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PM 2005-08-23

Comments on

Draft recommendations to member states regarding a code of conduct for non-profit organisations to promote transparency and accountability best practices

An EU design for implementation of FATF Special Recommendations VIII – Non-profit Organisations

Conclusion

The fight against terrorism is important. The methods used should be carefully examined to make sure they are up to their purpose. In an open society as ours such methods may have disadvantages or being harmful to profound democratic values or have other detrimental side effects. It is important that there is a proper balance between these two concerns. The proposals concern Non-profit organisations. There are no records on to which extent such organisations are being used in or for terrorist activities. The proposals will create an immense bureaucracy that will create serious obstacles for these organisations and also harm needed social work in the society. The proposals are out of proportions, the detrimental sides and other negative effects have not been recognised.

The work is not co-ordinated with the same work in an other international organisation. There are other better legal ways to deal with the problems.

The proposals should be turned down and a new work initiated founded on other legal principles, specially those existing dealing with terrorist activities and money laundry for that purpose.

General

The comments concern a draft discussion document issued Brussels, 22nd of July 2005, by the European Commission, Directorate-general Justice, Freedom and Security, Directorate D, Unit D2 : Combating economic, financial and cyber crime.

The reason for the documents is the ambition to prevent Non-profit organisations (NPOs) to be part in or exploited in financing or supporting terrorism and other kind of criminal abuse. The immediate reasons for this document just now are of course the terrorist activities in London this Summer.

The document contains a number of recommendations to Member States and a *voluntary* Code of Conduct for NPOs acting in the European Union.

In the document it is stated that this discussion paper is drafted on the basis of preliminary consultations and does not reflect any official position of the European Commission. NPOs are invited to give comments until 26th of August 2005.

There is a connection between the proposals in the document and what has previously been decided or proposed by the Financial Action Task Force (FATF). The document is an implementation of FATF Special Recommendation VIII Non-profit Organisation, Best Practice Paper, October 2002, (SR VIII).

NPO has the same meaning in this document as in the SR VIII. It therefore covers organisations, legal or natural persons, legal arrangements or other types of body that engage in the raising and/or disbursing funds for charitable, religious, cultural, educational, social or fraternal purposes, or for the carrying out of other types of good works – in effect almost every kind of NPO, regardless of if it is active in international solidarity or any other international work or not. It also covers everything from big organisations to very small local clubs.

Proposals in the draft document

The document consists of three parts – A. Recommendations to Member States, B Code of conduct for non-profit organisations and C Considerations at the European level. Added to this there is an Annex with risk indicators.

The document lacks an account of to which extent NPOs have been used for activities of this kind. It only states that this has happened. There is also no description what so ever of in which way the proposal will create effective obstacles in order to prevent terrorist activities or financing them. Obviously there are many other ways to support terrorists and their activities which could and probably would be used if these proposals came into effect. Even more serious is that there are no descriptions of the effects the proposals will have on both the NPOs and their social and solidarity work and the society – the proposals means an immense increase of bureaucracy. For both the Member States and the NPOs the proposals will create severe administrative burdens and huge costs. There is no discussion in the document on these matters, nor on the balance between the suggested effect of the proposals and their side effects.

Not mentioned in the document is the independence between the NPOs and the national authorities. Many NPOs have rightfully in their own country political aims – the political parties are NPOs, the same goes for the labour movements and the churches. Giving authorities a formal right to investigate such organisations is creating a serious risk of damaging fundamental democratic values. Other NPOs working with individuals with social needs or for health care purposes must have the possibilities to sustain the confidentiality on information of clients and the patients.

The document does not recognise that very often the NPOs, specially concerning social relief work, performs for the society important and much needed work which the formal authorities have difficulties to carry out. There is here a partnership between the official society and the NPOs (se further comments on Part B below).

The proposals seem founded on the pretext that there are or might be abuse of everyone of the NPOs and the regulations therefore should comprise every NPO and have not taken in to consideration that there are also other fundamental values in the society which have to be protected and safeguarded.

Detailed comments

In Part A.1 Oversight Mechanisms it is stated that the Member States should ensure that they have designated competent authorities with the responsibility to oversee the non-profit sector. To achieve this the authorities are supposed to have some legal tools, i.a. registration and tax audits. One task for the authorities is to help and support NPOs, there is no arguing against that, but that task should be the prime point and also been stressed.

In Part A.2 Encourage compliance with the Code of Conduct there is pointed out registration, enhanced transparency and accountability standards. These requirements should be achieved in order to get privileged tax status, public grants etc. This will give the authorities a very and often much too close view of the NPO:s inner conditions. The proposals that the NGOs and their umbrella organisations themselves develop systems for checks and controls is something that instead should have been further discussed.

