



ALTER-EU submission to the consultation on a Code of Conduct for Interest Representatives

The Alliance for Lobbying Transparency and Ethics Regulation (ALTER-EU) is a coalition of over 140 civil society groups, trade unions, academics and public affairs firms campaigning for a stricter regulation of lobbying in the EU. For more information about ALTER-EU please visit our website: <http://www.alter-eu.org>

ALTER-EU welcomes the Commission's decision to take forward the discussion on a Code of Conduct for Interest Representatives, applicable to all lobbyists. However, we think that the current proposal is too weak and will most likely not have positive effects. Therefore we would like to put forward some remarks on specific elements of the proposed code and the framework in which it is presented.

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

ALTER-EU is disappointed that the proposed Code of Conduct does not go much beyond these basic principles and core rules. 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.

ALTER-EU 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.

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>

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 proposed by the Commission merely refers to the obligations to abide by the rules and confidentiality requirements of the EU Institutions. ALTER-EU believes that an explicit cooling-off period should be established in the Code of Conduct in order to contribute to the de-legitimisation of the revolving doors' practice.
- > **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 anymore.

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. ALTER-EU 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. **ALTER-EU 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 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. **ALTER-EU calls on the Commission to clarify these issues in favour of a robust and proactive monitoring and enforcement function. ALTER EU favors an independent monitoring body to deal with complaints, with the ability to start own initiative investigations.**

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

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

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 similar code?

We would like to remind the Commission of its statement in the Follow-up communication to the Green Paper 'European Transparency Initiative' that "It is clear that the Commission will always remain accountable for the soundness of its relations with representatives of outside interests. Therefore, it would be difficult to envisage the Commission outsourcing the responsibility for the definition and monitoring of a code to external bodies."⁶

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"⁷. We believe it is unlikely that indeed 'all' would be inclined to trust a variety of codes presented by different actors, but deemed 'similar'. **ALTER-EU 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.**

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'⁸ 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." **ALTER-EU 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.

⁶ 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

⁷ Green Paper 'European Transparency Initiative', 20.05.06, p.9 http://ec.europa.eu/commission_barroso/kallas/doc/com2006_0194_4_en.pdf

⁸ 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