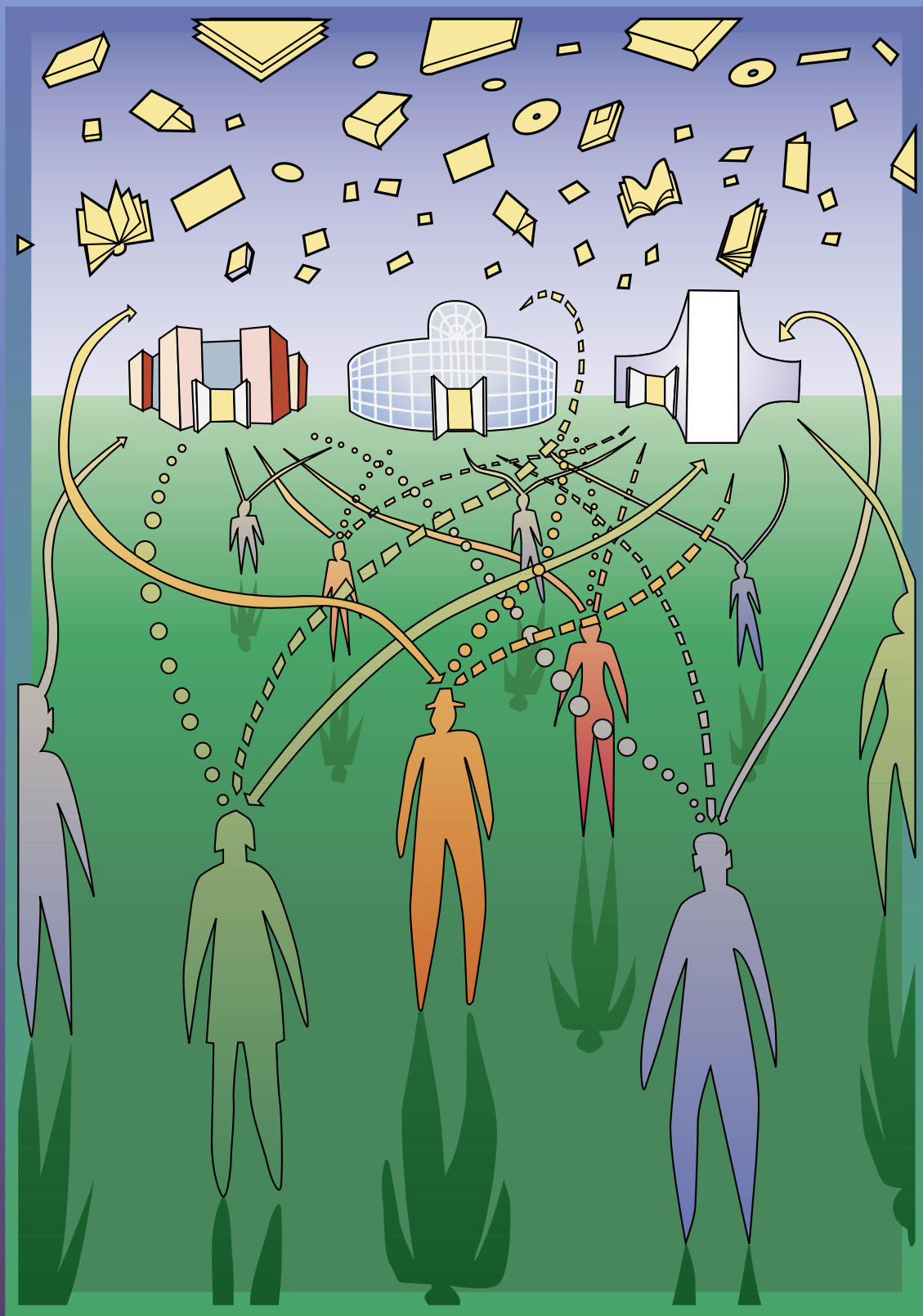


# Civil dialogue: making it work better



Study commissioned by the Civil Society Contact Group,  
researched and written by Elodie Fazi and Jeremy Smith

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MOTT FOUNDATION

# **Civil Dialogue**

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## **Making it work better**

**Report researched and written by Elodie Fazi and Jeremy Smith**

The European Union is a common project shared by all levels of government, all types of organisations and people from all walks of life. Civil society organisations have a very important role to play in raising public awareness of European issues and policy debates, and in encouraging people to take an active part in those debates.

I therefore welcome the report “**Civil Dialogue – Making it work better**”, as an important contribution on how we will make the European Union more open and more democratic – it is about a creating an active citizenship.



