

Mr Janós Bertók
Head of Integrity Unit
The OECD
2, rue André-Pascal
75775 Paris Cedex 16
France



Monday, 30 November 2009

Dear Mr Bertók,

The Society of European Affairs Professionals (SEAP) response to the consultation on the draft Principles for Transparency and Integrity in Lobbying

1. Thank you for Mr Alter's letter dated 30 October SEAP asking SEAP to respond to your consultation. As a body committed to ethics and integrity in public affairs, we are happy to do so. We are convinced that transparency is one of the ways to ensure high standards of ethical behaviour in policy making.

About SEAP

2. SEAP was established in 1997 and currently has approximately 300 members, who join voluntarily on an individual basis. Members are active as European affairs practitioners in consultancies, law firms, trade associations and individual companies with representations in Brussels. SEAP also has members from other non-governmental organisations (NGOs) and think tanks, and is open to representatives of the EU trade unions or any other organisation of interest representatives seeking to sign up to its Code of Conduct.
3. This self-regulatory Code (annex I) sets out the ethical standards that SEAP members must observe when making representations to the EU institutions. Each SEAP member must participate in a training workshop on the Code and personally sign the Code as part of the membership requirements.
4. SEAP is committed to ensuring high ethical standards in public affairs; promoting transparency and openness in EU decision-making; acting as the voice of the profession to the EU institutions; providing a forum for public affairs professionals to meet; and ultimately contributing to the making of EU law and policy that is fit for purpose.
5. While SEAP is committed to a self-regulatory approach in the field of public affairs, it has worked closely with the European Commission in recent years to develop the European Transparency Initiative and register of interest representatives. SEAP members who register with the Commission are encouraged by us to denote that they are already bound by SEAP's Code. Further information on SEAP is available on our web-site mentioned below.

Comments on the draft Principles

- SEAP broadly supports the draft Principles enumerated by the OECD. As such, unless stated otherwise below, we agree with the draft text.

Introductory remarks

- As a general point, we note the references to “governments” and “countries” in the principles. We appreciate that the principles might be directed primarily to OECD member states and note paragraph 12. We would suggest however that it is equally important for such principles to be observed and implemented by decision-makers from the supranational to local level. Ensuring transparency and integrity should not, and sometimes can not, depend only on government or national action.
- Lobbying within a supra-national context also raises additional elements for consideration that are not addressed in the principles. For instance, in an EU context, lobbying to influence decision-making can involve lobbying governments, domestic parliamentarians, MEPs and the EU institutions, as well as others. The OECD should consider how to create meaningful transparency in relation to *what* lobbyists are influencing rather than simply *who*. Nonetheless in the EU context we hope that the European Commission, Parliament and Council will establish a joint register of interest representatives.
- It is equally true in relation to the work of the OECD. We would suggest that the OECD could provide a role model to its member states by implementing improvements in relation to transparency, consultation and stakeholder engagement.
- We welcome wholeheartedly the acknowledgement of “it takes two to lobby”. Too often the integrity of lobbying activities and the perceived problems of exerting influence are portrayed as a problem in the “industry” that is solved by taking measures that place the onus on the lobbyist. The recipients of lobbying, as public decision-makers who should be publicly accountable, should also be under a duty to account in *qualitative* terms for how their thinking has been influenced. This consideration might be implied in the draft principles but should be emphasised explicitly, perhaps in the first or sixth principles.

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| <ol style="list-style-type: none">Governments should provide a level playing field by granting all stakeholders fair and equitable access to the development and implementation of public policies. |
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11. We

would agree that access to decision-makers on an equitable basis is essential. Ensuring access, however, is not a safeguard against “vocal” lobbying. It is the integrity of the decision-making process and of the decision-makers themselves that should provide this. As such, equitable access does help to ensure that decision-makers have all the facts at their fingertips on which to take a decision. We believe that the principle should acknowledge that “lobbying” is more often than not about the communication of expertise from specialists to decision-makers. Decision-makers should be able to examine the arguments put forward by competing interests on an objective and rational basis.

- Governments should also develop rules or guidelines on effective consultation. Equitable access is only one element of good consultation. For instance, public

bodies often fail to identify and engage actively with those whose opinions they seek but who might not otherwise be represented.

13. We fail to see why governments should only consider alternatives to regulation where professional lobbying is limited (para. 18). Principles of better regulation would dictate that governments *always* consider all the options for action.

