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EBC Position Paper on the Green Paper “European Transparency Initiative” COM (2006) 194 final

Chapter 1: Transparency and Interest Representation

Established in 1990, the European Builders Confederation - E.B.C. - is a European professional organisation representing national associations of Craftsmen and SMEs working in the construction sector. Through its national members, E.B.C. represents 600,000 micro, small and medium sized enterprises from the construction sector employing 2.5 million workers.

EBC is a member of UEAPME.

The construction sector is of vital importance to the European Economy. With 2.3 million enterprises, an annual turnover of almost € 1000 billion, a total direct workforce of almost 14 million, the construction sector contributes about 10% to the GDP of the European Union.

The European construction sector is composed at about 99% of Small and Medium-sized Enterprises (SMEs), who produce 78% of the construction industries output. The small enterprises (less than 50 employees) ensure 60% of the production and employ 70% of the sectors working population.

Introduction.

EBC warmly welcomes the European Transparency Initiative as it contributing to good administration and good policymaking.

TRANSPARENCY AND INTEREST REPRESENTATION

1. Definitions and basic framework.

Fundamental for a democratic system is that every citizen, every organisation has the right to defend its personal and/or collective interests. Every burden to this fundamental right must be carefully avoided.

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.”

Lobbying also means:

- seeking to improve EU institutions
- Understanding what individuals, organisations, NGOs, governments, think tanks and trade associations stand for and what they do
- Putting communication and dialogue at the heart of the democratic process

NGOs, charities, trade unions, trade associations or other collections of interests or individuals who have an objective of communicating with, or influencing policy of, European institutions. These are known as lobby groups.

The most important is that for third parties (institutions, organisations, citizens,) it should be clear who has been consulted in the consultation process and in the preparatory phase of the consultation process. True transparency is, in EBCs view, transparency from the Commissions side on what basis decisions are taken. It is the right for the citizen in general to know 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 take a decision. We do agree that the Commission must know whom “lobbyists” represent and what their mission is.

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 evidenced 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?

It is also important to comment in this section that “reputation” has an important element in lobbying. For example, the reputation a charity, NGO or trade union may have more influence – irrespective of the substance of their argument – than that of a corporate organisation (irrespective of their financial strength).

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. EBC is of the opinion that consulting enterprises through the Internet is biased. This problem could be easily solved by consulting representative organisations.

“Distorted information is provided to the EU institutions about the possible economic, social or environmental impact of draft legislative proposals.” If information is distorted is often very subjective. When the Commission states that lobbyist should not disseminate misleading information, it is clear that EBC 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.

• *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?*

EBC is asking for an automatic alert for the representative organisations. EBC 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, EBC 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.

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