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EUROPÄISCHE UNION DES HANDWERKS UND DER KLEIN- UND MITTELBETRIEBE
EUROPEAN ASSOCIATION OF CRAFT, SMALL AND MEDIUM-SIZED ENTERPRISES
UNIONE EUROPEA DELL' ARTIGIANATO E DELLE PICCOLE E MEDIE IMPRESE

**UEAPME's Position Paper on the
Green Paper
"European Transparency Initiative"**
COM (2006) 194 final

Introduction

UEAPME warmly welcomes the European Transparency Initiative as it contributing to good governance and good policymaking.

TRANSPARENCY AND INTEREST REPRESENTATION (LOBBYING)

1. Definitions and basic framework.

It is fundamental for a democratic system that every citizen and organisation has the right to defend its personal and/or collective interests. All obstacles to this fundamental right must be dealt with.

According to the Commissions definition of lobbying in the Green Paper (point II.1), *"lobbying" means all activities carried out with the objective of influencing the policy formulation and decision-making processes of the European institutions. Accordingly, "lobbyists" are defined as persons carrying out such activities, working in a variety of organisations such as public affairs consultancies, law firms, NGOs, think-tanks, corporate lobby units ("in-house representatives") or trade associations."*

While the first sentence seems indeed to give a broad definition on which we can agree, the deduction in the second sentence is not correct as it excludes "lobby" activities of individual citizens and as it limits "lobbying" to activities carried out in a professional relation. In addition, it should be mentioned that "lobbying" also means:

- seeking to improve EU institutions,
- understanding what individuals, organisations, governments, trade associations etc stand for and what they do,
- putting understanding and dialogue at the heart of the democratic process.

The Green Paper also fails to take into account non-professional lobbying, although the general definition and the terms used ("lobbying" = interest representation (see title)) cover them. This is even explicitly mentioned when the Green Paper sets out the components to define the basic framework and under the first point states that:

*"1. Lobbying is a legitimate part of the democratic system, regardless of whether it is carried out **by individual citizens** or companies, civil society organisations and other interest groups*

or firms working on behalf of third parties (public affairs professionals, think-tanks and lawyers).”

UEAPME wants also to stress that European social partners cannot be compared with “normal” lobbyists. Indeed, the European social partners have a specific role and statute, recognized by the Treaty.

UEAPME fully agrees with the 6 components to define the basic framework, on which the relationship between the EU institutions and lobbyists should be built, except on point 4. Point 4 states that:

“When lobby groups seek to contribute to EU policy development, it must be clear to the general public which input they provide to the European institutions. It must also be clear who they represent, what their mission is and how they are funded. “

Most importantly, it should be clear to third parties (institutions, organisations, citizens) who has been consulted in the consultation process and in the preparatory phase of the consultation process. True transparency, however, is in UEAPME’s view, transparency from the Commission’s side regarding the basis upon decisions are taken. It is every citizen’s right to know in general how and why decisions are taken. The Commission should give feedback after consultation about the changes made in policy decisions and / or the reasons why the arguments presented by the different stakeholders were or were not taken into account and which reasons /arguments have led to the taking of a decision. We do agree that the Commission must know whom “lobbyists” represent (although we have to stress that the Commission still continues to consult organisations which are absolutely not representative) and what their mission is. Information on how they are funded has in most cases no added value, but we fully agree that the Commission is entitled to ask for this information if necessary and relevant.

2. Potential problem areas.

It has to be highlighted that the Green Paper gives no single concrete case of “ *lobbying practices which are considered to go beyond legitimate representation of interest*”. The Green Paper only mentions “*Concerns have been voiced by the media, academics and interest representatives about lobbying practices which are considered to go beyond legitimate representation of interests. This applies not only to practices which are clearly unlawful (fraud and corruption) but also to other improper lobbying methods which abuse the EU institutions’ policy of openness or are plainly misleading.*” In addition, it is not specified why or on what basis some practices are “considered to go beyond legitimate representation of interests”.

It would be relevant for the Green Paper to identify the practices that are “considered to go beyond legitimate representation”, given that the suggestion that some lobbying has transgressed is not evident and only “voiced” by some lobby groups. It could be argued that “voiced” concerns cannot be “verified” as genuine concerns.

Moreover, it is at least questionable if the 5 general examples that the Green Paper quotes can be considered as “to go beyond legitimate representation of interest”.

How can one defend intellectually that, when “*there is no level playing field in lobbying because the corporate sector is able to invest more financial resources in lobbying*” or when

“In general terms, there is criticism about the lack of information about the lobbyists active at EU level, including the financial resources which they have at their disposal” , this goes beyond legitimate representation of interest?

On the other hand it is true that *“Modern communication technologies (internet and e-mail) make it easy to organise mass campaigns for or against a given cause, without the EU institutions being able to verify to what extent these campaigns reflect the genuine concerns of EU citizens.”* Here it has to be highlighted that the Commission, with its direct consultation through the Internet is contributing to this. UEAPME has already argued for years that consulting through the Internet is not democratic and is biased. Consulting representative organisations could easily solve this problem.

