



The European Consumers' Organisation



European Consumer Voice in Standardisation

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BEUC / ANEC position on the European Transparency Initiative

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BEUC/ANEC position on the European Transparency Initiative

On July 2006 the European Commission published a Green Paper or consultative document on Transparency – on making the EU decision making process more open and more accessible to citizens and interested groups. This document sets out the views of BEUC, the European Consumers' Organisation, and ANEC, the European consumer voice in standardisation, on the Green Paper. BEUC represents 39 independent national consumer organisations in 28 European countries. ANEC represents consumers from all EU Member States and the three EFTA countries in standardization. We are glad of the opportunity to comment on the Green Paper entitled the "European Transparency Initiative" published by the Commission.

Before responding to the specific questions we wish to make some general points:

We are impatient with the slow pace of improvement in transparency in the Commission and other institutions. There has been too much talk and too little action. This current Transparency Initiative is a good illustration of our point. Nearly eighteen months ago, in March 2005, in the first of many such announcements the Commission signalled their intention to produce a "Transparency Initiative". Given the amount of talk about it, we expected something big. We got a Green Paper, asking more questions, and describing further initiatives (including a "debate with the other institutions") that the Commission would take at some time in the future.

Going further back, the Commission published in 2002 a Communication setting out general principles for minimum standards of consultation and dialogue. Undoubtedly, this has some positive effects but it is discouraging that we have so often to remind individual DGs of the requirements in that Communication.

In general the Commission's attempts to improve transparency have tended to be very complex and bureaucratic, whether dealing with access to documents or other issues. We have long proposed a more simple and creative approach that is certainly not a panacea but that would in one step greatly improve transparency. We do not understand why the Commission does not take this action.

In brief we proposed that the Commission should take a Decision to publish (electronically) all submissions made to the Commission on matters of public policy, subject to a few well defined and strictly limited exceptions. These exceptions could include (genuine) matters of personal privacy and matters of (genuine) commercial confidentiality.

The Commission publishes some, but rarely all, submissions and communications on public policy issues. In effect, they follow a "private" consultation process whereby the Commission sees all views submitted but the stakeholders and general public do not. As a result, certain views may go unchallenged. There is no way of seeing the balance of views which form the basis for the Commission's subsequent decisions or actions. The Commission retains to itself the privilege of seeing the "full picture" while denying the same possibility to everyone else.

In certain cases at present, authors of submissions know in advance that their submissions will be published, but these occasions are relatively rare and even in such cases publication can be easily avoided. In other cases the Commission seeks permission to publish – a time-consuming and often wasteful procedure.

At times, representatives of the Commission have tried to justify the current practice by citing the constraints of data protection rules. This is nonsense. Already the Commission can announce in advance that they are going to publish some submissions, e.g. during an open consultation. The Commission should simply make a similar announcement in relation to all future policy submissions (subject to a few limited exceptions, as mentioned above).

Publication of all policy submissions would have the following advantages:

- Stakeholders and citizens would see the full balance of views which form the basis for Commission decision or action.
- Stakeholders and citizens would see precisely who is trying to influence Commission policy and from what perspective. (This would be highly relevant to the current discussions on lobbyists and their influence.)
- Stakeholders and citizens would have the possibility, not only to submit their own views but to challenge other views with which they do not agree. At present the Commission may be relying on viewpoints that nobody else has seen or heard of.
- There would be no further need for complex and over-bureaucratic procedures for deciding which submissions might be released and under what circumstances.
- While individual DGs would still retain discretion as to procedures for consultation, there would finally be coherence across the Commission as a whole on the publication of submissions, irrespective of the precise consultation procedure in any given case.
- Above all, the publication of all submissions would be a great step forward towards the transparency to which we all aspire.

We have never received any explanation as to why it is thought that this proposal could not be implemented. This is a matter wholly within the competence of the Commission to decide – it could be done at one meeting of the Commission. We know there are members of the Commission who would support such a move but they seem to be blocked by some internal opposition, whether institutional, political, cultural or just bureaucratic, we do not know.

