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Follow-up to the Green Paper "European Transparency Initiative"

RESULTS OF THE COMMISSION CONSULTATION ON THE GREEN PAPER 'EUROPEAN TRANSPARENCY INITIATIVE' (COM(2006) 194 final)

{COM(2007) 127 final}

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1. INTRODUCTION

On 3 May 2006, the Commission adopted a Green Paper[1] in order to drive forward its 'European Transparency Initiative"[2] (ETI).

The objective of the Green Paper was to launch a broad public consultation on the following key components of the ETI:

- The need for a more structured framework for the activities of interest representatives (lobbyists);
- Feedback on the Commission's minimum standards for consultation[3] *("consultation standards"*);
- Mandatory disclosure of information about the beneficiaries of EU funds under shared management.

From May to August 2006, the Commission consulted widely and comprehensively, in particular on the basis of an open internet-based consultation. As a response to the internet consultation, the Commission received contributions from more than 160 interested parties. These included submissions by some of the EU Member States, private sector interest groups, the NGO community and several individual citizens. Not only European but also national and regional organisations took part in the consultation process. In line with the Commission's consultation standards, all contributions have been displayed on the ETI consultation website[4].

The objective of the present Commission Staff Working Document is to provide a brief overview of the main results of this consultation process.

2. INTEREST REPRESENTATION (LOBBYING)

2.1. The definition of 'lobbying'

Several NGOs at EU and national level called for a clear distinction to be made between 'lobbying activities' and 'advocacy activities', thus disapproving of the encompassing definition of lobbyist used in the Green Paper.

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1 COM(2006) 194.
2 COM(2005) 1300.
3 COM(2002) 704.
4 ttp://ec.europa.eu/transparency/eti/contributions.htm

Representatives of the private sector also took issue with the proposed definition. Several highlighted the fact that the term lobbyist has negative connotations in certain member states. The term "representation of private interests" was suggested instead. Groups from all over the private sector called for differentiation to be made in the definition in order to accommodate the specific characteristics of the different groups. Contributions from some religious groups also objected to be labelled 'lobbyists', and suggested the terms 'interested parties' or 'interested circles'.

2.2. Overall satisfaction with the European Commission Lobbying Initiative

Many contributors explicitly welcomed the Commission's initiative and the opportunity given to comment on it.

2.3. Should a register be established?

None of the contributors were against a register. In fact, many voiced their appreciation of such a tool, although it should be noted that among the contributions of some of the NGOs it was unclear whether they saw themselves as lobbyists, who should be included in such a register, or not.

Discrepancies mainly surfaced on the matter of whether such a tool should be voluntary (but accompanied by incentives for signing up) or mandatory. Among private interest representatives both at national and EU level, a little more than half requested that the register should be voluntary. The other half sided with the majority of the NGOs, where there was a clear preference for a mandatory system of registration. Some amongst the EU level and national NGOs suggested however, that mandatory registration should only apply to lobbyists whose amount of activity surpassed a certain threshold, in order to allow small groups to campaign without being burdened by registration.

Many among all types of contributors argued that the incentive proposed by the Commission for registering, i.e. an electronic alert system on upcoming relevant issues for registered lobbyists, is too weak. Many also said that the register should be linked with the system currently used in the European Parliament, making registration a 'one-stop-shop'.

Some national level contributors stressed that a new register should be inclusive to all organisations and not only pan-European ones.

2.4. Should the information in the register be public?

On the question of whether the information in the register should be public or not, no contributors were against it being a public register. By contrast, many directly supported the idea of making the information in the register available to the general public.

2.5. What type of information should be requested?

The NGOs generally agreed with the three areas for disclosure proposed by the Green Paper, namely interests represented (clients/members), objectives and sources of income.

Among the interest representatives of the private sector there was no general direction. Many company and industry representatives supported disclosure of all three types of information. Lawyers felt that they should not be obliged to disclose information, where it would be a breach of professional secrecy or other professional rules. A wide variety from the public

affairs practitioners over the banks and to the trade unions objected to disclosing sensitive financial information, such as individual fees or total budgets.

