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COMMISSION STAFF WORKING DOCUMENT
RESULTS OF THE CONSULTATION ON THE
CODE OF CONDUCT FOR INTEREST REPRESENTATIVES

Accompanying document to the

COMMUNICATION FROM THE COMMISSION

European Transparency Initiative

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

[COM(2008) 323 final]

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RESULTS OF THE CONSULTATION ON THE CODE OF CONDUCT FOR INTEREST REPRESENTATIVES

1. INTRODUCTION

From December 2007 to February 2008, stakeholders were consulted on a draft “Code of Conduct for interest representatives” through an internet-based public consultation. A total of 61 contributions were received from the corporate sector, NGOs, think-tanks, the public sector and individual citizens. In line with the Commission consultation standards, all contributions have been published on the Europa website¹.

This document sets out the main results of the consultation.

2. OVERALL SATISFACTION WITH THE DRAFT CODE OF CONDUCT

Many contributors welcomed the Commission’s initiative to draft a Code of Conduct and the opportunity given to comment on it. The consultation has shown the existence of wide support for a concise code with concrete content.

The consultation has essentially highlighted a desire, broadly shared by all categories of respondents, for a number of clarifications regarding in particular: the definition of activities falling under the scope of the Register; the eligible entities expected to register; and the monitoring and enforcement procedure.

Contributors of all categories put forward arguments in favour of an inter-institutional approach, making subscription to the Code a “one-stop-shop”.

A number of NGOs would like a higher level of ambition: a broader scope for the Code, encompassing such issues as conflicts of interest or revolving doors.

3. CONTENTS OF THE CODE: MAIN COMMENTS AND SUGGESTIONS FOR IMPROVEMENT

The replies made and positions taken by the respective categories of respondents with regard to the building bricks of the Code can be summarised as follows.

¹ http://ec.europa.eu/transparency/consultation_code/contributions_fr.htm.

3.1. Preamble

The vast majority of the corporate sector made reference to the definition of interest representation as set out previously in the Green Paper on the European Transparency Initiative. They argued that the definition of “interest representation” is too wide and that the specificities of various (regulated) professions should be better taken into account. They argued that activities following a direct request by the EU institutions, such as providing expertise and preparing and tabling contributions to consultations, and participating in consultative committees, should not fall within the scope of the definition. Many opinions stressed that the Commission’s relations with interest representatives are a two-way system.

Members of the regulated professions, but also other professions such as public affairs practitioners, welcomed the exemption allowed for activities related to legal and other professional advice. However, it was mostly lawyers who commented that the exemption is in their eyes far too narrow. According to them it does not cover all the activities which in their view should fall outside of the Register’s scope, such as individual casework carried out for a client and those carried out in the public interest. Some organisations asked the Commission to further clarify the activities falling outside the scope of the definition of “interest representation” in order to guarantee a level playing field between all interest representatives.

3.2. Principles

Most of the contributors supported the set of principles proposed in the Code. Some opinions considered that interest representatives are also expected to respect the principles not only by the public at large, but by all other stakeholders themselves.

3.3. Rules

Contributors of all categories asked for the third rule of the draft text to be reworded in such a way that every interest representative would be asked to declare its interests, and only **where applicable** their clients or their members, as this formula would cover all categories of actors. It was also suggested that an additional rule be added specifying that interest representatives should not misrepresent their interests vis-à-vis the Commission.

The vast majority of the corporate sector appreciated the concise character of the proposed rules. Several suggestions were made on how to clarify the rules so that their own professional standards would not be compromised or contradicted. Furthermore, it was proposed that a statement be included that interest representatives should not claim any formal relationship with the Commission in any dealings with third parties.

NGOs and some citizens generally agreed with the proposed rules, but urged the inclusion of a number of more far-reaching rules on professional conflicts of interest, misleading and biased information. It was also suggested that the rule on the employment of former EU staff could be supplemented with an explicit cooling-off period in order to discourage the practice of revolving doors.

3.4. Other provisions

3.4.1. Breaches of the Code and complaint mechanism

All categories of respondents asked for clarification of the monitoring and enforcement procedure (complaints and sanctions). A number of NGOs asked the Commission to provide a robust and proactive monitoring and enforcement function with effective procedures. The corporate sector was mainly concerned with the proportionality of the procedure and the protection of interest representatives against bogus or trivial complaints. More information was requested on the procedure for the investigations, and the need for a right to appeal the decisions on sanctions was stressed. The Commission was also asked to bear in mind the consequence of imposing sanctions on registered entities, rather than on the constituent members or individuals. More detailed guidance was asked for on how to promote compliance with the Code.

The topic of breaches of the Code received a lot of attention from several NGOs, which pressed for more powerful measures to be established. They also suggested that breaches of the Code should be made public, for example, by publishing a blacklist.

3.4.2. Publication of contributions and other documents

This provision was generally welcomed.

Table: number of respondents by category

| Categories | Number of replies |
|------------------|-------------------|
| Corporate sector | 40 |
| NGOs/think-tanks | 17 |
| Public sector | 1 |
| Citizens | 3 |