Apart from a lack of the necessary will, there is no reason why the Commission could not move forward on this issue; in doing so they would only be following best practice in a number of member states.

(Clearly we would like to see the European Parliament and the Council also adopting the practice of publishing all policy submissions: on this issue those two institutions are very much less transparent than the Commission.)

In answering the specific questions raised in the Green Paper we stress that the over-riding need is to publish all policy submissions as we propose. Registration of lobbyists, improved consultation procedures, and disclosure of beneficiaries of community funds are all very well but publication of all policy submissions is essential.

CHAPTER 1

- Do you agree that efforts should be made to bring greater transparency to lobbying
- 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 made available to the general public? Who do you think should manage the register?

Our references to lobbyists are intended to cover all those professionally involved in seeking to influence the policy making process, including so-called “think-tanks, “institutes” and the like - and NGOs.

Much more efforts are needed to bring greater transparency to lobbying. We favour a system of registration that would cover all lobbyists and those seeking to influence public policy, with effective incentives for those who register and/or disincentives for those who do not.

However, we strongly oppose the idea of using automatic alerts as a “reward” for registering. Consultation procedures must be transparent and open to all who have an interest in or who may be affected by a proposed initiative and the Commission and other institutions must make a positive effort to achieve this aim. An individual market operator or a group of consumers who have never lobbied in their lives may be more affected by Commission action than registered lobbyists.

Unregistered lobbyists should not be admitted to participate in hearings (or given passes to the European Parliament, by the way). However, the consultation process must remain open to citizens’ groups, to those who have a direct interest in a given issue or who have relevant personal experiences to contribute.

Registration should cover all EU institutions, not only the Commission. This would enable the EU institutions, lobbyists and EU citizens, to be informed of who influences the EU policy making process. We believe that registration should not pose an undue administrative burden and that the information to be provided should be the same for all lobbyists who register. Registration of lobbyists should include information on the mission, funding/budgets, membership and clients (for private lobby groups).

The register should be managed by an independent body, such as the European Ombudsman. This independent body should also have the responsibility for monitoring that the information provided is true and correct. This should be done by undertaking regular spot checks. Obviously the register must be open to everyone to see, inspect and challenge, when appropriate.

The EU should take example from the US, where the Lobbying Disclosure Act obliges public relations firms and lobby groups to list their clients, the issues they deal with and the money they get to perform these tasks. It requires lobbyists to file a semi-annual report including income received from clients and expenses of lobbying activities. It also introduces penalties in case of non-compliance.

The US experience also reminds us that registration is not in itself a guarantee against undue influence on policy making. At best it is only one element in an overall transparency policy and not necessarily the most important - after all what is the point of registering lobbyists if we do not know what they are saying to decision makers, and if their submissions on policy issues are not published?

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

BEUC and ANEC are in favour of one common code of conduct for all lobbyists. The code should not be written by the lobbying profession itself but developed by an independent third party such as the European Ombudsman, in collaboration with the Commission, Parliament and the Council of Ministers and of course by way of wide public consultation.

CHAPTER 2

In your view, has the Commission applied the general principles and minimum standards for consultation in a satisfactory manner?

European Commission

We cannot give a general answer to this question because there are so many different experiences, depending on the issue, the particular DG, and even the unit concerned. Generally, knowledge of the principles and standards for consultation is patchy throughout the Commission services. Practices vary widely, especially on access to documents and submissions from other parties.

These are some of the instances we have experienced:

- A tendency to favour established interlocutors in the consultation process, particularly within DGs and units with responsibilities for specific economic sectors. Consultation documents and questions to stakeholders may tend to reflect the views of a particular interest group.
- A tendency to cut short consultation periods, for “reasons of urgency” while taking all the time in the world to prepare consultation documents or study submissions received.
- The use of special groups, (sometimes but not always called “high level” groups) with a specific membership or orientation, perhaps even with a token “consumer”. Such groups do not have to follow the general principles and minimum standards for consultation yet still set the agenda for future consultation and action.
- A tendency to believe that stakeholders should not go on holidays, with eight-week consultation periods spanning the month of August.
- An assumption that the presence of a consumer representative in a consultative group means that consumers support the conclusions of the group.
- A tendency to demand that the consumer representative(s) in a consultative or advisory group should be from a particular member state, region or language group or should be of a specified gender – in order to “balance” the other members of the group.
- A tendency to privilege certain interlocutors in terms of access to internal documents and drafts. In the worst cases, consultation documents may be written, at least in part, by outside interests.

