

# Transparency in EU decision making: reality or myth?

Do EU consultation practices and codes of conduct for decision makers and lobbyists contribute to transparency and ethical decision making?

AN ANALYSIS | MAY 2006



**Friends of  
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Europe

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An analysis

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When the European Commissioner for Administrative Affairs, Audit and Anti-Fraud, Siim Kallas, first publicly established the need for a European Transparency Initiative (ETI) in March 2005<sup>1</sup>, he acknowledged that “Brussels is regarded [...] as a far away place, as an inaccessible political ‘black box’ where all sorts of obscure measures are taken”. To “increase openness and accessibility of EU institutions, raise awareness over the use of the EU budget and make the Union’s institutions more accountable to the public”<sup>2</sup>, the European Transparency Initiative (ETI) was formally launched on November 9th 2005.

One of the issues that Commissioner Kallas wants the ETI to address is the personal integrity of decision makers and officials at the European institutions. But Kallas does not stop there: he demands that “the issue of integrity should not only be limited to public institutions”<sup>3</sup>. He acknowledges that lobbyists can have considerable influence on legislation, but that their transparency is too deficient in comparison to the impacts of their activities. “Organisations, groups or persons in the ambit of European institutions which offer advice, represent clients, provide data or defend public causes should also be accountable.”<sup>4</sup>

The Green paper on the ETI was published on May 3rd 2006. In light of the coming debate with all stakeholders, it is important to know what the existing rules and regulations are, both on the side of lobbyists and lobbying associations, and on the side of the European institutions. How do the existing rules and regulations address transparency in European decision making? Which rules do the European institutions apply in their relations with lobbyists, and which rules do lobbyists apply in their dealings with European decision makers and officials? Do the rules address the issue of equal access at all? To provide decision makers with a representative and balanced picture of public opinion, including the views of all stakeholders, it is necessary to ensure that no stakeholder is granted with privileged access rights to the policy making process. How can this be addressed in the ETI?

This report by Friends of the Earth Europe analyses the most relevant rules and practices that have an influence on the transparency of lobbying and decision making at the European level, without claiming to be exhaustive. It is intended to provide background information for stakeholders interested in getting involved in the ETI debate, by examining and evaluating the different regulatory frameworks. But the report also goes one important step further: it questions the value and potential of existing codes and rules for improving transparency and ethics in EU policy making. Both on the side of lobbyists and of the European institutions, various actors affirm that the elements of the current system – all relying on self-regulation – provide enough potential to create a transparent decision making environment. But is this really true? Or is the crux of the matter another entirely? Can the current system be improved in such a way to guarantee transparency, or are there important elements missing? This report seeks to answer these questions and provides detailed recommendations on what Friends of the Earth Europe thinks is needed to create a transparent and ethical EU policy making environment. These recommendations were developed in close collaboration with the Alliance for Lobbying Transparency and Ethics Regulation (ALTER-EU), where Friends of the Earth Europe is represented in the interim steering committee.

For the purpose of this report, ‘lobbying’ is defined as ‘the specific effort to influence public decision making either by pressing for change in policy or seeking to prevent such change. It consists of representations made to [and/or policy relevant discussion with] any public office holder on any aspect of policy, or any measure implementing that policy, or any matter being considered, or which is likely to be considered by a public body’.<sup>5</sup> A ‘lobbyist’ is a person designated by an interest group or interest to facilitate influencing public policy in that group or interest’s favor by performing one or more of the following: (1) directly contacting public officials; (2) monitoring political and governmental activity; (3) advising on political strategies and tactics; (4) developing and orchestrating the group’s lobbying effort.

1 speech on March 3rd 2005  
<http://europa.eu.int/rapid/pressReleasesAction.do?reference=SPEECH/05/130&format=HTML&aged=0&language=EN&guiLanguage=en> [03.03.06]

2 [http://europa.eu.int/comm/commission\\_barroso/kallas/transparency\\_en.htm](http://europa.eu.int/comm/commission_barroso/kallas/transparency_en.htm) [17.02.06]

3 speech on March 3rd 2005  
<http://europa.eu.int/rapid/pressReleasesAction.do?reference=SPEECH/05/130&format=HTML&aged=0&language=EN&guiLanguage=en> [03.03.06]

4 Ibid.

5 Institute of Public Relations and Public Relations Consultants Association proposed Register of Professional Lobbyists, p.1, 31 October 1994; In our view, this definition also covers the issue of lobbying for contracts or funds.

6 Phil Harris and Craig S. Fleisher, Handbook of Public Affairs, London, 2005

# Lobbyists: ethics and transparency

# 1

Most major corporations and political interest groups hire professional lobbyists to promote their interests as intermediaries. About 15,000-20,000 professional lobbyists now operate in Brussels, a large majority representing business interests. Some of the lobbyists are organised in associations such as the European Public Affairs Consultancies Association (EPACA), the Society of European Affairs Professionals (SEAP) and the Association of Accredited Lobbyists to the European Parliament (AALEP). These associations assert that they wish to provide a platform for dialogue with the EU institutions and other stakeholders, to exchange information and experience, to stimulate discussion on lobbying and – last but not least – to promote high ethical standards within the profession at large. To achieve this latter aim, they have adopted codes of ethical conduct.

But can these codes effectively regulate members' conduct? Are they an appropriate tool for regulating lobbying? Do they really promote high ethical standards or do they merely try to prevent the worst? But ultimately, the most essential question is how the codes of conduct can create a transparent system where all lobbying activities are put under democratic scrutiny. Do codes of conduct have the potential for this, or do we need other elements?

The following chapter tries to find answers to these questions by analysing the codes of conduct of EPACA, SEAP and AALEP.



## 1.1. EPACA

The European Public Affairs Consultancies Association is a representative trade association for professional public affairs consultancies active in the EU marketplace. It was formed on 28 January 2005. EPACA is the formalisation of a loose network of signatories to a previous version of the EPACA Code of Conduct. This network was known under the name “Public Affairs Practitioners”.

### EPACAs Code of Conduct

EPACA has a Code of Conduct<sup>7</sup> which EPACA members are required to respect.

**Overview:** The general principles stated in the Code require lobbyists to behave honestly and transparently towards the institutions; not to give misleading information; to honour confidential information; to avoid professional conflicts of interest; not to give financial inducement to EU officials and politicians; to refrain from exerting improper influence; and to respect rules and confidentiality requirements of the EU institutions when employing EU personnel

**Implementation:** EPACAs management committee (comprising nine members and a chairman, elected by the general assembly) is responsible for ensuring maintenance of the Code of Conduct, reviewing it when necessary and recommending amendments at the annual meeting.

**Complaints:** Complaints concerning breaches of the Code of Conduct can be filed with the Chairman of EPACA or any member of the management committee. The management committee - excluding members who work for or represent the consultancy against which the complaint has been made - decides whether it warrants investigation by a professional practices panel, consisting of three persons from outside the profession<sup>8</sup> and appointed by the management committee. The incriminated consultancy has the right to meet with the committee before a decision is taken on whether to refer the matter to the professional practices panel. The panel rules – after seeking a meeting with at least the complainant and a representative of the incriminated consultancy – whether a breach has occurred or not and may recommend sanctions. The management committee decides by a majority vote whether any sanctions will be applied and in which form. The member consultancy shall then be informed in writing of the management committee’s decision. Findings shall be made available to the public.

**Sanctions:** The professional practices panel can recommend one of the following sanctions<sup>9</sup> for breaching the code:

- > reprimand the member consultancy and warn as to its future conduct
- > expel the member consultancy for a specific period
- > expel the member consultancy indefinitely

**Membership:** EPACA currently has 31 member consultancies with some 500 staff.<sup>10</sup>

<sup>7</sup> [http://www.epaca.org/code\\_of\\_conduct.php](http://www.epaca.org/code_of_conduct.php) [24.01.06]

<sup>8</sup> e.g. former MEPs, former Commission officials or members of Brussels think tanks

<sup>9</sup> [http://www.epaca.org/terms\\_of\\_reference.php](http://www.epaca.org/terms_of_reference.php) [24.11.05]; additionally, the code of conduct contains the phrase: “Any signatory will voluntarily resign should they transgress the code.”

<sup>10</sup> <http://www.epaca.org/members.php> (08.12.05)

### Our view

The Code of Conduct in itself appears to be a positive declaration of intent underpinned by admirable values.

However, a closer look reveals that there are some issues that remain unclear and that merit clarification, e.g.:

- › **Conflicts of interest:** The provisions in the Code of Conduct don't specify what exactly a conflict of interest is – e.g. is it a conflict of interest if the lobbyist lobbies his or her own spouse and other close family members? Should a Code of Conduct require that lobbyists refrain from representing two different clients on conflicting matters? Should it require the lobbyist not to represent opinions that run counter his or her own personal beliefs or interests, including a sense of civic obligation? What about lobbying a previous employer?
- › **Improper influence:** To avoid every lobbyist defining the term 'improper' to his or her convenience, it should be specified more clearly.
- › **Employment of EU personnel:** EPACAs Code of Conduct refers only to the rules laid down by the EU institutions. There are no clear regulations, e.g. an obligatory cooling off period of 2-3 years before decision makers can move into lobbying.

Concerning transparency, there are some important requirements in EPACAs Code of Conduct. EPACA members shall:

- › identify themselves by name and by company
- › declare the interest represented
- › not intentionally misinterpret or create false impressions on their status or the nature of their enquiries to officials of the EU institutions

This is a good starting point, although the term “intentionally misinterpret” would have to be defined more clearly to ensure that everybody meets the same standard. However, there is one major weak point: There is **no external transparency** towards EU citizens concerning information on lobbying activities in general and the implementation of the Code of Conduct. The public is left in the dark as to which lobbying activities were carried out when, for whom, with what budget and whose funding, and on what issues, and whether the respective lobbyists were behaving ethically or not.

The complaints procedure of EPACA include the calling of an independent professional practices panel. However, it is unclear who decides on the composition of this panel and consequently, how independent it really is. Moreover, the panel is only called if the management committee deems this appropriate and the final decision on the application of any sanctions is taken by the management committee. Ultimately, this means that ***misbehaving lobbyists are judged by their fellow lobbyists***, and not by the independent panel. It is positive that findings shall be made available to the public – yet if the process were to be entirely transparent, the committee and the panel would be obliged to meet in public and to publish the names of wrongdoers.

**The sanctions** – the strongest being indefinite expulsion from the Association – ***can not really be effective***. While of course an organisation with voluntary membership does not have the possibility to impose stronger sanctions, expulsion has no real effect for the affected lobbyist – he or she can simply continue lobbying just as before without being a member of EPACA. Expulsion does not have direct implications for the lobbyist's right of access to policy-makers.

