



Joint Transparency  
Register Secretariat



By registered mail with acknowledgment of receipt

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Brussels, 19 June 2015

Dear Ms Katzemich,

On 27 January 2015, you submitted to the Joint Transparency Register Secretariat (JTRS) a complaint on behalf of LobbyControl, Friends of the Earth Europe and Corporate Europe Observatory (Complainants) against Goldman Sachs Group Inc. (GS).

#### **THE COMPLAINT**

The Complainants alleged that GS had breached the Code of Conduct of the Interinstitutional Agreement on the Transparency Register (IIA)<sup>1</sup>, notably point (d)<sup>2</sup> and, as a consequence, also point (b)<sup>3</sup>. To that end, the Complainants put forward the following arguments:

*As regards point (d) of the Code of Conduct*

- In its registration in the Transparency Register, GS declared *less than EUR 50 000 as estimated costs to the organisation directly related to representing interests to EU*

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<sup>1</sup> Agreement between the European Parliament and the European Commission on the transparency register for organisations and self-employed individuals engaged in EU policy-making and policy implementation, OJ 2014 L 277, p. 11.

<sup>2</sup> *In their relations with EU institutions and their Members, officials and other staff, interest representatives shall: ... ensure that, to the best of their knowledge, information, which they provide upon registration, and subsequently in the framework of their activities covered by the register, is complete, up-to-date and not misleading; accept that all information provided is subject to review and agree to cooperate with administrative requests for complementary information and updates;*

<sup>3</sup> *...not obtain or try to obtain information or decisions dishonestly or by use of undue pressure or inappropriate behaviour;*

*institutions* in 2013 (estimated costs). Based on the data in the Transparency Register, two professional consultancies, namely Afore Consulting (ID number: 03013154889-05) and Kreab Gavin Anderson (ID number: 1078390517-54) declared GS as their client with payments above EUR 50 000<sup>4</sup>;

- GS declared four persons as being engaged in London concerning activities falling under the scope of the Transparency Register, which even if those individuals only partially worked on the relevant activities, would not be sufficient to pay their staff costs, travel costs and administrative expenses;
- There were many EU files of interest to GS. For comparison, Deutsche Bank declared to have lobbied on a number of EU files. Moreover, it was in the public domain that GS had four meetings with DG MARKT in 2013;
- In the United States, which operates a mandatory register of interest representation, GS reported spending USD 3 630 000 in 2013;

*As regards point (b) of the Code of Conduct*

- In the Complainants view, GS used an incorrect Transparency Register entry to have access to the Commission and, in so doing, breached point (b) of the Code of Conduct.

## THE REGISTRANT'S STATEMENT

On 18 March 2015, the JTRS informed GS of the content of the complaint and invited it to submit a written statement. By letter of 27 April 2015, GS replied putting forward the following arguments:

*As regards Kreab Gavin Anderson and Afore Consulting*

- GS did not agree that the full amount of fees paid to these two consultancies fell under the scope of the Transparency Register, as governed by the provisions of the 2011 IIA<sup>5</sup> and the definitions of the 2012 JTRS Transparency Register Implementing Guidelines.
- GS pointed out that Kreab Gavin Anderson and Afore Consulting were engaged to provide factual information gathering and monitoring services. Therefore, in its view, the services rendered in the financial year 2013 were not for activities *carried out with the objective of directly or indirectly influencing the formulation or implementation of policy and the decision-making process of the EU institutions* and were excluded from the scope of activities covered.
- However, having reviewed its expenditure to those consultancies in the framework of the present complaint, it corrected its estimated costs for the financial year 2013 to the bracket between EUR 50 000 and EUR 100 000.

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<sup>4</sup> Afore Consulting declared that GS paid EUR 250 000 – EUR 300 000 between July 2013 and June 2014 and that Kreab Gavin Anderson declared that GS generated as their client in 2013 a turnover between EUR 200 000 and EUR 250 000

<sup>5</sup> Agreement between the European Parliament and the European Commission on the establishment of a transparency register for organisations and self-employed individuals engaged in EU policy-making and policy implementation, OJ 2011 L 191, p. 29.

