

EU Civil Society Contact Group

EU Civil Society Contact Group submission to the consultation on a Code of Conduct for Interest Representatives

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The EU Civil Society Contact Group brings together eight large European platforms of public interest organizations active in the following fields: culture (EFAH), development (CONCORD), environment (Green 10), human rights (HRDN), lifelong learning (EUCIS - LLL), public health (EPHA), social (Social Platform) and women (EWL). Together we work to develop the dialogue between public interest organisations and the EU institutions as an essential part of strengthening participatory democracy.
www.act4europe.org

The EU Civil Society Contact Group supports efforts to improve transparency in interest representation towards the EU institutions. We believe that a code of conduct for interest representatives can bring some improvements to the status quo. At the same time, we urge the European Commission to improve its own staff regulations in order to make the interactions of interest representatives and European Commission staff more transparent and to ensure that there are no conflicts of interest.

The proposed code of conduct for interest representatives is weak and unlikely to improve the current situation. In the hope that the Commission will improve on this draft code, we have put together a series of remarks on specific elements of the proposed code and the framework in which it is presented.

Please note that this submission by the EU Civil Society Contact Group is in many parts in line with the submission of ALTER-EU, the Alliance for Lobbying Transparency and Ethics Regulation. Five areas in which our submission presents new ideas are:

- Where EU officials witness that interest representatives are breaching the code, they should have a formal duty to report such breaches
- The wording of the code should reflect the realities of public interest organisations
- Only if the code of conduct applies to individual lobbyists will it enhance a sense of personal responsibility and integrity among lobbyists
- The Code should set out specific rules for lobbyists and lobbying firms that wish to hire former EU officials
- The Code should be drafted so that it could function, at a later stage, as a single code of conduct for all institutions especially for the European Commission and the European Parliament

Content of the Code

The code of conduct as proposed by the Commission requests lobbyists to comply with "the principles of openness, transparency, honesty and integrity, as expected of them by the citizens in a democratic system." The code requires lobbyists to abide by six core rules:

- identify themselves;
- declare their clients and interests represented;
- provide accurate information to the EU institutions;
- not to obtain information dishonestly;
- not to induce officials to breach internal staff rules;
- abide by the institutions' rules and confidentiality requirements when employing former officials.

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The EU Civil Society Contact Group is disappointed that the proposed code of conduct does not go beyond these basic principles. Regrettably, the requirements in the proposed code of conduct are less exacting than the existing voluntary codes of conduct devised by the associations representing for profit lobbyists and lobby firms in Brussels.

The EU Civil Society Contact Group calls for the following elements to be included in the code:

- **Conflicts of interest:** Unlike existing voluntary codes of conduct¹, the code proposed by the Commission fails to require lobbyists to avoid professional conflicts – or the appearance of a conflict – of interest. It is fundamental that the issue of conflicts of interest is included and clearly defined in order to avoid misinterpretations.
- **Improper influence:** Some existing codes require signatories to "neither propose nor undertake any action which would constitute an improper influence"². Such a requirement should be included in the Commission's code, together with a definition of, and / or guidance on, what would be considered an 'improper influence'.
- **Misrepresentation:** A requirement not to misrepresent links with EU institutions is included in some existing voluntary codes as well as in the European Parliament's code of conduct³. This should be included in the code proposed by the Commission in order to ensure clarity of whose interests are being represented.
- **Financial inducements:** The code proposed by the Commission only indirectly refers to financial inducements (Rule 5: "not induce EU officials to contravene standards of behaviour applicable to him or her"). As is the case in existing voluntary codes⁴, the offering and giving of financial inducements should be explicitly prohibited.
- **Employment of former EU officials:** The code should specify that lobbyists may not employ former officials of the EU, in particular Commission officials, unless the EU institutions have formally and transparently assessed any possible conflict of interest that may arise from any particular employment of its former officials, and have decided that the proposed employment does not cause conflict of interest. For high ranking EU officials, the code should state explicit cooling-off periods (ranging from 6 months to 5 years) during which the person may not work as an interest representative at all.
- **External transparency:** Apart from the obligation for lobbyists to disclose the information required for being registered (including regular reports), the code should further require lobbyists to make information about clients (in the case of consultancy firms) and sources of funding available in between reporting dates on their website or upon request by the public. This avoids cases where information on potential new clients and funding sources only becomes available when it is not relevant any more.
- **The wording of the code should also reflect the realities of public interest groups:** In order to ensure an effective implementation of the code of conduct and the register, we call on the European Commission to better take into account the specificities of citizens' associations. The terminology of the draft code does not reflect the characteristics of public interest organisations. Public interest groups, contrary to business associations, do not have 'clients' for example. The code should differentiate between the various types of interest representatives while applying the same rules to all.

¹ E.g. EPACA's Code of Conduct, http://www.epaca.org/code_of_conduct.php

² Ibid.

³ Ibid. and Rules of Procedure European Parliament, Annex IX, Article 3, <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+RULES-EP+20071128+0+DOC+PDF+V0//EN&language=EN>

⁴ E.g. EPACA's Code of Conduct, http://www.epaca.org/code_of_conduct.php

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The consultation website argues that "The code contains a limited number of clear and concrete rules, indicating how interest representatives are expected to behave when representing their interests. This is deliberately done in order to avoid the use of any abstract or general expressions which could subsequently lead to subjective appreciations or unending debates linked to alleged violations of the rules."

