

DISCUSSION PAPER

3rd conference on "Enhancing Transparency and Accountability of the Non-Profit Sector" on 2 July 2010 in Brussels

Voluntary Guidelines for EU based non-profit organisations

1. INTRODUCTION

The vulnerability of non-profit organisations for terrorist financing purposes has been proven by concrete cases in Member States and in third countries. The phenomenon of such abuse has been further analysed in several reports and studies¹ carried out in the EU and beyond, and was addressed in various political statements².

As announced in the Stockholm Action Plan³, a way forward to address this problem in the EU could be a Communication from the Commission on voluntary guidelines for EU based non-profit organisations. Such a non-binding measure could help to raise awareness on the part of the NPOs as regards the risk of an abuse for terrorist financing purposes, and it could encourage them to review their internal rules.

The Directorate-General for Home Affairs of the European Commission (DG HOME) is in charge of drafting this communication and has a strong interest in producing its final proposal only after having closely consulted the NPO sector and Member States. To this end the present conference has been organised. The oral and written contributions provided by the participants during and after the conference on possible key elements for such guidelines, as specified in section 2 of this paper, will be an important input to the Commission's further work on this topic.

¹ Examples are given in the studies ordered by the European Commission (see FN 7) as well as in FATF Typologies Reports such as "Report on Money Laundering and Terrorist Financing Typologies 2003 – 2004 available at <http://www.fatf-gafi.org/dataoecd/19/11/33624379.pdf>.

² G8 Finance Ministers, "Finance Ministers' Statement" of Deauville, 17 May 2003; G8 Justice and Home Affairs Ministers, "Recommendations for Enhancing the Legal Framework to Prevent Terrorist Attacks", Washington, 1 May 2004;

³ COM (2010) 171 final of 20.4.2010, p. 40.

As the study "*Public and self-regulatory initiatives improving transparency and accountability of non-profit organisations in the European Union*", presented by the Commission in early 2009, has shown, in various EU Member States there are already to some extent guidelines or codes of conduct (public or self-regulatory ones) in place. In addition, in some third countries, such as the US or Australia, Governments have published official guidance for the charity sector to prevent an abuse for terrorist financing purposes. Being inspired by these examples, DG HOME could envisage to address various aspects of relevance for NPOs and their activities in voluntary guidelines for EU based non-profit organisations to reduce the risk of their possible abuse for terrorist financing purposes. The issues to be addressed could comprise, in particular, basic principles for good non-profit organisation practice, good governance, financial accountability and transparency, relations to the donor and relations to the beneficiary.

2. SPECIFIC GUIDELINES FOR CONSIDERATION

2.1. Basic principles for good non-profit organisation practice

- (1) The non-profit organisation will always act in an honest manner and will be truthful in all its dealings. It will answer honestly all reasonable questions about its fundraising costs and it will do so within a reasonable timeframe.
- (2) There should be a clear and consistent statement of the mission and aims of the organisation in all public reports and fundraising materials.
- (3) Non-profit organisations are encouraged to adopt practices in addition to those required by law that provide additional assurances that all assets are used exclusively for charitable or other legitimate purposes
- (4) Activities must be directed towards the attainment of the organisation's stated public benefit goals.
- (5) Non-profit organisations are asked to identify the specific risk which they have to face of being abused for terrorist financing purposes. Relevant elements to measure the risk are amongst others: Involvement in programmes or projects in territories outside the EU, in particular in high risk areas (where terrorist activity is known to occur); Co-operation with NPOs that conduct or contribute to programmes or projects in these areas; The usage of alternative remittance systems or other payment methods which are beyond the traditional financial mechanisms; Difficulties in overseeing own projects, for example because of third parties being involved in them
- (6) NPOs should consider, on a risk-based approach as referred to under (5), making reference to publicly available information, to determine whether any of their own employees are suspected of being involved in activities relating to terrorism, including terrorist financing;

2.2. Good governance

- (1) NPOs should operate in accordance with governing instruments, like statutes or charters. These should ideally define the non-profit organisations"

objective and purpose, its structure and its practices and standards for accountability and for the solicitation and distribution of funds.

