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COVER NOTE

from: Secretary-General of the European Commission,
signed by Mr Jordi AYET PUIGARNAU, Director

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to: Mr Javier SOLANA, Secretary-General/High Representative

Subject: Communication from the Commission: European transparency initiative
- A framework for relations with interest representatives (register
and code of conduct)

Delegations will find attached Commission document COM(2008) 323 final.

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COMMISSION OF THE EUROPEAN COMMUNITIES

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COMMUNICATION FROM THE COMMISSION

European Transparency Initiative

A framework for relations with interest representatives (Register and Code of Conduct)

{SEC(2008) 1926}

COMMUNICATION FROM THE COMMISSION

European Transparency Initiative

A framework for relations with interest representatives (Register and Code of Conduct)

On 21 March 2007, the Commission adopted the Communication “Follow-up to the Green Paper ‘European Transparency Initiative’”¹, which included the decision to establish a framework for its relations with interest representatives. It was decided to:

- create and launch a new voluntary Register for interest representatives in spring 2008;
- draft a Code of Conduct. Respect for the Code will be a requirement for entry in the Register and will be monitored by the Commission;
- establish a monitoring and enforcement mechanism for the Code and the Register;
- increase transparency through reinforced application of the Commission’s consultation standards based, in particular, on a standard website for internet consultations.

This Communication:

- provides further clarifications about these measures and reports on the progress made toward their implementation;
- presents the Code of Conduct established following a public consultation.

In implementing the Communication “Follow-up to the Green Paper ‘European Transparency Initiative’”, the Commission has had numerous contacts with stakeholders and has organised an open, public consultation on the draft Code of Conduct. The feedback received has highlighted a desire, broadly shared by all categories of actors, for a number of further clarifications, regarding in particular the definition of the activities and entities falling under the scope of the Register, as well as the monitoring and enforcement mechanism.

This Communication provides information on those aspects of the framework.

1. THE VOLUNTARY REGISTER OF INTEREST REPRESENTATIVES

The Register, with its web interface and database, will offer, in spring 2008, user-friendly access both to interest representatives for their online registration and subsequent updates and to the public at large, for the consultation of its content.

¹ COM(2007) 127 final.

It has emerged from the feedback that more information is needed on the activities and operators included in the definitions of “interest representation” and “interest representative”.

1.1. “Interest representation”: activities for which registration is expected

“Interest representation” activities for which registration is expected are defined as “activities carried out with the objective of influencing the policy formulation and decision-making processes of the European institutions”².

This definition does not include:

- activities concerning legal and other professional advice, in so far as they relate to the exercise of the fundamental right to a fair trial of a client, including the right of defence in administrative proceedings, such as carried out by lawyers or by any other professionals involved therein;
- activities of the social partners as actors in the social dialogue (trade unions, employers associations). However, when these actors engage in activities falling outside the role conferred on them by the Treaties, they are expected to register in order to guarantee a level playing field between all the interests represented;
- activities in response to the Commission’s direct request, such as ad hoc or regular requests for factual information, data or expertise, invitations to public hearings, or participation in consultative committees or in any similar fora.

The Commission recognises that the mission of most organisations engaged in interest representation is wider than the activities for which registration is expected. They engage in activities such as the production of studies, statistics and other information and documentation as well as the provision of training and capacity building for members or clients which fall outside the scope of this definition, if they are not related to activities of interest representation.

The Commission encourages European networks, federations, associations or platforms to produce, as a dimension of their self-regulation, common, transparent guidelines for their members identifying the activities falling under this definition.

1.2. “Interest representatives”: entities which are expected to register

Only entities engaged in interest representation activities as described above and not individual persons are expected to register.

With the exception of local, regional, national and international public authorities³, any entity, irrespective of its legal status, is expected to register if it is engaged in activities meeting the definition above.

² COM(2006) 194 final: “Green Paper ‘European Transparency Initiative’”

³ The Register will offer them the possibility to enter data if they wish to do so.

This applies to social partners (employers organisations and trade unions) engaged in interest representation activities falling outside the specific framework of the social dialogue. It also applies to associations of public authorities with a private legal status, or any mixed (private/public) structure of which public authorities are part, if they are carrying out activities falling under the definition presented above.

2. THE CODE OF CONDUCT

Subsequent to discussions held with different European networks of stakeholders and after an open, public consultation which took place from 10 December 2007 to 15 February 2008, the Commission has established the attached Code of Conduct (cf. Annex), drawing on the 60-plus contributions collected during the consultation.

Registrants should agree to comply with this Code or with a professional code that has comparable rules. When declaring that they abide by a professional code that has comparable rules, registrants should agree to hand this code over to the Commission upon request.

The consultation has shown wide support for a concise and concrete code as suggested in the consultation document. A number of organisations would welcome a higher level of ambition: a broader scope for the Code, encompassing such issues as conflicts of interest or revolving doors. However, these issues do not fall within the scope of the European Transparency Initiative. On the one hand, the Register aims to enhance general transparency in relations between the Commission and interest representatives. On the other hand, the Commission considers that issues such as conflicts of interest of Members of the institution and its staff are already covered by a number of existing rules which provide appropriate safeguards, such as the Treaties, the Staff Regulations, the Code of Conduct for Commissioners and the Code of good administrative behaviour. These texts apply to Commissioners and staff not only during their time in office, but also once their occupation at the European Commission ends⁴.

The Code of Conduct responds to a large number of the questions raised during the consultation: it refines the definition of the activities and entities concerned. It deals with the monitoring and enforcement mechanism more comprehensively.

3. THE MONITORING AND ENFORCEMENT MECHANISM

The Code of Conduct contains seven clear and verifiable rules which are to be respected by the signatories of the Code. The Commission will apply corrective measures only if it can establish that one or more of these seven specific rules have been violated. This includes, *inter alia*, false or misleading information entered in the Register.