A contribution from a religious group held that it would be impossible to list all the interests served by them and that the requirements of a register should take this into account.

2.6. Who should manage the register?

There was a clear majority among the contributors from the NGOs and from the private sector, who felt that the register should be managed by the European Commission. A few NGOs mentioned that it might be done in cooperation between the European Commission and relevant stakeholders, or run by an independent body, like the European Ombudsman. Several private sector representatives suggested that each registered organisation should have the authorization to update their data at any time.

2.7. Should there be a Code of Conduct?

Most of the EU and national level NGOs were for a consolidated code of conduct for all lobbyists. Again, it was unclear whether they saw themselves as lobbyists or not. It was held that such a code should take into account the different natures of the interest groups.

The opinions of the private sector were less uniform. Many agreed to have a common set of requirements, but wanted to have influence in shaping them. Especially the professionals like lawyers and architects were anxious to have any new rules drafted with and for all, so that their own standards would not be compromised. A few private sector representatives favoured a voluntary code, but several supported a compulsory one, as they must already subscribe to such a code at the European Parliament. Only a limited number of those consulted questioned or did not want a harmonisation of codes for interest groups.

2.8. Who should write the Code?

The vast majority suggested that the European Commission draft or facilitate the drafting of it in cooperation with all relevant stakeholders. Several contributors suggested that already existing codes, for instance the European Parliament's Annex IX to its Rules of Procedure, should be taken into account.

2.9. Watchdog and Sanctioning

The NGOs were predominately for establishing a watchdog with sanctioning powers, to oversee the behaviour of interest representatives. Most of them argued that this should be undertaken by an external body. Concerning the management of such as system, it was highlighted that if accused, one should have the right to appeal, complaints and outcomes of investigations should be publicised, and the incentives for signing and breaking the code should be made clear.

In the private sector, there was general support for the idea of monitoring and sanctioning, but on the matter of who should oversee it, there was less unanimity. Some preferred a self-regulatory mechanism. Others wanted an EU institution to undertake the role of watchdog, several suggesting the EU Ombudsman. Others again suggested a body consisting of both EU officials and industry representatives. Few were opposed to the idea in general, however some argued that imposing sanctions on a voluntary system was unacceptable or would result in further 'inflation' of EU-administration.

3. CONSULTATION STANDARDS

Out of the contributions received to the Green Paper on the European Transparency 108 contained comments on the Commission's General Principles and Minimum Standards for Consultation (MSC) (*i.e*. Chapter 2 of the Green Paper).

3.1. General remarks

The question asked in the ETI Green Paper was*: "In your view, has the Commission applied the general principles and minimum standards for consultation in a satisfactory manner? You may refer to the individual standards. Please give reasons for your reply and, where appropriate, provide examples".*

Respondents generally welcomed the Commission's minimum standards and efforts the Commission has made to improve its consultation processes.

The responses provided useful feedback on how to further reinforce the application of the minimum standards for consultation by the Commission services and helped to identify areas for improvement. However, on the basis of the contributions received to the Green Paper it is not possible to make a general judgement if, in the opinion of external stakeholders who responded, the Commission's minimum standards for consultation have been applied "in a satisfactory manner" or not. In most of the contributions, a general assessment was not given. Some explained that a general assessment was not possible due to the multitude of Commission's consultations in different policy areas, and that their response was based on limited experience of contributing to specific consultations. Only 30 % of respondents (33 contributors) provided a general assessment. Of those, 4 out of 5 (26 contributors) gave a general positive assessment, indicating for example that MSC have generally been applied or that they have had a positive effect on the Commission's consultation practices. This general statement was normally combined by suggestions for further improvement.

In 7 contributions there was a negative general assessment, indicating for example that the MSC had not been applied consistently by the Commission.

