



## European Foundation Centre (EFC) Preliminary Comments

### on the recommendations of the Matrix Study to assess the extent of abuse of non-profit organisations for financial criminal purpose at EU level<sup>1</sup>

September 29<sup>th</sup> 2008

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## I - Background

In autumn 2007, the European Commission Directorate-General Justice, Freedom and Security commissioned the Matrix Knowledge Group to undertake a study to assess the extent of abuse of non-profit organisations (NPOs) for financial criminal purposes and set out recommendations to address shortcomings. The Matrix study was presented at a meeting on non-profit transparency on April 25<sup>th</sup> 2008 in Brussels. The presentation emphasised the need for more collaboration and better information sharing among relevant stakeholders and suggested undertaking a “victim survey” at EU level to generate more information on NPO financial crime. The possibility of setting up a “virtual NPO college” allowing for exchange of best practice, the need for developing a proactive media strategy, the role of basic registers, the importance of self regulation, including application of simple due diligence models, and NPO to NPO mentoring schemes were stressed.

***Following the April 25<sup>th</sup> meeting, the Commission has proposed to establish a roadmap on future actions in cooperation with the NPO and public sectors. In this connection, the Commission has identified a series of actions, regarding which it is calling for input. The EFC has focused its preliminary comments on these proposed actions.***

## II – EFC Preliminary Comments - Executive Summary

The EFC welcomes the consultation launched by the European Commission on the recommendations of the Matrix Study before formalising a road map for follow-up action. The EFC wishes to submit the following preliminary comments:

- I. Proportionality and anti-discrimination should be the guiding principles for any follow-up action to the Matrix study addressing NPO transparency, accountability and terrorist financing.
- II. There is no scope for specific legislation on the transparency and accountability of national public benefit foundations at EU level.
- III. The EFC does not support the development of EU criteria of due diligence or risk profiling for public benefit foundations.
- IV. Public authorities and the NPO sector should establish a continuing dialogue and develop a mutual understanding of the issue and their respective concerns. At EU level, dialogue could be facilitated by the setting-up of a contact group to clarify future developments in the field.
- V. The resource implications of the Matrix study recommendations should be assessed. In particular, the Commission should clarify whether it intends to use the current EU funding scheme to support actions in the field.
- VI. The EFC believes that the effectiveness and impact of existing “victims’ surveys” -- to try and document the abuse of NPOs for financial criminal purpose-- should be analysed before planning their extension at EU level.

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<sup>1</sup> Extent of abuse of non-profit organisations for financial criminal purpose, *Matrix insight* April 2008. Study commissioned by the European Commission’s Directorate –General Justice, Freedom and Security.

- VII. Any EU Handbook of NPO transparency initiatives should be conceived as an online resource building on existing materials on self-regulation and co-regulation approaches.
- VIII. The EFC has reservations on the usefulness of developing a general EU NPO Code of conduct. The Commission may however wish to develop a code for parties benefiting from EU funds.
- IX. Individual NPOs, NPO and foundation collectives are best placed to determine how to organise training and capacity-building schemes for them and their members. National and EU public bodies could help this process by making funds available.
- X. Cross-sector learning and consultation should start at the national level, according to the needs identified by NPOs and public authorities in the Member States. Here, the EU can step-up support for cross-border peer-learning projects and programmes between public bodies and experts, where appropriate.
- XI. The proposed contact group (point IV) could also serve as a forum to appraise the impact of counter-terrorism measures on the NPO sector EU level.
- XII. EU financial assistance should also help support research on the impact of counter-terrorism measures on NPOs' development and activities.
- XIII. The EFC understands that DG Justice has commissioned a second study which focuses on NPO transparency and (self)regulation initiatives. The EFC will complete its comments and proposals once the outcome of this second study is made available and after having had the opportunity to analyse its findings.

### III - EFC preliminary comments

The EFC welcomes the consultation launched by the European Commission on the recommendations of the Matrix Study before formalising a road map for follow-up action. The EFC is pleased to submit its preliminary comments. The EFC will complete its comments and proposals once the outcome of the second study contracted out by the European Commission on NPO transparency and (self)regulation will be made available.

1. The EFC welcomes the Commission's statement stressing that **proportionality and anti-discrimination should be the guiding principles for any follow-up action** to the Matrix study. In addition, any initiative should be undertaken in the framework of the 5 principles agreed by Member States' representatives at the Justice and Home Affairs Council of December 2005.<sup>2</sup>
2. The EFC believes that, based on the results of the Matrix study, **there is no scope for specific legislation regarding the transparency and accountability of national foundations and other NPOs at EU level**. In this context the EFC welcomes the statement of the Commission not to propose legal measures at this stage in this area.
3. **The EFC does not support any measure to develop EU-level criteria of due diligence or risk profiling for public benefit foundations.**

Public benefit foundations have to comply with law requirements in the pursuit of their public benefit mission and activities. They already report to the competent authorities (ministries, independent oversight bodies, chambers of commerce, etc) as stipulated in their regional and national jurisdictions. In this context, **foundations should not have to abide to any additional regulatory and administrative constraints which would *de facto* discriminate them against other type of societies and companies in the EU.**

Beyond meeting legal requirements in terms of transparency and accountability, public benefit foundations have developed the policies, procedures and tools to ensure that they realise their public benefit mission and related-activities at home and abroad. Such policies and procedures relate to the governance of the organisation, its investments, recruitment, and contracts with third parties, as well as dealings with beneficiaries and grantees. The relevance and efficiency of these policies and measures lie in the fact that they are crafted and tailored to the mission, dimension, and operations of the respective foundations.

