



SBF



Joint comments on the discussion paper “Voluntary guidelines for EU based non-profit organisations”

10 September 2010

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The European Foundation Centre (EFC), Cordaid and the Samenwerkende Brancheorganisaties Filantropie (SBF) are pleased to submit their comments 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 as follows:

1. There is no need for new voluntary guidelines

The EFC, Cordaid and SBF believe that there is no need for “voluntary” guidelines for non-profit organisations (NPOs) at EU level, on which the European Commission is currently considering a communication. We ask the Commission to reconsider the benefit and scope of such an initiative on the following grounds:

- We are wary of so-called “voluntary” guidelines, which by their nature cannot address the wide diversity of organisations and situations¹. As evidenced in the US, such guidelines would add excessive an administrative burden on NPOs and lead to a decline in international grantmaking and programmes as well as discourage newly set up foundations from becoming active internationally. We are also concerned by the “one-size-fits all” set of proposals presented in the discussion paper released by DG HOME, which would clearly create an excessive burden for small NPOs. The proposals include audit requirements, audit trails of funds, independent oversight of charitable operations, and performing “routine” on-site audits of beneficiaries. The discussion paper also addresses specific issues that are already covered by national and regional laws where applicable or that go beyond legal requirements with which small NPOs must already comply in their respective jurisdictions.
- We consider that given the outcomes of previous EU studies on the matter², 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 released by DG HOME in June.
- We believe that the real issue at stake is not the need to address the alleged abuse of NPOs for criminal purposes (including terrorist financing), rather the need for NPOs to

¹ Some proposals set out in the discussion paper would only apply to fundraising organisations, whereas some recommendations would apply differently to NPOs that have grantmaking activities and/or run their own programmes.

² Study to Assess the Extent of Abuse of Non-Profit Organisations for Financial Criminal Purposes at EU Level – 2008. Recent public and self-regulatory initiatives improving transparency and accountability of non-profit organisations in the European Union – 2009.

design and implement tailored and effective management policies that balance the pursuit of their respective organisations' missions with a need to prevent potential criminal abuse. We therefore believe that specific counter-terrorist provisions should be separated from general good practices in the discussion paper and in future references to this issue. Criminal practices should be dealt with by criminal law and not by tightening the requirements, oversight and operating frameworks of a single sector, namely that of NPOs. Improving NPO management should be dealt with by NPOs and their support organisations and networks. We call on the Commission and EU Member States to ensure that any initiative, as part of the implementation of the Stockholm programme action plan, does not lead to new layers of rules and red tape or introduce unrealistic regulatory provisions 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 zones.

- We believe that EU Member States should maintain an open dialogue and cooperate with the non-profit sector in their respective countries to review the scope and impact of Special Recommendations VIII³ of the Financial Action Task Force on terrorist financing and NPOs.
- The European Commission and EU Member States should also look at ensuring full transparency and accountability of all beneficiaries of EU funds that they (co)-managed.
- We also wishes to draw the attention of the European Commission and EU Member States to the outcome of the 2009 feasibility study⁴ and to the recent opinion of the European Economic and Social Committee in favour of a European Foundation Statute⁵, which would set a benchmark of accountability, transparency and good governance in channelling domestic and foreign financial funds for public purposes across the EU and beyond.

2. Acknowledging the role of the NPO sector and supporting NPO initiatives

- The EFC, Cordaid and SBF regret that, as illustrated by the June discussion paper, the role of NPOs and their contribution to stable and healthy societies is not always clearly acknowledged, nor is their vital contribution in areas such as conflict resolution or addressing violent radicalism. 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. NPOs also regularly support efforts in the field by reaching populations who are vulnerable or susceptible to criminals' interests. Undue suspicion should therefore not be cast upon NPOs that are active -- in some cases with government funds -- in regions where terrorist organisations are known to be active, nor should additional reporting burdens be required.

³ http://www.fatf-gafi.org/document/22/0,3343,en_32250379_32236920_43757718_1_1_1_1,00.html

⁴ http://ec.europa.eu/internal_market/company/eufoundation/index_en.htm

⁵ <http://www.efc.be/EuropeanFoundationStatute/Documents/INT-498-CESE%20634-2010EN-o.pdf>

- We believe 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.
- In the foundation sector, the EFC and the Donors and Foundations Networks in Europe (DAFNE) have launched an 18-month project to review and assess existing self-regulation schemes and tools across the EU, an initiative which will increase awareness on transparency and accountability in the sector; help adapt existing frameworks where appropriate; and promote access to practical resources on risk identification and risk management.
- We believe that the European Commission and EU Member States could also help support initiatives by the non-profit sector to promote transparency and accountability.

3. Clarifying counter-terrorism legislation and addressing its impact on the NPO sector

- The EFC, Cordaid and SBF believe that the Commission at EU level and Member States in their respective jurisdictions could play a useful role in documenting/clarifying counter-terrorism legislation and its implications for NPOs. DG Home's current proposed responsibilities for NPOs set up expectations of action without giving corresponding information from the EU or Member States to allow for due diligence. For instance NPOs are "expected" to check if their employees/partners are suspected of being involved in activities relating to terrorism. However, the June discussion paper does not specify which (governmental) lists of proscribed/designated organisations and individuals these employees/partners would be checked against. Additionally, DG Home's discussion paper does not address liability or other legal implications that this process would have for NPOs. The same applies with regard to suspicious activity reporting.
- EU institutions and Member States should review with NPOs on a regular basis the (potential) impact of counter-terrorism law/action on NPO work. In particular, counter-terrorism concerns should not undermine the integrity and independence of action of foundations and their international work.

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The European Foundation Centre (EFC) is the principal association for public benefit foundations in Europe. 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.



Cordaid

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Cordaid is a catholic co-financing agency based in the Netherlands. Cordaid combines more than 90 years' experience and expertise in emergency aid and structural poverty eradication. We are one of the biggest international development organisations with a network of almost a thousand partner organisations in 36 countries in Africa, Asia and Latin America. Cordaid has a strong support base in the Dutch community. This is proved not only by some 370,000 contributors who support Cordaid financially, but also by the commitment of volunteers.

SBF

Samenwerkende Brancheorganisaties Filantropie

Joop Daalmeijer – voorzitter

The SBF is a cooperation of four associations within the public benefit sector, based in the Netherlands:

1. Vereniging van Fondsen in Nederland (FIN).
2. Instituut voor Sponsoring en Fondsenwerving (ISF).
3. CIO, het platform van 30 kerkgenootschappen, t.b.v. contact met de overheid.
4. VFI, brancheorganisatie van goede doelen.

Together they represent 70% of the charity sector of € 4,5 billion in the Netherlands.