The most common concerns were: (1) Need for general reasoned feedback *i.e*. how received comments were or were not taken into account by the Commission. (2) The minimum consultation period of eight weeks for open public consultations also provoked many comments; respondents gave examples of cases where the 8 weeks had not been respected, complained that the holiday periods were included in calculations of this minimum period or that the 8-week period is not sufficient for representative organisations to consult their members. (3) Unbalanced representation of relevant sectors in targeted consultations (for example in some high-level groups) was also a complaint made in several responses.

In the following chapter the comments and suggestions are broken-down by 'standards' and 'principles'.

3.2. Main comments and suggestions for further improvement

3.2.1. Scope of the general principles and minimum standards for consultation

Some felt that the **scope of application of the minimum standards** was not clear or that it should be widened. In particular it was felt that there is inconsistency with the scope of the

Commission's Impact Assessment guidelines. Some felt that the MSC should apply to more informal consultations too.

3.2.2. Minimum standards for consultation

3.2.2.1. Clear content of consultation

Regarding this standard it was said that, whereas scope and objectives of the consultation are usually well explained, clarity was sometimes lacking as to follow-up actions, feedback to expect and next stages of the policy process.

3.2.2.2. Consultation of target groups

It was felt that the representation of relevant sectors in targeted consultations was not always balanced.

Some NGOs indicated that in targeted consultations (*i.e.* consultative groups) there have been cases where corporate interests are represented while other stakeholders are in a minority or not represented at all. They said that the Commission has a tendency to favour established interlocutors in the consultation process, particularly within DGs and units with responsibilities for specific sectors.

It was recommended that DGs should consult beyond usual stakeholder circles to ensure a more balanced representation of different interests.

3.2.2.3. Publication

The Commission's single access point for consultation "**Your Voice in Europe**" web portal was generally praised as a good information tool.

However, there were complaints that the Commission has not managed to **publish all the submissions** to open public consultations although it is a requirement of the minimum standards.

It was also stressed that the MSC review should take fully into account accessibility for **disabled people**. Since much of the information on EU activities which citizens need is published on EU websites, these would need to be urgently made fully accessible to disabled people according to recognised web accessibility guidelines.

Some claimed for better and more consistent awareness-raising on new consultations in order to ensure that all interested parties are informed in a timely manner and are able to contribute. It was also suggested that the Commission should publish a schedule of planned consultations.

3.2.2.4. Time limits

Regarding the minimum **eight-week deadline** for open public consultations, it was felt that this should be the absolute minimum consultation period and the Commission should provide longer periods whenever possible. It is necessary to always take into account the main holiday periods (summer and Christmas break) when calculating the consultation period.

Some organisations asked for prolongation of the minimum consultation period to 12 weeks.

3.2.2.5. Acknowledgement and feedback

Lack of **reasoned general feedback** was a complaint raised in several contributions. Information on how contributions received were or were not taken into account in the final policy proposal was however deemed to be essential by many of the respondents. It was complained that "*the consultation responses of stakeholders disappear into a black hole and there is no way of telling what weight the Commission gave to the results of consultation (either any or part of it) what other interests and influences it took into account and therefore how it reached its final conclusions".*

Several representative associations also asked the Commission to clarify **how contributions are weighed** regarding their quality, pertinence and representativeness.

3.2.3. General principles for consultation

3.2.3.1. Effectiveness

There were some comments on **timing of consultations**. It was said that some consultations have been very late in the legislative process limiting the value of the consultation. The Minimum Standards should include another standard including a requirement as to consultations take place as early in the process as possible.

3.2.3.2. Coherence

There were suggestions how **to further improve the coherence** of the Commission's consultations and to increase consistent application of the minimum standards for consultation.

It was suggested to improve awareness of the MSC among the Commission officials; provide further support to officials carrying out consultations; strengthen the role of the Secretariat-General ensuring a better coordination and/or publish developed guidelines on consultation. It was also suggested to provide more transparency regarding the annual Better Lawmaking reports via more thorough analysis on how the MSC are met and to publish the Commission's departments' analysis of compliance with MSC.