“Distorted information is provided to the EU institutions about the possible economic, social or environmental impact of draft legislative proposals.” If information is distorted it is often very subjective. When the Commission states that lobbyist should not disseminate misleading information, it is clear that UEAPME fully agrees with this. But the problem is to define misleading information and who should and can judge this. In our opinion there is no legal basis to sanction this. In our opinion, organisations or individuals, which provide distorted or incorrect information, lose their credibility not only towards the European institutions but also towards the other stakeholders. Once again, this problem can be solved through a correct consultation of the representative organisations.

Finally it has to be stressed that “reputation” has an important element in lobbying. For example, the reputation of a certain organisation may have more influence –irrespective of the substance of their argument – than that of a corporate organisation (irrespective of their financial strength).

• Do you agree that efforts should be made to bring greater transparency to lobbying?

Yes, in the sense mentioned above.

• Do you agree that lobbyists who wish to be automatically alerted to consultations by the EU institutions should register and provide information, including on their objectives, financial situation and on the interests they represent? Do you agree that this information should be available to the general public? Who do you think should manage the register?

UEAPME has already been asking for years for an automatic alert for the representative organisations. UEAPME can agree with the proposal to create a registration system, which provides information on the objectives and the interests of ”lobbyists”. The question remains if also financial data should be published. How relevant is indeed the financing for judging the validity and fidelity of a lobbyist? Who should have the authority to judge this? In any way, overregulation should be avoided in the framework of a voluntary system.

What about the language(s) used for this register? Will it be necessary to register in all languages? Will it be possible to register only in your own language?

The European Commission should manage such a register. Every registered organisation/person should have the authorisation to manage its own data.

• Do you agree to consolidate the existing codes of conduct with a set of common minimum requirements? Who do you think should write the code?

In the past 14 years, no violation of the existing codes of conduct has been made public. Neither does the European Commission mention any violation of its own principles published in 1992. Thus, the question is whether it is necessary at all to consolidate the existing ones. However, if a decision to elaborate a consolidated code of conduct is reached, UEAPME insist on a broad approach involving all relevant and representative stakeholders.

• Do you agree that a new, inclusive external watchdog is needed to monitor compliance and that sanctions should be applied for any breach of the code?

No, introducing sanctions to a voluntary system is unacceptable.

FEEDBACK ON APPLICATION OF THE MINIMUM STANDARDS FOR CONSULTATION

In your view, has the Commission applied the general principles and minimum standards for consultation in a satisfactory manner? You may refer to the individual standards (provided, for ease of reference, in Annex 2).

Please give reasons for your reply and, where appropriate, provide examples.

UEAPME fully appreciates the continuous efforts of the Commission to improve its consultation process. This call for feedback and to continue the discussion on general principles and minimum standards for consultation shows the Commissions will to reinforce the culture of consultation and dialogue.

Nevertheless, the comments UEAPME made in its position paper on the Consultation document “Towards a reinforced culture of consultation and dialogue – Proposal for general principles and minimum standards for consultation of interested parties by the Commission” COM (2002) 277 all remain valid.

In addition some comments have to be made on the analysis made in the Green Paper.

Under point III it is stated “The minimum standards apply to consultations on the Commission’s major policy proposals for which an impact assessment is required; these proposals are listed in the Commission’s Annual Work Programme¹³. The minimum standards also apply to consultations on Green Papers”. This is not what the Commission has decided. Indeed Communication COM (2002) 277 mentioned that: “The proposal is that the Commission will be guided in the conduct of its open and/or focused consultations on major policy initiatives by the general principles and the minimum standards set out in this document, without prejudice to more advanced practices applied by the Commission departments or any more specific rules to be developed for certain policy areas.” In footnote 11 major policy initiatives are then defined as “, in particular, those that will require an extended impact assessment”. So, in the Green Paper the Commission has reduced the scope of the minimum standards.

In addition the minimum standards were also introduced for invitations for meetings (20 days). Here we have to stress that this standard is rarely respected.

The Green Paper also makes an analysis of the compliance with the minimum standards by stating “the general assessment was that the overall compliance is good” proving this with references to the Better Lawmaking reports 2003 and 2004 (!). These reports however do not contain any data or evidence to prove this statement.

The Green Paper continues by saying that “The minimum time limits for responses seem to have been met in most cases”. Also here no evidence is given.

So, on the question “*has the Commission applied the general principles and minimum standards for consultation in a satisfactory manner?*” our answer is two fold:

- for consultation on Green Papers, the answer is positive as in most cases the consultation time was around 3 months minimum;
- for the other consultations, the answer is negative.