Anyone will be able to lodge a complaint with the Commission where a breach of the Code is suspected. In the event of such a complaint and before a formal process is launched, the Commission will request the concerned entity to clarify the issue, and to invite this entity to abide by the rules or correct any false or misleading information in the Register.

⁴ See Articles 213 and 287 of the Treaty establishing the European Community, the Code of Conduct for Commissioners (in particular “Independence and dignity”), the Staff Regulations (especially Articles 11-18) and the Code of good administrative behaviour for staff (particularly “Objectivity and impartiality”).

The possibility of malicious complaints needs to be anticipated and should be dealt with. As a safeguard, the Code specifies that complaints will have to be substantiated by material facts in order to be taken into consideration by the Commission. If substantiated, the complaint will trigger an administrative process which will pay due respect to proportionality and the rights of defence.

The Commission will apply the following corrective measures:

- temporary suspension from the Register for a set period or until correction of the situation by the registered entity. During the suspension period all benefits of registration will also be suspended;
- exclusion from the Register in case of severe and persistent failure to comply with the Code.

The outcome of the administrative process will be notified to the concerned entity. The complainant will be informed.

4. CONSULTATION PROCESSES AND STANDARD TEMPLATE

The Commission will progressively apply a model template for the presentation of its public consultations launched via the consultation pages of the competent DGs, and announced via the single access point for all public consultations, Your Voice in Europe (YVIE). This will ensure a systematic link between the consultations and the Register so that unregistered entities will be informed about registration and offered the possibility to register when they make their submission to the consultation.

5. INTER-INSTITUTIONAL APPROACH

The invitation to register and to accept the Code of Conduct will apply for interest representatives in their dealings with the European Commission only. Many contributions to the consultation call for an inter-institutional one-stop-shop register and code. The Commission has invited the European Parliament, the Committee of the Regions and the Economic and Social Committee to examine the possibility of closer cooperation in this area. The Commission welcomes the positive reaction of the European Parliament to this suggestion and is open to discuss the development of a shared one stop-shop registration system with the Parliament and the Council of the European Union.

Commission staff is encouraged to use the Register as a reference for contacts and, in the interest of transparency, to always invite, in the framework of their work contacts, non-registered entities to register.

The Commission considers registration as an important contribution to transparency and therefore invites all organisations engaged in interest representation activities to register.

ANNEX

CODE OF CONDUCT FOR INTEREST REPRESENTATIVES

Interest representation is a legitimate part of a democratic system. The European Commission, in its effort to enhance public confidence, has established a voluntary Register and adopted this Code of Conduct to bring more transparency to interest representation, its actors and their activities.

The present Code contains seven basic rules, specifying how interest representatives should behave when representing their interests. Registrants agree to abide by this Code or declare that they already abide by a professional code that has comparable rules.

“Interest representation” activities for which registration is expected are defined as “activities carried out with the objective of influencing the policy formulation and decision-making processes of the European institutions”.

This definition does not include:

- activities concerning legal and other professional advice, in so far as they relate to the exercise of the fundamental right to a fair trial of a client, including the right of defence in administrative proceedings, such as carried out by lawyers or by any other professionals involved therein;
- activities of the social partners as actors in the social dialogue (trade unions, employers associations, etc.). However, when such actors engage in activities falling outside the role conferred on them by the Treaties, they are expected to register in order to guarantee a level playing field between all the interests represented;
- activities in response to the Commission’s direct request, such as ad hoc or regular requests for factual information, data or expertise, invitations to public hearings, or participation in consultative committees or in any similar fora.

The Commission recognises that the mission of most organisations engaged in interest representation is wider than the activities for which registration is expected. They engage in activities such as the production of studies, statistics and other information and documentation as well as the provision of training and capacity building for members or clients which fall outside the scope of this definition, if not related to activities of interest representation.

PRINCIPLES

Interest representatives are expected to apply the principles of openness, transparency, honesty and integrity, as legitimately expected of them by citizens and other stakeholders.

Similarly, Members of the Commission and staff are bound by strict rules ensuring their impartiality. The relevant provisions are public and contained in the Treaty establishing the

European Community, the Staff Regulations, the Code of Conduct for Commissioners and the Code of good administrative behaviour.

RULES

Interest representatives shall always:

- (1) identify themselves by name and by the entity(ies) they work for or represent;
- (2) not misrepresent themselves as to the effect of registration to mislead third parties and/or EU staff;
- (3) declare the interests, and where applicable the clients or the members, which they represent;
- (4) ensure that, to the best of their knowledge, information which they provide is unbiased, complete, up-to-date and not misleading;
- (5) not obtain or try to obtain information, or any decision, dishonestly;
- (6) not induce EU staff to contravene rules and standards of behaviour applicable to them;
- (7) if employing former EU staff, respect their obligation to abide by the rules and confidentiality requirements which apply to them.

OTHER PROVISIONS

- Breaches of the Code. Registered entities are informed and agree that breaches of the above rules by their representatives may lead to suspension or exclusion from the Register following a Commission administrative process paying due respect to proportionality and the right of defence.
- Complaints. Registered entities are informed that anyone can lodge a complaint with the Commission, substantiated by material facts, about a suspected breach of the above rules.
- Publication of contributions and other documents. Registered entities are informed that their contributions to public consultations will be published on the internet together with the identity of the contributor, unless the contributor objects to publication of the personal data on grounds that such publication would harm his or her legitimate interests. The Commission may, upon request and subject to the provisions of Regulation (EC) No 1049/2001 on access to documents, have to disclose correspondence and other documents concerning the interest representatives' activities.