



ALTER-EU recommendations for the revision of the Code of Conduct for Commissioners

Preventing post public-employment conflicts of interest (“the revolving door”)

Alliance for Lobbying Transparency and Ethics Regulation in the EU, October 2010

The current Code of Conduct for Commissioners contains only a short eight-sentence paragraph on the important issue of conflicts of interest. The revolving doors cases that emerged earlier this year show that the rules need to be clearer and more detailed. ALTER-EU recommends extending the notification period from one to three years and introducing far stricter scrutiny of potential conflicts of interest for the jobs and activities referred by ex-Commissioners. This would create a three-year cooling-off period and constitute effective safeguards against conflicts of interest.

The relevant paragraph in the Code of Conduct (from 1.1.1 Outside Activities):

“Whenever Commissioners intend to engage in an occupation during the year after they have ceased to hold office, whether this be at the end of their term or upon resignation, they shall inform the Commission in good time. The Commission shall examine the nature of the planned occupation. If it is related to the content of the portfolio of the Commissioner during his/her full term of office, the Commission shall seek the opinion of an ad hoc ethical committee. In the light of the committee’s findings it will decide whether the planned occupation is compatible with the last paragraph of Article 213(2) of the Treaty.”

The following is a more detailed version of the recommendations as presented by ALTER-EU in open letters to the European Commission in November 2009 and May 2010¹. Our recommendations are based on a clear trend towards a more serious approach to post-employment conflicts of interest, reflected for instance in the ‘Revolving Door Ban’ introduced by the Obama administration in early 2009² and the Ministerial Code introduced by the new UK Government (May 2010)³, discussions in the framework of the OECD⁴ as well as proposals for more broadly defined revolving door restrictions made by leading US law-makers.⁵

Recommendations:

- **1) Three-year notification period:** the period during which ex-Commissioners must ask permission for new activities should be extended from the current one year to at least three years. A three-year period would correspond with the period during which ex-Commissioners receive allowances (the scheme that was recently widely criticised as overly generous). Allowances provided to guarantee the independence of ex-Commissioners is not in itself a bad idea (at more appropriate levels), but this should be combined with strict interventions to prevent conflicts of interest during the course of these three years.
- **2) Early notification:** the notification should happen well before an ex-Commissioner starts in a new job or activity; in fact notification should happen as soon as contract talks start (this could be defined as the point in which both the potential employer and Commissioner have expressed mutual interest in employment opportunities). Ideally,

employment negotiations should not take place while a Commissioner is still 'in office'.

- **3) Clear definition:** a clear definition of what constitutes a conflict of interest and clear criteria for assessing conflicts of interest are needed, incorporating the concerns that have emerged over the potential conflicts of interest of six members of the previous Barroso Commission⁶. The new Code of Conduct must clarify what type of activities will be prohibited. The term "planned occupation" must be replaced with a clearer term⁷. The rules should cover any activity that can lead to conflicts of interest, such as for instance the purchasing of shares or equity investments. It is irrelevant whether the jobs are described as "non-executive positions"⁸. It should become impossible to hire former Commissioners to strengthen a firm's lobbying efforts, regardless of the job title they are given.
- **4) A broader view of conflicts of interest:** the current rules are limited to conflicts of interest that occur when a planned activity "is related to the content of the portfolio of the Commissioner". This is far too limited. Considering that all decisions taken by the college of Commissioners are collective decisions, Commissioners also face potential conflicts of interest when moving into a private sector job not directly related to their former portfolio. Moreover, by employing former Commissioners, large corporations and lobby groups can unduly benefit from their insider knowledge and networks within the institutions.
- **5) Lobbying and lobby advice should be off-limit:** ALTER-EU proposes a three-year cooling-off period for all (remunerated) activities involving lobbying and/or lobbying advice (following the definition of interest representation in the Commission's Register of Interest Representatives). The cooling-off period must not only cover direct interest representation, but also the preparation of lobbying, strategy work and supervision of lobbying activity and other efforts intended to facilitate lobbying. There should obviously also be a three-year cooling-off period for business activities where the ex-Commissioner's previous role (including insider information and networks developed while in the Commission) might unduly benefit the new employer. Clearly off-limit is any employment with private interests that may have significantly benefited from the policies the Commissioner has formulated during his/her term in office.
- **6) Revolving door exit plans:** when a Commissioner is given approval for a new job under specific conditions (restrictions), it must be made explicit and clear which activities and/or issues are off-limit⁹. This could take the form of a binding revolving-door exit plan that outlines the areas of activity and the policy issues which the former Commissioner is banned from working on. Such exit plans should be available to the public.
- **7) Revolving door reports:** when former Commissioners are given approval for a new job under certain conditions (restrictions), both the former Commissioners and their new private sector employers should on an annual basis submit revolving-door reports attesting that they have complied with the agreed revolving door exit plan. Such reports should be available to the public.
- **8) Independent assessments by ethics experts:** the ad hoc ethical committee must be fully independent and composed of experts on public administration ethics, such as academics and national government ethics regulators. The committee should actively scrutinize possible conflicts of interest, including through communication with

the planned employer and other pro-active steps. The input from third parties should be considered in the assessment process.

- **9) Transparency:** there should be comprehensive online transparency around the Commission's decision to approve or reject requests for post-employment approval (see for instance the website of the UK Advisory Committee on Business Appointments). Decisions should be available online and be searchable, sortable and downloadable.
- **10) Effective sanctions:** the new Code of Conduct should include sanctions for ex-Commissioners who violate the rules or who refuse to follow decisions by the College of Commissioners regarding their post-Commission activities. These sanctions should be strong enough to act as a deterrent and they should follow clear criteria.

