



EPHA Response to the ETI Green Paper

Subject	European Transparency Initiative Green Paper
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The European Public Health Alliance (EPHA) represents over 100 non-governmental and other not-for-profit organisations working in support of health in Europe. EPHA aims to promote and protect the health interests of all people living in Europe and to strengthen the dialogue between the EU institutions, citizens and NGOs in support of healthy public policies.

The European Public Health Alliance welcomes the European Transparency Initiative (ETI) and looks forward to working with the EU Institutions, and other stakeholders, to improve the transparency of the European policy-making process. EPHA is committed to a better and more inclusive European Union and we welcome all efforts to promote transparency and accountability of the EU policy process, as key elements to maintain and strengthen the trust of citizens. We believe that transparency around EU lobbying is currently insufficient and we call on the EU to adopt effective measures that will allow for public scrutiny of EU decision-making.

Summary

Transparency and Interest Representation

Definitions and basic framework of the Green Paper

- EPHA, the European health platform, calls upon the European Commission to note the specific role of non-governmental organisations (NGOs) in providing equitable balance between public and private interests within the promotion of participatory democracy.
- The Commission should stress the diversity of “lobbyists” in order to allow the wider public to better appreciate the diversity of interest groups that are active on EU matters.

Potential problem areas identified by the Green Paper

- EPHA calls upon the Commission to make a strong declaration that the public funding of civil society is necessary in order to ensure that public interests are brought in a balanced manner into an independent civil dialogue.
- EPHA encourages the European Commission should make disclosure a clear condition of funding. We believe that the Commission itself should publish easily accessible lists of direct beneficiaries of EU grants.

The role of the EU institutions in promoting transparency

- EPHA believes that the role of the EU institutions in promoting transparency includes (i) an improved code of conduct for European Commission staff and other EU officials, (ii) equal access for all stakeholders in the EU processes, (iii) increased publication of input into the EU policy process, as well as (iv) further progress relating to other key phases of the decision-making process within the European Council.



EPHA Response to the ETI Green Paper

Mandatory registration and reporting

- EPHA call for mandatory registration and reporting of lobbyists as minimum conditions for the scrutiny of lobbying.
- EPHA suggests the development of an online database to provide background information on lobbyists and lobbying activities. This lobbyist register and reporting system should be overseen by an independent public watchdog, with the necessary resources and authority to ensure optimal transparency around EU lobbying. We call on the EU to draw lessons from the existing lobbying disclosure systems.
- EPHA calls upon the Commission to introduce incentives and sanctions that will result in high levels of compliance in registering and reporting lobbying activities.

Consolidating the existing codes of conduct with a set of common minimum requirements

- EPHA has reservations about the ability of such diverse lobbying sectors to consolidate existing codes of conduct with a set of common minimum requirements that ensures effective lobbying transparency. We believe that such an approach is more likely to result in a lowest common denominator than to fairly reflect public interests.
- EPHA calls on the Commission to develop a draft minimum code of conduct by seeking feedback from interested stakeholders and citizen. The Commission should take responsibility for the implementation of outcomes.
- EPHA believes that the Commission should, at the very least, encourage mutual learning and exchange of good practices between different types of actors, which ultimately could lead to a consolidation of codes based upon minimum common principles.

A new, inclusive external watchdog to monitor compliance and apply sanctions

- EPHA agrees that a new, inclusive external watchdog is needed to monitor compliance and that sanctions should be applied for any breach of the code. The overseeing body must be a public body, fully independent of those it monitors. It must have sufficient powers to instigate its own inquiries, as well as powers to investigate all alleged breaches of the codes and of the disclosure system. There must be clear and effective incentives as well as sanctions.

Minimum Standards for Consultation

- EPHA calls for more action from the Commission in applying the general principles and minimum standards in a satisfactory manner and suggests a number of improvements.
- EPHA believes that for the consultation standards to be meaningful, they need to be extended to include clear guidance on the standards to be expected even where a formal consultation is not taking place.

Disclosure of EU Fund Beneficiaries

- EPHA believes that there should be a general principle of full disclosure concerning how the EU's budget is spent and the beneficiaries involved. This should apply both to funds managed at EU and at national level.