Margot Wallström  
Commissioner for Institutional Relations and Communication  
Vice-President of the European Commission

Dear reader,

As NGOs, we play a growing role in shaping the EU project through our participation in a ‘civil dialogue’ with the EU institutions. After several decades of involvement in the European project, members of the Civil Society Contact Group increasingly came to the conclusion that, as the debate on how to bridge the gap between the EU and its citizens heats up, time has come for a common reflection on how to make this dialogue work better. This led us to commission the present study.

Based on an overview of dialogue with EU institutions and on case studies with a particular focus on national NGOs’ involvement, “Civil dialogue, making it work better” looks at the practise of dialogue between NGOs and EU institutions, reviewing what works and what doesn’t, and making recommendations for change.

We hope this study will be a useful contribution to the current debates on how to strengthen the governance of the EU and on ‘Communicating Europe’, led by Commissioner Wallström.



Ilona Kish  
Chair of the Civil Society Contact Group  
Secretary-General of the European Forum for the Arts and Heritage

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## EXECUTIVE SUMMARY

### 1. Why this study?

The role and contribution of civil society organisations (and in particular NGOs) to the EU policy process has grown hugely over the last decades. Its value is increasingly recognised by the EU Institutions, both in terms of the specific expertise introduced into the policy process and as a contribution to tackling the so-called 'EU democratic deficit' through the development of more participatory forms of governance. During this time, structured practices of dialogue between European institutions and NGOs have emerged, which are commonly referred to as civil dialogue – a development which is recognised by the draft Constitutional Treaty.

The inclusion of Article 47 in the Constitutional Treaty, followed by the French and Dutch 'no' to the text in May and June 2005, were only some of the challenges that lead to this study. After several decades of engaging with EU institutions, members of the Civil Society Contact Group have indeed experienced a number of trends which led them to acknowledge the necessity of a common reflection: strong fragmentation of dialogue throughout policy areas, difficulty to actively involve their membership in the European debate, inequality of access with private sector actors, challenges raised by enlargement, but also a necessity to share good practices.

The objective of this study is thus to review existing practices of civil dialogue on EU-related issues, in order to:

- ◆ provide an overview of existing practices;
- ◆ identify good and bad practices;
- ◆ provide common input into the current debate on civil dialogue.

### 2. Methodology

The study examines the practices of civil dialogue by looking at five case studies – each one in a major EU policy area. Evidence was collected through interviews, questionnaires and desk research between July 2005 and May 2006. In total, 42 people were interviewed in Brussels and 59 in the six focus countries. The vast majority of these interviews were conducted in person, by two researchers in charge of specific parts of the study. While the first three chapters are based on an important level of desk research and a questionnaire that served as a basis for interviews with EU level actors, chapter 4 and 5 are dedicated to case studies and build upon specific questionnaires and interviews with both national and EU level actors.

### 3. Main findings

#### 3.1 The 'patchy' picture of civil dialogue

**A 'soft' framework at EU level** – The report begins with an initial review of the history and concept of civil dialogue between the EU and NGOs, plotting how this interaction has evolved in the light of both the EU's own 'democratic deficit' and lack of strong accountability mechanisms and NGOs' growing engagement within the EU and national policy arena. If the development of civil dialogue in the EU found an inspiration in practices at national and international level, it was marked by a much 'softer' approach, characterized by the following elements: strong role of one particular institution (the European Commission), non-binding character, open approach (absence of binding representativity criteria and no accreditation of specific organisations), 'wide' and potentially ambiguous definition of civil society (comprising economic actors).

**Absence of clear-cut definition: a continuum from informal lobbying to structured relations** – Chapter 2 stresses the difficulty to provide a comprehensive view of the actual forms taken by civil dialogue in the EU, which turn out to be complex and fragmented. A review of interactions between EU institutions and NGOs reveals that civil dialogue is rather based on a continuum between informal lobbying and structured relations and that its degree of openness to the wider public varies strongly from one channel to the other. Civil dialogue is thus marked by a permanent tension between expertise, effectiveness and



participation.

**Imbalance between institutions and throughout policy areas** – The actual practices of dialogue vary importantly from one institution to the other and across policy areas. Driven by a strong willingness to increase accountability but also the quality of decisions, the European Commission appears as the main driver for structured forms of interactions, followed by the European Economic and Social Committee which increasingly sees itself as a ‘dialogue champion’ (which is not without raising a number of controversies even among NGOs themselves). Despite its high level of openness to NGOs’ concerns and input, the European Parliament has so far opted for more informal ways of interactions, while the Council is marked by a strong degree of closedness to NGOs and the wider public (especially in pillar 1 covering community policies). Civil dialogue also appears to be unevenly developed throughout policy areas, which can be explained by factors such as legal basis, historical path, but also degree and mode of organisation of civil society itself.