ALTER-EU would also like to restate some important related points:

- the revised Code of Conduct must secure stricter enforcement of financial transparency by Commissioners, in order to enable the public to assess potential conflicts of interest: financial declarations must be complete and updated at least annually.
- The new Code of Conduct should include clear rules on acceptance of gifts, including hospitality and other benefits, with a view of ruling out conflicts of interest.
- The above-mentioned ten points are all relevant for the ongoing review of the conflicts of interest rules for European Commission staff (Staff Regulations suffer from many of the same weaknesses as the Code of Conduct for Commissioners). Instead of the current case-by-case approach, a clear definition of what constitutes a conflict of interest and an effective cooling-off period is required. Clearer new rules on the acceptance of gifts and hospitality are also needed.

1 ALTER-EU wrote to the Commission in November 2009 and May 2010 calling for a swift review of the Code of Conduct and the introduction of a cooling-off period to prevent ex-Commissioner from moving into jobs with conflicts of interest. On 17 May 2010, ALTER-EU wrote to President Barroso, and Commissioners Sefcovic and Semeta to raise concerns about potential conflicts of interest for former Commissioners. <http://www.foeeurope.org/corporates/pdf/Letter%20to%20Commission%20on%20CoI%204%20Commissioners%20May%2017.pdf>

On 24 November 2009, ALTER-EU sent a letter to Commission President Barroso, asking him to address conflicts of interest in the revision of the code of conduct for EU Commissioners. http://www.alter-eu.org/sites/default/files/documents/Preventing_Conflicts_of_Interest_of_EU_Commissioners.pdf

2 Barack Obama, "Executive Order --Ethics Commitments by Executive Branch Personnel", The White House, January 21, 2009

Precedents and practice

4. *Revolving Door Ban Appointees Leaving Government.* If, upon my departure from the Government, I am covered by the post employment restrictions on communicating with employees of my former executive agency set forth in section 207(c) of title 18, United States Code, I agree that I will abide by those restrictions for a period of 2 years following the end of my appointment.

5. *Revolving Door Ban Appointees Leaving Government to Lobby.* In addition to abiding by the limitations of paragraph 4, I also agree, upon leaving Government service, not to lobby any covered executive branch official or non career Senior Executive Service appointee for the remainder of the Administration.

3 UK Ministerial Code: <http://www.cabinetoffice.gov.uk/media/409215/ministerialcodemay2010.pdf> (page 14 and 17)

7.7 Ministers must scrupulously avoid any danger of an actual or perceived conflict of interest between their Ministerial position and their private financial interests. They should be guided by the general principle that they should either dispose of the interest giving rise to the conflict or take alternative steps to prevent it. In reaching their decision they should be guided by the advice given to them by their Permanent Secretary and the independent adviser on Ministers' interests. Ministers' decisions should not be influenced by the hope or expectation of future employment with a particular firm or organisation.

7.25 On leaving office, Ministers will be prohibited from lobbying Government for two years. They must also seek advice from the independent Advisory Committee on Business Appointments about any appointments or employment they wish to take up within two years of leaving office. Former Ministers must abide by the advice of the Committee.

- 4 See for instance Prof. David Miller, Professor of Sociology, Department of Geography and Sociology, University of Strathclyde, Glasgow, United Kingdom: "Revolving doors, accountability and transparency: Emerging regulatory concerns and policy solutions in the financial crisis"
http://www.oecd.org/document/28/0,3343,en_2649_33735_43244956_1_1_1_1,00.html
- 5 Amendments for cooling-off periods to cover both lobbying contacts and lobbying activities, tabled by Senators Wyden and Grassley
- 6 The six ex-Commissioners are Benita Ferrero-Waldner (Munich Re and Gamesa), Meglena Kuneva (BNP Paribas), Günter Verheugen (RBS, lobby consultancy Fleishman Hillard, European Experience Company, the Turkish Union of Chambers and Commodity Exchanges and a German banking lobby group), Charlie McCreevy (NBNK and Ryanair), Joe Borg (lobby consultancy FIPRA) and Lous Michel (Credimo).
<http://www.alter-eu.org/press-releases/2010/09/27/revolving-door-scandal-alter-eu-call>
- 7 Ex-Commissioner Verheugen claims that the Code of conduct does not apply to his involvement in the lobby firm European Experience Company, arguing that he does not receive a salary so it is not an 'occupation'. Verheugen is managing director and owns 50% of the firm.
- 8 Ex-Commissioner Ferrero-Waldner was given approval to take up a paid board position in Munich Re, with the argument that this is a "non-executive" function. The documents related to the approval procedure are available on the ALTER-EU website: <http://www.alter-eu.org/conflicts-of-interest-former-commissioners-relevant-documents>
- 9 Ex-commissioners Verheugen, Borg and Ferrero-Waldner were given green light move into jobs on the basis of very weakly defined restrictions on what they are not allowed to do in these jobs. Mr. Verheugen, for instance, was given the go-ahead on the basis of his statement that the new jobs "exclude any type of any lobby", without any further definition of the term 'lobby'. At the same time the description of his tasks for these new employers indicate that he will be assisting their lobbying efforts, at the very least with strategic advice. The documents related to the approval procedure are available on the ALTER-EU website: <http://www.alter-eu.org/conflicts-of-interest-former-commissioners-relevant-documents>