EPHA Response to the ETI Green Paper

- In addition, EPHA calls for an EU-wide debarment (“blacklisting”) system.



EPHA Response to the ETI Green Paper

Introduction

EPHA and its members is committed to improving transparency in the policy-making process of the European Union, as an essential element in the creation of stronger participatory democracy, particularly at a time when increasing numbers of EU citizens are disengaging from the formal political process.

We believe that the principles of transparency imposes obligations upon all the EU institutions and Member States, together with the stakeholders involved in the policy-making process, including NGOs, businesses, trade unions, and other actors.

The debate over the transparency initiative is an opportunity for a wide range of actors to review and discuss their own practices, how they relate to other EU stakeholders but also to the general public. This is key both for the credibility of each specific sector, as well as for the legitimacy of the European Union in general.

Transparency and Interest Representation

Definitions and Basic Framework of the Green Paper

EPHA generally agrees with the ETI Green Paper's six components of the basic framework on which the relationship between the EU institutions and lobbyists¹. However, we believe that the terms “lobby”, “lobbying”, and “lobbyist” are confusing if applied to non-governmental organisations (NGOs). A non-governmental organization (NGO) may be defined as

“Any non-profit, voluntary citizens' group which is organized on a local, national or international level. Task-oriented and driven by people with a common interest, NGOs perform a variety of service and humanitarian functions, bring citizen concerns to Governments, advocate and monitor policies and encourage political participation through provision of information.”²

The impact of the transparency initiative will depend to a large extent upon its ability to target a wide range of actors involved in the EU policy process, including industry lobby groups and NGOs alike. For the purposes of the ETI Green Paper, EPHA as a NGO accepts the label of “lobbyist” on the condition that the Commission stresses the diversity of “lobbyists”. In other words, we call for the Commission to differentiate between “lobbyists” of either public or private interests.

This acknowledgement is crucial as it emphasises the diversity of interest groups that are active on EU matters. By doing so, the transparency initiative would represent an opportunity for the wider public to appreciate better the nature of lobbying in the EU.

Potential Problem Areas

1 ETI Green Paper, page 5

2 NGO Global Network definition - <http://www.ngo.org/ngoinfo/define.html>



EPHA Response to the ETI Green Paper

EPHA is concerned that the Green Paper identifies the public funding of NGOs as a “*potential problem area*”³. We believe that public funding of civil society is a necessary and positive guarantee for the development of civil dialogue. Views and interests cannot be organised, structured and voiced without adequate support free from undue influence.

In most cases, EU funds received by NGOs support the implementation of specific projects that are part of EU programmes and policies, with a much smaller amount dedicated to support the advocacy activity of some European networks. The added value of operational funding is in allowing NGOs to make quality input into the policy process, by providing them with essential resources needed to develop a concerted view. This is done in full consultation with national and local groups of citizens directly concerned by these policies, bringing wider voices into the development of EU policy. As representatives of public interests, NGOs play an indispensable role in promoting citizen participation and therefore participatory democracy. **EPHA calls upon the European Commission to acknowledge the specific role of NGOs within the promotion of participatory democracy.**

The voluntary sector is a vibrant and growing aspect of society and the economy. NGOs and not-for-profit organisations (NPOs) enjoy a high degree of public trust and provide a voice for the most marginalised and services for these communities⁴. NGOs have been catalysts for change on a global scale.

NGOs working on public health and health care have a long standing tradition of advocating for transparency and accountability. However, this practice is not followed by all organisations – some of whom do not reveal information about their members, sources of funding or decision-making and consultation processes. Within the context of the health community, NGOs that do not adhere to these minimum standards of transparency are discredited.

Conclusion -

Although EPHA welcomes all efforts in improving the transparency of the NGO sector, the Commission's inferences regarding NGO public funding only serves to undermine the ongoing dialogue between the EU institutions and civil society.

EPHA encourages the **European Commission to make disclosure a clear condition of funding**. We believe that the Commission itself should publish easily accessible lists of direct beneficiaries of EU grants.

