

Contribution on NPO transparency and counter-terrorism

19.03.09 – final

On February 12, the European Commission (EC) invited participants to the meeting on non-profit sector (NPO sector) transparency to comment on the ECNL study on “recent public and self-regulatory initiatives improving transparency and accountability of non-profit organisations in the European Union”, and to make suggestion for possible follow-up by the European Commission.

The EU Civil Society Contact Group (CSCG), an umbrella platform bringing together eight large sectoral European NGO platforms (culture, development, environment, human rights, lifelong learning, public health, social and women), is willing to contribute to the discussion with the following comments in what we expect to be the first step of a longer consultation process, although we consider that the conditions for a proper consultation have not been met (as we will further detail below).

CSCG recommendations for future initiatives: consultation and 3 key principles

Based on these outcomes of the study as well as on its previous contributions, the CSCG would firstly recommend that a *genuine consultation process be put in place that respects the EC minimum standards in this field.*

Secondly, we would like to underline the following three key principles that should be respected in any further action:

- *Accountability and transparency of the NPO sector should be looked upon under a broader perspective, and not only in the context of fighting terrorism financing*
- *Principles of subsidiarity and proportionality are to be at the heart of any further initiative*
- *Any further action should carefully evaluate and avoid harmful side effects in terms of NPOs' independence of work and protection when acting in sensitive situations*

Last but not least, we are concerned by an apparent double standard in the EC approach¹, which does not seem to address with the same attention other important potential sources of terrorism financing, such as the business sector (through “paid services” for example), when considering the transparency of legal entities.

Positive outcomes of the study

In general terms, the CSCG welcomes the main outcomes and recommendations of the study (except the annexes that were not made available at this date), in particular as far as:

- Considering the five principles agreed upon by the JHA Council in December 2005² as the main framework under which any further initiatives should be regarded
- The need for a better understanding of the NPO sector specificity and constraints as well as a better knowledge of the already existing regulatory frameworks
- The diversity and specificity of both the NPO sector and of national historical, cultural and regulatory frameworks makes a “one-size fits all” solution impossible
- The added value role of the EU in terms of exchange of information and good practices, while practical measures, when needed, should be taken at national level

¹ This is particularly visible on the relevant [DG JLS webpage](#) on terrorist financing

² Doc 14390/05, p.32

- The importance of a genuine consultation and involvement of non-profit organisations (NPOs) as a prerequisite for success

What does that mean concretely for an EC roadmap

We will now be developing a little further below our 4 recommendations, without pretending to be exhaustive on each and every potential development as we are not yet at a stage of commenting on concrete proposals. More details could come at a later stage once the Commission will be putting on the table a roadmap proposal.

We do consider nevertheless that the following elements could help the EU in defining this roadmap, in particular in terms of the general framework, benchmarks and relations with stakeholders.

1. A broader approach of accountability and transparency issues

The CSCG appreciates and shares the Commission's concern to prevent misuse of NPOs by terrorist or criminal organisations in order to finance their activities. CSCG members are committed to a better and more inclusive policy process and we welcome all efforts to promote transparency and accountability of NPOs, as key elements to maintain and strengthen the credibility and effectiveness of our sector. It should also be reminded that NPOs' accountability and transparency obligations exist not only towards their governments, but also towards their donors, members and beneficiaries, as well as the wider public.

The ECNL study conclusions underline that most of the initiatives they have collected took place in a broader context of improving governance, transparency and accountability of the NPO sector and are not so much driven by counter-terrorism objectives. The study also recommends that "recognizing the broader context [...] could more effectively promote NPO transparency and accountability"³. We fully share these views and recommend that:

- *Counter-terrorism concerns should not overlook the other obligations of the NPO sector, and the EC should address transparency and accountability issues under a wider and mutually reinforcing approach*
- *A pure counter-terrorism approach would create the feeling that initiatives are singling out the NPO sector without justification rather than contributing to strengthening it, and would jeopardize ownership by NPOs*

2. Subsidiarity and proportionality

As also showed by the ECNL study, any efficient measures relating to possible abuse should firstly be based on:

- a clear assessment of the extent of the threat: until now evidences seem to show that the actual scope of such abuses is rather limited and happening at the margins (as confirmed by the Matrix study commissioned by the EC in 2008 and by the representatives of the US government at the 12/02 meeting)
- an extensive knowledge of the already existing regulatory frameworks at all levels relating to transparency and accountability of the NPO sector, as the ECNL study started to do (and already showing the very many initiatives taken since 2005 only)
- a rigorous assessment of the reasons that led to cases of abuses, in order to understand if those abuses were due to inexistent/inadequate regulations or to a poor implementation of existing regulations, and thus be able to bring the adequate response
- a clear understanding of the NPO sector, its diversity and specificities according to historical and cultural national contexts

In light of these key points, we recommend that:

- *Proportionality should be the first driving principle, meaning that any further action should be proportionate (a) to the scope of the threat, (b) to the already existing regulatory frameworks in particular at national level and (c) should directly respond to the potential weaknesses identified. Non-respect of this*

³ ECNL study, p.94

proportionality principle would most probably just end up raising duplication and excessive administrative burden for very many NGOs, as well as public suspicion on the broader NPO sector, without resolving at all the problem targeted.

