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COMMUNICATION FROM THE COMMISSION

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

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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. In addition, the Commission Representations organised consultation meetings in a number of Member States. In June 2006, the European Economic and Social Committee (EESC) held a hearing with more than 60 European interest groups and other interested parties, which provided another useful opportunity for an exchange of views on the Commission's proposals[4].

In 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 a number of individual citizens. Not only European but also national and regional organisations took part in the consultation process. In accordance with the Commission's consultation standards, all contributions have been displayed on the ETI consultation website[5].

In terms of reaction from the EU advisory bodies, the European Economic and Social Committee[6] and the Committee of the Regions[7] each produced an opinion on the Commission's Green Paper.

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1 COM(2006) 194.
2 COM(2005) 1300.
3 COM(2002) 704.
4 http://eesc.europa.eu/sco/events/11_07_06_transparency/minutes-en.pdf
5 http://ec.europa.eu/transparency/eti/index_en.htm
6 CESE 1373/ 2006.
7 CoR 235/2006.

The Commission's Green Paper generated wide public interest. Every month, several thousand visits to the ETI consultation website were registered. On the basis of this Communication, the Commission now wishes to provide feedback in response to the arguments put forward in the consultation process and to decide on the follow-up measures to the Green Paper.

2. FEEDBACK AND FOLLOW-UP

2.1. Interest Representation (Lobbying)

2.1.1. Overall approach, terminology and scope

The opportunity to discuss the issue of interest representation at European level was generally welcomed, although several participants in the consultation process were critical of the Commission's use of the term 'lobbying' to describe this phenomenon. Therefore, it should be stressed once again that the Commission's definition of 'lobbying' did not include any negative value judgment. Lobbying was referred to as *"activities carried out with the objective of influencing the policy formulation and decision-making processes of the European institutions"*. The Commission explicitly underlined the legitimate and useful role of lobbying activities in a democratic system. The Commission's new register (see below) will nevertheless be entitled 'Register of Interest Representatives'.

Public affairs consultancies, corporate lobby units ("in-house representatives"), NGOs, think-tanks, trade associations and law firms will be encouraged to join the register and offered the opportunity to indicate to which category they belong.

2.1.2. Proposals in the Green Paper

In its ETI Green Paper, the Commission suggested a new framework for lobbying activities which would be based on:

– A voluntary registration system with incentives for lobbyists to register. The incentives would include automatic alerts of consultations on issues of known interest to the stakeholders.

– A common code of conduct for all lobbyists, or at least common minimum requirements.

– A system of monitoring, and sanctions to be applied in the event of incorrect registration and/or breach of the code of conduct.

2.1.3. Register of interest representatives

Many contributions supported the establishment of a voluntary register. However, a considerable number of those consulted, in particular NGOs, advocated a compulsory approach as the only way of ensuring full transparency.

For the Commission, full transparency means first and foremost covering the landscape of European interest representatives as comprehensively as possible. To reach this objective, the Commission proposed a voluntary and incentive-based

approach. Lobbyists that register certain information about themselves would be given an opportunity to indicate their specific interests and, in return, would be alerted to consultations in those specific areas.

It has been argued that as an incentive to register voluntarily this is still relatively weak. In the context of the consultation process it appears that the automatic alert function will probably not provide a sufficient incentive to register, particularly for Brussels-based interest groups that follow the Commission's activities on a daily basis.

An additional incentive should therefore be added to the system which at the same time would strengthen both the application and enforcement of existing Commission policy on consultation (see also Chapter 2.2.). The Commission's *consultation standards* require that interested parties who wish to submit comments in the context of internet consultations must be prepared to provide the Commission and the public at large with information about their objectives and structure. It is the Commission's stated policy that *"if this information is not provided, submissions will be considered as individual contributions"*[8].

The Commission therefore intends to combine the voluntary register with a new standard template for internet consultations. If organisations submit their contributions in the context of such a consultation they will be systematically invited to use the register to declare whom they represent, what their mission is and how they are funded.

This is justified because having sufficient information about the organisations participating in a consultation is clearly a precondition for any meaningful assessment of the relevance and usefulness of the contributions they submit.

