

Opinion of the European Economic and Social Committee on The Green Paper — European Transparency Initiative

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On 12 May 2006, the European Commission decided to consult the European Economic and Social Committee, under Article 262 of the Treaty establishing the European Community, on the *Green Paper — European Transparency Initiative*

Under Rule 19(1) of its Rules of Procedure, the Committee decided to establish a subcommittee to prepare its work on the matter.

In view of the renewal of the Committee's term of office, the Plenary Assembly decided to vote on this opinion at its October plenary session and appointed Ms Sánchez Miguel as rapporteur-general under Rule 20 of the Rules of Procedure.

At its 430th plenary session, held on 25 and 26 October 2006 (meeting of 26 October), the European Economic and Social Committee adopted the following opinion by 132 votes to 7, with 12 abstentions.

1. Background

1.1 The European Commission is aware of the need to establish a framework for improving transparency between the EU institutions and lobby groups, whilst providing the public with better information on the beneficiaries of the funds that the EU distributes under its various policies.

1.2 Against this backdrop, the Commission put in place the European Transparency Initiative, although it must be said that this concern had already been voiced in the White Paper on European Governance and subsequently built on in:

- Regulation 1049/2001 of 30 May 2001 regarding public access to European Parliament, Council and Commission documents;
- a special register for documents relating to the work of the Committees;
- Commission databases providing information about consultative bodies and advisory groups;
- the Commission's 'Code of Good Administrative Behaviour', which sets the standards for its relations with the public.

1.3 The Green Paper thus puts forward three aspects to take into account in a public debate on transparency in the activities of the EU institutions, specifically:

- the need for a more structured framework for the activities of lobbyists;
- feedback on the Commission's minimum standards for consultation;
- mandatory disclosure of information about the beneficiaries of EU funds under shared management.

2. Summary of the aims of the Green Paper

2.1 Transparency and lobbying

2.1.1 The Commission is of the view that, in order to better assess the results of the standards that have been set, and to

ensure greater transparency in its relations with lobby groups or with any other member of the public who turns to the European institutions, there must be a clear definition of what is meant by 'lobbyists' and 'lobbying'.

2.1.2 The basic framework for relations between the institutions and lobbyists must, the Commission believes, contain a number of essential components which, working from the basic assumption that lobbying is a legitimate activity, promote transparency in relations. Therefore, no questionable influence or economic pressure on decision-making or financial, material or personal inducements should be permitted under any circumstances. It is essential to prevent the distribution of deliberately ambiguous or false information from doubtful sources. At all events, it is the 'general interest of the Community' that must be safeguarded, and not the specific interests of the lobbyists.

2.1.3 First and foremost, any lobbying practice which could give rise to fraud or corruption, or which could be misleading, either in the information it provides or in the legitimacy of the lobbyists, must be considered to be unlawful. An important issue is the representativeness of these groups.

2.1.4 Measures currently in place, especially those concerned with external scrutiny, can improve transparency in relations between the institutions and lobby groups. To this end, a number of 'general principles and minimum standards for consultation' were established, improving communication by means of the CONECCS database on European civil society organisations, which contains the data necessary to prove that they are indeed representative.

2.1.5 At all events, there appears to be a need to step up external scrutiny, even though some of the measures proposed by the Commission to achieve this are already in force in many Member States. The first measure suggested concerns the information provided by lobby groups, which would be improved by means of a dedicated questionnaire on the Commission website.

2.1.6 The most important tool is the voluntary Internet-based register, which would help to provide the information required for assessing organisations' stated aims and sources of funding. It should be noted at this point that many of the European Commission's Directorates-General already have a system for recognising accredited organisations, which helps to facilitate relations with them.

2.1.7 Another issue worth highlighting is that of the codes of conduct, which would apply equally to all lobby groups and their representatives, regardless of their category. The idea is that these codes, which would be adopted on a voluntary basis and drawn up independently by the groups themselves, would share a number of minimum requirements.

2.2 *Feedback on the minimum standards for consultation*

2.2.1 It should be pointed out that under its annual work programmes, the Commission has laid down a number of minimum standards for consultation, in order to improve the quality of legislative proposals; hence the importance of the final results for the impact assessment. Nevertheless, there is a set of decisions that remain outside the scope of this consultation, such as the comitology procedure and social dialogue, as set out in Articles 137 to 139 of the EC Treaty, referred to below.

2.2.2 Since this procedure was put in place, the Commission has found it satisfactory, not only in terms of the number of proposals consulted on, but also in terms of the results, especially through its Internet portal.

2.3 *Disclosure of beneficiaries of Community funds*

2.3.1 To date, most Member States have developed information channels for publishing lists of beneficiaries of Community funds that they co-finance. The most noteworthy example is the publication of beneficiaries of the CAP. Nevertheless, it is a fact that the data obtained varies from one country to another, as does the information concerning the use of funds in policies directly funded by the EU.

