

# Ban the SoE&A!

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## INITIATORS

### BAN SOE&A:

Stephen Dewar (Ireland)

Bill Fraser (United Kingdom)

Michael Gericke (Germany)

David Hepburn (United Kingdom)

Tamer Kirac (U.S.A. - Turkey)

Henry Leerentveld (Netherlands)

## WEBSITE

[www.bansoea.portal4project.net/](http://www.bansoea.portal4project.net/)

## EMAIL

[ban\\_soea@henry-leerentveld.eu](mailto:ban_soea@henry-leerentveld.eu)

## EDITOR IN CHIEF

Stephen Dewar

## PETITION IS STAYING OPEN

**IF YOU HAVE ALREADY SIGNED, GET TWO MORE PEOPLE TO SIGN UP!**

The third newsletter is here!

### Petition is staying open!

This is our third newsletter and the **last one before we approach Brussels for the opening discussions and negotiations**. As of 30 September, 544 of you from 59 countries have signed the petition. (Please see Section 2 for the breakdowns and some comments). We decided to keep the petition open for some time longer as we are still hearing from consultants and other interested persons who have only just learned about the petition. More than 540 is still a lot of people and we would like specially to acknowledge the public support of the Association of Dutch Consultants, who endorsed the campaign and urged its members to support it. Thanks to this, the number of Dutch signatories is close to 100 – second only to the Brits, who have over 140, and way ahead of the next biggest national groups – France, Ireland, Germany and Belgium, each of them with between 30 and 40 names.

### Volunteer translators

In the last newsletter we appealed for volunteers to translate at least some of the materials into French, Portuguese and Spanish.

Unfortunately, nobody responded. so we are still working only in English. Since we are keeping the petition open for a while longer, it is not too late if any of you change your mind and volunteer

### Women

The proportion of women who have signed has remained about the same as before, at just over 15%. We asked for views from women in the last newsletter, especially on whether the SoE&A is discriminatory, and several women consultants wrote to us. You can see what they said in Section 3.

### New in this newsletter...

There are three new subjects in this newsletter:

- The state of our research into the legal status of the SoE&A, see Section 4,
- The plans for our approach to the Commission, see Section 5, and
- An appeal for financial support to cover the cost of the legal opinions and travel costs to meet the Commission in Brussels, see Section 6.

## OVER 200 COMMENTS...

We now have over 200 written comments from you, for which many thanks indeed once more. We received several comments telling us that the last newsletter was too long, so this time, apart from a few relevant comments in the following sections, we are not reproducing a selection of your views. Apologies for this, but please be assured that I read and file everything and what you have told us is being used in our case preparations.

### Women experts

We invited women colleagues to send us their estimate of how many women there are working in this profession, and also to say if they think the SoE&A discriminates against them. On the first point, one woman wrote to say that when she had worked for a contractor, there were 4,000 experts on the database, of whom 20% were women. Like our correspondent, I think that the sample size is probably big enough for 20% to be a reasonably accurate industry estimate (assuming there were no national or cultural characteristics in that firm which might have skewed the figures). On this basis, having 15% women signing the petition could be better – but it's not bad. Nobody else has offered comments on this aspect.

On the other issue, three women experts wrote to us. They were in agreement that the SoE&A does not, per se, discriminate against women, but they noted some indirect effects.

"I believe female consultants tend to respect or fear the rule [more than men] and not submit more SoEs. This is not to say that men are ignorant of rules, but having tried to contract female consultants, they were really careful calculating the (approximately) time required for the given consultancy..."

That's an interesting point – women observe the rules more than men. It makes intuitive sense, especially given the number of men (but no women) who have written to say that they sign multiple, simultaneous SoE&As.

Another woman expert wrote, "By making you insist that as a key expert you are completely available during the named period they of course do ignore things like child care emergencies which the law on Parental Leave insists is permitted for employees." That is also an interesting point.

She added this additional concern, "Most EU delegations do not accept home working AT ALL – not even for a few days.