The new system will not only increase overall transparency but also contribute to the achievement of the Commission's 'better regulation' aims. Open and inclusive stakeholder consultations are essential tools for carrying out impact assessments and strengthening the knowledge-based approach to policy making.

With regard to financial disclosure required to join the register, the Commission considers it necessary and proportionate to request registrants to declare relevant budget figures and breakdown on major clients and/or funding sources. The main objective of revealing how interest representatives are funded is to ensure that decision-makers and the general public can identify and assess the strength of the most important driving forces behind a given lobbying activity.

In line with the self-regulatory approach, it will remain the responsibility of registrants to accurately and objectively calculate and disclose how they are funded. On this basis, the Commission will apply the following minimum criteria in assessing whether the information supplied is sufficient to join the register:

[8] COM(2002) 704.

– For professional consultancies and law firms involved in lobbying EU institutions, the turnover linked to lobbying EU institutions, as well as the relative weight of the clients in this turnover, should be declared.

– For "in-house" lobbyists and trade associations active in lobbying, an estimate of the cost associated with the direct lobbying of EU institutions should be provided.

– For NGOs and think-tanks, the overall budget and breakdown per main sources of funding (amounts and sources of public funding, donations, membership fees etc.) should be declared.

Regulation (EC) No 1367/2006 on the application of the Aarhus Convention to the Community Institutions stipulates that NGOs (fulfilling a number of specific requirements) will be entitled to request an internal review of certain administrative acts under environmental law. Therefore, as a possible further incentive to register, the Commission will examine to what extent the future register could serve as a tool for identifying NGOs entitled to launch such a procedure (e.g. in the form of advanced recognition).

2.1.4. Code of conduct

The Green Paper stated that applicants for the register *"have to subscribe to a **code of conduct**, which would be enforced credibly and transparently".*

The issues of how such a code should be drawn up and exactly how it would be monitored in practice were not addressed in detail. There was some discussion as to whether a voluntary common code, developed and monitored by the lobbyists themselves (and including the imposition of penalties), might be a preferable option. However, the responses to the Green Paper suggest that it would be rather difficult to bring the various parts of the lobbying community together in such an exercise, especially as far as cooperation between the private sector and NGOs is concerned.

It is clear that the Commission will always remain accountable for the soundness of its relations with representatives of outside interests. Therefore, it would be difficult to envisage the Commission outsourcing the responsibility for the definition and monitoring of a code to external bodies. Self-regulation of lobbyists is not seen as a viable option. Instead, the Commission should review and update the existing minimum requirements it adopted in 1992. The content of such a revamped code will be discussed with the stakeholders. Subscribing to the code should become a requirement for lobbyists wishing to be included in the new register, in line with the example set by the European Parliament.

It goes without saying that all factual information provided by interested parties with a view to being registered must always be accurate. Registrants found to submit inaccurate information will be invited, possibly in a public manner, to correct it. As a measure of last resort, the Commission can exclude registered lobbyists providing inaccurate information from the register. A similar procedure would apply to alleged breaches of the Code of Conduct.

2.1.5. Possible inter-institutional cooperation

Many of those taking part in the consultation on the ETI Green Paper argued in favour of an inter-institutional approach to lobbying. They called for a future register and Code of Conduct to be common to the Commission and, at least, the European Parliament.

The Commission fully shares this view and believes "one-stop-shop" registration would provide an increased incentive for stakeholders to register. The Commission therefore invites the European Parliament, the Committee of the Regions and the European Economic and Social Committee to examine the possibility of closer cooperation in this area.

2.1.6. Timing and review

The Commission considers that the new measures described in this Communication will be a balanced and proportionate framework contributing to greater transparency in lobbying. The Commission will launch the discussions with stakeholders on a common Code of Conduct before summer 2007, and open the Register for Interest Representatives in spring 2008. Following the launch of the Register, Commission services will receive guidance on how to actively promote registration and deal with non-registered interest representatives. In spring 2009, the Commission will conduct a review to examine whether the new system has produced the desired results, including in terms of coverage of the target group for registration. If not, consideration could be given to stricter measures, in the form of compulsory registration and reporting.

2.2. Consultation Standards

Over 100 contributions[9] on the "minimum standards" chapter of the Green Paper were received, mostly from various business interest groups and NGOs.