## 1.2. SEAP

The Society of European Affairs Professionals is an organisation with individual membership and includes members from consultancies, trade associations and corporations. It was established in 1997.

### SEAPs Code of Conduct

SEAP also has a Code of Conduct<sup>11</sup> SEAP members should abide by.

**Overview:** The Code requires lobbyists to act with honesty and integrity; to conduct their business fairly and professionally; to refrain from exerting improper influence; to be open, transparent and truthful towards the institutions; not to give misleading information; to honour confidential information; to avoid professional conflicts of interest; to regard rules and confidentiality requirements of the EU institutions when employing EU personnel; and not to give financial inducement to EU officials and politicians except for normal business hospitality.

**Implementation:** SEAP has a code of conduct committee whose objective it is to develop the code of conduct, keep it under regular review and ensure that the standards are complied with. Upon registration with SEAP, new members have to attend a training session on the Code of Conduct.

**Complaints:** A complaint can be filed by SEAP members, EU officials, Members of the European Parliament and member state representatives – but not by the general public or NGOs. Complaints can be filed with the President and the Chair of the Code of Conduct Committee (CCC) with as much information as possible. The President and/or the Chair of the CCC<sup>12</sup> is to make contact with all those believed to be involved and to assess which article(s) of the SEAP code, if any, has been breached. Their findings are to be reported to the SEAP member in question and the CCC, which then discusses the matter informally before it makes a recommendation to the Board on the action to be taken. The SEAP member in question can appeal against the decision of the Board, whereupon the General Assembly will take a final decision on the basis of simple majority. SEAP reserves the right to publish its final decision.

**Sanctions:** With a revision of the Code in 2004, sanctions for non-compliance were included. They range from verbal warning to expulsion<sup>13</sup>. Expulsion is considered the “ultimate sanction [...] – a sanction SEAP hopes it never has to invoke but which sends out a powerful message.”<sup>14</sup>

**Membership:** SEAP currently has 164 individual members representing 119 corporations, consultancies and trade associations.<sup>15</sup>

### Our view

SEAPs Code of Conduct is very similar to the EPACA code. Although it is slightly longer and provides a few more details, there are no significant differences between the two codes. SEAPs code however refers also to the kind of relationship members should have with colleagues and competitors, requiring them to be fair, professional, respectful and courteous – stipulations not included in EPACAs code.

The code was designed in the desire to keep it succinct and flexible, without being prescriptive. However, as with EPACAs code, ‘conflicts of interest’, ‘improper influence’ and regulations for the employment of EU personnel require clarification to avoid misinterpretations.

Concerning *financial inducements*, EPACAs code is quite clear: financial inducements are not to be offered or given neither directly nor indirectly, thereby not giving much room for interpretation. SEAPs code, however, adds a loophole: it allows ‘normal business hospitality’ without clearly defining the term. What is ‘normal’, however, is subject to interpretation. Although it would be difficult to convincingly declare hospitality as it was recently uncovered in the scandals around Abramoff and others in the US – including golfing vacations, free restaurant meals and box seats at sporting events – as ‘normal’, the broad scope for interpretation should be reduced to avoid widely diverging standards.

The transparency requirements in SEAPs code are identical in content to those in EPACAs code, being similarly *silent on the issue of external transparency*. For the citizens it remains unclear which lobbying activities were carried out when, for whom, with what budget and whose funding, and on what issues, and whether the respective lobbyists were behaving ethically or not.

A major disadvantage in SEAPs code is also the fact that there is no right for the public to complain about SEAP members’ ethical conduct. While SEAP might still react if members of the public or NGOs present sufficient evidence for breaches of the code, the explicit right to complain is reserved to fellow members, EU officials, Members of the European Parliament and member state representatives.

Regarding the transparency and credibility of SEAPs procedures for dealing with complaints, there are some drawbacks if compared with EPACAs provisions. While EPACA involves – at least to a certain extent – an independent body (the professional practices panel), *complaints* concerning a breach of SEAPs code of conduct are *dealt with entirely within SEAP itself*. Furthermore, SEAP reserves the right to publish the final decision of complaint procedures, while EPACA states that the findings shall be made available to the public.

*Sanctions are as weak as* with EPACA – the strongest being indefinite expulsion from the Association.

To improve their code, SEAP must improve significantly on the issue of external transparency – stating a public right to know as well as a right to complain. Also, an independent body is needed for dealing with complaints.

11 <http://www.seap.eu.org/code.php> [24.01.06]

12 Excluding members who either work with or represent the person against whom the complaint has been made

13 <http://www.seap.eu.org/code.php> [25.11.05]

14 <http://www.seap.eu.org/ccp.php> [22.11.05]

15 <http://seap.agepnet.com/members.php> [08.12.05]



## 1.3. AALEP

The Association of Accredited Lobbyists to the European Parliament was created on the 2nd of September 2005.

## 1

### AALEPs Code of Ethics and Practices

AALEP has a Code of Ethics and Practices which members are required to respect.<sup>16</sup>

**Overview:** The code requires lobbyists to be respectful towards the European Parliament; to conduct lobbying activities with honesty and integrity; to provide only accurate information; not to give misleading information; not to induce MEPs and/or Assistants and European Parliament personnel to behave improperly; to refrain from exerting undue pressure; to avoid conflicts of interest; to honour confidential information; to inform their clients of their duties and obligations under this code; to be transparent towards MEPs and/or Assistants and European Parliament personnel regarding the interests they are representing; to be cooperative with the Quaestors; to take the public interest into account; to respect the right of the public to information; to foster among the public a good understanding of their activities and of their legitimacy.

**Implementation:** By accepting membership in AALEP, members agree to abide by all terms and conditions of membership and agree to accept sanctions in the event of a breach of the Code.

**Complaints:** Complaints about the ethical conduct can be filed by anyone with the President of the Association. He will appoint a panel of three disinterested members who will attempt to mediate the dispute and make every effort to arrive at a solution that is agreeable to the parties. The panel may determine that disciplinary actions are necessary and can recommend that the Board impose sanctions.

**Sanctions:** Range from letters of guidance to expulsion of the Association

**Membership:** unclear, but under 100<sup>17</sup>

### Our view

AALEPs code in itself is more comprehensive and includes some important issues that are missing in EPACAs and SEAPs codes. Several provisions clearly indicate a much *more open and transparent attitude towards the public*: lobbyists are required to take the public interest into account; they have to respect the right of the public for accurate information where, in support of lobbying activities, written or electronic means of communication are used to influence public opinion. Furthermore, they have to foster among the public and through their professional dealings a good understanding of their activities and of the legitimacy of such activities. In addition, they shall refrain from acting in any manner that may discredit the occupation of a lobbyist.

Another strong point of this code is that conflicts of interests are defined in more detail and explicitly encompass personal conflicts of interests.

Some provisions should be more detailed; such as defining more clearly what is meant exactly by 'undue' pressure. Also, provisions on the employment of EU personnel should be included.

AALEPs code seems to be the best of the three. However, *reality does not always reflect the good code*. Concerning external transparency, the interested public has the same problem as with EPACA and SEAP: there is no overview on which lobbying activities were carried out when, for whom, with what budget and what funding, and on what issues. And what is more, a list of AALEP members is only available to other members<sup>18</sup> – EPACA and SEAP in contrast have complete list of members on their websites.

So although it appears quite fair towards the public to respect their right to complain about the ethical conduct of lobbyists, it is unclear how any member of the public can complain about an AALEP member when it remains a secret who AALEP members are.

The procedures for dealing with complaints are similar to SEAPs procedures, with *no independent body involved*. And unlike EPACA (decisions shall be published) and SEAP (decisions may be published), AALEP states that all proceedings of the disciplinary process are completely confidential. Considering that AALEP Lobbyists “shall foster among the public and through their professional dealings a good understanding of their activities and of the legitimacy of such activities”, it seems inappropriate to keep proceedings and outcome of a disciplinary process confidential.

A reason for scepticism is also that the aim of AALEPs disciplinary proceedings is the mediation of a dispute. This may be fine when only two parties are affected and mediation can result in a win-win situation for all stakeholders. However, mediation is not adequate for punishing unethical behaviour of lobbyists, which also negatively impacts the European public interest.

<sup>16</sup> <http://www.eulobby.net/eng/desktopdefault.aspx?tabid=500> [24.01.06]

<sup>17</sup> There is no list of members available to the public on the website; upon request, AALEPs president stated that membership currently is under 100 individuals

<sup>18</sup> <http://www.eulobby.net/eng/desktopdefault.aspx?tabid=500> [24.01.06]

## 1.3. AALEP

**EU Principles for the Conduct of Lobbying:**<sup>18</sup> Additionally to the Code of Ethics and Practices, AALEP has elaborated EU Principles for the Conduct of Lobbying which intend to provide practical guidance to persons who engage in the process of lobbying. They define overarching values and standards.

Ethical conduct in general is extensively discussed in the principles, e.g. a lobbyist should only accept assignments from clients whose senior management is genuinely committed to ethical conduct, and the lobbyist should inform the client about ethically acceptable lobbying options and strategies.

External transparency and a public right to information is also addressed, stating that the communications media and the EU public should be accurately informed about who is promoting a particular policy and who is funding and supporting the efforts made on its behalf. Lobbyists should show the same respect for the public and its right to accurate and relevant information as is shown to policy makers and their staffs. Also, a lobbyist should maintain the confidentiality of the client's information, but at the same time not intentionally obstruct or manipulate a journalist's efforts to seek accurate information.

Moreover, a lobbyist should not use campaign strategies that create unfair advantages in the decision making process for their clients (such as "phantom" grass roots campaigns, "front" groups intended to conceal the true identity of the clients, unscrupulous pressure on public officials, inordinate expenditure of money to create an uneven playing field).

### Our view

The *EU Principles for the Conduct of Lobbying* define high standards and values that lobbyists should respect. They serve to give lobbyists a clear understanding of what is properly expected of them in their work as political agents. The idea that lobbyists have the responsibility to accurately inform the media and the public about who is promoting a particular policy and who is funding and supporting the lobbying efforts goes further than the approach found in the codes of conduct – these merely forbid certain behaviours but do not lay down positive obligations for external transparency.

However, it remains unclear why the principles are not integrated into the code of ethics and practices. AALEPs members are expected to apply the ethical principles in the conduct of their activities, but there is no implementation mechanism and no sanctions are imposed for non-compliance. Why are these principles and the code of ethics not integrated into one comprehensive and detailed document? Why are they left to stand as a sort of wishlist that does not produce any consequences for non-compliance?

