



EFC's preliminary comments on the discussion paper "Voluntary guidelines for EU based non-profit organisations"

Third conference on "Enhancing transparency and accountability of the non-profit sector" 2 July 2010 in Brussels

1 July 2010

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The European Foundation Centre (EFC) was invited to comment on the discussion paper entitled "Voluntary Guidelines for EU based non-profit organisations", which was prepared by the European Commission Directorate-General for Home Affairs (DG HOME) on 25 June 2010. The Commission will table the discussion paper at the third conference on "Enhancing transparency and accountability of the non-profit sector meeting on 2 July 2010.

1. Allowing sufficient time for consultation

- The EFC welcomes the interest of DG HOME in producing its final proposal on voluntary guidelines *only after having closely* consulted the NPO sector and Member States.
- The EFC has to consult its membership and partners on the proposed guidelines, and asks the European Commission to allow for sufficient time for this consultation process according to the EC minimum standards for consultation (8 weeks, taking into account the summer holiday period).
- The EFC will be pleased to submit its final comments after full consultation with its membership. In the meantime, however, the EFC wishes to make some preliminary comments and highlight some issues of concern as follows:

2. Acknowledging the role of the NPO sector

- EFC regrets that the paper does not acknowledge the role of NPOs in general, their contribution to stable and healthy societies, not to mention their vital contribution in areas such as conflict resolution or addressing violent radicalisation. NPOs play a crucial social and economic role in Europe *and beyond* and their contribution to the public benefit is highly valuable to society and should not be called into question. The vast majority of NPOs operate legitimately and undertake vital activities for the improvement of society that governments and industry could not or would not carry out. The NPOs also regularly support efforts in the field by reaching populations who are vulnerable or susceptible to criminals' interests. Furthermore, undue suspicion should not be cast upon NPOs which -- in some cases with government funds -- are active in regions where terrorist organisations are known to be active, nor should additional reporting burdens be required.
- The EFC wishes to ensure that the "voluntary" guidelines do not lead to new layers of rules and red-tape or introduce unrealistic regulatory and/or financial obstacles which would hinder the sector's ability to perform vital work on behalf of its beneficiaries in Europe and beyond, including NPOs that work in conflict situations.

- The EFC considers that given the outcome of previous EU studies on the matter, there is little evidence of the vulnerability of NPOs to falling victim to terrorist financing, yet this is the core focus of the discussion paper. We would suggest that rather than addressing the alleged abuse of NPOs for terrorist financing, the paper could address the responsibility of NPOs to design and implement tailored and effective management policies which can balance the need to pursue the mission of the organisation and the need to prevent potential criminal abuse.
- The EFC believes that transparency, accountability and good governance lie at the heart of donors' confidence and probity in the non-profit sector. The NPO sector has a clear and strong self-interest in preventing the misuse of funds for criminal purposes, and there is a general agreement that NPO board, staff and volunteers are best placed to prevent and expose fraud and corrupt practices. This could be reflected in the paper.
- The EFC also wishes to draw DG HOME's attention to the outcome of the Commission's 2009 feasibility study¹ and to the recent opinion of the European Economic and Social Committee in favour of a European Foundation Statute², which would set a benchmark of accountability, transparency and good governance in channeling domestic and foreign financial funds for public purpose across the EU and beyond.

3. Scope and application

- Clarification is needed on the scope and use of the guidelines. The European Commission is considering a communication on voluntary guidelines, which is a policy document but is not legally binding. Will the Commission apply these guidelines to EU-funds beneficiaries? How does the Commission see EU Member States/foundations supervisory authorities applying these guidelines? How do they relate to existing legal provisions and NPO self-regulation schemes and guidelines? What are the consequences if an organisation cannot implement these guidelines?
- Specific counter-terrorist provisions should be separated from general good practice, since one does not follow from the other.
- Recommendations and guidelines - be they "voluntary" - should not add excessive administrative burden on NPOS which would lead to a decline of their intentional grant-making and programmes .