### 3.2 Challenges to take up

Chapter 3 identifies some of the key challenges met by NGOs interacting with EU institutions. It is completed by a more in-depth survey of five particular examples of processes of dialogue in chapter 4: Constitutional process, DG Trade dialogue with civil society, Corporate Social Responsibility Multi-Stakeholder Forum, Service Directive, Open Method of Coordination on Social Inclusion. The challenges raised by the involvement of national organisations is highlighted in particular in chapter 5, which reviews the situation in six focus countries: Czech Republic, Italy, Latvia, Netherlands, Poland, United Kingdom.

The four following points arise as key challenges for the development of civil dialogue in the future:

**Providing an enabling structure leading to concrete outcomes** – Rather than a quantitative lack of participation opportunities, a key challenge is to provide an efficient and effective structure that enables dialogue to really make a difference, whilst at the same time not ‘capturing’ the fluid nature of civil society. Consultation with NGOs thus needs to be enshrined in a timely and focused process, where the objectives and the follow-up of the consultation are clearly stressed out. This is all the more important as NGOs are often equipped with limited human and financial resources to get engaged in advocacy activities, as illustrated in particular by the case study of the Multi-Stakeholder Forum on Corporate Social Responsibility (chapter 4). This specific example also stresses that, even if civil dialogue has a strong added value per se (in particular in reinforcing trust among NGOs and between them and institutions), a key incentive for NGOs to get engaged is its potential impact in the policy process. In particular, the impression that their voice is only listened to as a formal exercise might lead a number of NGOs to increasingly focus their energy on less formalised participation channels. Improving the quality of feedback to consultations should thus be a priority to avoid such consultation fatigue and disproportionate expectations.

**The need for better horizontal coordination and equal access** – Providing the right structure also involves strengthening the degree of coordination between different actors, so as to make sure that a coherent approach is adopted. The report stresses that the frequent perception that NGOs’ voices do not count, in particular in relation to that of business, can be partly explained by the lack of a horizontal approach to dialogue. In the specific case of the European Commission, dialogue appears to be well developed with a number of Directorates General (DGs) that fall directly within NGOs’ remit (e.g. DG Employment and Social Affairs, Environment, Development) but much less with other segments which tend to involve other types of stakeholders (e.g. DG Internal Market and Services). The lack of horizontal approach also results in a strong imbalance between different types of stakeholders, business being the prime interlocutor of the most influential DGs. Better coordination between the different DGs of the European Commission appears as a priority, as well as the need to avoid consultation with business interests only, which should be tackled amongst others by increased transparency over the relation between EC officials and stakeholders.

**Strengthening trust and mutual understanding between NGOs and EU institutions** – The lack of horizontality results in a lower level of trust and mutual understanding between NGOs and EU institutions in these specific fields. Yet the need to reinforce this trust appears more as a challenge for the institutions in their entirety. A low level of understanding of how NGOs work often results in disproportionate expectations. Besides, strengthening mutual knowledge should also contribute to lift unfounded suspicions and attacks which NGOs have been facing over the last years, pointing at their supposed lack of accountability and transparency. While attacks linked to financial transparency can be easily discarded, it is crucial for NGOs to take a leadership role in the debate over transparency and accountability, where business appears to have

taken a more visible (though sometimes rather weak) approach.

**The need for an inclusive approach** – Originally driven by the need to tackle the shortcomings of representative democracy, civil dialogue appears as a mean to bring back in the policy decision the citizens whose voice is not always sufficiently heard. Yet inclusiveness and participation are regularly confronted with requests for more efficiency. Three main challenges arise: ensuring access to a plurality of organisations, involving the hard to reach in particular through increased awareness of participation opportunities, and efficiently involving national NGOs (in particular from the New Member States) in the decision-making process. The division of labour between the European Secretariats and their national members appears as one key challenge to ensure a real participation, whilst at the same respecting a form of subsidiarity and efficiency. The key is the extent to which NGOs have systems and structures in place to test on an ongoing basis how much European NGOs are representing the views and interests of their (national) members and how much (national) members are able to fully hold them to account. The role of national governments and of the European Commission's representation in the Member States is also crucial to ensure that participation of national NGOs reaches its full potential.