The EFC believes that a one-size-fit-all approach will not be effective given that the foundation sector encompasses a variety of organisations with different structures and sizes, specific concerns and activities. At the same time, operations or practices which may be perceived as "risk indicators", -- e.g. working abroad, in a conflict area, regranteeing, using intermediaries and non financial channels, setting up branches, working with new partners, -- may be the only ways for NPOs to operate with their partners in certain regions, reach-out to the grass-roots or increase their cost-effectiveness. No single due diligence approach will be appropriate in every case.

Exchange of experiences, practices and training schemes in the field are best designed by the sector for the sector. Such schemes exist at the national, European and international levels<sup>3</sup> for individual foundations, as well as for their support organisations. **Any specific measures which would affect the whole sector should be discussed within the framework of its support organisations and respond to an actual need identified by their respective members.**

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<sup>2</sup> Member States should take the following principles into account when implementing measures aimed at preventing terrorist abuse of the non-profit sector: " 1. Safeguarding the integrity of the non-profit sector is a shared responsibility of states and non-profit organisations. • 2. Dialogue between Member States, the non-profit sector and other relevant stakeholders is essential to build robust defences against terrorist finance. • 3. Member States should continually develop their knowledge of their non-profit sector • 4. Transparency, accountability and good governance lie at the heart of donor confidence and probity in the non-profit sector. • 5. Risks of terrorist finance are managed best where there are effective, proportionate measures for oversight. 2696<sup>th</sup> Council meeting – Justice and Home Affairs 1-2 December 2005

<sup>3</sup> Such schemes are run by [national association of foundation and donors](#), [the European Foundation Centre](#) and the [Worldwide Initiatives for Grantmaker Support](#) (WINGs)

Since 1994 the EFC has worked to re-assess these needs through an update of the EFC Principles for Good Practice (2007) and a review of its programme on professional development in philanthropy (on-going 2008). These reviews cover issues including compliance, governance and due diligence. **The EFC will be pleased to share and publicise foundation members' practices in the field.**

4. The EFC **welcomes the Commission's proposal to have a continuing dialogue and develop a mutual understanding of the issue.** The EFC will be pleased to contribute to the discussions and reviews. Such a dialogue is essential, as the Commission had planned to assess - three years after its adoption- the 2005 *Recommendation for Member States and Framework for a Code of Conduct for NPOs to Enhance Transparency and Accountability in the Non-profit Sector to Prevent Terrorist Financing and other Types of Criminal Abuse*<sup>4</sup>.

At EU level, dialogue could be facilitated by **the setting-up of a contact group** to clarify future developments in the field and examine issues of common concern, e.g. listing/delisting of alleged "criminal" NPOs, the impact of counter terrorism policy and measures on foundations and other NPOs cross-border work and development, prevention of violent radicalisation and protection of civic rights. The group should also assess the need and opportunity to undertake action on issues stemming out from the Matrix study.

Such a contact group should be open to foundation and other NPO representatives, various EC services (e.g. home affairs, external relations, neighbourhood policy and education), national competent bodies and other key European and international actors (Council of Europe, Financial Action Task Force on money laundering and terrorism<sup>5</sup>).

5. The EFC believes that **the resource implications of the Matrix study recommendations will have to be examined.** In particular, the Commission should clarify whether it intends to use the financial programme "Prevention of and Fight against Crime" and other EU funding schemes (7<sup>th</sup> research framework programme lifelong learning and vocational training schemes etc..) to support actions aimed at enhancing NPO transparency and reinforcing NPO capacities against financial crime, including terrorist financing.

#### EC Proposed Action:

*Victim surveys - The matrix study states a need to generate more information on NPO abuse, in this context the feasibility of an EU level victim survey should be further assessed.*

6. The EFC recommends that **the effectiveness and impact of existing "victims' surveys" should be analysed before planning their extension at EU level.**

The EFC understands that victim surveys were carried out in the US and the UK. Little information is available on these experiences and their actual utility and effectiveness in addressing the stated objectives i.e. to prevent the abuse of non-profit for financial criminal purpose at EU level. It would be useful to have the views of both the NPO and public sectors (including oversight bodies, financial information and intelligence services) on the matter. The EFC is concerned in particular about the detrimental public and media impact that victim surveys may have on the perception and understanding of the work and the role of the sector. We all agree that public trust is essential to the work and effectiveness of foundations and other NPOs.