All in all, AALEPs code and the principles offer a decent basis, but the implementation, especially regarding external transparency, should be significantly improved.

And one more issue to think about: AALEP is an association for Accredited Lobbyists to the European Parliament – lobbyists at the Commission are not included. Why limit the setting of good standards to the only EU institution that actually laid down its own rules for lobbyists in the Rules of Procedure, while lobbyists at other institutions continue unregulated?

<sup>19</sup> AALEPs president explained that AALEP does not publish their members' names on the website in order to protect them.

<sup>20</sup> The number was calculated by adding the number of staff of companies represented by EPACA (~500), SEAPs individual members (~165), and an assumed number of ~90 AALEP members. There is some membership overlap that was subtracted - some 30 staff of EPACA member companies are also members of SEAP. <http://www.epaca.org/qanda.php>.

<sup>21</sup> speech on March 3rd 2005  
<http://europa.eu.int/rapid/pressReleasesAction.do?reference=SPEECH/05/130&format=HTML&aged=0&language=EN&guiLanguage=en> [03.03.06]

## 1.4. Summarized analysis

# 1

While the codes put in place by EPACA, SEAP and AALEP may be good starting points for a discussion on what kind of codes we want, this discussion would not help in solving the true problem: the lack of transparency in European decision making processes and the unregulated influence lobbyists have on decision makers. If we want a transparent system where all lobbying activities at European level are put under public scrutiny - who is lobbying on whose behalf, on which issues and with how much money – then more is needed than upgrading the existing voluntary codes of conduct.

A major problem that the codes cannot solve is that they cover only a small part of the sector. Currently, there are an estimated 15,000-20,000 lobbyists running around in Brussels, with EPACA, SEAP and AALEP together representing less than 800<sup>20</sup> (4-5%) of them. Even if associations like EPACA, SEAP and AALEP commit to ethical behaviour and utmost external transparency in their codes of conduct, even if they improve upon this by including information on their lobbying activities, clients and budgets on their websites, lobbyists who don't want to provide such information will simply get away with it by not signing up.

Therefore, in order to improve transparency around EU policy making, the focus should not be limited to codes of practice, **but on registration systems**. Real transparency can only be achieved if all lobbyists are obliged to register and disclose what they are lobbying on, for which clients, and with what resources. But this does not render codes of conduct meaningless. A common code of conduct for all lobbyists is an important tool to ensure the highest ethical standards in the lobbying sector - but in order to be truly effective, it has to be linked to a mandatory registration system.

For the debate on a **common code of conduct**, EPACAs, SEAPs and AALEPs codes provide a good starting point. However, they would need to be improved and amended to address the shortcomings outlined in the previous chapters. For example, there should be clearer definitions concerning conflicts of interest, starting from AALEPs provisions which explicitly encompass personal conflicts of interest. Also, terms like 'improper influence' or 'undue pressure' need a precise explanation.

One very important issue that is not addressed sufficiently in any of the three codes concerns financial inducements. While all three codes in one way or another include statements on 'inducements', none specifies exactly what is considered an inducement. Prohibiting gifts, benefits and contributions of any kind would be too strict – since this would exclude also snacks served at a reception – but allowing 'normal business hospitality' (as SEAP does) without further explanation is not a good option either. The line between 'normal' and the expensive restaurant invitations and free vacations, which feature prominently in the Abramoff scandal in the US, has to be clearly defined.

None of the codes lays down any specific rules and regulations for the employment of EU personnel, instead either referring to the rules and regulations laid down by the institutions (EPACA and SEAP) or not mentioning the issue at all (AALEP). Referral to the EU rules would be fine if those rules were strong enough to prevent revolving doors. Currently, however this is not the case (cf. Chapter 2). While of course it is more logical to demand that the institutions act on this and amend

existing regulations, lobbying associations should also establish clear rules to prohibit employment of EU personnel and insert **cooling-off periods for former decision makers and senior officials**.

In all three codes, there is much need for improvement regarding external transparency. While AALEPs code – contrary to EPACA and SEAP - at least recognizes a public right for information, this is reflected neither in the information provided on the website (not even a complete members list), nor in the procedures for complaints (proceedings and decisions remain fully confidential). EPACA and SEAP are more open in listing their member's names on their website, but don't give any additional information such as clients, issues lobbied upon and related budgets.

Regarding decisions of complaint procedures, only EPACA states their intention to make all decisions public while SEAP reserves the right to keep decisions confidential. EPACA is also the only one of the three that includes the possibility to involve an independent professional practices panel in the procedures for dealing with complaints. SEAP and AALEP deal with complaints entirely among themselves. In a fully transparent and accountable lobbying system, **complaints should be dealt with by a fully independent public body**, and not only decisions should be made public but the whole process, starting from the filing of the complaint and including holding all panel's meetings in public.

It should also go without saying that anybody, including members of the public, should have the right to submit an official complaint if he or she has reason to believe that a lobbyist is not complying with the code of ethics. There should be a clear process for complaints from the public, indicating where and how to complain and how the proceedings will be.

Perhaps the most important issue concerning codes of conduct is the question who enforces them. Due to their voluntary status, the associations do not have the power to impose **strong sanctions for non-compliance** with their codes. Expulsion from the association as a sanction does not have a significant effect, if the lobbyist in question can continue lobbying just as before, whether member or not. Under the current self-regulatory approach, no cases of non-compliance have been reported by any of the three lobbying associations so far, although newspapers, NGOs and MEPs have uncovered several cases of unethical lobbying. How credible then is self-regulation? In this context, it is also interesting to consider that two of the lobbying associations were set up in 2005 – just as the Commission announced the need for more transparency. Are lobbyists trying to hide behind self-regulation in order to avoid clear rules, mandatory registration and full transparency?

As Commissioner Kallas put it:<sup>21</sup>

**“There is no mandatory regulation on reporting or registering lobby activities. Registers provided by lobbyists' organisations in the EU are voluntary and incomprehensive and do not provide much information on the specific interests represented or how it is financed. Self imposed codes of conduct have few signatories and have so far lacked serious sanctions.”**

# Decision makers: ethics and consultation

# 2

The EU's policy and decision making process involves three main institutions:

- > the European Commission, which has the right to initiate legislation and implements EU policies once adopted
- > the European Parliament, which represents the EU's citizens and is directly elected by them
- > the Council of the European Union, which represents the individual member states

Within these institutions, there are a variety of rules and regulations that refer to the ethical conduct of decision makers and staff, good administrative behaviour, consultation practices and the relations with lobbyists. Some rules apply for all European institutions, some only for one of them; some are binding, some are not.

Are the current rules and regulations within the three EU policy making institutions adequate to deliver the objectives Commissioner Kallas has outlined for the ETI? Can they effectively contribute to create a transparent and democratic decision making system, granting equal access to all stakeholders? And how far apart is what is written on paper and what is actually implemented? The following chapter seeks to answer this by analysing the rules and regulations applying to the three institutions. The list of rules and regulations covered is not exhaustive, but it is intended to examine the most relevant.

## 2.1. Regulations for all institutions

### Rules for all Staff of the Institutions

The *Staff Regulations of Officials of the European Community*<sup>22</sup> are a framework which each institution can transpose individually in its own implementing rules, setting out the terms and conditions of employment of EU officials.<sup>23</sup> The consolidated version of the document (entry into force on 1st May 2004) is a compendium of legal instruments and is in itself not legally binding. In case of litigation reference must be made to the relevant Council Regulation(s) as originally published in the Official Journal.<sup>24</sup>

**Overview:** The staff regulations cover many issues like career possibilities, working conditions, social security, pension schemes and so on. There is also a series of ethical rules:

- > Independency (Art.11): Officials are required to be objective and impartial; to be independent from any government, authority, organisation or person outside their institution; not to accept honours, decorations, favours, gifts or payments of any kind without permission from the appointing authority
- > Conflicts of interest (Art. 11a, Art. 12b, Art. 13): Officials have to report any personal conflicts of interest, especially family and financial interests, to the appointing authority. They have to obtain permission from the appointing authority if they wish to engage in an outside activity, whether paid or unpaid, or stand for public office. Also, gainful employment of spouses has to be reported.
- > Revolving doors (Art.16): for two years after their retirement, former officials are required to seek permission from the institution before engaging in any activity with which they were actively involved in an official capacity during their last three years of service and in respect of which a conflict with the interests of the institutions could arise.

**Complaints and disciplinary proceedings:** Allegations will be investigated either by OLAF<sup>25</sup> or by the appointing authority.<sup>26</sup> The appointing authority can decide to drop the case, issue a warning or reprimand, or initiate disciplinary proceedings before the disciplinary board established within each institution<sup>27</sup> (Annex IX). Officials may appeal against decisions taken in relation to them. (Art. 87)

**Sanctions:** One of the following penalties may be imposed by the disciplinary board:

- > a written warning or reprimand
- > deferment of advancement to a higher step for 1 to 23 months
- > relegation in step
- > downgrading in the same function group, temporary or permanent
- > classification in a lower function group, with or without downgrading;
- > removal from post and, where appropriate, reduction pro tempore of a pension or
- > withholding, for a fixed period, of an amount from an invalidity allowance;

In cases of serious misconduct, the appointing authority may immediately suspend the person accused of that misconduct for a specified or indefinite period. The situation of a suspended official must be definitively settled within six months, except if criminal proceedings are taking place. An official may be required to make good, in whole or in part, any damage suffered by the Communities as a result of serious misconduct on his part. The Court of Justice of the European Communities has unlimited jurisdiction in disputes.

### Our view

The staff regulations are a comprehensive document covering many issues. But despite its comprehensiveness, the *rules to avoid conflicts of interests and revolving doors are not precise enough*. Basically, the provisions require to report to and ask permission from the appointing authority in case of (potential) conflicts of interests of any kind.

It is then entirely up to the personal convictions of the appointing authority to decide whether outside activities of officials, their spouses' employment or activities after ceasing to hold office could constitute a conflict of interest. Without clearer and more precise guidelines on what is allowed and what is not, each institution or even each department might end up applying different standards. This does not result in a coherent approach to conflicts of interest and revolving doors.

This leaves not only officials without a clear notion of what is properly expected of them, it also makes it difficult for the general public – including potential future employers of officials - to understand the ethical values applied in the European institutions.

Especially with regards to revolving doors, there should be strict rules applying to senior officials, establishing *binding exit-plans with cooling-off periods* during which they cannot change into the lobbying sector to lobby on issues they were previously working on in an official capacity.