4. Avoidance of "one-size-fits-all" approach

- The paper should cater for smaller organisations. Some current proposals in the discussion paper should be reviewed in this regard as they set additional requirements beyond existing legal provisions with which small NPOs have to comply in their respective jurisdictions. Moreover, the proposals create excessive burden for NPOS e.g. audit requirements, audit trails of funds, independent oversight of charitable operations, performing "routine" on-site audits of beneficiaries.
- Some of the recommendations clearly would only apply to fundraising organisations,
- Recommendations would also apply differently whereas NPOs have grant making activities and/or run their own programmes.

¹ http://ec.europa.eu/internal_market/company/eufoundation/index_en.htm

² <http://www.efc.be/EuropeanFoundationStatute/Documents/INT-498-CESE%20634-2010EN-o.pdf>

5. Clarification of the recommendations

The paper combines a set of general recommendations and in some instances “prescriptive suggestions” about what constitutes “good practice”. If the purpose of the “voluntary” guidelines - as stated in the document- is to “raise awareness”, the language of the document will have to be reviewed accordingly, for example changing “NPOs are asked” to into “NPOs are encouraged to”. Some of the proposals would also need to be clarified as they may leave room for uncertainty and misinterpretation or are merely inapplicable, for example:

- **Risk identification**
 - NPOs are “asked to” identify whether they are at risk. Elements of risk determination as set out in the paper (e.g. a direct or cooperative projects outside the EU, use of remittance systems, etc) should be considered with caution. Furthermore, if NPOs were to reach such a risk determination because they have some activities in “fragile” states, conflict or post natural-disaster areas, what would be the consequences?
 - NPOs “are also invited” to check if their employees are suspected of being involved in activities relating to terrorism. What does this imply in practice, which lists of proscribed organisations and people should they be checked against? What legal implication, liability does this have for NPOs?
- **Independent oversight**- Section 2.2 (2):
 - The paragraph should be clarified | Is it saying that NPOs should have trustees managing the governance of the NPO or is it referring to external oversight or to an NPO regulator if one does not exist
- **Disclosure**
 - NPOs are encouraged to “answer honestly all reasonable questions about its fundraising costs and it will do so within a reasonable timeframe” but it does not say to whom? Is it to the national regulators?
 - NPOs are encouraged to disclose the contributions which may have the potential to influence the independence of the organisation. This raises the question whether any large grant could be construed as “influencing” grantees policy/independence? The wording should be reviewed. Key elements to stress in this context is the importance of the independence of the NPOS and its board, and the good practice of disclosing financial support
 - NPOs are encourage to “publicly” disclose when there is a change in the use of funds from the charitable purpose for which such funds were provided or solicited. This may run counter to donor-grantee agreements.
- **Due diligence**
 - Due diligence related to individuals and to organisations would need to be addressed separately as they entail different practices and liabilities. For instance verifying organisations is not the same as verifying personal identities and other such activities. The latter can lead to violations of privacy laws.
- **Suspicious activity reporting**
 - With regard to suspicious activity reporting, the paper does not define to which police or which financial intelligence unit NPOs are meant to report.

About the European Foundation Centre

Who we are:

The EFC is an independent association dedicated to creating an enabling environment for foundations, strengthening the infrastructure of the sector, and promoting collaboration, both among foundations and between foundations and other actors, to advance the public good in Europe and beyond. Established in 1989, the EFC today serves a core membership of more than 230 members in some 40 countries. The EFC also hosts the secretariat of The Donors and Foundations' Networks in Europe (DAFNE) set up in 2006 gathering over 5,000 foundations.

What we do:

The Centre fulfils its mission through:

- Representing its members' interests at the level of third parties such as European and international institutions
- Improving the visibility and understanding of the role of foundations, and advocating good practice, openness and transparency
- Playing a consultancy role with respect to legal and fiscal issues and expansion of professional development opportunities for foundations' staff
- Convening foundations to facilitate exchanges of information and expertise and fostering cooperation with national-level associations of foundations, and organisations serving the sector

The Centre is an independent international not-for-profit association under Belgian law. Ultimate authority vests in the EFC Annual General Assembly of Members, with governance entrusted to an elected Governing Council, supported by a Management Committee. Membership of the Centre implies commitment to the EFC brand. Members agree to adhere to the [EFC Principles of Good Practice](#). Details of EFC membership and activities are available at www.efc.be