

EVCA's Response to the European Commission's Draft Code of Conduct for Interest Representatives

Following its previous contribution to the European Commission's Green Paper on the European Transparency Initiative¹, the European Private Equity and Venture Capital Association (EVCA)² welcomes the opportunity to contribute to the European Commission's consultation on a Draft Code of Conduct for Interest Representatives³, which will accompany the public register for interest representatives to be launched in spring 2008.

EVCA would like to reiterate that it fully supports the commitment of the European Commission to further develop existing standards which must apply when interest representatives seek to contribute to EU policy development, and within this context, confirms its support of the European Transparency Initiative. However, EVCA would like to make some comments on the following issues raised in the Draft Code of Conduct, namely:

1. Nature of the register – voluntary register;
2. The scope of liability of interest representation;
3. The principles at large (Openness, Transparency, Honesty and Integrity);
4. The rules as outlined by the Commission;
5. Clarifications in respect of breaches of the Code and complaints procedure.

1. Nature of the register – voluntary register

- o Further to its previous response to the European Commission's Green Paper, EVCA would like to reiterate that it agrees with non-compulsory (i.e. voluntary) registration requirements for interest representatives when interacting with European Commission officials.
- o However, in order to encourage registrations, as⁴ noted on the Commission's website⁴, the Code should contain within its general provisions text, clear reference to the fact that the Commission will not consider responses sent to the Commission (e.g. consultation papers) as representative of an industry or sector if the interest representative, of whatever nature, has not signed up to the register and Code of Conduct.

¹ http://www.evca.com/html/public_affairs/position.asp

² EVCA was established in 1983 and is based in Brussels. EVCA represents the European private equity sector and promotes the asset class both within Europe and throughout the world.

EVCA's 1,200 members in 53 countries represent all main industry stakeholders, from PE/VC fund management companies to institutional investors (banks, pension funds, insurance companies, family offices, etc.), to professional advisors (lawyers, placement agents, investment bankers, etc.) and national (European) trade associations.

EVCA's role includes representing the needs and interests of the industry to regulators and standard setters; developing professional standards; providing industry research; professional development and forums, facilitating interaction between its members and key industry participants including institutional investors, entrepreneurs, policymakers and academics.

³ http://ec.europa.eu/transparency/consultation_code/docs/gp_en.pdf

⁴ "This means that the contributions received from organisations not registered cannot be regarded as representative of their sector. They will be considered as contributions from individuals." Source: <http://europa.eu/rapid/pressReleasesAction.do?reference=MEMO/07/110&format=HTML&aged=0&language=EN&uiLanguage=en>

- The European Commission's dedicated website to the consultation⁵ states that *'When registering, registrants would automatically be asked to declare that they would abide by this code, or that they already abide by a similar professional code.'*

EVCA would like to state that the European Commission should call for all interest representatives who want to be included in the register to sign up to one and the same code, i.e. the Commission's Code of Conduct. This will avoid issues around monitoring, compliance and potential inconsistencies between any different codes.

2. The scope of liability of interest representation

Although EVCA materials as presented to, and indeed all contacts with, the Commission already fall within both the rules and principles as outlined by the Commission, EVCA will in due course inform all its office holders⁶ of the final Commission Code of Conduct. However,

- there is still an issue as to the scope of the liability of organisations such as EVCA in terms of its broader membership base and the status of registration of its members, notably as organisations like EVCA may often draw on the individual technical expertise of specific members to represent the Association and the European private equity and venture capital industry on specific topics within for example technical expert groups or workshops of limited duration. EVCA would therefore appreciate clarification as to the status of registration of these persons and the liability of EVCA in such situations.
- Moreover, EVCA would note that in respect of the coverage of the Code of Conduct, specifically in the case of pan-European associations or organisations, and notably those with direct membership⁷, it is not fully clear as to whether such an association or organisation can be held accountable for the independent actions of individual members or persons who may have contact with the Commission on a specific issue, but who are not acting under the direct auspices of the association or organisation (e.g. an individual who is not a dedicated permanent employee or a designated office holder such as a member of a Committee).

EVCA would welcome formal clarification from the Commission on these points, notably in relation to the other provisions of the code which are as yet undefined (such as the complaints procedure), and the impact of these issues in enabling an association or organisation to sign the Code and adhere to its principles.

3. The principles at large (Openness, Transparency, Honesty and Integrity) *and*;
4. The rules as outlined by the Commission

- EVCA welcomes the inclusion of the above principles and rules within the Commission's Draft Code of Conduct.
- In this respect and for its part, EVCA would like to confirm that it 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.
- EVCA would like to stress that the concepts of well-designed registration and the application of a Code of Conduct 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.

⁵ http://ec.europa.eu/transparency/consultation_code/index_en.htm

⁶ EVCA defines its office holders as members of its Secretariat, Committees, Board and related Task Forces.

⁷ As opposed to a pan-European federation of national associations or organisations

- Moreover, EVCA would like to restate that it 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 list of EVCA office holders is available as well as its financial statements, via its annual report.
- EVCA agrees that 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)⁸.

5. Clarifications in respect of breaches of the code and complaints procedure

The European Commission's Draft Code of Conduct states that *'Registrants are informed that breaches of the above rules may lead to suspension or exclusion from the Register,'* and that *'signatories should be aware that the [European] citizens have the possibility to lodge a complaint about a suspected breach of the rules set out in this Code.'*

- In respect of those provisions, EVCA would like to note that although issues such as the complaints procedure are raised in the Commission's Draft Code of Conduct, no details as to their practical application are provided. In the interests of transparency on the part of the Commission, such procedures should be made public before the Code is finalised and implemented.
- Within this context and according to EVCA's previous and preceding comments, EVCA would like to again call for an independent and neutral watchdog, such as the European Ombudsman, to monitor compliance with the Code and to decide on possible exclusion from the register, in order to ensure a level playing field.

EVCA remains at the disposal of the European Commission for further discussions and can be contacted via the address below:

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⁸ http://www.evca.com/html/PE_industry/IS.asp