*On the costs of four persons in London*

- GS explained that the four persons identified in its registration were members of its EMEA Government Affairs team based in London. Their function was not limited to interest representation, nor was it focused solely on the EU.

*As regards the comparison with Deutsche Bank*

- GS pointed out that the comparison was not appropriate in view of the differences between GS and Deutsche Bank (such as, Deutsche Bank is a bank with EU headquarters, a Brussels office<sup>6</sup> and a very different business model). The financial disclosure information of banks GS considered its peers (such as Morgan Stanley, Bank of America or JP Morgan), were more consistent with the amounts it reported.

*On the amounts reported for interest representation by GS in the United States*

- GS argued that a comparison with the costs it had reported for the financial year 2013 in the United States did not support the allegation. To this end, it highlighted that: (i) it was a bank with headquarters in the United States, which was its primary jurisdiction in regulatory and policy matters, (ii) the United States Government Affairs team had 12 members and was more active in public affairs work, also due to the constitutional system in the United States, and (iii) the United States relevant rules were wider in scope than those of the Transparency Register.

*Allegation of having breached point (b) of the Code of Conduct*

- GS strongly rejected that allegation and pointed out that it was based on the argumentation concerning alleged incorrect reporting, which it had proven was not the case.

Finally, GS also confirmed that it would update its entry on 27 April 2015, which would include all the fees paid to Kreab Gavin Anderson and Afore Consulting in 2014 in respect of activities covered by the Transparency Register.

## **JTRS ASSESSMENT**

The JTRS has carefully assessed the submissions of the Complainants and of GS.

As a preliminary observation, the JTRS notes that GS estimated cost concerns the year 2013. It registered in the Transparency Register under the previous IIA from 2011, which ceased to apply as of 1 January 2015, when the current IIA entered into force. Registrants had until 29 April 2015 to update their registrations so as to satisfy the new requirements of the IIA (see points 36 and 38 of the IIA).

### *Substantive reasoning*

On the substance, the complaint was based on: (1) the Transparency Register entries of Kreab Gavin Anderson and Afore, (2) the number of GS employees working on activities covered

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<sup>6</sup> In this context, GS pointed out that, in 2013, it did not have a presence in Brussels. At the end of 2014, it had opened a Brussels office, and the increased costs would be reflected in its Transparency Register entry for 2015.

by the Transparency Register, (3) a comparison with the data registered by the Deutsche Bank, and (4) the data on GS spending on interest representation in the United States.

Argument (1) *prima facie* indeed suggested that there was a manifest discrepancy between the data provided by GS, on the one hand, and Kreab Gavin Anderson and Afore Consulting, on the other hand. Following a review of its payments, GS corrected the estimated costs as being between EUR 50 000 and EUR 100 000 duly updating its entry in the Transparency Register. GS's explanations concerning the discrepancy on payments made to Kreab Gavin Anderson and Afore Consulting, namely that those payments did not fall under the activities covered by the Register, appear plausible as a possible interpretation of the requirements under the 2011 IIA.

The same conclusion holds true for argument (2) concerning the four employees in London. To the extent that, as put forward by GS, the EMEA Government Affairs team covers a range of topics, the estimated human resource figure does not appear unreasonable, in particular considering also that GS did not have a Brussels office at the time.

As for arguments (3) and (4), the Complainants' comparison with Deutsche Bank is not relevant. It is clear that, in 2013, Deutsche Bank had a dedicated office in Brussels, whereas GS's EMEA Government Affairs team in London appears to have covered a wide range of issues. Furthermore, the comparison with the data provided in the United States register is not convincing either, *inter alia*, because the two registers operate under different legal frameworks and the spending in one jurisdiction does not necessarily lead to the conclusion of same or comparable spending in another jurisdiction.

In light of this, the JTRS has come to the conclusion that no violation of point (d) of the Code of Conduct has been established and, as a result, the allegation on violation of point (b) of the Code of Conduct cannot be established either. Therefore, the JTRS has decided that, pursuant to point 10 of Annex IV to the IIA, the present complaint should be closed without further action.

Yours sincerely,



Martin Kröger  
Coordinator of the Joint Transparency Register Secretariat