In the regulations, no explicit mention is made of who can complain and where. It seems logical that either the secretariat or the DG personnel and administration of the institution concerned, or a direct superior official should react if a member of the public alerts him or her – providing the necessary evidence – to cases of wrong-doing among his or her staff. However, to make this easier, a *contact point and procedures for dealing with complaints from the public* should be established.

Further, clear rules to protect whistleblowers inside the institutions are needed. This should prevent staff from keeping quiet about wrongdoing among their colleagues out of fear of retaliation.

Another issue that remains unclear is how the individual institutions implement the staff regulations. Only the Commission refers to the staff regulations on its website.<sup>28</sup>

22 Consolidated version  
[http://europa.eu.int/comm/dgs/personnel\\_administration/statut/tocen100.pdf](http://europa.eu.int/comm/dgs/personnel_administration/statut/tocen100.pdf) [07.02.06]

23 All staff from Director-Generals and Heads of units to personal assistants, technical officers/attendants, clerks and parliamentary ushers, including junior posts. Cf. Annex I (p. 46) to the staff regulations.  
[http://europa.eu.int/comm/dgs/personnel\\_administration/statut/tocen100.pdf](http://europa.eu.int/comm/dgs/personnel_administration/statut/tocen100.pdf) [07.02.06]

24 In the compendium, reference to the relevant Council regulation is always made in brackets.

25 The responsibility of the European Anti-Fraud Office is to initiate and conduct investigations on financial interests, and on irregular conduct liable to give rise to administrative or criminal proceedings

26 in case of administrative enquiries

27 consisting of a chairman and four full members, including at least one member from outside the institution concerned.

28 [http://europa.eu.int/comm/reform/index\\_en.htm](http://europa.eu.int/comm/reform/index_en.htm) [16.02.06]

## 2.1. Regulations for all institutions

**A European code of good administrative behaviour**<sup>29</sup> was published by the European Ombudsman (first published in March 2002, current version from January 2005), intended to provide clear information about the administrative duties of Community staff<sup>30</sup> towards the citizens. The right to good administration is laid down in the Charter of Fundamental Rights of the European Union.<sup>31</sup> The Code is intended to explain in more detail what the Charter's right should mean in practice, but it is not binding in itself.

**Overview:** The code requires officials to act lawfully; to treat all members of the public equally; to ensure that all measures are proportional; not to abuse of their power; to act independently and impartially; to be objective and fair; to be consistent in their behaviour; to be courteous; and to protect confidential information and personal data.

In cases where the rights or interests of individuals are involved, the official has to ensure that the rights of defence are respected at every stage in the decision making process. Every member of the public has the right, in cases where a decision affecting his rights or interests has to be taken, to submit written comments and – when needed – to present oral observations before the decision is taken. (Art.16) The officials are required to indicate clearly the relevant facts and the legal basis of their decisions and inform the person affected by this decision of his or her right of appeal. (Art.18-19)

Every communication to the Institutions shall be acknowledged with a receipt within two weeks, indicating name and telephone number of the official who is dealing with the matter. Letters, requests and complaints have to be answered no later than two months from the date of receipt, except in very complex matters.

**Complaints:** In case of failure or non-compliance of an Institution with the code, any citizen can file a complaint with the Ombudsman (see next entry).

### Our view

This code offers a good overview of the behaviour that citizens can expect from the European institutions. It is succinct and can be easily understood.

The code sets clear standards for dealing with requests from the public in a timely manner and requires transparency regarding the indication of contact persons and grounds for decisions.

Unfortunately, however, the code is **not binding to the institutions** and it remains unclear how and if the provisions in the Code are actually implemented in the different institutions. Only the Commission has adopted its own code of good administrative behaviour, which comprises the Ombudsman's code's main points.

29 [http://www.euro-ombudsman.eu.int/code/pdf/en/code2005\\_en.pdf](http://www.euro-ombudsman.eu.int/code/pdf/en/code2005_en.pdf) [09.02.06]

30 All staff from Director-Generals and Heads of units to personal assistants, technical officers/attendants, clerks and parliamentary ushers, including junior posts.

31 [http://www.europarl.eu.int/charter/pdf/text\\_en.pdf](http://www.europarl.eu.int/charter/pdf/text_en.pdf) [03.02.06] Art. 41

32 Provisions concerning the European Ombudsman can be found in Article 195 of the Treaty establishing the European Community ([http://europa.eu.int/eur-lex/lex/en/treaties/dat/12002E/pdf/12002E\\_EN.pdf](http://europa.eu.int/eur-lex/lex/en/treaties/dat/12002E/pdf/12002E_EN.pdf) [25.01.06]), and in Title IX, Rule 194-196 and Annex X of the Rules of Procedure of the European Parliament <http://www.europarl.eu.int/omk/sipade3?PUBREF=-//EP//NONSGML+RULES-EP+20050905+0+DOC+PDF+V0//EN> [26.01.06]

33 Of course ethical rules have been laid down for the Ombudsman (he is required to be completely independent; not to engage in any other occupations; to behave with integrity and discretion; an Ombudsman who no longer fulfils the conditions required for the performance of his duties or is guilty of serious misconduct may be dismissed by the Court of Justice of the European Communities at the request of the European Parliament). But the ethical rules for the Ombudsman are not further analysed here because this chapter deals with the possibilities for filing complaints WITH the Ombudsman and not ABOUT the Ombudsman.

34 Complaint forms can be downloaded on the website of the European Ombudsman: <http://www.euro-ombudsman.eu.int/home/en/default.htm> [02.02.06]

35 <http://www.euro-ombudsman.eu.int/home/en/default.htm> [02.02.06]

36 Provisions concerning Petitions to the Parliament are laid down in Article 194 of the Treaty establishing the European Community ([http://europa.eu.int/eur-lex/lex/en/treaties/dat/12002E/pdf/12002E\\_EN.pdf](http://europa.eu.int/eur-lex/lex/en/treaties/dat/12002E/pdf/12002E_EN.pdf) [25.01.06]), and in Title VIII Rule 191-193 of the Rules of Procedure of the European Parliament <http://www.europarl.eu.int/omk/sipade3?PUBREF=-//EP//NONSGML+RULES-EP+20050905+0+DOC+PDF+V0//EN> [26.01.06]

37 Online form: <http://www.europarl.eu.int/parliament/public/petition/submit.do?language=EN> [09.02.06]; by post to European Parliament, Members' Activities, L-2929 Luxembourg

38 A petition transferred to the Ombudsman by the European Parliament with the consent of the petitioner is treated as a complaint.

### Possibilities for Complaints and Petitions

The European Parliament appoints a **European Ombudsman**<sup>32</sup> who investigates complaints about maladministration in the institutions and bodies of the European Union.<sup>33</sup>

**Complaints and proceedings with the Ombudsman:** Every natural or legal person resident in the EU can complain to the Ombudsman.<sup>34</sup> Where the Ombudsman in the course of his inquiries finds there has been maladministration, he informs the institution concerned, where appropriate making draft recommendations. The institution has a period of three months in which to react with a detailed opinion. The Ombudsman then makes a report to the European Parliament and the institution concerned, including recommendations where appropriate. The person lodging the complaint shall be informed of the outcome of such inquiries. Reports and decisions are published on the website of the European Ombudsman.<sup>35</sup>

In appropriate cases and with the consent of the complainant, the Ombudsman may transfer a complaint to the European Parliament to be dealt with as a petition (see next entry)

**Sanctions:** The European Ombudsman is a mediator and can therefore not impose any sanctions. If he finds maladministration, as far as possible he cooperates with the institution concerned in seeking a friendly solution to eliminate it and to satisfy the complainant. If he considers a friendly solution to be impossible, he can:

- › Close the case with a reasoned decision that may include a critical remark
- › Make a report with draft recommendations aiming to eliminate the instance of maladministration, to which the institution has to respond with a detailed opinion. The detailed opinion could consist of acceptance of the Ombudsman's decision and a description of the measures taken to implement the draft recommendations. If the Ombudsman does not consider that the detailed opinion is satisfactory he may draw up a special report to the European Parliament in relation to the instance of maladministration. The report may contain recommendations. The Ombudsman sends a copy of the report to the institution concerned and to the complainant.

If the Ombudsman learns of facts which he considers might relate to criminal law, he shall immediately notify the competent national authorities and, if appropriate, the Community institution with authority over the official or servant concerned. The Ombudsman may also inform the Community institution or body concerned of the facts calling into question the conduct of a member of their staff from a disciplinary point of view.

**Transparency:** The public shall have access to unpublished documents held by the Ombudsman, exempting confidential documents.

### Our view

Complaints with the Ombudsman are a useful and fair tool that every citizen can use if s/he feels to be the victim of maladministration in the institutions.

It is regrettable that his mandate *only includes cases of maladministration*. It lies within the Ombudsman's power to decide whether a complaint is admissible or not. In the past, Mr. Diamandouros, who holds the office of the European Ombudsman presently, has also accepted complaints about unfair consultation practices under the term of 'maladministration'. However, to avoid different interpretations of the term, it would be desirable to explicitly extend his mandate to complaints about consultation practices and cases of privileged access granted to specific interest groups.

## 2.1. Regulations for all institutions

**Petitions to the European Parliament**<sup>36</sup> give the European Parliament the opportunity of calling attention to any infringement of a citizen's rights by a Member State or an institution. They may present individual complaints, requests or appeals to the European Parliament to adopt a position on an issue of public or private interest.

**Petition Procedures:** Petitions can be submitted online or by post<sup>37</sup> by any citizen, company, organisation or association with residence in the European Union on matters which come within the Community's fields of activity and which affect him/her/them directly, including copies of any supporting documents. If the petition falls within the remit of the EU, it will be declared admissible and is referred to the Committee on Petitions, which can then organise hearings of petitioners or general hearings, dispatch members to establish the facts of the situation in situ, and request the Commission to submit documents, to supply information and to grant access to its facilities. The petition committee may seek to cooperate with national or local authorities in Member States, but it cannot override decisions taken by competent authorities within Member States.

The petitions committee may also advise the petitioner to contact a non-EU body (e.g. the European Court of Human Rights) or a national authority (e.g. the national ombudsmen or petitions committees in the Member State parliaments), or refer the matter to the Ombudsman.<sup>38</sup>

**Sanctions:** As the Parliament is not a judicial authority, it can neither impose sanctions, nor pass judgement on or revoke decisions taken by the Courts of law in Member States. However, the committee on petitions may decide to:

- > ask the European Commission to conduct a preliminary investigation and provide information regarding compliance with the relevant Community legislation,
- > refer the petition to other European Parliament committees for information or further action (a committee might, for example, take account of a petition in its legislative activities),
- > submit a report to Parliament to be voted upon in plenary or conduct a fact-finding visit
- > take any other action considered appropriate to try to resolve an issue

Whatever is decided, the Committee on Petitions will inform the petitioner as soon as the decision has been reached.

