2) Is the HLG expected to provide advice on specific pieces of upcoming regulation or only on existing legislation?**

According to the available EC documents about the creation of the group,<sup>3</sup> the scope of its activities is related to the Action programme for reducing administrative burdens in the EU and the simplification of initiatives identified by the Commission work programme. The main purpose of the group, as far as relevant in relation to the Tobacco Products Directive, is to suggest which additional pieces of existing legislation could be included in the reduction programme. However, as the alleged conversation between Mr Stoiber and Commissioner Dalli is said to have focused on the revision of the Tobacco Products Directive, it did not focus on an existing piece of legislation but on a new one. Some of the members of the group have raised concerns that, by so doing, Mr Stoiber overstepped his mandate, in breach of the rules of the group.

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<sup>2</sup> <http://www.euractiv.com/future-eu/tobacco-lobby-focus-switches-sto-news-515682> and correspondence with HLG member Jim Murray.

<sup>3</sup> As detailed in the Commission decision of 31 August 2007 setting up the High Level Group of Independent Stakeholders on Administrative Burdens, Brussels, 31 August 2007, C(2007)4063 ([http://ec.europa.eu/dgs/secretariat\\_general/admin\\_burden/docs/enterprise/files/hlg2007\\_ab\\_en.pdf](http://ec.europa.eu/dgs/secretariat_general/admin_burden/docs/enterprise/files/hlg2007_ab_en.pdf)) and the Commission decision of 17 August 2010 amending Decision 2007/623/EC setting up the High Level Group of Independent Stakeholders on Administrative Burdens (2010/C223/03) (<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2010:223:0006:0007:en:PDF>)

**We ask you to:**

- **Clarify whether the mandate of the group includes commenting on legislation in the making, or only on existing legislation.**
- **Clarify if the rules have been breached by Mr Stoiber.**

**3) Concerns about the misuse of the expert group meeting for lobbying purposes**

The name of the HLG suggests that it should be composed of “independent stakeholders”, who respectively commit to “act in the public interest” (article 4.6). In particular, article 4.3 stresses that “the members shall be appointed in a personal capacity and shall advise the Commission independently of any outside influence in accordance with this decision.” Therefore, while the group is expected to take into consideration the views of a variety of stakeholders in its undertaking, it has a clear obligation to refrain from representing specific interests. The group’s success relies on members - including the chairperson - acting independently.

The reports of the meeting available to the public suggest that Mr Stoiber breached this rule, by raising the concerns of a specific company, on a specific piece of upcoming legislation, in the alleged discussion with Mr Dalli, a decision-maker of the highest level. The EC itself defines lobbying as “activities carried out with the objective of directly or indirectly influencing the formulation or implementation of policy and decision-making processes of the EU institutions”.<sup>4</sup> By bringing up the concerns of a specific company in an expert groups’ meeting, it is to be feared that Mr Stoiber did indeed cross the line between providing independent expertise and lobbying the Commissioner. The fact that only this case was raised during the discussion suggests that Mr Stoiber might have used his privileged access to the Commissioner for the benefits of a very specific interest – those of a private company located in Bavaria.

Also of concern, Mr Dalli – in response to the allegations of Mr Stoiber lobbying him during this meeting – stated that: “I made a comment about Stoiber’s intervention which I did not consider as a lobbying attempt but as a politician bringing forward concerns of someone in his constituency”.<sup>5</sup> Such an interpretation is in direct contradiction with the EC’s own definition of lobbying. As Mr Stoiber is currently not performing as an elected official or politician, he is also not representing a constituency. What Mr Stoiber did is bring specific concerns from a company on a specific new piece of legislation to the decision-maker in charge. This is what the EC considers as lobbying and it is clearly not in either the mandate of the HLG or in that of Mr Stoiber in particular.

If Mr Stoiber continues to act as he reportedly did in this case, the work of the HLG could seriously be jeopardised. It could not only make it a magnet for lobbyists that disagree with upcoming legislation, instead of focussing on reducing administrative burdens related to the implementation of existing legislation. But it could also provide companies with privileged access to European Commissioners and high-level decision makers. This would be in

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<sup>4</sup> [http://europa.eu/transparency-register/pdf/faq\\_en.pdf](http://europa.eu/transparency-register/pdf/faq_en.pdf)

<sup>5</sup> <http://www.europolitics.info/dalli-still-yet-to-see-incriminating-olaf-report-art344588.html>

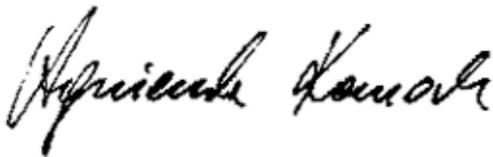
contradiction with recent commitments you made in relation to making expert groups more balanced and representing different sections of society.

**We call on you to:**

- **Investigate and make fully transparent what occurred and what was said during the meeting between the High-Level Group and Commissioner Dalli, including by publishing the full documents related to this discussion on the website of the expert groups register.**
- **If it is confirmed that Mr Stoiber acted as reported and that the rules have been breached, to take the appropriate measures in order to remedy the violation of his mandate and ensure that this does not happen again.**
- **Provide guarantees that the HLG will not be used to promote privileged access and undue influence.**

Thank you for your consideration of this letter. We look forward to your response on this important matter.

Yours sincerely,



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On behalf of the ALTER-EU Steering Group

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