



# EPHA's Comments to the Code of Conduct for Non Profit Organisations

Subject	Response to the consultation on the European Commission's (DG JLS) draft Recommendations to Member States regarding a Code of Conduct for Non Profit Organisations to Promote Transparency and Accountability Best Practices
Date	September 2005

***The European Public Health Alliance (EPHA) represents over 115 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. <http://www.eph.org>***

The voluntary sector is a vibrant and growing aspect of society and the economy. Not-for-profit (NPO) and non governmental organisations (NGOs) enjoy a high degree of public trust and provide a voice for the most marginalised and services for these communities. NGOs have been catalysts for change on a global scale, for example the impact of campaigns on animal welfare, respect for human rights, improved working conditions, fair trade, access to healthcare, gender equality, poverty and education.

EPHA welcomes the fact that the European Commission has started to examine the role of NGOs. The White paper on governance<sup>1</sup> set out many key principles for the way that the EU institutions could work with NGOs and set out elements of good practice in terms of consultation and partnership.

The public health community strives towards building a more equitable, open and sustainable society as a means of ensuring that all parts of the population experience better health.

However, the Draft Recommendation to national governments about a code of conduct for NPOs from DG Freedom, Security and Justice (DG JLS) adds nothing new to the ongoing structured debate about how the EU could work with the NGO sector. Instead this document represents a poorly designed attempt to regulate NPOs at European level according to a number of very subjective risk indicators.

The first key point to bear in mind is that the European Commission has failed to meet the minimum standards on consultation of interested parties<sup>2</sup>. The consultation was opened on 27 July 2005 with a very short deadline for response in August. This was in the middle of the holiday period and the consultation was poorly publicised. Although an extension of the deadline for responses to

<sup>1</sup> [http://europa.eu.int/eur-lex/en/com/cnc/2001/com2001\\_0428en01.pdf](http://europa.eu.int/eur-lex/en/com/cnc/2001/com2001_0428en01.pdf)

<sup>2</sup> [http://europa.eu.int/comm/secretariat\\_general/sgc/consultation/index\\_en.htm](http://europa.eu.int/comm/secretariat_general/sgc/consultation/index_en.htm)



## **EPHA's Comments to the Code of Conduct for Non Profit Organisations**

19 September 2005 is helpful it is wholly inadequate given the critical importance of involving national authorities and NGOs in the consultation process.

The Commission's initiatives is based on recommendations from the G8 Finance and Justice and Home Affairs Ministers who were concerned about NGOs being involved in financing of terrorism and other criminal activities. Although this may be a legitimate concern internationally, no evidence is provided in the paper from DG JLS about how many NGOs in Europe are suspected of being involved in these activities nor about whether there are real dangers of public funds being diverted for criminal or terrorist purposes.

Every EU country (except Malta) already regulates NGOs registered in their jurisdictions and these laws cover key issues such as membership, decision-making processes, the role of trustees, filing of accounts, acceptable type of activities and tax and accountancy rules. If a problem does exist in the EU then the question should be asked about whether this is due to a loophole in the existing legislation or a weakness in monitoring and enforcement of the law.

The draft recommendations from DG JLS do not define what is meant by an NPO nor do they address other key elements in potential financing of terrorism and criminal activity such as private foundations, businesses and financial institutions.

As already stated, NGOs working on public health and health care have a long standing tradition of advocating for transparency and accountability. 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.

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.

However, this practice is not followed by all organisations for example some think tanks, trade bodies and NGOs 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.

An issue of strong concern in the DG JLS Recommendations is suggestion that EU awareness programmes should be launched "on the vulnerabilities of the non-profit sector to terrorist financing and other criminal abuse". The European Union has a relatively poor track record in pan European awareness raising campaigns to the point that it is re-examining the way that it communicates with



## **EPHA's Comments to the Code of Conduct for Non Profit Organisations**

citizens. It is appropriate for the EU to advise Europeans about 'responsible giving' and is it likely to have any impact? Are public donations to charities really the source of the problem of terrorist financing? Most NGOs that gather money from the public have spent a lot of time develop trust, credibility and authenticity in the way that they work to deliver their mission statement. The integrity of their brand and reputation are critical to their ability to function. It is therefore highly unlikely that they would allow their funds to be used for criminal or terrorist activities.