It is also important that those who submit policy papers receive some form of feedback, and can see how their information has been used by the Commission. Those officials who conduct consultations must ensure that the views of the full spectrum of players is taken into account, so that the potential imbalance in favour of industry views as opposed to the opinions of the NGO sector can be redressed. There have been some recent cases where the Commission has given preference to exclusively consulting the business sector, for instance the High Level Group on film online or the High Level Group on CARS21, or other cases where civil society groups participate(d) but with a majority of industry representatives, effectively smothering their voice (e.g. High Level Group on Digital Rights Management, multi-stakeholder forum on Corporate Social Responsibility).

The Commission should automatically try to hear from all relevant stakeholders on a given issue. BEUC and ANEC are for instance usually consulted by DG SANCO but not always by other DGs on matters of concern to consumers. This reflects the lack of implementation of Article 153 of the EC Treaty which requires the integration of consumer policy into all other EU policies. BEUC and ANEC believe the Commission should publish a Communication setting out the institutional and practical arrangements, including monitoring instruments, they have or will put in place to ensure the better integration of consumer policy across all policy areas. (The Council and Parliament should do the same.) This Communication should include a commitment for every DG to report annually on consumer relevant projects and legislative proposals within its field of responsibility. These reports could be co-ordinated through DG Sanco or perhaps published directly by the DGs concerned.

We also believe that the consultation period should be longer than 8 weeks. At the very least, the 8-week period should be respected, given our recent experiences of consultations that ran for only 6 weeks (or even less). The number of key consultations could also be timed better, to ensure that all players can make a submission. At the moment there are so many consultations on a continuous basis that this is an extreme burden for NGOs. The Commission sometimes launches consultations over the summer period which is an additional burden, as the staff of BEUC and ANEC member organisations are often on holiday during this period. We therefore feel that the summer break (for example between 15 July and end of August or at least four weeks in this period) should not be counted as part of a consultation period. Consultation must include a positive effort to seek a wide range of views and especially to ensure that diffuse general interests are consulted. The Commission should study the range of submissions received and ask themselves if they have received the full range of relevant views. They may find, for example, that they have received few submissions on behalf of consumers, the aged, the disabled or some particular group. In such cases positive action must be taken to hear these voices.

Finally, the Commission should improve its internal code of conduct and implementation of the Communication on general principles and minimum standards for consultation of interested parties. There is currently a code of conduct for Commissioners in place (since November 2004) which we welcome as it requires Commissioners to avoid conflicts of interest, to disclose financial interests and to refuse gifts above 150 €. However this code does not cover all the other Commission officials, who at senior level can be very influential. Moreover, there are no rules with regard to Commissioners and Commission officials leaving the Commission to work as lobbyists. There should be a cooling off period, of at least one year, during which they are not allowed to work as lobbyists on issues they were previously involved in.

European Parliament

Just as for the Commission, rapporteurs (and other MEPs) should publish their sources of information on their individual websites and make publicly available all policy papers they receive from all interest groups. This would address the current lack of transparency as regards lobbying in the European Parliament. Whilst we welcome the openness of the European Parliament and its willingness to hear the views of various stakeholders, it is necessary to ensure that citizens are informed of whether MEPs have a balanced view on a given legislative proposal. Similarly, public hearings should ensure that all relevant stakeholders are given the opportunity to express their views and that the full balance of views is reflected in the panel of participants.