The EFC believes that if the objective is to actually better document and analyse actual and alleged abuses, the best source of information lies with the police, the judicial bodies and the intelligence units. In this context what would be needed is enhanced collaboration between the competent bodies at this level. Public surveys would appear of little value in this sense, while still damaging the reputation and thus the work of the NPO sector.

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<sup>4</sup> See footnote 2

<sup>5</sup> [www.fatf-gafi.org](http://www.fatf-gafi.org)

EC Proposed Action:

An "EU Handbook of NPO transparency initiatives". The Commission has contracted out a second study assessing existing NPO transparency initiatives. The Commission stated that this work carried out by ECNL<sup>6</sup> could lead to an "EU Handbook of NPO transparency initiatives".

7. The EFC believes that any **EU Handbook of NPO transparency initiatives should be conceived as an online resource building on existing materials on self-regulation and co-regulation approaches** (e.g. codes of conduct). It should also clearly specify which initiatives cater for fundraising organisations (e.g. the International Committee on Fundraising Organizations -ICFO) and related monitoring agencies<sup>7</sup>; Quality marks/accreditation scheme<sup>8</sup>. The EFC itself works to keep track of developments in the foundation community in Europe. An overview of existing foundation collectives' codes and selected resources is available on the EFC website at: <http://www.efc.be/codex/default.htm>
8. The EFC recalls that many framework codes were developed by the non-profit sector at national and EU levels catering for specific NPO communities, including foundations. In this context **the EFC has expressed its reservations about the usefulness of developing a general EU NPO Code of conduct to the Commission in 2005**<sup>9</sup>.

In their advocacy work, NPOs have already been invited by the European Commission to join its new interest representatives register and abide by its code of conduct<sup>10</sup> within the framework of the European Transparency Initiative.

The Commission may however wish to develop a code of conduct for parties benefiting from EU funds, but this is not and should not be specific to NPOs, but would logically address EU funds beneficiaries and service contractors.

EC Proposed Action:

*Twinning Schemes- Twinning schemes among NPOs or NPO monitoring bodies could add value provided that no burdensome costs are created through such structures; however resource implications should be considered.*

9. The EFC is supportive of exchanges of experience and peer learning initiatives to support continuing training of NPO staff – as well as volunteers – covering the different facets of NPOs set-ups, governance and operations. **Individual foundations, foundation and NPO collectives are best placed to determine how to organise training and capacity-building schemes for themselves and their members.** However, national and EU public bodies could help this process by making funds available for peer-learning, training, scholarships, fellowships and academic master level (post graduate) schemes for NPOs. Such funds could help individual NPOs and NPO collectives to assess existing practices and further strengthen the prevention of their misuse for criminal financing. Such initiatives could also be considered at European level. **The EU could support NPO cross-border peer-learning projects, EU and international Philanthropy/NPO masters and fellowships for in-training placements and staff exchanges.**

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<sup>6</sup> European Center for Non-profit Law <http://www.ecnl.org/>

<sup>7</sup> International Committee on Fundraising Organizations [www.icfo.de](http://www.icfo.de)

<sup>8</sup> Community foundation Network in the UK

<sup>9</sup> [http://www.efc.be/ftp/public/eu/jai/2005\\_EFCCommentsJAI\\_Code.pdf](http://www.efc.be/ftp/public/eu/jai/2005_EFCCommentsJAI_Code.pdf) (pdf 220kb)

<sup>10</sup> <http://ec.europa.eu/transparency/regrin/>

EC Proposed Action:

*NPO Observatory - There is a need to set up a forum for discussion among non-profit and public sector experts: in this context the possibility of an NPO Observatory or a (virtual) NPO college was mentioned with tasks for sharing best practices and organisation of trainings and involving both public and non-profit sector experts.*

10. The EFC is supportive of cross-sector and cross-country learning on a bilateral and multi-lateral basis. **Given the competence of EU Member States as regards laws and regulations governing foundation and other NPOs, we believe that cross-sector learning and consultation should start at the national level, according to the needs identified in the respective Member States.** Indeed these may well vary according to the regional and national regulations, the mandate of existing oversight bodies and the scope of oversight mechanisms as well as the size and field of activities of foundations. However, **the EU could step-up support for cross-border peer-learning projects and programmes between public bodies and experts, where appropriate.**
11. **The proposal for a European Observatory requires some clarification.** The EFC sees the role of a European Observatory as an independent body that will monitor the impact of EU legislation and policies on a specific sector, not a forum for discussion. This task should be part of regular consultations between the sector and its oversight bodies, both at national and EU level. The EFC believes that **the proposed contact group at EU-level (see point 4) could also serve as a forum to appraise the impact and consequences of counter-terrorism measures (CTM) on the NPO sector across the EU, and policies affecting its fields of activity.**
12. **EU financial assistance should also help to support research on the impact of counter-terrorism measures on NPOs' development and activities in Europe and associated countries.**
13. The EFC understands that DG Justice has commissioned a second study which focuses on NPOs transparency and (self)regulation initiatives. **The EFC will complete its comments and proposals once the outcome of this second study on NPOs transparency is made available,** and after having had the opportunity to analyse its findings and recommendations.

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