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EVCA's Response to the European Commission's Green Paper on the European Transparency Initiative

The European Private Equity and Venture Capital Association (EVCA)¹ welcomes the overall, broad objectives and orientation of the Green Paper on the European Transparency Initiative (COM (2006) 194), specifically at reinforcing high standards of lobbying in Brussels, on the grounds that the Commission states it; "needs greater transparency and stronger accountability towards the public...to maintain the legitimacy of European decision-making".

Although this Paper aims to cover different topics, namely:

- "The need for a more structured framework for the activities of interest representatives (lobbyists²)";
- "Feedback on the Commission's minimum standards for consultation"; and
- "Mandatory disclosure of information about the beneficiaries of EU funds under shared management";

EVCA's focus, as an independent professional association³, is on the first two sections.

EVCA fully supports the commitment of the Commission to further develop existing standards which must apply when lobby groups seek to contribute to EU policy development: well-designed registration and the application of a code of conduct. These concepts are in line with EVCA's own internal policies and industry standards which it implements to ensure its members (industry practitioners) share best practices and spread understanding of the need for common ethics and transparency. The Commission's approach therefore seems to be appropriate for creating a level playing field for lobby activities across Europe, and in facilitating best practices.

Before answering to this consultation, EVCA would like to draw the attention of the Commission to two preliminary points: the scope of the consultation and the meaning of the term "transparency".

As framed within the Green Paper's "Definitions and Framework" (Chapter II.1), "lobbying" means; "all activities ["regardless of whether it is carried out by individual citizens or companies, civil society organisations and other interest groups or firms working on behalf of third parties (public affairs professionals, think-tanks and lawyers)" (Chapter II.1.1)]

¹ The European Private Equity and Venture Capital Association, established in 1983 and based in Brussels, promotes, facilitates and represents the needs and interests of the private equity and venture capital industry in Europe and promotes the asset class both within Europe and throughout the world. EVCA has over 925 members in 50 countries, including the leading fund managers in the European private equity and venture capital industry. EVCA's role includes representing the interests of the industry to regulators and standard setters; developing professional standards; providing industry research; professional development and forums, (www.evca.com)

² As defined within the Green Paper (see below).

³ EVCA Annual Report 2005: http://www.evca.com/images/attachments/tmpl_9_art_81_att_961.pdf

carried out with the objective of influencing the policy formulation and decision-making processes of the European institutions”.

This definition could end up by encompassing every individual citizen or company defending or presenting a certain position, even outside the context of a specific Commission consultation. To that extent, it seems necessary to limit the real scope of the current Green Paper and thus of “lobbying” to activities carried out by organisations per se and specific individuals in the context of EU “policy” dialogue, and disregard “civil” dialogue (such as, for example, contacts with the media).

In terms of greater efforts to improve transparency, EVCA, as many organisations most likely will, supports the open nature of actions and relations towards policymakers which are aimed at improving the decision-making process. However, a clear distinction has to be made between the terms **transparency** – providing information about the lobbyists and the organisations they are representing – and **disclosure** of information regarding on-going discussions due to the inherent processes involved in lobbying and the nature of the topics involved:

- EVCA welcomes the Commission’s assessment that “Lobbying is a legitimate part of the democratic system” (Chapter II.1.1), and is supportive of the public disclosure of the opening and closing of consultation processes, clear representation of organisations or persons responding to or participating in those consultations and the publication of final responses, and related public hearings to facilitate wider debate and dialogue.
- However, it does not support any proposal, which may appear in relation to the future development of the Commission’s work in this area, that relates to intermediary processes involving the Commission such as the ongoing, or non-finalised discussions of a working group. Disclosing tools and processes, positions or arguments which do not go beyond the legitimate representation of interests when lobbying the European Commission, could end up distorting well-balanced, evidenced-based representation of interests.

- *Do you agree that efforts should be made to bring greater transparency to lobbying?*
- *Do you agree that lobbyists who wish to be automatically alerted to consultations by the EU institutions should register and provide information, including on their objectives, financial situation and on the interests they represent? Do you agree that this information should be available to the general public? Who do you think should manage the register?*
- *Do you agree to consolidating the existing codes of conduct with a set of common minimum requirements? Who do you think should write the code?*
- *Do you agree that a new, inclusive external watchdog is needed to monitor compliance and that sanctions should be applied for any breach of the code?*

- **Bring greater transparency to lobbying**

EVCA welcomes the efforts towards more transparency and accountability, disclosing represented interests, in order to contribute to better regulation and to improve the quality of the legislation through better decision-making process. Today, virtually anyone can set up as a lobbyist: registration and/or application to a Commission Code of Conduct under the auspices of the Commission will further contribute to a more professional framework, providing some formal recognition to European lobbying.

For its part, and to contribute to this process, EVCA maintains high standards through its evidence-based approach when interacting with policymakers, regulators and stakeholders. EVCA includes within each public policy statement that it makes details of the Association, including its membership, aims and objectives, contact details, and ensures that all policy positions (once finalised) are made public via its website. Furthermore, a full list of EVCA office holders (including its various committees) is available as well as its financial statements, via its annual report.