Those taking part in the consultation generally welcomed the Commission's consultation standards and the efforts that have been made by the Commission to improve its consultation processes. At the same time, the participants pointed to certain weak areas in the application of the consultation standards. In particular, there are weaknesses in providing general feedback explaining how and to what extent the comments have taken into account by the Commission and also in observing the minimum time limit of 8 weeks for open public consultations (for example, where the period included a major holiday period). It was felt that targeted consultations were not always sufficiently balanced between the relevant sectors.

While it is not intended to review the content of the consultation standards at this stage[10], a reinforcement of their application is necessary in order to raise further the general level of quality of the Commission's consultations. Such a reinforced

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9 Contributions are available at: http://ec.europa.eu/comm/eti/contributions.htm

10 Without prejudice to possible measures necessary for the implementation of Regulation (EC) No 1367/2006 of the European Parliament and of the Council on the application of the provision of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community Institutions and Bodies.

application will focus, in particular on providing better feedback, a more coordinated approach to consultation and the need for ensuring plurality of views and interests expressed in consultations. This approach will help improve the quality of the Commission's impact assessments, thereby contributing to the implementation of the Commission's 'better regulation' policy.

The Commission will therefore put more emphasis on measures such as:

- Training and appropriate awareness raising among staff;
- Sharing information and good practices on stakeholder consultation between the Directorates-General;
- Reviewing the practical guidelines for stakeholder consultation;
- Creating a new standard consultation template to improve the consistency of open public consultations.

Once these new measures have been put in place and tested, the Commission intends to submit its consultation policy to an external evaluation.

2.3. Publication of Beneficiaries of EU Funds

2.3.1. The legislative process

The publication of the Green Paper on Transparency led to intense media coverage of the issue of publication of information on beneficiaries of shared management funds. This enabled the Commission to engage in constructive discussions with the Member States, Parliament, interest representatives and civil society organisations, ultimately leading to a consensus on the desirability of publishing the relevant data. The Commission was very encouraged to see several Member States abandoning their explicit opposition in favour of cooperation with the Commission on the issue, thus allowing the rapid adoption of the basic requirement for the introduction of the system, namely the inclusion of the requirement in the Financial Regulation, which was undergoing its first triennial revision since its entry into force in 2003.

A description of the amendments to the various legal acts concerned is provided in the annex.

2.3.2. Practical implementation

The introduction of provisions in the relevant legislation is only the first step in what will necessarily be a complex undertaking, requiring significant cooperation with a wide range of implementing bodies across the EU as well as a step-by-step approach.

Certain comments received in the context of the Green Paper consultation process point to the desirability of a searchable, centralised database, managed by the Commission, containing all relevant information on beneficiaries.

However, the reality is that the data on beneficiaries are collected by the implementing bodies in the Member States to whom management is delegated. In the field of CAP direct aid and market measures, data are sent to the Commission under

the responsibility of these bodies and the Commission has no way of checking the reliability of every single data information received. However, the Commission has just adopted a proposal amending Council Regulation (EC) No 1290/2005 in order to oblige Member States to publish this data including rural development expenditure. In the field of structural funds, Commission Regulation (EC) No 1828/2006, which sets out the rules for the implementation of Council Regulation (EC) No 1083/2006 on Structural Funds and the Cohesion Fund, clearly puts the responsibility for collecting and publishing data of beneficiaries on the Member States and the Commission does not even receive the relevant data sets. Moreover, the Commission is making determined efforts to obtain a positive "Statement of Assurance" from the European Court of Auditors, as required by Article 248 EC. This requires determined efforts by the Commission, in particular with regard to direct management, but Member States will have a crucial role to play in addressing the shortcomings noted by the Court in the area of shared management. The Commission would therefore like to stress the importance of the Member States' responsibilities for the implementation of the measures under shared management.

To achieve the goal of publishing the data as of 2008, the following procedure, in cooperation with the European Data Protection Supervisor, therefore seems the most appropriate:

Step 1: Publishing the data in their current form

In accordance with the provisions of the amended Financial Regulation and the applicable sector specific legislation, those Member States who have not yet done so will grant public access to data, through national websites and other means they see fit, for all shared management programmes.