- (2) It is important for NPOs to have independent oversight of its charitable operations, whereby the oversight structure best could be defined following the individual organisation of the NPO.

2.3. Accountability and transparency

- (1) NPOs should follow proper book-keeping practice and produce annual financial statements of income and expenditure. A report should be prepared annually containing the description and budget of activities, projects over the previous financial year and include a statement of how these have promoted the NPO's General Objectives. In order to avoid overburdening NPOs with excessive administrative requirements, Simplified accounting and reporting requirements should apply to NPOs under a certain size. Financial statements and reports should be kept available at the office of the NPO accessible at request of public authorities having oversight responsibility.
- (2) Any contribution which may be construed to have the potential to influence the independence of the organisation's decision making shall be disclosed in the Annual Report and in the Statement of Annual Accounts.
- (3) Annual financial statements and reports, minutes of meetings of decision making bodies, records on audit trails should be held for at least 5 years at the registered office of the NPO.
- (4) The non-profit organisation's internal financial control procedures will ensure that all funds are used effectively and will minimise the risk of funds being misused.
- (5) NPOs should keep full and accurate audit trails of funds transferred outside their jurisdiction/ country and of funds transferred to any person delivering service on behalf of the originator NPO. This could include keeping appropriate records of all financial transactions to direct intermediary organisations and persons.
- (6) The non-profit organisation's board (or, in the case of an association, the general meeting of members) shall appoint an external auditor or independent examiner as appropriate to audit/examine the annual accounts.
- (7) The non-profit organisation should clearly state its goals for and purposes of fundraising so that anyone examining the non-profit organisation's disbursement of funds can determine whether the non-profit organisation is adhering to those goals.
- (8) Fundraising practices should be truthful, accurate and not misleading.
- (9) The non-profit organisation should fully, immediately, and publicly disclose if it makes a determination that circumstances justify applying funds for a charitable purpose different from the purpose for which such funds were contributed or solicited.

- (10) NPOs should use formal channels for money flows for all transactions, whenever there is a reasonable possibility to use the formal financial system, keeping in mind the varying capacities of financial sectors in different countries and in different areas of urgent charitable and humanitarian concerns. To the extent practicable, all money received should be deposited in bank accounts and the disbursement of money should be performed by means of these bank accounts.

2.4. Relations to the donor

- (1) Donors have the right to be assured that their donations will be used for the purposes for which they were given and to be informed about how their donation is being used.
- (2) The non-profit organisation's policies and practices will ensure that any donations received will be used only to further the organisation's mission.

2.5. Relations to the beneficiary

- (1) All NPOs should follow the “Know your beneficiaries and associate NPOs” rule, which means that the NPO should make best endeavours to verify the identity, credentials and good faith of their beneficiaries and associate NPOs. This could include for example, in advance of payment, the NPO determining that the potential recipient has the ability both to accomplish the charitable purpose of the grant and protect the resources from diversion to non-charitable purposes. Where practicable, the NPO should reduce the terms of the grant to a written agreement and engage in on-going monitoring.
- (2) The non-profit organisation should be able to determine that the potential beneficiary of the donated money has the ability to both accomplish the charitable purpose of the grant and protect the resources from diversion to non-charitable purposes or exploitation by terrorist organisations and/or their support networks; to monitor the beneficiary and the funded activities and to apply appropriate measures to reduce the risk that its assets would be used for non-charitable purposes or exploitation by terrorist organisations and/or their support networks.
- (3) The non-profit organisation should perform routine, on-site audits of beneficiaries to the extent appropriate to ensure that the beneficiary has taken adequate measures to prevent any diversion of donations to, or abuse or influence by, terrorists.

2.6. Suspicious activity reporting

- (1) NPOs should make a report to the Police or the Financial Intelligence Unit when there is any knowledge or suspicion of terrorist property/activity. Even if there may be a low risk, NPOs may still come across terrorist property/activity. If they know or suspect any property/activity to be linked to terrorism, they should report their knowledge or suspicion to the Police or the Financial Intelligence Unit.