2.3.2 The proposal is for the Commission to make this information available centrally. The issue is the complexity of categorising the different beneficiaries and the administrative costs that this might entail. One solution might be, whilst complying with data protection standards, to establish minimum information requirements.

3. **The most important issues contained in the Green Paper**

3.1 In relation to the first of the issues raised — transparency and lobbying, the following questions arise:

3.1.1 Measures to improve transparency in the activities of lobbyists.

3.1.2 Are lobbyists to be consulted automatically if they feature on a register?

3.1.3 Would there be unrestricted public access to the register? Who would oversee this register?

3.1.4 Should the codes of conduct currently in force be amended?

3.1.5 Should compliance with the codes of conduct be monitored and should it even be possible to impose sanctions?

3.2 As regards feedback received during the consultation process, there is only one issue:

3.2.1 Is the Commission's application of the general principles and minimum standards for consultation satisfactory?

3.3 Disclosure of beneficiaries of EU funds raises the following questions:

3.3.1 Should all Member States be obliged to provide information on the beneficiaries of EU funds?

3.3.2 If the answer is yes, should this be done at national level and have a set content?

4. **General comments**

4.1 The EESC welcomes the European Commission's Green Paper on Transparency. The existence of many interests that seek to influence Community policy requires the Commission to establish standards regulating the way in which this influence can be exerted and also the requirements that must be met by the individuals and organisations representing these interests.

4.2 However, the term 'lobbyists' and the nature of their relationship with the Commission must be defined in advance and this definition should leave no room for misunderstanding.

4.2.1 The Green Paper's⁽¹⁾ definition of 'lobbyists' is confusing to say the least, because it lists socio-professional organisations, NGOs, trade associations, etc., that carry out activities 'with the objective of influencing the policy formulation and decision-making processes of the European institutions'. The EESC has already developed the concept of 'civil society organisations'⁽²⁾ in order to differentiate these from lobby groups. Furthermore, Articles 137 to 139 TEC lay down the conditions under which 'management and labour' can enter into social dialogue⁽³⁾. Organisations which carry out lobbying activities in the EU differ in their aims, their structures and in

⁽¹⁾ Green Paper II, 1, p. 5.

⁽²⁾ See, in particular, the Committee Opinions on 'The role and contribution of civil society organisations in the building of Europe' of 23 September 1999 (OJ C 329, 17.11.1999), 'Organised civil society and European governance: the Committee's contribution to the drafting of the White Paper' of 26 April 2001 (OJ C 193 of 10.7.2001), 'European Governance — a White Paper' of 21 March 2002 (OJ C 125 of 27.5.2002), and 'The representativeness of European civil society organisations in civil dialogue' of 14 February 2006 (OJ C 88 of 11.4.2006).

⁽³⁾ It should be taken into account that Article I-48 of the European Constitution sets out the role of social partners and autonomous social dialogue, differentiating it from consultation of the so-called interested parties named in preceding articles.

the interest groups they support. Industrial, employers' and employees' associations, which represent the interests of thousands, if not millions, of European companies or employees should, therefore, not be counted amongst organisations and interest groups that carry out lobbying activities in pursuit of narrow commercial or other interests, given that they represent a broad range of common, public interests in society and enhance industrial and economic development, as well as economic and social progress. These organisations are not profit oriented. The public are well aware of their activities, which are aimed at the common good; the press reports on these in detail; and they themselves have an interest in ensuring that as much information as possible is provided on their activities. These organisations are, in fact, social partners who take part in social dialogue at European level, together with state institutions.

4.2.2 It would therefore be advisable to state precisely who is meant by the term 'lobbyists', and especially to acknowledge that their existence is part and parcel of participatory democracy in the EU.

4.2.3 In order to ensure the principle of participatory democracy, Article I-46.3 of the draft Constitutional Treaty states that 'Every citizen shall have the right to participate in the democratic life of the Union. Decisions shall be taken as openly and as closely as possible to the citizen.' In addition, Article I-47.3 recognises that 'The Commission shall carry out broad consultations with parties concerned in order to ensure that the Union's actions are coherent and transparent.'

4.2.4 With regard to the activities of 'lobbyists', a distinction should be made between access to information and consultation. EU citizens have a right to information; this is an integral part of the transparency that all EU institutions must demonstrate. Consultation is limited to those that have a legitimate interest in Community policies.

4.2.5 The Commission adopted 'minimum standards for consultation' ⁽⁴⁾ an attempt to establish a general transparent, coherent and yet flexible framework that would allow for consultation on policies in specific areas, especially in those requiring an impact assessment. The Green Paper takes a new approach to, and improves some of, the conditions for the participation and consultation of interested parties. This is reflected in the transparent results of these processes.

5. Specific comments on the questions raised in the Green Paper

5.1 **Register.** The registration requirement should be considered a precondition for the acquisition of a right, such as the right to compulsory consultation of the interested parties on the subjects that concern them. In this respect, the EESC considers

that a compulsory register is a minimum requirement for the transparency with which consultation on Community policies should take place and above all to ensure that this is not done to benefit in ways that run counter to the general interest.