**Transparency:** Summary of the texts of petitions together with the texts of the opinions and the most important decisions shall be made available to the public in a database, provided the petitioner agrees.

### Our view

Petitions to the Parliament offer the possibility to alert the Parliament to issues that might not directly fall under the remit of the Ombudsman, or any other Authority.

Although there is no guaranteed right that a petition leads to the desired effect, it might sometimes be the only possibility for members of the public to **bring certain issues to the attention of policy makers**.

As the Parliament has the right to ask the Commission to deal with certain matters, this can also be a means of influencing the Commission's behavior or policy agenda.



## 2.2. European Commission

# 2

### Rules for Commissioners

The current *Code of Conduct for Commissioners*<sup>39</sup> was adopted by the Barroso Commission at its first meeting on 24 November 2004 in accordance with the ethical rules laid down in the Treaty establishing the European Community.<sup>40</sup> It is not legally binding.

**Overview:** The code is divided in two sections. While the second section is rather a division of labour between Commissioner and department (directorate), requiring them to establish good working relations, the first part contains ethical rules for Commissioners' private activities and activities within the performance of their duties:

- Private activities: Commissioners are required not to engage in any other professional activity, whether paid or unpaid; not to accept any form of payment for delivering speeches or taking part in conferences; to avoid conflicts of interests; to fill in a declaration of interest<sup>41</sup>, stating activities engaged in over the last ten years and financial interests (including financial interests of spouses); not to hold any public office of whatever kind; to inform the Commission of occupations they want to pursue in the year after they have ceased to hold office.
- Activities within performance of their duties: Commissioners are required to respect the principle of collective responsibility; to regard strict travelling rules; and not to accept any gift with a value of more than €150.<sup>42</sup>

**Complaints and Sanctions:** No formal complaint procedures or sanctions are included in the code of conduct for Commissioners.

### Our view

The Code of Conduct for Commissioners is fundamentally reasonable. It is only logical to require Commissioners to be independent and to discharge their duties in the general interest of the Community.

There are some strong points in the code. Compared for example with the codes of conducts of lobbying associations, the issue of conflicts of interests is described in much greater detail. Not only must outside activities, financial interest and assets and activities of spouses be declared publicly, they are also scrutinised under the authority of the President with due regard for Members' areas of responsibility. However, considering the important status Commissioners have in the European decision making process, these rules should be strengthened. Additional to declaring and scrutinizing potential conflicts of interest, there should also be some clear indications which kind of conflicts of interest should be out of bound – e.g. **prohibiting participation in any official action in which the Commissioner has a vested financial interest** and stands to benefit personally and substantially, and **prohibiting immediate family members to lobby the Commission**.

Regarding the revolving doors problem, the rules are not strong enough. They require Commissioners to inform the Commission of occupations they want to engage in during the year after they have ceased to hold office; if the occupation is related to the content of the portfolio of the Commissioner during his/her full term of office, an adhoc ethical committee will decide whether the planned occupation is compatible with ethical rules. These rules are similar to the ones laid down for officials in the staff regulations; there **are no binding exit plans with cooling-off periods** during which Commissioners can not start to work as lobbyists on issues they were previously involved with in an official capacity, or lobby the agency they served on. It is also incomprehensible why the timeperiod after holding office during which occupations have to be reported is only one year for Commissioners, while it is two years for officials.

Completely absent are rules governing professional occupations and employers before the appointment. Although in the declaration of interest, posts in foundations or similar bodies and in educational institutions must be revealed, other **posts e.g. in the lobbying sector remain hidden**. To determine and avoid conflicts of interest, these need to be declared as well.

The public register of gifts worth more than €150 seems fair and transparent - however, it is apparently not up to date, with the last entry dating from November 2005 [13.02.06], although the average monthly number of registered gifts up to then is between 6 and 7.<sup>43</sup>

A big disadvantage in the code for Commissioners is the fact that there are no formal complaint procedures. Neither are there any sanctions, although the Treaty mentions that in case of serious misconduct, the European Court of Justice (ECJ) may, on application by the Council or the Commission, rule that the Commissioner be either compulsorily retired or deprived of his right to a pension or other benefits in its stead. However, the **credibility of the way the ECJ seems to assess misbehaviour** among the Commissioners **is questionable**: although former education Commissioner Edith Cresson is deemed guilty of gross negligence and favouritism by a highranked legal advisor to the ECJ, he merely suggested that she be deprived of 50% of her yearly €41,000 for life pension. Considering the gravity of the charges, this sanction is lamentable and will not contribute to increasing public confidence in the EU institutions.

39 [http://europa.eu.int/comm/commission\\_barroso/code\\_of\\_conduct/code\\_conduct\\_en.pdf](http://europa.eu.int/comm/commission_barroso/code_of_conduct/code_conduct_en.pdf) [03.02.06]

40 Art. 213 (2) establishes some general guidelines for the ethical conduct of Commissioners: In the performance of their duties, Commissioners have to be completely independent, not engage in any other occupation, and behave with integrity and discretion as regards the acceptance, after they have ceased to hold office, of certain appointments or benefits. [http://europa.eu.int/eur-lex/lex/en/treaties/dat/12002E/pdf/12002E\\_EN.pdf](http://europa.eu.int/eur-lex/lex/en/treaties/dat/12002E/pdf/12002E_EN.pdf) [25.01.06]

41 Available under [http://europa.eu.int/comm/commission\\_barroso/interests/index\\_en.htm](http://europa.eu.int/comm/commission_barroso/interests/index_en.htm) [03.02.06]

42 When, in accordance with diplomatic usage, they receive gifts worth more than this amount, they must be registered. The register is available online under [http://europa.eu.int/comm/commission\\_barroso/gifts/gifts\\_fr.pdf](http://europa.eu.int/comm/commission_barroso/gifts/gifts_fr.pdf) [13.02.06]

43 And the Christmas time was in between, a popular time to receive gifts.

## 2.2. European Commission

### Consultation Practices

The *White Paper on European Governance*<sup>44</sup> (latest version: 25.07.2001) proposes opening up the policymaking process to get more people and organisations involved in shaping and delivering EU policy. Commission White Papers are documents containing proposals for Community action in a specific area. As such, they are not legally binding and do not contain any provisions on implementation, complaint possibilities or sanctions.

The White Paper promotes greater openness, accountability and responsibility for all those involved. The Commission underlines its intention to “reduce the risk of the policymakers just listening to one side of the argument or of particular groups getting privileged access [...]”<sup>45</sup>. The importance of involving civil society organisations in consultation processes is explicitly stressed.

**Overview:** Under the heading of “Better involvement and more openness”, a less top-down approach is proposed, using instead more non-legislative instruments. The Commission wants to:

- Establish a more systematic dialogue with representatives of regional and local governments through national and European associations at an early stage in shaping policy
- Bring greater flexibility into how Community legislation can be implemented in a way which takes account of regional and local conditions
- Establish and publish minimum standards for consultation on EU policy (see next entry)
- Establish partnership arrangements going beyond the minimum standards in selected areas committing the Commission to additional consultation in return for more guarantees of the openness and representativity of the organisations consulted

The *General Principles and Minimum Standards for consultation of interested parties*<sup>46</sup> (adopted by the Commission December 11th, 2002; applying from January 1st, 2003) are intended to offer a general and flexible framework for consultation of civil society and stakeholders, ensuring transparency and access to consultations, feedback to contributors and a reasonable minimum delay for responding. The document is published in the form of a communication which is not legally binding.

44 [http://europa.eu.int/comm/governance/white\\_paper/index\\_en.htm](http://europa.eu.int/comm/governance/white_paper/index_en.htm) [25.01.06]

45 *Ibid.*, p.17

46 [http://europa.eu.int/comm/secretariat\\_general/sgc/consultation/index\\_en.htm](http://europa.eu.int/comm/secretariat_general/sgc/consultation/index_en.htm) [25.01.06]

47 These are specific consultation frameworks provided for in the Treaties or in other community legislation, consultation requirements under international agreements, and decisions taken in a formal process of consulting Member States ('comitology' procedure)

48 Whether an extended impact assessment is required will depend, *inter alia*, on “whether the proposal will result in substantial economic, environmental and/or social impact on a specific sector, and whether the proposal will have a significant impact on major interested parties” and “whether the proposal represents a major policy reform in one or several sectors”; [http://europa.eu.int/comm/secretariat\\_general/sgc/consultation/index\\_en.htm](http://europa.eu.int/comm/secretariat_general/sgc/consultation/index_en.htm) [25.01.06]; p.15

**Overview:** The Commission commits itself to consulting as widely as possible on major policy initiatives, particularly in the context of legislative proposals. Key principles are participation, openness, accountability, effectiveness and coherence. The need for consultation is assessed on a case-by-case basis. Some fields are excluded from the scope of the principles and standards.<sup>47</sup>

Access to consultation processes is limited via the selection criteria. The crucial issue for the Commission, when deciding on the target groups, is to ensure that relevant parties – those affected by the policy, those who will be involved in implementation of the policy, or bodies that have stated objectives giving them a direct interest in the policy - are given the opportunity to express their views.

In determining the relevant parties for consultation, the Commission should take into account the following elements:

- The wider impact of the policy on other policy areas, e.g. environmental interests
- The need for specific experience, expertise or technical knowledge, where applicable
- The need to involve non-organised interest, where appropriate
- The need for a proper balance between the representatives of social and economic bodies, large and small organisations or companies, wider constituencies (e.g. churches and religious communities) and specific target groups (e.g. women, the elderly, the unemployed, or ethnic minorities)
- Organisations in the EU and those in non-member countries (e.g. in the candidate or developing countries or major trading partners)

**Implementation:** The general principles and minimum standards are accompanied by the following implementation measures:

- A Commission intranet website with practical guidance for staff, including examples of best practice
- A help-desk facility using a mailbox, to which staff can send questions on the application of the principles and standards
- Awareness-raising measures and specific training seminars (not further specified)
- Annual report on ‘better lawmaking’ covering implementation of the Commission’s consultation framework

As a first step, the Commission will focus on applying the principles and standards to those initiatives that will be subjected to an extended impact assessment.<sup>48</sup>

**Complaints:** No complaint procedures are designated. However, the Commission aims to include mechanisms for feedback, evaluation and review.

**Sanctions:** The Document is not binding, therefore there are no sanctions.

### Our view

The values in respect to good consultation practices that the Commission affirms in the white paper and in the subsequently published general consultation principles give the impression of a true intention to provide equal access for all stakeholders in decision making processes.

