



**EPACA Response to the Draft European Commission
Code of Conduct for Interest Representatives**

Brussels, 15 February 2008

EPACA welcomes the opportunity to comment on the Commission's first draft for a Code of Conduct for lobbyists (more broadly referred to in the Code as "interest representatives"). The rules outlined by the Commission are contained in the existing code of conduct which the members of EPACA have respected for over 15 years (see www.epaca.org/code_of_conduct.php and www.epaca.org/principles.php). This reflects the usefulness of the work of EPACA, together with SEAP and IPRA, who together drafted the Common Principles of their codes of conduct, and presented them to Commissioner Kallas in April 2007. There are however a number of aspects which need to be treated carefully to avoid distortion of competition.

Guidelines needed on definitions

The definition of "interest representation" attached to the Commission's code remains too broad when it refers to all activities "with the objective of influencing the policy formulation and decision-making processes of the European institutions". This is reinforced by the fact that the Commission's register and code will solely apply to the Commission itself and, apparently, not to other institutions at this stage.

Consequently, the notion contained in the Commission's draft Rules and expressed as "In their representation activities as defined above....," fails to provide operators with enough clarity about the scope of applicability of the Code.

We believe it is in everyone's interest that there is no doubt in the mind of any operator when they are lobbying and when they are not lobbying, and therefore, when they should follow the Rules and apply the Principles outlined in the draft code. There is a need to differentiate representation activities from the more general services our consultancies provide to their clients (when these do not have as a direct objective to influence policy-makers). The best solution is to define 'lobbying' or 'interest representation' more clearly and specifically. Failing this, operators need Commission Guidelines on the interpretation of the definition.

The Commission's draft Rules are right in their focus because they impose high standards upon lobbyists when they are directly interacting with the EU institutions.

Level playing field

EPACA strongly believes in the equal treatment of all lobbyists, whether they reside in a consultancy, a corporate office, a national, regional or local representation office, an NGO, a trade association or union, a law firm or anywhere else.



As it stands now, the draft appears to concede that lawyers, when doing legal work and interacting with the EU institutions, do not have to follow any of the rules, such as identifying themselves by name and organisation, or declaring their client's interest.

Lobbyists should be defined only by the nature of the interactions they have with officials and politicians in EU institutions. All such interactions should be held accountable to the same high ethical standards, including transparency.

We therefore urge that the Commission definition of this exemption for “legal advice” should be specific and limited and on no account broadened or made all-encompassing.

Need for a clear process

The proposed code fails to present us with a system of “due process”, which clearly explains how possible complaints for breaching the code will be handled, by whom, with what guarantees for transparency, possible protection of commercially sensitive information, and possible right of appeal. A clear process needs to be established defining who has “standing” to complain and what makes for an “admissible / legitimate” complaint. This needs to be designed, refined through further consultation, and presented well in advance of the opening of the register, with a view to reassuring operators and providing them with legal certainty.

Bearing the above-mentioned comments in mind, EPACA wishes to continue the open dialogue it has upheld so far with the Commission, the European Parliament and other stakeholders in the Public Affairs sector. As previously stated, we believe that the 4 main points that need to be addressed by the Commission in its further fine-tuning of the European Transparency Initiative (ETI) are:

- Clear guidelines on how to implement the Commission's definition of lobbying;
- A broad threshold approach, should financial disclosure be required, to protect commercially sensitive information
- A level playing field, with all lobbyists treated equally; and
- A clear review process assessing success of the initiative and/or further steps.

We trust the Commission will address these important points with a view to building a system which provides legal certainty. These are important elements which could enable the European Commission to make much-needed progress in its effort to convince operators that they have more to gain in registering in a suggested voluntary system than not to be part of it at all.