More people have chosen to become members of NGOs than are members of trades unions or of political parties. This shows the fundamental and central role of NGOs in society, a fact that is further demonstrated when disasters or crises occurs it is the NGO community that is mobilised first. For example, in December 2004 after the Asian Tsunami the UK public donated more money through NGOs than the government pledged for aid. An information campaign by the EU about the dangers of giving to NGOs could have a dramatic negative impact on the entire non-profit sector, risks being seen as a scare tactic and is unlikely to achieve the objective of fighting terrorism.

The non profit sector has become increasingly involved in the development and implementation of public policies and in service delivery at European and national level. In order to access national or EU funds, NGOs are required to fulfil high standards of management and administration and to provide proof of their compliance with accounting, taxation and other national requirements. An information campaign about the vulnerability of NGOs to terrorism would not only be a disproportionate response to a perceived problem but it could undermine major EU and national programmes and policies that are reliant on NGO participation and implementation.

The risk indicators annexed to the DG JLS Recommendations provide no added value. The basic criteria for indicators are that they should include sources of verification and be objectively verifiable. The risk factors listed are both highly subjective and represent appropriate behaviour for the NGO sector.

For example, sharing office space and using the same accountant, lawyer, auditor or other service provider can be a signal of good administration rather than a risk factor. Using service providers that have developed sectoral expertise in the appropriate legislation or accounting rules for NGOs makes sense as does reducing overheads by sharing facilities and infrastructures. For small NGOs this is essential to be able to operate and larger NGOs often offer such support as a means of enhancing the capacity of small NGOs and as a way of showing solidarity and encouraging networking. Similarly, it is a mark of good governance to have experienced directors, trustees or members of an executive committee. In most cases they will already fulfil these functions in other organisations and therefore this should be seen as an asset rather than a weakness. Some large NGOs run complex programmes for donors or procure large amounts of goods and services. Within this context they seek to keep overheads and administration to a minimum and this may include using as few people as possible to manage the funds. The ratio of employees to funds



## **EPHA's Comments to the Code of Conduct for Non Profit Organisations**

managed or activities undertaken should be seen as an indicator of operational efficiency rather than a risk factor.

The Commission has indicated that a risk factor could be that the organisation does not 'cooperate with public authorities in case of legitimate enquiries'. Some NGOs work in difficult political situations and with the most marginalised or oppressed populations. An enquiry, legitimate or not, about recipients of NGO services, financial support or lists of local supporters may breach confidentiality and expose them to danger.

In terms of risk factors listed for financial management, several EU programmes require new bank accounts to be established for each individual project and separate financial management and auditing records. The Commission must be coherent on this topic. Multiple bank accounts cannot be both a criteria for receiving EU grants and a reason for being considered a risk of criminal activity !

NGOs apply for funding on a regular basis and financial resources can vary greatly during accounting periods and from one year to the next. Grants from lotteries, foundations as well as public authorities are usually large and can therefore result in a 'sudden change in the amount of funds distributed or collected', although this is highlighted by DG JLS as a risk factor. Furthermore, the Commission identifies the reliance on a main donors who have links to the trustees or managers of the NGOs as a risk factor. But this is usually the basis on which many grants are made particularly through foundations, private philanthropists and other fund-raising activities that use personal connections and knowledge of an organisation as a basis for allocating money.

In conclusion, although EPHA welcomes all efforts and improving the governance, sustainability and operational integrity of the NGO sector, the recommendations from DG JLS undermine the ongoing dialogue between the EU institutions and civil society about how to ensure constructive engagement. The document is poorly argued, lacks details and consistency with other initiatives on transparency and good governance and the risk indicators are neither well defined or objectively verifiable.

A more considered and well balanced approach is needed which addresses the key problem of financing for terrorism and criminal activities and ensures that all stakeholders including NGOs can work together to minimise the opportunities for such abuse.