Unfortunately, White Papers are *not legally binding*, and the general principles were published as a Communication instead of as a legally-binding instrument in order to avoid that Commission proposals are challenged in court on the grounds of an “alleged lack of consultation of interested parties.”<sup>49</sup>

This non-binding status as well as the current consultation practices at the Commission give reason to have serious doubts about the correct implementation of the consultation standards. Consultation seems to be increasingly restricted to business interest groups. Especially in ‘partnership arrangements’ going beyond the minimum standards<sup>50</sup>, it appears that *representativity of the organisations consulted is not guaranteed* – e.g. the high level working group ‘Cars 21’ includes 7 business representatives, but only one representative from an environmental institute and one from a trade union. Similarly, the new high level working group on ‘competitiveness, energy and environment’ allows for 11 people from industry (out of which not one company represents renewable energy), but only two from environmental NGOs.<sup>51</sup>

Very interesting is the Commission’s commitment to ‘making consultation processes transparent to those who are directly involved and to the general public.’ According to the Commission, it must be clear:

- > What issues are being developed
- > What mechanisms are being used to consult
- > Who is being consulted and why
- > What has influenced decisions in the formulation of policy

Until now, these issues remain *far from being transparent*. The Commission is not very forthcoming with information; for example, when Friends of the Earth Europe requested the Commission to disclose the composition of the biotechnology advisory group, this was initially denied for privacy reasons. The composition was finally revealed after five months of insisting that in a transparent decision-making environment members of official advisory groups cannot be kept secret. However, the Commission only revealed the names because all members of the group had agreed to this - had they disagreed, the Commission would have continued to keep the composition secret. Also, it remains unclear how more transparency in consultation processes can be achieved as long as many interested parties themselves operate in a nontransparent environment (cf. Chapter 1).

<sup>49</sup> *ibid.* p.10

<sup>50</sup> E.g. High level working groups and advisory groups

<sup>51</sup> The initial composition included only one environmental NGO, but following protests, another one was allowed.

## 2.2. European Commission

### Rules for Lobbyists

There is no register for interest groups lobbying the Commission, nor is there any code of conduct.

The only element bearing some resemblance to a registration system is the **CONECCS** database<sup>52</sup>. According to the Commission, this database aims to make the dialogue with civil society organisations more transparent by providing information about the Commission's formal or structured consultative bodies in which civil society organisations participate, and a voluntary directory of non-profit making civil society organisations organised at European level.

### Our view

CONECCS may be a good starting point for developing a comprehensive registration system for interest groups at the Commission. But in order to provide true and meaningful transparency, some shortcomings would have to be removed.

The main problem is that registering in the CONECCS database is **voluntary** and that it is intended only as a register for civil society organisations but **not for corporations and for-hire lobbyists**. Consequently, some of the most influential business pressure groups that often enjoy privileged access to decision making processes can not be found in the database. For example, there is no mention of the TransAtlantic Business Dialogue (TABD)<sup>53</sup>, nor of the European Round Table of Industrialists (ERT)<sup>54</sup> in the database.

The information is provided by the organisations themselves, without being controlled by the Commission. For example, the latest update about the European Chemical Industry Council (CEFIC) – recently lobbying heavily around the European Chemicals directive REACH - dates from July 2003, and there is **no information at all on sources of finances or membership**.

As a registration system for interest groups, the CONECCS database is insufficient as long as it does not include all interest groups, fails to provide more detailed information on lobbying activities and is not updated and controlled regularly.

52 [http://europa.eu.int/comm/civil\\_society/coneccs/index\\_en.htm](http://europa.eu.int/comm/civil_society/coneccs/index_en.htm) [28.02.06]

53 The Trans-Atlantic Business Groups calls itself "invited advisors"; the former European Co-Chair Michael Treschow defined their influence as follows: "It is relatively easy for us to get time together with top politicians and they listen to us.[...] We help to push them in the right direction." European Co-chair, Michael Treschow. "Electroluxchefen lade främ storforetagens råd till lederna", Dagens Industri, June 15 2001

54 A group of some forty European industrial leaders which defines itself as one of the most influential pressure groups around. <http://www.ert.be/home.htm> [28.02.06]

## 2.3. European Parliament

# 2

### Rules for MEPs

The *Rules of Procedure*<sup>55</sup> (16th edition established September 2005) are the Parliament's internal organisational and operational rules.

**Overview:** The Rules of Procedure cover a variety of issues such as legislative, budgetary and other procedures, relations with other bodies and national parliaments, committees and delegations, petitions, the ombudsman, powers and responsibilities relating to political parties at European level, and many more. There are also provisions on ethical conduct:

- Members of the European Parliament shall exercise their mandate independently and not be bound by any instructions and shall not receive a binding mandate (Rule 2).
- A code of conduct is attached to the rules. Under the heading 'Transparency and members' financial interests', MEPs are required to disclose any direct financial interest in the subject under debate before they speak in the Parliament; to fill out a declaration of interest (stating professional activities and any other remunerated functions or activities, and any support (financial, material, staff) received in connection with political activities from other parties than the Parliament); and not to accept any gifts or benefits in the performance of their duties. A public register of MEPs declarations of interests is kept by the Quaestors.<sup>56</sup> Chairmen of groupings of Members are required to declare any support, whether in cash or kind (e.g. secretarial assistance), which is offered to Members as individuals.

Until a statute for Members of the European Parliament replaces the various national rules, Members are still subject to the obligations imposed on them by the legislation of their Member State as regards the declaration of assets.

The Rules of Procedure also require the utmost transparency of the Parliament's activities, implying that debates in Parliament and meetings of Committees shall normally be public. Furthermore, any natural or legal person residing in a member state has the right to access Parliament documents.<sup>57</sup> Exemptions to the above are made in case of sensitive information especially in the field of security and defence policy. (Rule 96 & 97)

**Complaints:** There is no public right to submit formal complaints about MEPs. However, other Members can speak at sessions to draw the attention of the President to any failure to respect Parliament's Rules of Procedure. (Rule 166)

**Sanctions:** MEPs that refuse to submit a declaration of interest may be suspended by the President. Also, the conference of Presidents may propose to Parliament to terminate the holding of office of a (Vice)President, a Quaestor, a (Vice)Chairman of a committee, a (Vice) Chairman of an interparliamentary delegation, or any other holder of an office elected within the Parliament, where it considers that the Member in question has been guilty of serious misconduct. This has to be approved by a two-thirds majority vote in Parliament. (Rule 18)

### Our view

Rules for Members of European Parliament are a sensitive subject. All EU Member States have different national rules and MEPs have a mandate to represent the interests of their voters. This exacts a particular approach for example on equal access.

Nonetheless, as specified in Rule 2, they shall exercise their mandate independently and not be bound by any instructions; this should imply some specific requirements on conflicts of interest that are not reflected in the current rules. For example, MEPs should not only be transparent about their outside activities and financial interests, they should also **refrain from being members of committees or delegations if their outside activities or financial interests would provide a conflict** (i.e. if an MEP doubles as a paid advisor to a chemical company, he should not be a rapporteur on REACH or even vote on REACH).

It is questionable anyhow whether MEPs should be allowed to pursue any professional outside activities. **Being an MEP is a full-time job** and therefore, MEPs should not hold any other posts, unless they require so little time that they don't interfere with their parliamentary work.

Declarations of financial assets, especially companies' shares, should as quickly as possible be regulated by a statute for Members of European Parliament and not by different national rules. MEPs should be explicitly prohibited from entering into any contractual arrangements or other restrictive transactions that might oblige them to act as a representative of that interest and not of the Community.

Another issue that is hardly covered in the EPs rules of procedure are **positive commitments**, e.g. to ensure that the information provided and on which decisions are taken is correct; to encourage the community by leadership and example; to give priority to the common good and welfare; to make decent and reasonable use of the resources allocated for carrying out the requisite duties; etc. Many national European parliaments include such commitments, why not the European Parliament?

A strong point in the Parliament's rules of procedure is their approach to transparency. They recognize a **public right to know** and allow citizens to follow debates and meetings as well as have access to documents, except in the case of sensitive information.

<sup>55</sup> <http://www.europarl.eu.int/omk/sipade3?PUBREF=-//EP//NONSGML+RULES-EP+20050905+0+DOC+PDF+V0//EN> [26.01.06]

<sup>56</sup> The declarations of interests are published separately under each MEPs personal entry in the directory under <http://www.europarl.eu.int/members.do?language=EN> [08.02.06]

<sup>57</sup> Legislative documents and a list of other documents indicated in Annex XV to the rules shall be made directly accessible through a public register; references for other Parliament documents shall as far as possible be included.

## 2.3. European Parliament

### Consultation Practices

No formal rules for consultation have been laid down by the European Parliament. But consultation and participation of members of the public can take place in the form of hearings in committees or in informal intergroups.

**Hearings** of experts or members of the public may be organised by any committee of the Parliament if it considers such a hearing essential to the effective conduct of its work on a particular subject (Rule 183, parliamentary Rules of Procedure), when dealing with petitions to the Parliament (Rule 192) or in the course of investigations by committees of inquiry (Rule 176).<sup>58</sup> A register of hearings is available online.<sup>59</sup>

**Intergroups** are nonofficial crossparty groups formed by MEPs which allow them to work together on matters of common concern. They intend to offer a platform on which to voice minority views in the European Parliament. They meet regularly with civil society and business groups that work on the same issues; often one of these groups acts as a secretariat to the intergroup.

### Our view

Although there is no formal right for civil society groupings to be heard, experience shows that MEPs are often very interested in their views and opinions. The wide range of hearings organised by different committees in Parliament shows that these do offer a chance for civil society to make their voice heard at European level.

The influence of intergroups seems to be significant, but since they are not formal, they are not listed on the Parliament's website and therefore difficult to find. Experience tells us that both civil society and business groups are intensively involved in these intergroups. To improve transparency, a comprehensive list of all intergroups and their members should be accessible from the European Parliament website.