While avoiding unending debates may be a valid point, this should not lead to a weak code that falls behind already existing codes. The EU Civil Society Contact Group believes that the code presented by the Commission is attempting to find the lowest common denominator between different interests and interest groups, as opposed to representing public interests.

The EU Civil Society Contact Group calls on the Commission to show real leadership and ambition in the area of regulating lobbying practices by going beyond the very general provisions of existing voluntary codes drawn up by the industry itself.

Monitoring and Enforcement

The Commission's Green Paper on the European Transparency Initiative stated that applicants for the register "have to subscribe to a code of conduct, which would be enforced credibly and transparently"⁵. The currently proposed code however does not offer any clarification on the issue of enforcement. It mentions that "breaches of the above rules may lead to suspension or exclusion from the register" and that "Signatories should be aware that the citizens have the possibility to lodge a complaint about a suspected breach of the rules set out in this code." But it remains unclear which body will be in charge of monitoring compliance and deciding on possible exclusion from the register. It is also unclear whether this body will only act after being alerted by a complaint from a citizen, or whether the enforcing body will effectively monitor compliance, including by carrying out own-initiative investigations.

The EU Civil Society Contact Group calls on the Commission to proactively raise the awareness of its employees of their responsibility to report breaches of the code of conduct by interest representatives. A robust and proactive monitoring and enforcement function is crucial to enhance credibility of the code of conduct. The EU Civil Society Contact Group favors an independent monitoring body to deal with complaints, including for citizens and public interest organizations, with the ability to start own initiative investigations.

We would further like to express our concern about the consultation website saying "When registering, registrants would automatically be asked to declare that they would abide by this code, or that they already abide by a similar professional code." We are surprised that the Commission deems it sufficient if lobbyists declare that they abide by a similar code. Who would be in charge of deciding whether another code is indeed similar? Who would then be in charge of monitoring compliance to that other, similar code?

The Green Paper on the European Transparency Initiative stated that "it appears necessary to consolidate the existing codes and put in place a common enforcement and sanction system trusted by all"⁶. We believe it is unlikely that indeed 'all' would be inclined to trust a variety of codes presented by different actors, but deemed 'similar'.

The EU Civil Society Contact Group calls on the Commission to ask all interest representatives who wish to be included in the register and lobby the EU institutions to sign on to the same code.

⁵ Green Paper 'European Transparency Initiative', 20.05.06, p.8
http://ec.europa.eu/commission_barroso/kallas/doc/com2006_0194_4_en.pdf

⁶ Green Paper 'European Transparency Initiative', 20.05.06, p.9
http://ec.europa.eu/commission_barroso/kallas/doc/com2006_0194_4_en.pdf

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The code of conduct must apply to individual lobbyists. Only in this way it will enhance a sense of personal responsibility and integrity among lobbyists by making them aware of their rights, obligations and duties.

We note that each institution has so far adopted its own approach to transparency of interest representatives. In particular, both the European Parliament and the European Commission have developed, or are in the process of developing, code of conducts and registration systems. We believe that the transparency initiative offers the opportunity to work towards a single code of conduct and registration system for both institutions. This would increase the transparency of interest representation and help organisations with more limited resources to fulfil the requirements. Given that none of the institutions has so far developed a code of conduct and register that fulfils basic transparency requirements, and which could thus simply be adopted by the other institutions, we urge the European Commission to continue with developing an exemplary code, which should be adaptable to the other institutions as soon as possible.

Sanctions

The only possible sanction for non-compliance mentioned in the code is "suspension or exclusion from the Register". In our view, suspension or exclusion from a *voluntary* register is not an effective sanction – especially as the register is meant to increase transparency. Even if lobbyists are excluded from the register after having provided inaccurate information to the register and/or having breached the code, they can still continue lobbying, as do those lobbyists who chose not to join the register. Some lobbyists might even feel that not being part of the register is a benefit instead of a sanction.

The follow-up communication to the Green Paper 'European Transparency Initiative'⁷ explains that "Registrants found to submit inaccurate information will be invited, possibly in a public manner, to correct it. As a measure of last resort, the Commission can exclude from the register lobbyists providing inaccurate information. A similar procedure would apply to breaches of the code of conduct."

The EU Civil Society Contact Group would strongly support a provision ensuring that submission of inaccurate information and breaches of the code will be publicly announced, for example in a blacklist published on the same web-portal as the register and code.

We would also like to use this opportunity to reiterate our conviction that only a mandatory registration system, requiring *all* lobbyists to register and sign up to a code, will effectively lead to more transparency. Given the weak character of the proposed code of conduct so far, a meaningful and comprehensive register becomes even more important to avoid a failure of the European Transparency Initiative.

⁷ Follow-up communication to the Green Paper 'European Transparency Initiative', 21.03.2007, p.5, http://ec.europa.eu/civil_society/docs/com_2007_127_final_en.pdf