



Brussels, November 24 2009

To: José Manuel Barroso, President of the European Commission

Subject: Preventing Conflicts of Interest of EU Commissioners (Review of the Code of Conduct)

Dear President Barroso,

We are writing to you in response to your intended review of the Commissions' Code of Conduct.[1] We believe that such a review is long overdue as the current Code of Conduct is clearly insufficient, as detailed in the European Parliament's May 2009 study "*The Code of Conduct for Commissioners - improving effectiveness and efficiency*".[2]

From ALTER-EU's perspective, the most pressing issues are:

- the absence of a clear definition of what constitutes a conflict of interest;
- unclear rules on acceptance of gifts, including hospitality and other benefits;
- insufficient safeguards against conflicts of interest emerging from Commissioners taking up employment in the private sector: a cooling-off period of at least two years and clear criteria for assessing conflicts of interest are needed;
- stricter enforcement of financial transparency by Commissioners, in order to enable the public to assess potential conflicts of interest: financial declarations must be complete and updated at least annually;
- assessing and preventing conflicts of interest is not only a matter for the Commission itself, there should also be oversight by an independent public body.

We believe that an open and inclusive review process is desirable and necessary to promote trust and confidence in the Commission's Code. This should include consultation with stakeholders committed to promoting high standards of ethics and democratic accountability in public administration. ALTER-EU is willing to participate in such a process.

Assuming that the review of the Code of Conduct will take several months, we would like to highlight our concerns about important decisions that will be made in the near future, on the basis of the existing Code of Conduct. Five years ago, the last time a team of Commissioners was replaced, the approval procedure for post-Commission employment plans was inadequate. The one-year cooling-off period introduced after the Bangemann scandal in 1999 was not respected in at least one case. Also, the usual screening by an ad-hoc ethics committee was bypassed when Health and Consumer Commissioner Pavel Telicka's plans to establish a for-profit lobby consultancy firm were approved.[3] We believe this decision was made without sufficient scrutiny of possible conflicts of interest, and creates a very worrying precedent that must not be repeated in any circumstance.

We would like to ask you to indicate what your approach will be towards applications from current

Commissioners for approval of their future career plans. There are rumours about several current Commissioners considering future (lobby) work for large corporations. We are keen to establish what you intend to do in the short term to ensure that there will be no cases of conflict of interest that would undermine public trust in the European institutions?

To adequately deal with conflicts of interest both pre- and post public employment issues must be considered. We are aware that candidate Commissioners will go through approval hearings in the European Parliament, but would also like to recall the May 2005 Framework Agreement, which mentions that “the President of the Commission shall be fully responsible for identifying a conflict of interest which renders a Member of the Commission unable to perform her duties”.^[4] According to the EU Treaty, Members of the Commission shall “in the general interest, be completely independent in the performance of their duties”; “their independence shall be beyond doubt”.^[5] As mentioned before, we believe a more precise definition of conflicts of interest is required, and should include provisions to ensure that for-profit lobbyists cannot take up office in the new Commission. We would welcome a statement outlining how you will guarantee the complete independence and absence of conflicts of interest of new Commissioners.

Finally, it appears to us that an in-depth review of the conflicts of interest rules for European Commission staff (which contain many of the same weaknesses as the Code of Conduct for Commissioners) is also necessary.^[6] In particular, the current rules (outlined in the Staff Regulations) on Commission staff taking up employment in the private sector lack sufficient safeguards against conflicts of interest. Instead of the current case-by-case approach, a clear definition of what constitutes a conflict of interest and an effective cooling-off period is required. Clearer new rules on the acceptance of gifts and hospitality are also needed. ^[7]

We are encouraged that you have taken this initiative and look forward to your reply on the issues we have raised.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'Paul de Clerck', written over a large, stylized, scribbled oval shape.

Paul de Clerck

On behalf of the ALTER-EU Steering
Committee

Paul de Clerck (Friends of the Earth Europe)
William Dinan (Spinwatch)
Marc Gruber (European Federation of Journalists)
Ulrich Müller (LobbyControl)
Yveline Nicholas (Adequations)
Jorgo Riss (Greenpeace European Unit)
Erik Wesselius (Corporate Europe Observatory)

Notes

1: [“Political guidelines for the next Commission”](http://ec.europa.eu/commission_barroso/president/pdf/press_20090903_EN.pdf)
http://ec.europa.eu/commission_barroso/president/pdf/press_20090903_EN.pdf

2: “The Code of Conduct for Commissioners - improving effectiveness and efficiency”

<http://www.europarl.europa.eu/document/activities/cont/200907/20090728ATT59122/20090728ATT59122EN.pdf>

3: In November 2004, the Commission approved Mr. Telicka’s request to become a for-hire lobby consultant on the basis that he did not have his own portfolio in the Prodi Commission (Telicka shared a portfolio with Commissioner Byrne). The current rules refer to the word ‘portfolio’, but this interpretation is clearly far too narrow, as there are numerous possible conflicts of interest imaginable even if Telicka didn’t formally have his own, exclusive portfolio. Telicka worked in tandem with Byrne in a powerful role on health and consumer protection issues and he was fully part of the college of the Commissioners. In the Memorandum outlining the Commission’s decision it is wrongly stated that the occupation envisaged is not related to the content of his portfolio. Telicka promised “for the necessary period of time” not to lobby on issues related to health and consumer protection, but this is very vague and clearly a promise like that is not sufficient to prevent conflicts of interest. With his consultancy BXL Consulting (established within weeks after leaving the Commission), Telicka has lobbied for large corporations like Microsoft (from 2005 onwards).

Sources:

- Communication de M. le Président, “Application du Code de conduite des commissaires: activités après cessation des fonctions” SEC(2004) 1456

- Letter from Commissioner Telicka to commission President Prodi, 9 November 2004

4: Framework agreement on EP-Commission relations, 26 May 2005.

<http://www.europarl.europa.eu/sides/getDoc.do?objRefId=96173&language=EN>

5: Treaty establishing the European Community, Section 3, Article 213(1) [article 213(2)]

6: Between 2005 and 2008, 273 Commission officials asked for ‘post-employment’ authorisation, only three were refused. 30 were granted conditionally. A closer look at some of the cases reveals that the conditions imposed are too anemic to effectively prevent conflicts of interest and that the Commission lacks a consistent approach to revolving doors cases. In addition to these permanent departures, a far larger number of Commission officials make use of the possibility to go on a time-unlimited sabbatical, reserving the right to return the Commission job at a later stage. In 2007, 381 Commission officials announced they went on sabbatical leave, 40% of these went to the private sector.

7: In a recent European Ombudsman case (1341/2008/MHZ) the Commission accepted that, in that specific case, “it would have been better for it not to have allowed the officials in question to accept the hospitality in question”.

The Commission also confirmed that it is updating its internal provisions related to the acceptance of gifts and hospitality. <http://www.ombudsman.europa.eu/press/release.faces/en/4362/html.bookmark>