I need to be sitting in [Country X] writing a law and not in the UK although with Skype and email readily available even in places like Afghanistan and Iraq the world has changed. I have female solicitor friends in the UK who speak Farshi, Urdu etc and would be great counterparts for projects in Pakistan, Afghanistan etc and they have worked out there in the past but are prohibited by EU rules from continuing to work because of this need for days to be in country. They wouldn't mind flying out for a few days or a week to connect and do research but can't spend long periods away from partner and children."

A lot of us feel irritated by the excessive and frequently unnecessary demand that we must work in the beneficiary country, even when much of the work could be done at home (and probably better, given the greater access to information resources), but clearly this affects women more seriously than men.

A third contributor did not address the issue of discrimination arising from the SoE&A, but the more general and deeper issue concerning the lack of gender balance in the teams of proposed KEs. Unlike other areas of employment and, indeed, overall mainstreaming concerns formally adopted within several programs of EU assistance, there is nothing specific in PRAG requiring a minimum proportion of women to be included in proposed teams. This expert wrote to the Commission saying, inter alia, "I have recently skimmed through the PRAG 2008 and the EuropeAid website looking for gender mainstreaming provisions in terms of gender equality provisions in awarding of (service) contracts and in the composition of evaluation committees etc, and on the output/outcomes in terms of operational statistics, publication of gender distribution of project/assignment consultants."

After some correspondence, she received a final answer from the Commission that included this "**brilliant observation**": "As regards the Practical Guide on contract procedures for EC external actions, it has been revised in 2008 with a view to increase participation of women in the implementation of EU/EDF funded projects. As a result, for example all references to the sex of the contractor were deleted so that the wording is now "**completely neutral**"..... Surely, this must be one of the classic great lines.

I want to thank these three women, all of whom wrote a great deal more than can be included here and covered a number of the more general SoE&A concerns as well.

## STATISTICS & OBSERVATIONS THURSDAY 30 SEPTEMBER

The table below shows the state of play on Wednesday 29th September – a total of 544 from 59 countries. As before, Britain accounts for the majority with 27% (147).

The Dutch come next with 92, largely thanks to the much appreciated support of the Dutch Association of Consultants. France follows with 41 and then come Germany and Ireland (35 each) and Belgium (32). There are 14 names from Denmark, but only 4 from Sweden and 1 from Norway, while there are no names from Finland at all. In the Baltic States, there is 1 name from each of Latvia and Lithuania, but nobody from Estonia, somewhat surprising results I think, given the huge number of technical assistance projects before EU enlargement in 2004 and the subsequent spread of Baltic experts to other countries.

Among the non-EU countries, Turkey is still the clear leader with 11. Six non-EU countries from what used to be Yugoslavia contribute a further 14 and it is especially gratifying that 16 people from 15 African countries have also signed up. We have at last got two names from Asia – one from India and one from a Central Asian republic, formerly part of the Soviet Union. The Middle East is the same as before, one Israeli and one Egyptian.

On the gender ratio, the total number of women is 84, 15.4% of the total, a very slight increase from the last time. For countries with a significant number of names (in this case, over 30), Germany is still the most gender-balanced country with 11 out of 35, roughly a third, followed by the Netherlands with 15 out of 92, about one sixth. Britain, with 17 has the highest absolute number of women.

Continent	No.	Country	M	F	Total	%
AFRICA	1-15	Africa (15 countries)	14	2	16	2.9
AMERICAS	16-17	USA and Canada	9	2	11	2.0
	18-22	Central & South America & Caribbean (5)	6	3	9	1.7
ASIA	23	Central Asia (1)	1		1	0.2
	24	India	1		1	0.2
OCEANIA	25	Australia	5		5	0.9
	26	New Zealand	1		1	0.2
EUROPE - EU	27	Austria	6	1	7	1.3
	28	Belgium	27	5	32	5.9
	29	Britain	130	17	147	27.0
	30	Bulgaria	4	2	6	1.1
	31	Czech Republic	1		1	0.2
	32	Denmark	14	4	18	3.3
	33	France	36	5	41	7.5
	34	Germany	24	11	35	6.4
	35	Greece	2		2	0.4
	36	Hungary	2	1	3	0.6
	37	Ireland	31	4	35	6.4
	38	Italy	20	3	23	4.2
	39	Latvia	0	1	1	0.2
	40	Lithuania	1		1	0.2
	41	Malta	1		1	0.2
	42	Netherlands	77	15	92	16.9
	43	Poland	5		5	0.9
	44	Portugal	6	1	7	1.3
	45	Romania	3	2	5	0.9
	46	Slovakia	1	1	2	0.4
	47	Slovenia	1		1	0.2
	48	Spain	3		3	0.6
	49	Sweden	3	1	4	0.7
EUROPE - NON-EU	50	Norway	1		1	0.2
	51	Turkey	9	2	11	2.0
	52-57	West Balkans (6)	13	1	14	2.6
MIDDLE EAST	58	Egypt(*)	1		1	0.2
	59	Israel	1		1	0.2
TOTALS			460	84	544	100.0
%			84.6	15.4		