EPHA calls upon the Commission to make a strong declaration that the public funding of civil society is necessary in order to ensure that public interests are brought in a balanced manner into an independent civil dialogue.

We also ask that the Commission continues to support such public funding, providing there is full transparency concerning such funding, as a means of ensuring a voice for civil society organisations independent of the interests of business.

Transparency and Interest Representation

3 ETI Green Paper, page 5

4 EPHA's views on the conduct of NGOs - <http://www.ephpa.org/a/1921>



EPHA Response to the ETI Green Paper

EPHA Response to Questions⁵

“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?”

It is EPHA's opinion that measures to improve transparency should acknowledge the two-sided nature of lobbying and include rules for both the lobbied (the EU institutions) and the lobbyist.

The role of the EU institutions in promoting transparency

The EU institutions (and not only the European Commission) should commit themselves to transparency in relation to their contacts with stakeholders as part of the policy-making process. In order to improve public trust in the EU institutions, EPHA believes that there should be (i) an improved code of conduct for European Commission staff and other EU officials, (ii) equal access for all stakeholders in the EU processes, (iii) further progress relating to other key phases of the decision-making process within the European Council, as well as (iv) increased publication of input into the EU policy process.

(i) An improved code of conduct for European Commission staff and other EU officials

The European Commission has already set itself some strict rules, which we believe should be extended to better reflect the growing formalisation, number and impact of consultation practices. An extended code of conduct should be developed, in particular as a way to ensure that the Commission's proposals are not unbalanced due to unacceptable forms of lobbying. Since the European Council Secretariat plays an increasing role in formulating policies and implementation, **EPHA calls for an extended code of conduct for European Commission and Council officials**, which should be overseen by a public body.

An **extended 'cooling off' period** should be introduced before Commissioners and senior EC officials can start working for lobby groups or lobbying advisory firms. The other EU institutions should introduce similar rules to **avoid 'revolving doors' practices** between business and the EU Institutions, which undermine public confidence.

The Code should make it **compulsory for the European Commission to undertake formal and informal consultation processes with all relevant stakeholders**, not only business interests. Mechanisms for consultation, applicable to the Council Secretariat also, should be developed.

(ii) Equal access for all stakeholders in the EU processes

EPHA believes that it is necessary to ensure equal access for all stakeholders to the European decision making process.

EPHA makes the following recommendations for equal access for all stakeholders -

- **All formal consultation processes should be publicly announced and reported on** regularly and

⁵ ETI Green Paper, page 10



EPHA Response to the ETI Green Paper

transparently. This includes a description of mechanisms that are being used to consult and who is being consulted and why.

- During formal consultation processes **the Commission should provide some basic level of feedback to each stakeholder's response** to consultation – not simply a receipt of acknowledgement but specific reason for including or not the response of the stakeholder in the policy process. In addition, the Commission should offer information on which and how many organisations or citizens responded, plus the Commission's criteria to assess the responses received.
- Each policy proposal should include, in its Explanatory Memorandum, a **clear description of the type of organisations the Commission has been in contact with** during the preparation of the proposal. Where the number of contacts would make it difficult to describe this in full detail in the Memorandum, a link with a more detailed report should be included.
- **A public register of correspondence should be created**, making it an obligation for the Commission to disclose written contributions and meetings with lobbyists (including industry and NGOs).
- **Special working groups should involve all relevant stakeholders**, including representatives from citizen groups and not just industry interests.

(iii) Increased publication of input into the EU policy process

EPHA calls for increased publication of input into the EU policy process to enhance the impact of the initiative vis-à-vis the general public and allow a better assessment of the balance of views that were expressed and considered. As a priority, this should concern open consultations, where practices within the European Commission have been rather inconsistent so far. As a consequence, stakeholders and citizens would see more precisely who is trying to influence the Commission, but also would be given the opportunity to challenge other views. Publication of input should be primarily the responsibility of the Commission but interest groups should also be encouraged to do so.