The Commission will host a central web portal with links to the relevant websites in Member States. This site will, in turn, be linked to the website on EU funds under direct management launched by the Commission in 2006. This will ensure equality of treatment as between direct and shared management programmes.

Step 2: Ensuring the comparability and 'searchability' of data

The Commission fully acknowledges the need for searchable and comparable data and, as a further step, will in autumn 2007 propose a common standard for the publication of data on shared management, so as to enable interested parties to carry out consistent analyses across the EU, accessing the data published by the Member States through the central Commission portal. This common standard will take into account the specific features of the various policies under shared management.

3. CONCLUSIONS

As a follow-up to its Green Paper on the 'European Transparency Initiative', the Commission will:

- Create and launch in spring 2008, a new voluntary register for interest representatives with an "alert" function (the existing CONECCS database will be wound down);

- Increase transparency through reinforced application of the Commission's consultation standards based, in particular, on a standard website for internet consultations, and including scrutiny of the participants. This tool would be linked to the register;

- Draft a Code of Conduct to be discussed with stakeholders in 2007. The Code will be a requirement for entry in the register and will be monitored by the Commission;

- Reinforce the application of the Commission's consultation standards by means of a series of practical, in-house measures (see under 2.2.);

- Pursue and implement its policy on the publication of the beneficiaries of EU funds.

ANNEX

Beneficiaries of EU Funds – Amendment of Legal Acts

1. Amendment of the Financial Regulation

Regulation (EC, Euratom) No 1995/2006, which amends Financial Regulation (EC, Euratom) No 1605/2002, says in its introduction:

"Whereas:
(6) In order to ensure the transparency of the use of funds deriving from the budget, it is necessary to make available information on the beneficiaries of these funds within certain limits necessary to protect legitimate public and private interests and taking into account the particular accounting period for the European Agricultural Guarantee Fund."

A new paragraph 3 in Article 30 requires the publication of information on beneficiaries under all types of programme management modes:

"The Commission shall make available … information on the beneficiaries of funds as provided by the entities to which budget implementation tasks are delegated under other modes of management.

This information shall be made available with due observance of the requirements of confidentiality, in particular the protection of personal data as laid down in Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data and Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2001 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data, and of the requirements of security, taking into account the specificities of each management mode referred to in Article 53 and where applicable in conformity with the relevant sector-specific rules."

A new Article 53b specifies the frequency of publication and the fact that the practical arrangements are to be fixed in the relevant sector specific regulations:

"Article 53b

1. Where the Commission implements the budget by shared management, implementation tasks shall be delegated to Member States. That method shall apply in particular to the actions referred to in Titles I and II of Part Two.

2. Without prejudice to complementary provisions included in relevant sector-specific regulations, and in order to ensure in shared management that the funds are used in accordance with the applicable rules and principles, the Member States shall (…)

(d) ensure, by means of relevant sector-specific regulations and in conformity with Article 30(3), adequate annual ex post publication of beneficiaries of funds deriving from the budget."

Under the terms of a specific transitional provision the beneficiaries of aids from the European Agricultural Guarantee Fund (EAGF) will only be disclosed as of payments charged to the 2008 budget:

"Article 181

4. Article 30(3) shall apply to the fund mentioned in Article 148(1) for the first time in respect of the payments charged to the 2008 budget."

2. Sector legislation

2.1. European Fisheries Fund (EFF)

The EFF Council Regulation (EC) No 1198/2006 was adopted on 27 July 2006. The obligation of the managing authority for organising the publication of a list of beneficiaries, the names of operations and the amount of public funding allocated to the operation is clearly mentioned in the draft implementing regulation (Article 31), which is expected to be adopted by the Commission by the end of March 2007. However, there is already political agreement from the Member States in the EFF Committee.

2.2. Structural Funds – ERDF, European Social Fund and Cohesion Fund

Council Regulation (EC) No 1083/2006 lays down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund. Commission Regulation (EC) No 1828/2006 of 8 December 2006, which sets out the rules for the implementation of the Council Regulation for the three funds, specifies in its Article 7.2.d that the managing authority shall be responsible for organising… "*the publication, electronically or otherwise, of the list of beneficiaries, the names of the operations and the amount of public funding allocated to the operations. Participants in an operation of the ESF shall not be named*".