- *Because of the diversity of the NPO sector and of the national regulatory frameworks, subsidiarity should be the second driving principle, and any concrete regulatory or non-regulatory measures should be taken at Member State level according to the needs and local environment.*
- *The main added value at EU level could be to provide support for extensive exchange of information and good practices among the different stakeholders and between EU and national levels, as a way to bring responses to the 4 key points mentioned above.*

3. Avoiding harmful side effects against NPOs

Another aspect of the proportionality principle relates to the potential harmful side effects of measures taken on the NPO sector. At this stage it is just impossible to list all potential negative impacts of all possible measures in this field; therefore we will just raise 2 major concerns relating to a specific NPO sub-sector that has been singled out in FATF recommendations⁴ and that have been referred to again during the February 12 meeting.

Indeed the FATF recommendations identify as a subset of NPOs to be particularly targeted, those which account both “for a substantial share of the sector’s international activities” and for a “significant portion of the financial resources under the sector’s control”. This may bring specific concerns for NGOs working in sensitive situations, in particular in conflict situation or under authoritarian regimes:

- organisations active in the field of conflict prevention or peace-building de facto work essentially in conflict or pre/post-conflict situations where tensions are exacerbated and where they are often facing actors considered as terrorists, either internationally or by the local authorities; any genuine work meant to be effective in such areas does imply relating in one way or another with these actors. Moreover, the real and perceived political independence of these organisations by all actors of a conflict situation is key to the success of their mission, e.g. addressing the root causes of conflicts, which are most often also major root-causes of terrorism. Therefore any inadequate measures to fight against terrorism financing that would jeopardize directly or indirectly this independence of work would be highly counterproductive and should be absolutely avoided.
- International or local organisations working under authoritarian regimes are regularly facing public campaigns aiming at discrediting their actions and accusing them of collusion with terrorism, if not more. This can be the case not only under hard dictatorships but also in countries like Colombia, where any critical organisation and in particular human rights defenders are particularly vulnerable to these kind of attacks and do need political and material support from democratic countries and the EU in particular. There again, a careful examination of such situations should be done before any measure to be considered in terms of funding or in terms of international exchange of information for example.

These two examples only reflect concerns that have been brought to us in the last weeks by some members of the CSCG, and there are probably many other critical aspects that could be highlighted with some more time. Nevertheless, the general lessons that can be drawn from them are the following:

- *independence of action is also part of NPOs’ accountability toward their beneficiaries and donors*
- *Before any measures are decided and implemented, a careful assessment of potential negatives side effects should be carried out in collaboration with those non-profit organisations most likely to be affected*
- *measures should in no way attempt to limit the freedom of association and expression*
- *measures should in no way jeopardize the political independence and safety of the NPOs concerned and of their individual members*

⁴ FATF interpretative note to special recommendation VIII, p.3

4. Genuine consultation process

The ECNL study insists on the necessity to conduct proper consultations with and to involve NPOs as a key factor for success. Similarly the JHA council principles recommend developing a "dialogue between Member States, the non-profit sector and other relevant stakeholders". Unfortunately, the limits of the current exercise show that few lessons have been learned since 2005. Therefore most of our comments and recommendations are similar to those made previously⁵.

Concerning the current consultation process, we are very much concerned by the fact that the study was circulated only 3 days in advance of the meeting, that only a month was given for written contributions, that dissemination of the study for consultation purposes was extremely limited, and last but not least that the annexes of the study were not distributed before the deadline for comments. All this falls short of the 2002 EC Minimum Standards on Consultation of Interested parties.

In particular, the very limited timeframe given for written contributions made it extremely difficult to consult with constituencies. Secondly, it appears that major affected stakeholders, such as the European Peace building Liaison Office, were not invited to the February 12 meeting. Last but not least, until now the consultation process does not enable any anticipation, as decisions about when and who to meet, and agendas of the meetings seem to be decided in a discretionary way by the EC. The CSCG proposal of an informal contact group to better prepare consultations processes was never followed by the EC.

Therefore the CSCG expects the Commission and Member States to consult widely with interested parties in the next developments, and reiterates in particular the following recommendations for a proper consultation process:

- *The content and scope of the consultation process should be clear, and involvement of all relevant parties must be ensured; this means that anticipation of the meetings to come and preparatory discussions about topics and processes should take place well in advance through an informal contact group*
- *there should be adequate publication of the information or documents needed as well as an appropriate timeframe for preparation or contributions (as a minimum 20 working days for a meeting and 8 weeks for written contributions)*
- *acknowledgment of contributions received and feedback on the way they have been taken into account would enable stakeholders to see the added-value of being involved and that their views are taken seriously*

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⁵ CSCG response to the draft Code of Conduct, November 2005