<sup>58</sup> Rules 176, 183, 192 of the Parliaments Rules of Procedure;  
<http://www.europarl.eu.int/omk/sipade3?PUBREF=-//EP//NONSGML+RULES-EP+20050905+0+DOC+PDF+V0//EN> [26.01.06]

<sup>59</sup> [http://www.europarl.eu.int/hearings/default\\_en.htm](http://www.europarl.eu.int/hearings/default_en.htm) [05.03.05]

## Rules for Lobbyists

The *Rules of Procedure*<sup>60</sup> contain provisions that apply to lobbyists:

- › The Quaestors are responsible for issuing nominative passes valid for a maximum of one year to lobbyists. Lobbyists are required to respect the code of conduct published as Annex IX to the Rules of Procedure and sign a register kept by the Quaestors. The register, including name and organisation, is freely accessible online.<sup>61</sup> (Rule 9-2)
- › A code of conduct is annexed to the Rules of procedure. It requires lobbyists to state their interests or interests they represent; to refrain from obtaining information dishonestly; not to circulate for profit documents obtained from Parliament; to make sure that any support (financial, staff, material) given to MEPs is declared in the appropriate register; and to comply, when recruiting former officials of the institutions, with any provisions of rules laid down by Parliament and in the Staff Regulations (Annex IX)

**Complaints:** MEPs can complain about the activities of lobbyists. Such a complaint will be referred to the Quaestors

**Sanctions:** Permanent access passes will only be renewed if the holders have fulfilled the registrations obligations and respected the code of conduct. The Quaestors can – in case of a dispute by a Member as to the activity of a lobbyist – withdraw the permanent pass.

## Our view

As a registration system, this is a start. All lobbyists have to register, and the register is available for public scrutiny. The information in the register, however, is still quite incomplete – there is still ***no indication on the interests or clients represented, specific issues lobbied upon, and lobbying expenditures.***

The Code of Conduct is in content similar to the one EPACA has, insofar the comments made in Chapter 1.1. are valid here as well. However, the Parliament's code is less clear on financial inducements; it requires lobbyists only to make sure that any support is declared in the appropriate register, but does not directly forbid the giving of inducements themselves.

A strong point of this code is that in case of non-compliance, the Quaestors can decide to ***withdraw the lobbyist's permanent pass,*** thereby denying him further free access to Parliament. Again, however, members of the public do not have the right to complain about lobbyists behavior – the pass can only be withdrawn if an MEP complains. And unfortunately, even if the pass is withdrawn, the lobbyist in question can still enter the Parliament if he/she registers through an MEP; and he/she can also still continue to lobby the Commission or any other EU institution.

<sup>60</sup> <http://www.europarl.eu.int/omk/sipade3?PUBREF=-//EP//NONSGML+RULES-EP+20050905+0+DOC+PDF+V0//EN> [26.01.06]

<sup>61</sup> <http://www.europarl.eu.int/parliament/expert/lobbyAlphaOrderByOrg.do?language=EN> [26.01.06]

## 2.4. Council of Ministers

### Rules for Council members

Council members are currently bound only by their national laws and regulations, but not by a consistent European code or even legislation. Nor is there any specific code of ethics for civil servants at COREPER, where acts adopted by the Council are prepared, or the Council Secretariat.

There are no formalised consultations between COREPER and the public, although informal consultations seem to take place. But the Council portrays itself as an institution where no lobbying takes place; the secretariat keeps no listing of lobbyists and takes the position that “all contact with lobbyists and NGOs is handled by the European Commission”.

### Our view

The Council Secretariat and COREPER play an important and increasing role in formulating policies and preparing decisions. It is therefore unacceptable that there should be no consistent European rules regulating their ethical behaviour.

Also, there is a great need for improvement in respect to transparency: of all the institutions involved in decisionmaking, the **Council is the least transparent**. Council sessions are on the whole secret, and documents are not readily released. Often documents only become public when they are sent to institutions where they are dealt with in public. Sometimes, a detour via the national parliament is required to get hold of a document.

It is particularly difficult to assess the lobbying that goes on in the Council of Ministers as there is no formal recognition of the role of lobbyists. Especially COREPER is a common focus for lobbyists, but has **no system of registration and no minimum standards for consultation**. To ensure transparency and equal access, a regulatory framework should be set up for lobbying COREPER.

There is no short-term solution to the fact that, because the Council is made up of ministers from the various member states, it is almost impossible to know which ministers have been lobbied by which companies. This could only be solved by a consistent Europe-wide minimum approach to lobbying at national state level. Currently however, the development of such a framework is still highly unrealistic.

<sup>62</sup> [http://europa.eu.int/comm/reform/2002/index\\_en.htm](http://europa.eu.int/comm/reform/2002/index_en.htm) [14.02.06]

<sup>63</sup> This refers of course only to the three analysed institutions; it was not analysed whether any other European institution has such principles in place.

<sup>64</sup> i.e. from November 2005 to February 2006. It is questionable whether this qualifies as “temporarily”



## 2.5. Summarized analysis

# 2

Ethical rules have been laid down for all staff of the European institutions. However, the implementation of the staff regulations in the different institutions remains unclear. The Commission has a section on their website on their internal staff reform, referring to the implementation of the staff regulations<sup>62</sup>; neither the Parliament nor the Council has such a cross reference on their website although the staff regulations must be valid for them as well.

While there is one consistent set of ethics rules for all staff of the European institutions, the rules for decision makers are not consistent. The Commission has adopted a code of conduct for Commissioners, the Parliament has annexed a code for MEPs to their internal rules of procedure, and Council members are bound by their national rules and standards. Apart from these inconsistencies, there are also some weak points in the existing ethics rules for decisionmakers and officials. While it is very positive that all of them address the issues of independency and incorruptibility, conflicts of interest and – with the exceptions of the rules for MEPs – revolving doors, some rules should be further amended to make them more precise. Basically, all rules on conflicts of interest and revolving doors require the decisionmaker or official concerned to disclose the facts, whereafter a decision is taken on a case-by-case basis. Case-by-case decisions can of course be a good way to reach an adequate decision in each specific case, as circumstances may vary. There should, however, be some **clear guidelines especially on conflicts of interests and revolving doors**. The case-by-case approach has led to some of the following situations:

- > the current Director of Chemicals and Construction Unit at DG Enterprise at the same time being a member of the Monitoring Committee of PVC industry initiative “Vinyl 2010”,
- > the former Director General for Environment, Nuclear Safety and Civil Protection Unit at DG Environment (1997-2001) now being a non-executive Director of British Nuclear Fuels (November 2001-present), and
- > the former Director General of DG Enterprise (2002-2004) now being General Adviser to UNICE (October 2004-present).

Commissioners and Commission senior officials moving quickly into the lobbying sector are bound to compromise public trust in the institutions.

Another very weak point is that none of the ethics regulations include formal **complaint possibilities for the public**. Members of the public could only try to alert the Secretariat or DG Personnel of the respective institution, as well as colleagues and superiors of the decisionmaker or official in question in order to complain about the ethical conduct of EU decisionmakers or officials. Another possibility that might have some impact – apart from contacting the media - could be a petition to the Parliament.

The European Ombudsman is a good starting point for complaints against the European institutions. Unfortunately however, complaints about unethical behavior or unfair consultation practices at the institutions are currently not included in the Ombudsman’s mandate. In the past, the Ombudsman has also accepted complaints about unfair consultation practices under the term of maladministration - it would, however, be desirable to extend his mandate to explicitly give the public the right to call for ethical conduct and equal access at the institutions – and to complement this with implementation and sanction mechanisms.

To date, only the Commission has put in place general principles and minimum standards for the consultation of interested parties<sup>63</sup>. And while these principles and standards sound good on paper, recent experiences give reason to seriously doubt whether all DGs in the Commission do actually implement them. **Cases of privileged access for industry interests undermine the institutions’ intentions to increase public trust with e.g. the European Transparency Initiative and the White Paper on Information and European Democracy.**

Regarding good administrative behavior, the model code of the European Ombudsman is only a guideline with no legal implications for the institutions. It is not necessarily transposed into the institutions’ internal rules and regulations. Again, the Commission is the only institution presenting a code of good administrative behaviour on their website. According to the Ombudsman’s website, most institutions do have administrative rules in place; but without them being displayed on the website, the public cannot know what they can rightfully expect in their dealings with the institutions. On the one hand, this makes it more difficult for citizens to know when they have been a victim of maladministration and can consequently complain with the Ombudsman; and on the other hand probably also increases the workload for the Ombudsman, who has to deal with a large amount of inadmissible complaints.

When it comes to the institutions’ relations with lobbyists, there is a great need for improvement. Only the Parliament has a registration system and rules for lobbyists, reinforced with the possibility to withdraw the access pass in case of a dispute. The CONECCS database for formal or structured consultative bodies at the Commission offers some information, but neither does it cover all lobbyists nor is there a code of conduct with sanctions for non-compliance. In general, lobbying at the institutions remains almost completely unregulated, especially at the Council. Consequently, since neither lobbying associations nor the institutions provide a transparent and comprehensive registration and disclosure system for lobbyists and their lobbying activities, the **public remains in the dark about who is trying to influence European policy**, on which issues and with what budget. While access to documents is generally well regulated, the actual decisionmaking processes should be more transparent – e.g. for each policy proposal making clear which interest groups were involved in the preparation.

A major problem in respect to the institutions’ transparency is also the **piecemeal approach on the websites**. The rules and regulations relevant for specific groups are basically scattered over the websites, they are often difficult to find, and more often than not, one institution refers to the regulation of another, which can then not be found at the institution in question. There is no overview on the behaviour that can rightfully be expected from the European institutions. What is more, especially the Commission website is a complete chaos of many unstructured pages, many links do not work correctly or are simply not there, and the site’s search engine has been “temporarily” unavailable for technical reasons since research for this report was started.<sup>64</sup> Considering that most members of the public generally don’t feel like spending half a day looking for one piece of information, the institutions should not only create a coherent set of rules on ethical conduct, good administrative behaviour, consultation standards and lobbying registration, they should also create a clear and concise overview about these regulations.

## 3. Recommendations

# 3

On 9th of November 2005, the 'European Transparency Initiative' (ETI) was formally launched. This is the chance for the European Commission to meaningfully improve transparency and ethics in EU policy making, including a debate on both lobbying transparency and the European institutions' codes of ethics and consultation practices.

This chapter outlines, on the basis of the analyses in the preceding report, recommendations for the debate on the ETI.



## 3.1. Lobbyists: mandatory centralised register

**Currently, there is no register of the 15,000-20,000 lobbyists in Brussels; the public does not know who they are, what and whom they lobby for and if they perceive ethical behavior as a matter of course or a nuisance.**

**The contribution professional organisations and associations of lobbyists and public affairs practitioners with voluntary membership and voluntary codes of conduct can make towards improving lobbying transparency and ethics at the EU level is very limited. The core of any credible and effective system for transparency and ethics must be a mandatory registration system, closely linked with a code of ethical lobbying including implementation and sanction mechanism for all lobbyists. Experience from the US shows that is not a farfetched idea but existing practice**

### Registration and Disclosure

It is necessary to establish a system of electronic registration and reporting of lobbyists to ensure transparency in EU decisionmaking. Without a transparent system, neither the public in general nor in fact EU decision makers can objectively judge who is attempting to shape EU policies. Legislators must be able to evaluate the political pressures to which they are being subjected.