Indeed, although in the most cases the Commission accorded a 8 weeks period, this only applied for English speaking people (and sometimes also for German and French). Indeed, the majority of the language versions of consultation documents were rarely available from the beginning of the consultation period and sometimes even only after 4 weeks.

In addition, we can state that the minimum standards were never respected as the minimum standards clearly say that “ a consultation period longer than eight weeks might be required in order to take account of: the need for European or national organisations to consult their members in order to produce a consolidated viewpoint”. As UEAPME has to produce a consolidated viewpoint for all consultations, this standard was never respected. The same can be said about the extension of the consultation period due to main holiday periods.

However it has to be recognised that some DGs are flexible and that they accept contributions even after the consultation period.

UEAPME therefore urges the Commission again to extend the normal consultation period to at least **12 weeks** for **all** consultations.

As already mentioned in the first part, the European social partners have a specific role and statute, recognised by the Treaty, article 138, §2. Therefore, when it comes to consultation on the basis of article 138, the Commission should respect the official procedure and avoid the current tendency to integrate this consultation in public or broader public consultations.

UEAPME fully agrees with the Commission's position that good consultation helps to improve the quality of the policy outcome and enhances the involvement of the parties concerned.

However, the Commission's approach to have broad open consultation of all interested parties and individuals, mainly through the Internet, is, in UEAPME's opinion, not the best means for good consultation.

Good and efficient consultation requires, in the first place, consultation of the groups directly concerned and affected, and this should be done through their representative organisations according to the proposed focused consultation procedures.

More attention should be paid to the important role which representative horizontal and sectorial business organisations play as intermediaries between enterprises and the European institutions. Indeed, their role is not simply to register or collect the opinion of their members, but also to find a common position that reflects the opinion of the different countries or economic sectors. As such, their opinions are more than a simple sum of all the opinions from single enterprises. They are the result of a democratic consultation and decision-making process. It also means the application of the principle of subsidiarity. Regulations based on collectively agreed positions will also be more easily respected.

A culture of consultation and dialogue requires not only a consultation without engagement on specific proposals, but constitutes a compulsory part of the whole decision-making process as well as the consultation and involvement of the parties concerned during the whole preparatory process. The European Charter for Small Enterprises, as well as the European Parliament and the ECOSOC called on the Commission to initiate and increase consultation with the representative organisations, particularly those representing small businesses.

Direct consultation of businesses through the Internet can only be an additional way of consultation as the results are not representative and are frequently biased. Small business owners do not have the time to answer complex executive questionnaires on planned new legislation and here representative organisations play the role of intermediaries.

Moreover, many SMEs, especially micro-enterprises, do not use yet the Internet, and it will still take time, investment and training, before most SMEs use it and become familiar with it. To avoid the exclusion of entire SME sectors, consultation should not be solely organised on an electronic basis. There will still be a need for contacts "on paper basis". Otherwise, a lot of SMEs will be excluded from consultation.

So far, the results of direct consultation of businesses were also biased by the fact that the EC website and documents are not available (or not at the same time) in the different official E.U. languages and are not written in everyday language. The documents and questionnaires are often very detailed and written in a complicated, legal or very technical language. One needs a profound and detailed knowledge of the political developments in the respective area to be able to carry out a comprehensive evaluation. These surveys are often aimed at SMEs that do not have the capacity (time and personnel) to respond.

In addition, so far there are no criteria to give a weight to the different contributions received through direct consultation.

Finally, there is an urgent need for an impact assessment throughout the consultation process, meaning that major changes during the decision-making process should automatically be accompanied by a renewed impact assessment.

DISCLOSURE OF BENEFICIARIES OF COMMUNITY FUNDS

• Do you agree that it is desirable to introduce, at Community level, an obligation for Member States to make available information on beneficiaries of EU funds under shared management?

Yes. UEAPME believes that this is an essential tool for democratic transparency. It fully supports the commitment of the European Commission to raising awareness of the use made of EU money. The Commission - and the member states - are indeed accountable to the taxpayer. Also UEAPME considers it to be in the general public interest to provide information on how all EU funds are spent regardless of the kind of management. From the moment that European taxpayers' money is involved (thus also for "shared management"), the subsidiarity principle cannot and should not apply. But, for UEAPME it is of utmost importance that disclosure should not lead to additional administrative work (or red tape) for SMEs and that the disclosure respects the data protection and business secrets.

However, at the same time, there should be more transparency and clarity about the criteria and rationale to grant funds.

More attention should also be drawn to **enforcing existing obligations to publish information** about the assignment of financial means obtained from Structural and Cohesion Funds. This would help to increase transparency in a way visible to every EU-Citizen.

• If so, what information should be required at national level? What would be the best means to make this information available (degree of information required, period covered and preferred medium)?

The Community Program or Community Fund on the basis of which the funds are attributed; the division per member state, region; the criteria; the total amount of means; the amount received by the beneficiary; complete data of the beneficiary.

This should be published yearly or after the approval of the program or call.

Medium: website.

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