(iv) European Council Transparency

EPHA believes the transparency initiative should provide an impetus for further discussion regarding Council transparency, as it is key to strengthening an accurate perception of the EU among citizens. EPHA hopes it will pave the way to further progress relating to other key phases of the decision-making process, such as conciliation committees, and to the preparatory phase of the Council's work, in particular within the COREPER.

Mandatory registration and reporting

(i) Mandatory registration and disclosure rules

The European Commission and the other EU institutions are among the most lobbied political institutions in the world. Yet, as the Green Paper points out, there is a serious *“lack of information about the lobbyists active at EU level, including the financial resources which they have at their disposal.”*⁶ We still do not know basic information about the lobbying industry.

6 ETI Green Paper, page 6



EPHA Response to the ETI Green Paper

The European Transparency Initiative provides a significant opportunity for the EU to formulate an effective and reliable lobby registration system. EPHA believes that **all lobbyists should be obliged to register and report** themselves and their activities. EPHA calls for a **mandatory system of registration rather than voluntary** so that legislators and citizens know who is attempting to shape EU policies. Our reasons for this demand are as follows.

Firstly, lobbyists involved in deceptive and illegitimate lobbying practices, and thus eager to avoid public scrutiny, are unlikely to register and report voluntarily. Secondly, there is no evidence base to suggest that voluntary registration is effective. Thirdly, experiences with voluntary registration and reporting both in Europe and around the world indicate that the best solution to ensure verifiable transparency is a legal requirement for lobbying disclosure. Recently enacted lobbying laws in Poland, Lithuania and Hungary include forms of mandatory lobbying disclosure. The Danish Parliament – in a resolution approved unanimously on 31 May 2006 – calls for compulsory registration of EU lobbyists.

Transparency means that information should be made available to the public. One practical example of a way to do so could be a form of **user-friendly database**, available online. The database should be fully searchable, sortable and downloadable to enable detailed research and analysis.

The provision of background information regarding lobbyists in an online database would increase awareness both within the EU policy sphere and also amongst the general public. EPHA regrets that so far such initiatives have only targeted civil society organizations. Existing tools, such as the CONECCS⁷ database, could be better used in this view.

In order to increase awareness of the diversity of lobbying activities, **the registration system should address the difference between profit making** (including business, legal advisers, public relations and public affairs firms, as well as consultants), **public authorities and non-profit making organizations** (including NGOs). In this regard, NGOs are considered to be any legal entity that is non-governmental, democratically organised, not-for-profit, not representing commercial interests, and pursuing a common purpose in the public interest (see the definition of a NGO on page 4 of this document).

The registration system should provide information on the following criteria -

- objectives
- legal personality
- members
- board
- budget
- financial sources
- work programme
- mandate from the members
- main institutional targets
- main processes followed

EPHA believes that a mandatory registration system should apply only to companies and individuals spending above a certain threshold in terms of money and time. This will allow small groups and individuals the space to campaign without

⁷ CONECCS website - http://ec.europa.eu/civil_society/coneccs/index_en.htm



EPHA Response to the ETI Green Paper

the burden of registering on a continuous basis, while at the same time allowing for a more thorough reporting system for stakeholders above the threshold. EPHA recommends that the initial threshold be fixed at €5000 per quarter and/or 20 hours spent lobbying per quarter and encourages the Commission to monitor the suitability of these thresholds on a periodic basis.

EPHA believes that the EU should draw lessons from the existing lobbying disclosure systems in North America and the New Member States and develop an effective, state-of-the-art register that will allow public scrutiny of EU lobbying. This system should provide basic, up-to-date information about how much is spent on influencing the EU decision making process.

Finally, EPHA recommends that the information within the registration system be updated at regular intervals.

(ii) Reporting of lobbying activities

While mandatory registration should happen regularly, so too should frequent reporting. The Green Paper does not address the question of what information should be reported. EPHA believes that regular reports must include data on how much money particular interests spend on lobbying. Lobbying firms must disclose their clients, on which issues they lobby and budgetary information relating to this work. Such specific information would allow for comparisons over time and may help to highlight trends in lobbying activity.

A lobbyist register and reporting system should be overseen by an independent public watchdog, with the necessary resources and authority to ensure optimal transparency around EU lobbying.