The European Parliament's rules of procedure include some provisions on ethical conduct, notably obliging MEPs to disclose financial interests and not to accept any gifts. We feel they should adopt a proper internal code of conduct which would address the issue of conflicts of interest and the equal consultation of all interested parties. The declaration of interests should also be disclosed in English at least – currently it is in the MEPs' individual languages. More importantly, MEPs who have direct financial interests in particular sectors should not be allowed to sit on the relevant parliamentary committees or act as rapporteurs on draft legislation in which they or their families have a direct interest. However high the personal integrity of a particular MEP, citizens will not have confidence in a legislative process where key MEPs may work on a matter directly affecting the interests of themselves or those close to them.

It is also important that more information is made publicly available on the European Parliament's Intergroups. For many of these Intergroups, external organisations act as the secretariat and it should be clear how Intergroups are funded and how they operate. This information should be available on the European Parliament's website.

Council

Of all the EU institutions, the Council is the least transparent. Once a Commission proposal has been forwarded to the Council, it disappears into a black hole and will eventually come out again in

a definitive form. There is no official way for the public to follow the deliberations in the Council and consequently to understand the reasons which have led the Council to its decision.

BEUC and ANEC naturally welcome the new transparency policy adopted at the European Council on 15th-16th June 2006 and in particular the fact that deliberations on legislative acts under the co-decision procedure will be public in the future. However, the effectiveness of this policy will naturally depend very much on its implementation. In addition, this policy will not change the fact that a big part of the decisions taken at Council meetings have in reality already been taken in advance at the COREPER (committee of permanent representatives) meetings or even earlier at working group level, which remain secret. Meetings dealing with co-decision acts should be public regardless of if at working group, Coreper or minister level.

Naturally, we also want to see full publication of all submissions to the Council on public policy issues.

The Council's policy on access to documents has improved in the last few years and its online register is useful, but it does not change the fact that Council documents are published with a long delay, and usually not immediately after circulation to the delegations, but weeks later.

We believe that agendas for all Council, Coreper meetings and working group meetings, the submissions made by the Presidency or the Council secretariat in the course of discussions on a legislative act or other decisions (such as the programmes of the Commission or the presidencies as listed in the new transparency policy), and finally all documents issued in preparation of a Council meeting, should be made public immediately after circulation.

We welcome the idea of holding public debates on important issues for EU citizens as introduced by the new transparency policy in May 2006. As one of the first debates we would like to see the European Council discussing the future of consumer policy or the completion of the Internal Market for consumers. This would also help with the practical integration of consumer policy into other policy areas. The European Council meetings should have "cross-cutting" policy agendas such as the Göteborg Council (June 2001) on sustainable development more often.

CHAPTER 3

- 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?
- If so, what information should be required at national level? What would be the best means to make this information available?

We would agree with an obligation to make information on beneficiaries of EU funds under shared management available as this would allow for a better public assessment of whether EU money is being spent adequately, in particular with regard to the funds spent on the Common Agricultural Policy and the Structural Funds.

The question would be better posed the other way round, i.e. is there any good reason why Member States should not make available information on beneficiaries of EU funds under shared management? A presumption of freedom of information would be consistent with the Commission's commitments to good governance, value for money, competitiveness and encouragement of dialogue with citizens.

In particular we would like to see a Community-wide agreement to disclose details of individual payments made under the Common Agricultural Policy. We believe that consumers have a right to see clearly how public money is being spent particularly where, as with the single payment system, it involves public goods.

Full transparency is essential if there is to be an informed public debate on priorities and the nature of food, agricultural and environmental policies. The Commission will be aware that consumers in the United States already have access to this type of information.

Our preference would be that payments under the single payment system should be published online annually, by the relevant national authorities, with details of the individual recipients and the local administrative area within which the relevant farm is situated. The information should also be published promptly, for example 2007 data should be in the public domain in the first half of 2008.

We are however concerned that any Community-wide agreement to publish nationally information about the beneficiaries of EU funds under shared management should be a minimum requirement so that Member States remain free to provide additional information if they wish to do: it would be very regrettable if the policy of secrecy pursued by some Member States were to produce a Community-wide agreement that actually reduced the amount of information that they currently publish. END