In Part A.3. Awareness Program on Vulnerabilities of NPOs to Terrorist Financing and other Criminal Purposes it is flatly stated that NPOs have been misused for the purpose of transferring money to terrorist organisations and that it therefore is of key importance that Member States and NPOs are fully aware indicators that might signal misuse etc. Such a statement cannot be made without at least some report of the extent of the abuse. Even if it is a good thing to be aware of these risks the amount of information and other work on this issue must be related to the degree of misuse, otherwise the obvious risk is that the efforts will miss its point and in the long run make more harm than good.

Part A.4. Investigations of abuse of non-profit organisations deals with how the authorities should handle misuse of the NPOs. Activities of this kind must be supported by and carried out with the support from a clear legislation – and not from loose principles. In such a legislation there has to be clearly stated the legal grounds for the activities, e.g. demands on the grade of suspicion, which legal means the authorities are allowed to use and the possibilities to appeal.

Part B. A Code of Conduct for non-profit organisations to promote transparency and accountability best practices contains a framework for this kind of code of conduct. It might work as a basis for a NGO when it is deliberating on the principles for their work, but it is much too detailed for a more official use or as a standard for the authorities. In the beginning of the text it is stated that NPOs should use the code to demonstrate their “responsibility towards public generosity”. The text shows that the writers have not understood that in many cases, specially concerning social relief work, the NPOs work side by side with the society and very often performs a needed task the society has problems to carry out successfully. The persons active in the NPOs very often do their work on as volunteers without pay. Among the unnecessary details are some of of what is said of book-keeping, the demand of making it public and that only registered bank accounts should be used for money flows, allowing only for a tiny cash. What is said here shows that the writers have no deeper knowledge on how to economically run a NPO.

Part C. Considerations at the European level deals with guidelines on the international level. Many of comments made on the previous parts of the document can be made here. Proposals in this part should be done after regulations etc. have been settled for the national level and not now.

The Annex contains a list of risk indicators that something wrong might be going on. Such a list might be helpful for both NPOs and their umbrella organisations and the authorities when they are considering activities. The use of the list should end there.

The draft document and proposals from FATF

The draft document is meant to be an implementation of FATF SR VIII (see above). In the beginning of this year also the FATF secretariat issued a paper containing an implementation

of FATF SR VIII – FATF-XVI WGTF/75.REV1, DOMESTIC REVIEWS OF NON-PROFIT SECTOR :COMMON THEMES. *Information paper by the FATF secretariat.*

The proposals in the FATF draft were very similar to those in the EU document. The biggest difference is that the EU proposal makes the proposed Code of Conduct voluntary. The draft from the FATF secretariat met with heavy objections in Sweden, both from the Government and the Swedish NPOs. This draft was discussed at a FATF meeting in Singapore 6th of June 2005. The draft was turned down. The secretariat was ordered to work further with the proposal. A new proposal was supposed to contain a new definition of NPOs (not only high risk organisations) and minimum standards on registration, transparency and book-keeping. A new proposal is planned to be discussed later this year. Such a document has not yet been made public.

Obviously it is not in practice possible to have two different documents on the same issue. There should be reasonable co-ordination between those working with the documents, a work that should include not only the Member states but also the NPOs concerned.

Aims and goals of the proposals

In most countries the number of NPOs is huge. In Sweden alone the number estimated is well over 200.000. In Sweden as in most countries NPOs active in and/or supporting terrorism or other criminal activities are extremely few. The proposals from both FATF and now EU seems quite out of proportions. The immense bureaucracy that follows will create huge obstacles for the NPOs and their for the society needed work. A lot a voluntary work will cease, we will get a worse society. As it is indeed very doubt full if the proposals will effectively hinder terrorism and other criminal activities other solutions has to be sought.

In Sweden as in many other countries there is special legislation dealing with terrorist crime and money laundry for terrorist financing (in Sweden e.g. legislation number SFS 2002:444 and 2003:148). This is a better and more appropriate way of dealing with this kind of crime. That means strengthening the legal possibilities of investigation and other legal procedures when there is a suspicion of a crime.

No one can have founded objections against fighting terrorism. If people are to understand the need for this fight and the methods used – in effect if the fight will succeed – it is necessary that the methods used are ample and properly adapted to the over all situation. The proposals now from both the FATF secretariat and EU are not up this. A better way is to look into the existing legislation concerning terrorism and see what amendments and other changes are needed.

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