These are the hallmarks of a transparent registration and disclosure system:

- Registration should be mandatory for all lobbyists (individuals and companies) representing a certain amount of money and time for lobbying. All lobbyists who earn or spend above a certain threshold (for instance €5000 per quarter) on lobbying activities have to register. This threshold should enable small groups, companies or individuals that spend very little time or money on lobbying activities to continue to do so without having to comply with registration and reporting demands. The body overseeing the registration and reporting system should be able to adjust the threshold to ensure that it fulfils the above stated purpose.
- Upon registration, the following information should be disclosed:
  - name(s) of lobbyist(s), contact information, employing/contracting associations or individuals
  - the name of clients (in case of consultancies and law firms)
  - lobbying coalitions/associations should disclose on behalf of whom they are lobbying

This information should be updated in regular reports (e.g. every six months) and amended with:

- specific issue areas or legislative proposals lobbied on and how much was spent on them
- disclosure of “grassroots” lobbying expenditures<sup>65</sup>

<sup>65</sup> Grassroots lobbying is targeting decision-makers indirectly, by mobilising the general public to directly contact decision-makers on a specific issue. Examples of grassroots lobbying are co-ordinated e-mail or phone campaigns.

<sup>66</sup> Recusal is the act of a public official refraining from exercising any official power or performing any official duty or function with respect to a matter that would give rise to a conflict of interest, while also refraining from attempting to influence that matter in any way.

Online registration and databasing should be used for the lobbying register as they have proven to be an effective way of providing timely, accurate information to the general public at a low cost. The database should be fully searchable, sortable and downloadable to enable detailed research and analysis. The administrative burden for registering and maintaining the database should be kept to the minimum possible whilst providing the necessary level of information in a timely and meaningful fashion for the public scrutiny and accountability of lobbying. Using an electronic system with preformatted data entry forms also allows for a simple compliance process for the lobbyists registering. Experiences from Canada and the US, especially from some disclosure systems at state level, show that a database fulfilling these standards can be set up at fairly low costs. These models should be learnt from, as well as experiences with existing online EU databases such as CONECCS.

### Code of ethics

The registration system must be closely linked with a code of ethics to which all registered lobbyists (i.e. all lobbyists) have to respect. Such a code can be developed based on existing codes and standards, but should include more detailed provisions on various issues, such as:

- External transparency: apart from the obligation to disclose the information required upon registration and in the reports, the code should address the issue of a public right for information. General principles and standards for dealing with requests for information from the public should be devised.
- Gifts and contributions: Lobbyists and their clients should be prohibited from offering gifts to decision makers and staff of the European institutions with a value of more than €150, including travel, food and beverages, unless that person is a family member or a close personal friend. They must declare all reimbursements for travel and lodging to covered officials, e.g. when they invite a decision maker or official to speak at an event. All exceptions, e.g. for “normal business hospitality”, or gifts to “close personal friends” must be defined clearly.
- Conflicts of interest: Additional to requiring lobbyists to “avoid any professional conflicts of interest” the code should also specify what the term “conflict of interest” comprises for lobbyists. This should for example prohibit lobbyists from lobbying the agency on which an immediate family member serves.
- Revolving doors: The code should not only refer to the rules and regulations laid down by the EU institutions, but amend this with specifications on the length of cooling-off periods for former Commissioners and senior officials (e.g. three years). Furthermore, the code should be extended to former lobbyists now serving at one of the EU institutions and require them to recuse<sup>66</sup> from handling any matters directly involving their former employers and clients.

## 3.1. Lobbyists: mandatory centralised register

### Implementation and Enforcement

Without efficient mechanisms for implementation and enforcement of EU lobby transparency and ethics rules, it will be impossible to ensure compliance and foster public trust. An independent body with the necessary powers to act as a public guardian of lobbying transparency and ethics should be established. This could for example be a separate new lobbying transparency unit in the office of the European Ombudsman, or a new office in the European Commission. The overseeing body must be a public body; a private body established by the lobbying sector itself does not have the necessary powers and – what is more important – credibility.

- › This public body must ensure that all lobbyists (above the threshold) do register and report regularly as well as respect the rules of conduct. It should have the necessary authority to publish regular reports on the implementation and success of the lobbying disclosure system, and make recommendations for revisions that would increase visibility and ethics in EU lobbying.
- › The public body must have the necessary powers to investigate all alleged breaches of the lobbying disclosure system and initiate specific investigations on its own initiative.
- › There must be clear and effective incentives as well as sanctions. Access to formal meetings and focused consultation processes<sup>67</sup> in the EU institutions should be made conditional to fulfilling lobbying disclosure obligations (again, this would only apply to lobbyists above the threshold). Letters of reprimand or public listing of offenders are other options for encouraging compliance.
- › In serious cases such as the submission of false or misleading information, further administrative sanctions or fines are necessary. The Commission should consider the option of criminal prosecutions against serious and persistent offenders.
- › Any natural or legal person should be able to file a complaint about violations of EU lobby transparency and ethics rules.
- › The complaints and the outcomes of the investigation must be made available to the public through a fully searchable database that is accessible through the internet.
- › Both the plaintiff as well as the lobbyist(s) accused of the misconduct should have the right to apply for revision.

<sup>67</sup> E.g. in multi-stakeholder forums, high level working groups and advisory groups.

## 3.2. European institutions

# 3

**To increase public trust in the European institutions, the debate should also focus on the role of the European institutions. An extended Code of Conduct for Commissioners, permanent representatives at COREPER and all senior staff members should address efficiently and in depth issues such as conflicts of interest and revolving doors, as well as ensuring equal access for all stakeholders.**

**Furthermore, in order to enhance EU citizens' understanding of all European issues, a more coherent policy paper on the duties and obligations of decision makers and officials in respect to ethical and administrative conduct as well as consultation practices should be produced. This policy paper should be transposed also into a structured website.**

### Rules of Conduct for EU Officials

The rules laid down in the staff regulations and the Code of Conduct for Commissioners should be extended to include more details on issues such as revolving doors and conflicts of interest.

- Gifts and Contributions: EU decision makers and staff members should be prohibited from accepting gifts and contribution with a value of more than €150, including travel, food and beverages, unless the donor is a family member or a close personal friend. All reimbursements for travel and lodging must be declared. All exceptions, e.g. for "normal business hospitality", or gifts to "close personal friends" must be defined clearly.
- Conflicts of interest: Immediate family members of a covered decision maker or official should be prohibited from lobbying for compensation the agency on which that person serves. Furthermore, Commissioners, MEPs and staff members of the European institutions should not participate in any official action in which s/he has a vested financial interest and stands to benefit personally and substantially.
- Revolving Doors: Former Commissioners and senior officials should be prohibited from lobbying the EU institutions for a period of three years following public service<sup>68</sup>. When Commissioners and senior officials leave their office, they need to lay out a binding revolving door exit plan that sets forth the programs and projects from which s/he is banned from working during the cooling off-period. These reports should be available to the public on a web site.  
For former lobbyists appointed to policymaking posts in the Commission, recusal should be mandatory for all matters directly involving an appointee's former employers and clients during the 24-month period prior to taking office. The employment histories and financial disclosure records of all members of the European Commission, senior Commission staff and relevant other Commission officials, as well as any recusal reports, should be made public on a web site.

In order to safeguard the integrity of public service from too close interrelationships between the private and public sectors, Commissioners and senior officials should be required to disclose their occupations and employers for the six year period prior to public service. They must also disclose any employment outside the EU institutions that they undertake while on temporary leave.

- Complaints: Formal complaint mechanisms that give EU citizens the right to complain about the ethical conduct of European decision makers and staff of the institutions should be established. The mandate of the European Ombudsman should be extended to cover not only cases of maladministration at the European institutions, but also unethical behaviour.

### Equal Access

Cases of privileged access and undue influence granted to corporate lobbyists must be terminated. Instead, all stakeholders need to have equal access to the European decision making process.

The general principles and minimum standards for consultations adopted by the Commission as of January 1st 2003 are a good start. Now the Commission has to ensure that these principles are efficiently implemented:

- All formal consultation processes should be publicly announced and reported on regularly and transparently. This includes a description of mechanisms that are being used to consult and who is being consulted and why.
- In order to improve the transparency and accountability of the European decision making process, and to prevent cases of privileged access, we propose that:
  - for each policy proposal the European Commission should publish a list of organisations that it has consulted on this proposal
  - each Commissioner publishes a register of correspondence (incoming and outgoing) every month and an agenda of meetings, usually in advance, on their website.
- Special working groups (e.g. the high level working group on 'competitiveness, energy and environment' that comprises 11 people from industry, but only two from environmental NGOs) should involve all relevant stakeholders in a balanced way, not almost exclusively industry interests.
- Formal complaint mechanisms that give stakeholders the possibility to complain about cases of privileged access for specific interest groups should be established.

<sup>68</sup> this prohibition would not include lobbying on one's own behalf without compensation or at the invitation of the institutions itself.

### 3.3. The way forward

Enhanced visibility and ethics in EU lobbying and equal access to decision makers for all stakeholders is of crucial importance. EU regulation would be the most effective way to ensure progress.

In order to make quick progress in EU lobbying transparency and ethics, the European Commission should as a first step adapt its current rules with respect to lobbyists, including a revised and extended code of ethics, and a transparent registration and reporting system (all with efficient enforcement mechanisms). The other EU institutions should be encouraged to do the same, aiming for compatible rules and mechanisms that reduce bureaucracy and ensure optimal visibility. This could be facilitated through an interinstitutional agreement, which could for example designate a single body for oversight.

This intermediate solution should then be used as the basis for the establishment of an EU Lobbying Disclosure Regulation, covering mandatory registration and reporting, coupled with a code of conduct/ethics for all lobbyists and measures to ensure equal access to decision makers for all stakeholders.

Simultaneously, all the institutions should make an effort to amend their codes of ethics for decision makers and staff with clear rules especially on conflicts of interest and revolving doors. This effort should be completed with a transparent and structured presence on the web, making it easy for citizens to understand which rules apply and for whom.



**Check list for a good ETI**

- > *Central register of all lobbyists*
- > *Clear codes of ethics for lobbyists, decision makers and officials*
- > *Complaint procedures open to citizens*
- > *Credible sanctions for non-compliance*
- > *Clear procedures to ensure equal access to policy-making process*

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