<p>3. Countries should clearly define the terms “lobbying” and “lobbyist” when they consider or develop guidelines and rules on lobbying.</p>
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14. We agree strongly that defining “lobbying” and “lobbyist” well is very important. In the context of the work on this at the EU level, a mixture of concepts (such as “direct lobbying” and “interest representation”) has led to some confusion and we have had to try to clarify these concepts for our members.
15. Clarity of definitions is particularly important when lobbyists are supposed to publish related financial information. The lack of a joint register between the EU institutions has exacerbated the problem of knowing what activities to count. Reporting may be less complicated if “public affairs” activities generally rather than “direct lobbying” are to be counted.
16. We are not convinced that the focus of this principle is correct. In particular targeting primarily those who receive compensation for lobbying activities (to the exclusion of others) is unclear and potentially misguided. Transparency in relation to lobbying should seek to ensure that those who attempt to influence decision-making are known. This transparency is not an end in itself but a means by which to improve the integrity of the policy-making process.
17. It is unclear what the terms “in-house lobbyist” and “compensation” are intended to cover. We would suggest it should be as broad as possible and extend to those working in any type of organisation that is aiming to influence decisions, be it a company, charity, campaigning organisation or trade federation, not simply those that engage in lobbying as an economic activity in itself.
18. The definition would also tend to miss others who exert equally important influence. Many public sector bodies, for instance, lobby actively in relation to EU policy and law making. Individual citizens should not be considered lobbyists. However a group of volunteers or activists that is well organised can be very effective in influencing decision-makers.
19. In general terms, we believe that, at least in a European context, money and financial resources cannot be equated with influence, or at least should not be taken as the sole indicator of it. This has been shown in a number of studies, such as the Hansard Society’s publication: *Friend or Foe: Lobbying in British Democracy*, a discussion paper by Philip Parvin. Dr Parvin found amongst the sample of UK MPs questioned that 62% claimed they were more persuaded by arguments put forward by charities than businesses. There is indeed often a perceived bias in favour of charities, which the private sector does not enjoy. Another Hansard Society publication found that there was a willingness among MPs to meet with charitable organisations but sometimes wariness about business interests (see Rosenblatt G. (2006), *A Year in the Life: From member of public to Member of Parliament* (Hansard Society: London), p. 40).

20. To ensure full transparency in public policy processes, the level of financial disclosure should be comparable for different types of organisation. While a “lobbyist” might have to disclose information on its clients, similar information on charities and NGOs should be made available, particularly on how they are funded, who they are representing and how they are governed.

4. Countries should provide an adequate degree of transparency to supply public officials and citizens with sufficient information on lobbying that aims at influencing government decisions.

21. We welcome paragraph 22. Given the difficulties in defining clearly what constitutes “lobbying”, it is also essential that public bodies make provision to protect the confidentiality of certain contacts. Contacts with decision-makers may be made to encourage them to take a certain course of action, such as asking a public authority to take enforcement action against a competitor or public entity.
22. Some might consider this type of influencing should be treated like other lobbying on general legislation or policy. The consequences of making public such contacts (even the mere fact that a meeting took place), can be extremely serious, both economically and legally for the actors concerned as well as politically. Decision-makers need to be fully aware of this. While countries must do more to ensure transparency, they should devote attention to protecting confidentiality when it is legitimate to do so.
23. This principle fails to state clearly that the interest being represented (as well as the activity) should be disclosed – if not publicly then at least to the recipient of the lobbying. We note this is implicit in the seventh principle. Who funds a think tank, NGO or trade association is as pertinent as knowing a lobbyist’s client.

5. Countries should enable civil society organisations, the media and the general public to scrutinise lobbying activities.

24. Access to public information is an important aspect of ensuring the legitimacy of decision-making. This principle should also acknowledge, however, that civil society organisations, the media and the general public are not merely spectators to the decision-making process. They can be influencers of policy and decision-making as much as others.
25. The emphasis of this principle should be on ensuring that pertinent information is made public. Suggesting that oversight or scrutiny should be exercised by specific actors in society, such as the media, misses the point of ensuring transparency.
26. In addition, consideration should be given as to what information actually serves the purpose sought. Our experience with the European Commission’s lobbyist register is that the register itself does not offer an indication of what influence registrants exert beyond a general indication of the broad policy areas that are of interest to them. Respondents to specific public consultations are listed completely separately.
27. The principles should place greater emphasis on developing the concept of a “legislative footprint”. This is the idea that public documents published during the legislative or policy-making process indicate those who have sought to influence the process. This is an accurate and useful indicator of who is exerting influence.

6. Governments should foster a culture of integrity in public organisations and decision making by providing clear guidelines and rules of conduct for public officials contacted by lobbyists.