The single incentive actually named in the Green Paper (*“automatic alerts to upcoming consultations”*) will not secure meaningful levels of compliance, since lobbyists will have this information at their disposal anyway. **EPHA calls upon the Commission to introduce incentives and sanctions that will result in high levels of compliance and thus secure meaningful levels of transparency around EU lobbying.** The choice is between commercial interests and the public interest. The latter can only be served properly by making decision-making accountable and transparent. This requires mandatory registration and reporting as minimum conditions for the scrutiny of lobbying.

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

EPHA has reservations about the ability of such diverse lobbying sectors (ranging from commercial public affairs firms, consultants, law firms and industry associations, to trade unions and non-profit NGOs) to consolidate existing codes of conduct with a set of common minimum requirements that ensures effective lobbying transparency. Such an approach is more likely to reflect the lowest common denominator, than to fairly reflect public interests.

We believe it is important that the Commission demonstrate leadership by developing a draft minimum code of conduct (going beyond the very general provision of existing voluntary codes) and seeking feedback from interested stakeholders. The Commission should take responsibility for the implementation of outcomes.

At the very least, the **Commission should encourage mutual learning and exchange of good practices** between different types of actors; for example, by providing a web portal to outline and link the various codes of conduct in existence across civil society. This could ultimately lead to a consolidation of codes based upon minimum common



EPHA Response to the ETI Green Paper

principles. This consolidation should be carried out by the stakeholders within a process which is led by the European Commission. In addition, the European Commission should regularly report on the existing codes of conduct of stakeholders in order to encourage compliance and improvements.

As well as rules of conduct for lobbyists, the Commission should also introduce an improved code of conduct for European Commission officials, including an extended 'cooling off' period before Commissioners and senior officials can start working for lobby groups or lobbying advisory firms. *See page six of this document.*

“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?”

Perhaps the most important issue concerning codes of conduct is that of enforcement. EPHA agrees that a new inclusive external watchdog is needed to monitor compliance and that sanctions should be applied for any breach of the code. **The overseeing body must be a public body, fully independent of those it monitors.** It must have sufficient powers to instigate its own inquiries, as well as powers to investigate all alleged breaches of the codes and of the disclosure system. There must be clear and effective incentives as well as sanctions. Example of such bodies include a separate new lobbying transparency body in the office of the European Ombudsman or other external watchdog.

EPHA believes that national governments should explore the feasibility of applying criminal penalties for those lobbyists deliberately presenting misleading or fraudulent information to the Commission ombudsman or watchdog.

A private body established by the lobbying sector itself cannot have the necessary powers or credibility. Under voluntary registration systems strong sanctions for non-compliance with the codes cannot be imposed. Those who do not want to comply with codes and disclosure obligations will simply not register as lobbyists – but they will still be able to lobby decision-makers. This is the fundamental weakness of the voluntary approach that has yet to be addressed properly in the ETI Green Paper.



EPHA Response to the ETI Green Paper

Minimum Standards for Consultation

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

The Commission’s Minimum Standards for Consultation marked an important first step in improving consultation standards. However, **more action is needed**.

Minimum standards should not be ‘maximum’ standards – indeed the Commission itself does not even respect minimum consultation periods in a significant number of cases.

- Enhancing knowledge among stakeholders - Three years after their entry into force, the exact content of the Minimum Standards remains largely unknown. While the essence of participatory democracy is for citizens to know their right to participate, we believe there is a strong need to enhance awareness and concrete knowledge that will allow NGOs, citizens and other stakeholders to use them as a real participatory tool.
- The Commission should improve transparency on policy-making by providing public feedback explaining, at least in relation to legislative proposals, explaining why or why not proposals have been taken into account.
- There is a need for better coordination between DGs in the Commission concerning best practice in civil dialogue.
- Minimum standards for consultation should also be developed for other EU institutions: this was proposed within the White Paper on Governance in 2002, but was not achieved.
- The recent Council decisions to increase transparency are welcome, further steps should be taken to increase transparency by promoting simple access to documents in a timely manner.
- Responses to all Commission consultations should be published online.