2.3. Common Agricultural Policy (direct aid and market measures; rural development)

A proposal to amend Council Regulation (EC) No 1290/2005, which sets out rules for the financing of the Common Agricultural Policy, both in terms of direct payments, market measures and of rural development, has just been adopted by the Commission in order to include a provision making publication of the names of beneficiaries compulsory. Once approved by Council, the Regulation will need to be supplemented by the relevant implementing rules.

BUDGETARY IMPACT STATEMENT
(cf. Article16 of the Internal Rules)

POLICY AREA: COMMISSION'S POLICY COORDINATION AND LEGAL ADVICE

ACTIVITY: RELATIONS WITH CIVIL SOCIETY, OPENNESS AND INFORMATION

WORK PROGRAMME FOR: 2007-2008

1. BUDGET HEADINGS CONCERNED AND TITLE

– 25.02.04.02 General publications

– and budget line covering auxiliary and contract staff.

2. LEGAL BASIS

Tasks resulting from the Commission's prerogatives at institutional level.

3. OVERALL FIGURES FOR THE FINANCIAL YEAR (IN EUROS)

◘ 3.a – Current year: 2007

		CA
Initial appropriation for the financial year (budget)		2 200 000
Transfers		---
Additional appropriation		---
Total appropriation		2 200 000
Appropriations already set aside by another work programme		2 200 000 (POP 2007)
Balance available		
Amount for the action proposed		75 000 (already included in POP 2007) +300 000

- **3.b – Carry-overs**

		CA
Carry-overs		---
Appropriations already set aside by another work programme		---
Balance available		---
Amount for the action proposed		---

- **3.c – Next financial year: 2008**

Amount to be included in the preparation of the 2008 PDB

		CA
Initial appropriation for the financial year (budget)		PDB 2008 to be prepared
Transfers		
Additional appropriation		
Total appropriation		
Appropriations already set aside by another work programme		
Balance available		
Amount for the action proposed		**450 000**

4. DESCRIPTION OF THE ACTION

On 3 May 2006, the Commission adopted a Green Paper – COM(2006) 194 - in order to drive forward its "European Transparency Initiative" (ETI). The objective was to launch a broad public consultation in particular on the need for a more structured framework for the activities of interest representatives (lobbyists). Following this consultation, the Commission will create a new voluntary register for lobbyists, with an alert function.

This action generates two types of costs:

- Costs under budget line 25.02.04.02 to cover the production of the register (on the internet) and its maintenance.

- Costs for two A level equivalent contractual agents. This is an additional cost not yet covered by appropriations allocated to the Secretariat General.

– One agent to support the design, coordination and monitoring tasks of the overall project.

– One professional for all the specific IT-related tasks of the project

5. METHOD OF CALCULATION ADOPTED (IN EUROS)

Personnel			
2007	8 months	2 agents	**84 376**
2008	Full year	2 agents	**127 104**
2009		1 for 6 months, 1 for 12 months	**95 328**

Preparation and development of the Register		
2007	Analysis, vision document, feasibility study, etc 1 contract	**75 000**
	Development of management module, dissemination module: First phase	**300 000**
2008	Development Second phase (incl. production of version 1 and preparation of version 2): contract	**450 000**
2009 and after	Maintenance costs	**50 000 per year**

TOTAL		
Year	**Agents**	**Development**
2007	**84 376**	**375 000**
2008	**127 104**	**450 000**
2009	**95 328**	**50 000**

6. PAYMENT SCHEDULE (IN EUROS)

Heading	**Appropriations**		**Payments**	
			2007	**2008**
25.02.04.02	**2007**	375 000	375 000	
	2008	450 000		450 000
	Total	**825 000**	**375 000**	**450 000**

Agents	**2007**	84 376	84 376	
	2008	127 104		127 104
	Total	**211 480**	**84 376**	**127 104**

The needs for human and administrative resources shall be covered within the allocation granted to the managing service in the framework of the annual allocation procedure.

Given the fact that the budget 2007 and APS2008 have already been adopted, the new human resources needs have to be covered by redeployment or seizing on the existing appropriations for external staff.