3.2.4. Other comments, not covered by the MSC

There were some comments about the Commission's on-line questionnaires – their questions were said to be sometimes biased, and there were complaints that they were simple tick-box exercises, not allowing provide written comments and therefore limiting the value of such consultations.

There were complaints that the Commission's consultation documents do not always exist in sufficient number of languages. At least the three working languages (English, French and German) should be the minimum. Sometimes other language versions (than English or the three working languages) were only available when the consultation period had been open for a while.

4. PUBLICATION OF BENEFICIARIES OF EU FUNDS

The question raised in the Green Paper was the following:

– *Do you agree that it is desirable to introduce, at Community level, an obligation for Member States to make available information on beneficiaries of EU funds under shared management?*

– *If so, what information should be required at national level? What would be the best means to make this information available (degree of information required, period covered and preferred medium)?*

4.1. Main Results

89 contributions were submitted via the ETI website in response to the above question on disclosure of beneficiaries[5].

Roughly half of the contributions received came from bodies claiming to represent interests across the EU, from the public, NGO and private sectors. Other significant nationalities represented were Germany with 12 contributions, the UK with 9, Austria with 8. Other nationalities submitted between 1 and 3 contributions, and none were received from 11 countries (Cyprus, Finland, Sweden, Luxembourg, Ireland, Portugal, Spain, Slovakia, Czech Republic, Latvia and Malta).

67 answers were clearly favourable to the introduction of an obligation for Member States to publish, as stated in the question. Credibility, public understanding and support, basic democratic requirement, right of citizens to know how their taxes are used, better public assessment of policies, barrier against misuse of funds were the justification put forward.

22 were either against or not explicitly on favour. Their main concerns were linked to the necessary respect of data privacy, both for individuals and for businesses needing to protect their commercially sensitive data, with references to national data protection rules and/or to the European Human Rights Charter; to the risk of inequality among beneficiaries of public funding since such transparency at European level was not replicated at national level; to the risks of misunderstandings and jealousy if this information was released without pedagogical information on the underlying policies; and to the administrative burden on the beneficiaries themselves and the authorities involved in the collection and treatment of the data. Questions of subsidiarity were also raised.

The answers concerning the type of data to be made available varied considerably, from simple lists of the names and addresses of the beneficiaries, to detailed project information and programme/measure under which it is funded, including evaluation of results. Many insisted on the need for coordination at European level to ensure a level playing field in this respect, whilst others stressed that in shared management the responsibility of organising access to this information had to be left to the Member States, in view of national data access

[5] Six from national governments and public bodies; 7 from regional and local interest representations; 25 from private sector EU level bodies; 15 from private sector national bodies; 2 from private sector local and regional bodies; 2 from individual companies; 15 from EU level NGO bodies; 7 from national level NGO bodies; 1 from local and regional level NGO bodies; 5 from citizens; 1 from a Member of Parliament; 3 from other types of contributors.

and protection rules. Others stressed the need for the information to remain available for long periods of time (five years, two legislatures, etc.). 29 answered explicitly that the information should be available on internet, the most quoted solution being national websites accessible through a portal at European level. Other contributions refer to reports to be made publicly available.

One contribution stands out in terms of addressing the arguments presented by opponents of publication of data on beneficiaries: that of the German Federal Officer for Data Protection and Information Freedom. In particular, the latter refutes the argument that commercial secrets of big companies would be harmed by such a measure, provided it is applied uniformly across Europe. As for individuals and small companies, he stresses that they should be informed beforehand that by accepting the grants they are accepting the related publicity.

4.2. Conclusion

The majority of contributions explicitly supports the proposal of introducing an obligation on Member States to make available information on beneficiaries of EU funds in the field of shared management. The practical arrangements are subject to debate, in particular in terms of the level of detail of the information to be published, the timing and periodicity and the manner in which it is to be made available. On the latter point, some form of publication on the internet and the provision of "reports" at various levels, are the main options referred to.