EPHA believes that for the consultation standards to be meaningful, they need to be extended to include **clear guidance on the standards to be expected even where a formal consultation is not taking place**. We call upon the Commission to end cases of privileged access where corporate interests are represented while public interest NGOs are not.

There are a number of known cases of privileged access in the public health field. One example involves an organisation which succeeded in securing for itself a prominent position in key EU fora, despite non-disclosure of its strong links to industry, its sources of funding, its relationships with corporate sponsors, or its full list of members.

In order to reduce the likelihood of questionable organisations having such access and influence at European level, **EPHA strongly recommends that the Commission proposes concrete measures to ensure consultative balance in the context of the transparency initiative**.



EPHA Response to the ETI Green Paper

Disclosure of EU Fund Beneficiaries

“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?”

EPHA believes that there should be a general principle of full disclosure concerning how the EU’s budget is spent and the beneficiaries involved. This should apply both to funds managed at EU and at national level. Only in exceptional cases where the beneficiary’s safety could be under threat should the general principle of full disclosure be waived.

EPHA believes that while the arguments against disclosure, including privacy concerns, envy from neighbours and others, possible business secret exposure, etc might have some validity, they are largely outweighed by the public interest of disclosure.

Transparency is an effective barrier to the misuse of entrusted power and EU public resources, which has an annual budget of €100 billion. Some member states are already disclosing structural fund recipients (e.g. Slovenia and Estonia) showing that it is possible within a reasonable cost and time frame.

In addition, **EPHA calls for an EU-wide debarment (“blacklisting”) system.** Debarment disqualifies companies found to have engaged in corrupt behaviour from bidding on public contracts. It prevents fraudulent firms and legal persons from benefiting from EU contracts and serves as a powerful deterrent. A debarment system would ideally cover the entire EU budget, and hence also apply to the EU funds. EPHA advocates the implementation of such a system.

Transparency and EPHA

EPHA agrees with the Green Paper’s starting point that *“relations between the Commission and interest representatives must be open to outside scrutiny”*. We also fully support the assertion 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.”*⁹

NGOs working on public health and health care have a long standing tradition of advocating for transparency and accountability. EPHA commits to building upon our already strong practices of transparency. EPHA was established in 1993 and registered in Belgium. It meets all of the requirements as required by the regularly updated Belgian laws governing international not-for-profit organisations (A.I.S.B.L). The address, statutes and lists of executive committee members are submitted to the Belgian Ministry of Justice and published in the Moniteur Belge. In addition we file quarterly VAT returns and annual accounts.

9 ETI Green Paper, page 5



EPHA Response to the ETI Green Paper

As a further commitment to transparency, EPHA publishes on its website the full list of all member organisations with their contact details, the members of the Executive Committee, the Statutes, abbreviated annual accounts and contact details and responsibilities of all staff members. In addition, the members only section of the website contains minutes of meetings, the Annual General Assembly and the internal rules of the organisation.

We are registered on the Commission's CONECCS database and willing to register on any other similar EU institution database. In contrast it should be noted that only a small proportion of the business lobbyists active at EU level have made public commitments to transparency.

EPHA, as a member of the Social Platform, has made a commitment to lead on good governance, including by developing a Charter of Governance for European NGOs. This **Charter will encode our existing good practice in relation to transparency** within a public Charter, and work has begun on this document.

Further Reading

EU Civil Society Contact Group (of which EPHA is member)

- Civil Society Contact Group contribution to the Transparency Initiative, January 2006
<http://act4europe.horus.be/module/FileLib/Transparency%20initiative%20CSCG%20contribution.pdf>

Social Platform (of which EPHA is member)

- Transparency Initiative: Response of the Social Platform, July 2006 <http://www.socialplatform.org/>

ALTER-EU

- ALTER-EU Submission on ETI Consultation, July 2006
<http://www.alter-eu.org/submissionjuly2006>
- Recommendations on Lobbying Transparency and Ethics in the European Union, January 2006 - <http://www.alter-eu.org/pr20060117>

Transparency International

- Transparency International's Response to the ETI Green Paper
http://ec.europa.eu/comm/eti/contrib_7.htm