## Legal situation

In the last few weeks we have sought legal opinions regarding the SoE&A from several authorities in this area; among them are professors in law and an international law firm.

In the preparations for these expert opinions we have described the SoE&A process and practice in detail. We jointly gathered relevant and established jurisprudence related to our case and have evaluated this jurisprudence.

All experts agreed on the SoE&A practices being unjust. Our challenge from a legal perspective is however to prove illegality if necessary. Based on the established jurisprudence we have developed a strategy to change these practices. Unfortunately, because of tactical reasons (other parties will read this newsletter too) we cannot reveal our legal considerations and strategy in detail. But we will inform you about the main points.

Disproportionality is the main keyword in our approach: the SoE&A practice is disproportionate in terms of:

- Only the smallest party - the individual self-employed consultant - is limited and restricted in the current system
- Lengthy procedures
- The odds on winning
- The sanctions applied against the “innocent” in cases of abuse.

It is essential that less restrictive measures can be developed, while still ensuring the same quality of experts.

Further points of attention are the absence of:

- Transparency in the evaluation of consultants
- Apparent effective central control on how procedures are applied by CA and
- Appropriate appeal procedures for individual consultants

A [relevant ruling by the European Court of Justice \(I- 2008\)](#) has so far been without consequences for the SoE&A practice and this has become urgent now. The disproportionate character of the current practices became more apparent after this ruling.

This is the reason for our request for direct talks with EuropeAid, as we would like to emphasise our constructive approach and to avoid “legal fights” as much as possible. With more than 550 signatories to date we have become a representative body which can request direct talks with EuropeAid.

As explained in our previous newsletter, this is our first option anyway. We want to change the existing rules, not to have existing rules tested. New rules are not made in court rooms but in direct negotiations. Even winning a court case would not guarantee that a new regulation would be better for consultants if we don't participate in the deliberations / negotiations to design one.

There is a clear regulatory basis for claiming these direct talks in the EC Treaty and the Charter of Fundamental Rights of the European Union.

These direct talks should also serve a longer-term purpose: to create a more formalised “social partnership” about our other professional interests, making sure that our voice is heard in the development of our industry, and to create a negotiating position on issues related to our own obligations and rights.

## Letter to EuropeAid

Based on this knowledge, we have drafted a letter to the appropriate body within the Commission in Brussels: EuropeAid.

Essentially, we are saying:

- There are serious problems with the present system of SoE&A and well over 550 experts from around the world agree
- The problems are then listed
- We request a meeting in October to discuss the matter
- We suggest various improvements (but not in detail).

Right now, we are working on preparing the supporting materials explaining in much more detail what the problems are (supported by your anonymous experiences and comments) and developing options for improving matters. These documents will be presented to EuropeAid after constructive discussions have commenced.

We plan to send this letter by the end of this week. We hope you can understand that tactical reasons force us to be cautious with revealing the details of the information we have: the determination to win implies limitations in this regard.

You are kindly requested to inform us if you do not agree with the approach as described above.

Henry Leerentveld

### REQUEST FOR CONTRIBUTION...

We plan to send two people to the meetings in Brussels, Henry Leerentveld who started the whole campaign, and one of the other five of us. This will cost money (travel and subsistence). Additionally, we will soon need funds for legal support. We are currently working on an estimate and the necessary (transparent) facilities. We will approach you soon with a request for a small contribution.