- **Registration**

In its own words, the Commission does not consider that a compulsory registration system would be an appropriate option. A tighter system of self-regulation would appear more appropriate (see the remarks on code of conduct below). EVCA agrees with non-compulsory registration arrangements when incentives are strong enough to attract professionals by the virtue of their long-term benefits.

CONECCS⁴, the current Commission registration system to which EVCA is already registered, should be the starting point for any new registration system. As it is the case today, any future changes to such a register must be open to public consultation, with subsequent registration free of charge, and without any yearly membership or administrative fees.

- Individuals or organisations, including NGOs, will be entitled to register, including lobbyists not set up in Brussels but interested in European Union affairs. In the case of the registration of an organisation, this should cover, de facto, its representatives as dedicated employees or spokesperson(s) in their capacity as an elected representative of trade bodies with no need for individual registration.

As noted in the Green Paper, “after a certain period, a review should be conducted to examine whether self regulation has worked. If not, consideration could be given to a system of compulsory measures – a compulsory code of conduct plus compulsory

⁴ The database for Consultation, the European Commission and Civil Society (CONECCS): http://ec.europa.eu/civil_society/coneccs/index_en.htm

registration" (Chapter II 3.2). A compulsory system could then end up as the best way to make information on representatives' organisations available and to restore the image of "lobbying" to the wider public.

Although registration will give indications of the interests for which a lobbyist or organisation is acting, and as a recent example in North America demonstrates, heavy, prescriptive or compulsory rules (as opposed to principles based self-regulation), including the issuing of fees charged to each client, do not prevent circumvention of any rules by those who wish to act fraudulently.

- Incentives are meant to attract voluntary registration. However, the registration process should provide real benefits to applicants, thus trading off e-mail announcements of upcoming Commission consultations against registration seems a poor incentive. Information is already available to the general public through the current single access point, the "Your Voice in Europe" web portal, as noted in Chapter III. Such an incentive is not a credible one to ensure comprehensive registration and the contribution to the information provided by organisations involved in consultation procedures, and will miss the objective of this Green Paper.

In the absence of a mandatory system, EVCA is open to discuss any proposals that would provide stronger incentives.

- **Code of Conduct**

A Code of Conduct is fundamental to ensure high ethical standards and EVCA is fully supportive of strong self-regulation. In its own field of private equity and venture capital, EVCA has a long history of shaping and implementing self-regulatory measures concerning transparency, market integrity and efficiency, through the different professional guidelines endorsed by its members, and promoting best and common practices by European private equity practitioners (code of ethics, corporate governance and governing principles, and valuation and reporting guidelines)⁵.

- As noted in the Green paper, such "a common code...developed by the lobbying profession itself, possibly consolidating and improving the existing codes" (Chapter II 3.2), should ensure professional competence, personal integrity and civic responsibility. Therefore the Commission should confirm the minimum requirements. Current voluntary codes are broadly all the same and based on common sense.

- Its application could be helped by the electronic questionnaire envisioned by the Commission as a ready-made tool used by all Commission departments for their consultations. To be effective and ensure fairness, the code should apply to all lobbyists whether registered or not, every time they have contact with EU Institutions' representatives. However, the existing codes do not incorporate NGOs, thus creating an uneven playing field. NGOs are lobby organisations, relying on financial support from different sources (public or private) and have to fulfil the same obligations.

If so decided, the enforcement of such a code will lead to a shared responsibility with Commission personnel, checking beforehand if their correspondents abide to the official Code of Conduct (including those who are not Brussels-based).

- **External watchdog**

Further to the above remarks on the Code of Conduct, an external watchdog would ensure a level playing field among all lobbyists and monitor application of commonly agreed rules of

⁵ EVCA Industry Standards: http://www.evca.com/html/PE_industry/IS.asp

conduct. It would legitimise the fair enforcement of any new framework, both within the lobby practitioners and the outside world. It would check information provided by lobbyists when registering and in due course. This would be supported by a system of sanctions, in cases of deliberately inaccurate or misleading registration, or breach of conduct rules.

The EU Ombudsman is potentially the reasonable neutral person able to perform checking procedures and enforce new rules. However, doing so will increase the likelihood of a formalised, compulsory registration system and would question his/her ability to cope with Brussels-based as well as nationally based bodies with an interest in European Union affairs. The creation of an independent panel could be a solution, including members with in-depth knowledge of EU institutions and lobbying. They should be independent and act in the public interest, on the basis of a clearly defined mandate and rules of procedure. To avoid any risk of 'peer review' by the panel, it should be organised under the chairmanship of the EU Ombudsman who would be the guarantor of a fair, external approach on issues relating to lobby activities and related professional conduct.

A satisfactory method of funding would be needed as the cost of such a system would be high if current numbers of lobbyists are confirmed.

EVCA remains at the disposal of the Commission and other stakeholders for further discussion on the issues noted above, and can be contacted via the address below:

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