28. We agree that measures should be put in place to prevent “misuse” of confidential information and unethical practices more generally when government officials become “lobbyists”. The positive aspects of the practice of “revolving doors” does however deserve recognition as well. It provides important understanding of the reality on the ground, for both government or political representatives as well as company representatives, which can substantially improve the quality of legislation and policies provided it is done in a transparent way and according to agreed processes and principles.

7. Lobbyists should follow standards of professionalism and transparency; they share responsibility for fostering a culture of integrity, transparency and propriety in lobbying.

29. We fully

support this principle. SEAP’s own Code and its activities are an example of what is called for in this principle. Paragraph 27 should also note:

“Governments should leave sufficient scope to lobbyists to set their own professional standards. Self-regulation will enhance responsibility and professionalism in the lobbying industry.”

8. A coherent spectrum of strategies and mechanisms should carefully balance incentives and sanctions, and involve key actors to achieve compliance.

30. SEAP agrees with this principle. We would note, however, that positive incentives should be used coupled with sanctions for non-compliance. The success of non-mandatory schemes should not depend on coercion. Nor should such mechanisms lead in effect to the exclusion of legitimate concerns from the democratic process. SEAP has been keen to ensure that the ETI initiative should not have the effect of damaging the transparency of the EU institutions or limiting involvement in the democratic process.

Thank you in advance for your kind attention. Should it prove to be of interest, our most recent comments on the European Commission’s European Transparency Initiative and Register of Interest Representatives, as well as other statements of position are available on our web-site: <http://www.seap.be/about.html>

We remain available for any further information or clarification you may require and we would appreciate to be further involved in your consultation.

Yours sincerely,



Lyn Trytsman-Gray
President of SEAP



ANNEX I

Society of European Affairs Professionals (SEAP*) Code of Conduct

RECOGNISING that European affairs professionals are a vital part of the democratic process, acting as a link between on the one hand business and civil society, and on the other, European policy makers;

RECOGNISING that European affairs professionals must observe the highest ethical standards;

RECOGNISING that the principles laid down in this code of ethical conduct provide a benchmark for all European affairs professionals;

And therefore European affairs professionals when making representations to the EU institutions shall

Article 1 – Integrity

- (1) act with honesty and integrity at all times, conducting their business in a fair and professional manner;
- (2) treat all others, including colleagues, competitors, and staff, officials or members of the EU institutions – with respect and civility at all times;
- (3) not exert improper influence on nor offer to give, either directly or indirectly, any financial inducement to staff, officials or members of the EU institutions.

Article 2 – Transparency

- (1) maintain the highest standards of professionalism in conducting their work with the EU institutions;
- (2) be open and transparent in declaring their name, organisation or company, and the interest they represent;
- 3) neither intentionally misrepresent their status nor the nature of their inquiries to the EU institutions nor create any false impression in relation thereto;

Article 3 - Accuracy

- (1) take all reasonable steps to ensure the truth and accuracy of all statements made or information provided by them to the EU institutions;
- (2) not disseminate false or misleading information either knowingly or recklessly; exercise proper care to avoid doing so inadvertently and correct any such act promptly;
- (3) not obtain any information from the EU institutions by illicit or dishonest means.

Article 4 – Confidentiality

- (1) honour confidential information and embargoes and always abide by the rules and conventions for the obtaining, distribution and release of all EU documentation;
- (2) not sell for profit to third parties copies of documents obtained from the EU institutions.

Article 5 – Conflicts of interest

- (1) avoid any professional conflicts of interest;
- (2) disclose such conflicts when they occur to those whose interests are concerned;
- (3) take swift action in order to resolve any conflict which arises.

Article 6 – Former EU personnel

- (1) only employ personnel from EU institutions subject to the published rules and confidentiality requirements of those institutions.

Moreover SEAP members shall:

Article 7 - Compliance

- (1) cooperate fully with fellow members in upholding this code and its procedures;
- (2) not engage in any practice or conduct that could be in any way detrimental to the reputation of SEAP ;
- (3) in preference refer to the SEAP code of conduct when they register under the Commission's register of interests and inform the SEAP secretariat of this reference;
- (4) notify the SEAP secretariat of any challenge related to the Commission's register of interests;
- (5) accept that SEAP can apply a range of sanctions in case of non-compliance demonstrated under the SEAP code complaints procedure;

Adopted by the SEAP General Assembly in 1997 and last amended 20th January 2009 by written procedure.

*SEAP was established in 1997 to represent all those individuals active in European affairs trade associations; corporate representatives; consultants; lawyers; non-governmental organisations; regional representatives and others to encourage the highest standards of professionalism for European affairs activity and promote self regulation of the profession. SEAP is open to third parties to express their views on this code.