5.1.1 The public nature of any register is beyond question. Furthermore, this register should be overseen by the Commission, its public nature excluding any other form of management. Finally, regardless of the compulsory registration system selected, the extent of the information to be provided by the interested parties must be proportionate to the objective pursued, namely enabling European citizens to be informed about the interest groups which wish to influence the policies and decisions of the Union.

5.1.2 With this in mind, it should be made clear what contribution lobbying groups make to EU bodies and institutions, who they represent, what objectives that pursue and how they are financed. As a minimum requirement, this information should include, in addition to the organisation's name and headquarters, its business name, in line with the aims pursued by the organisation in question, the names of the persons authorised to represent it and to speak on its behalf, and any relevant information which might shed light on its statutes and revised financial accounts.

5.2 **Code of conduct.** The existence of a code of conduct should be linked to compliance with various minimum conditions for the acquisition of a certain professional or political status. This condition must be seen as an instrument related to the compulsory nature of the register. Compliance with it by those requesting inclusions will guarantee the right to consultation by the Commission and the other Community bodies.

5.2.1 The EESC is of the view that the Commission should adopt a binding code of conduct, thereby ensuring de facto and de jure equal treatment between all parties concerned, linked with a compulsory registration system, similar to the one established by the European Parliament ⁽⁵⁾, adapting its content to the type of consultation sought and in particular with regard to the consequences of failure to comply.

⁽⁵⁾ European Parliament Rules of Procedure, Annex IX. Article 3 : Code of conduct

1. In the context of their relations with Parliament, the persons whose names appear in the register provided for in Rule 9(4) shall:
 - (a) comply with the provisions of Rule 9 and this Annex;
 - (b) state the interest or interests they represent in contacts with Members of Parliament, their staff or officials of Parliament;
 - (c) refrain from any action designed to obtain information dishonestly;
 - (d) not claim any formal relationship with Parliament in any dealings with third parties;
 - (e) not circulate for a profit to third parties copies of documents obtained from Parliament;
 - (f) comply strictly with the provisions of Annex I, Article 2, second paragraph;
 - (g) satisfy themselves that any assistance provided in accordance with the provisions of Annex I, Article 2 is declared in the appropriate register;
 - (h) comply, when recruiting former officials of the institutions, with the provisions of the Staff Regulations;
 - (i) observe any rules laid down by Parliament on the rights and responsibilities of former Members;
 - (j) in order to avoid possible conflicts of interest, obtain the prior consent of the Member or Members concerned as regards any contractual relationship with or employment of a Member's assistant, and subsequently satisfy themselves that this is declared in the register provided for in Rule 9(4).
2. Any breach of this Code of Conduct may lead to the withdrawal of the pass issued to the persons concerned and, if appropriate, their firms.'

⁽⁴⁾ COM(2002) 704 final — 11 December 2002.

5.3 Feedback on the minimum standards for consultation: every DG is obliged to undertake an impact assessment of the consultation, accompanied by a list of those who have been consulted, but only for the Commission's strategic proposals. The EESC considers that this evaluation or feedback should be provided for all proposals on which public consultation takes place. To improve consultations, the Commission should address certain important issues, such as:

- the languages in which the consultations are carried out
- the neutrality of questions asked
- the weighting of individual positions and comments of organisations taking part in the consultations according to their representativeness.

5.3.1 We believe that the information on general consultation is insufficient, that each organisation consulted should receive the relevant specific information, and that longer deadlines should be established to allow for debate within the organisations themselves. Broad consultation via the Internet could result in the same weight being given to the opinions of individuals or non-representative organisations as to those of organisations whose viewpoint reflects a position shared by member organisations in a number of countries.

5.4 Disclosure of beneficiaries of Community funds The EESC proposes that, just as the beneficiaries of funds managed by the Commission are disclosed, the beneficiaries of funds managed by all the European institutions should also be disclosed, as should the beneficiaries of funds jointly managed by the Member States, as the latter are responsible for allocating these funds.

5.4.1 Some Member States are exemplary in the way they comply with current publishing obligation, in the area of EU agricultural assistance for example; others less so. The EESC calls for it to be made compulsory for all Member States to disclose all information relating to beneficiaries in the framework of the EU funds under shared management and also to publish this information on the internet.

5.5 The EESC would like the Commission to consider whether it would be advisable for any monitoring of the outcome of the consultation procedure also to apply to the members of the Commission performing these tasks, as set out in Article 213(2) TEC; it also calls for strict compliance with Articles 11 and 16 of the Staff Regulations. All parties involved in a consultation and decision-making procedure must be considered, so as to ensure transparency and that the institutions act correctly.

Brussels, 26 October 2006

The President
of the European Economic and Social Committee
Dimitris DIMITRIADIS