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## 4. Recommendations

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Taken together, the information presented in this report offers a rich and broad analysis of the state of current practice of dialogue between the EU and NGOs. At the end of the report, Steps to Improving Civil Society Participation in EU policy-making are offered. They detail actions that the EU needs to take in the areas of:

- ◆ Reviewing and strengthening civil dialogue
- ◆ Putting in place an efficient and effective dialogue structure
- ◆ Making participation matter
- ◆ Increasing transparency and stakeholder balance
- ◆ Opening up the Council
- ◆ Ensuring a real consultation on horizontal issues
- ◆ Ensuring an enabling environment for national NGOs to participate in European debates.

# INTRODUCTION

## 1. Context and rationale

### The need for a common reflection on NGOs' contribution to the European project

European institutions since the 1990s have increasingly acknowledged the role and contribution of civil society and fairly structured practices of dialogue between European institutions and non-governmental organisations (NGOs) have been developed in a wide range of policy areas, which are generally referred to as civil dialogue.

Yet after more than 15 years, some major shortcomings can be noticed and the role of NGOs in the European integration project seems to be increasingly subject to debate. The rationale for this study lies in the growing questioning that NGOs organized in the EU Civil Society Contact Group<sup>1</sup> have come to feel about the ways in which they are able to interact with the European Union (EU).

Although the challenges NGOs face to get their views across to the EU are many and each NGO will feel some more strongly than others, some fundamental issues can be immediately highlighted:

- ◆ The General principles and minimum standards for consultation of interested parties by the Commission<sup>2</sup> are inconsistently applied and the scope of their application is unclear. There is a lack of awareness among NGOs – in Brussels and particularly in EU Member States – of the current consultative framework;
- ◆ Some EU institutions – specifically the Council and some Directorates-General of the European Commission – are closed to NGO input or can be suspicious of the value of such input. This suspicion is replicated in the attitude of some national governments which ought to play a key role in enabling the engagement of national NGOs in EU policy processes;
- ◆ Systems for coordinating consultation on proposals, which cut across the competences of individual Directorates-General, are often inadequate. NGOs' own systems of sharing information among themselves should complement, not substitute, the European Commission's own primary responsibility to ensure proper horizontal coordination;
- ◆ There is a lack of clarity and transparency in the way that stakeholders are chosen for involvement in dialogue;
- ◆ There is typically limited feedback on the effects of NGOs' engagement in dialogue, on whether the institution involved accepts or rejects NGO input and the reasons behind such a decision.

It is to draw attention to these challenges and to suggest solutions that the Civil Society Contact Group has commissioned this research, which takes place in the context of a broader debate around the EU crisis of political legitimacy.

### A contribution to the debate around the EU 'legitimacy crisis'

Stung by the rejection of the Constitutional Treaty in France and in the Netherlands in the first half of 2005, the EU has itself recognized that it is distant from its citizens and that it is, in the words of one of the Vice-Presidents of the European Commission, "facing a crisis of political legitimacy"<sup>3</sup>. The opportunity exists, therefore, as part of its efforts to be more open and responsive, for the EU to pay greater heed to NGOs' concerns about how their involvement in policy-making is organized, valued and responded to.

<sup>1</sup> For membership and remit of the Civil Society Contact Group, see <http://www.act4europe.org/code/en/civi.asp?Page=2&menuPage=2>.

<sup>2</sup> The "General principles and minimum standards for consultation of interested parties" represent the Commission's 'rules' for how to engage with civil society. Published in 2002, the "General principles and minimum standards" are voluntary and aim at "defining the environment in which the relations between the Commission and interested parties operate";

European Commission "Towards a reinforced culture of consultation and dialogue - General principles and minimum standards for consultation of interested parties by the Commission", COM (2002) 704.

<sup>3</sup> "Transparency Restores Confidence in Europe", speech of Siim Kallas to the European Policy Institutes Network, at the Centre of European Policy Studies. Brussels, October 20th 2005; [http://ec.europa.eu/commission\\_barroso/kallas/doc/speech\\_201005\\_en.pdf](http://ec.europa.eu/commission_barroso/kallas/doc/speech_201005_en.pdf).

After the French and Dutch ‘no’ votes, the European Council declared the need for a ‘period of reflection’ and for debate in each EU Member State about the values and methods of the EU<sup>4</sup>. The European Commission made its own contribution to the period of reflection by proposing a **Plan-D for Democracy, Dialogue and Debate**. Plan-D is situated squarely in terms of closing the gap between the EU and its citizens:

*The current crisis can be overcome only by creating a new consensus on the European project, anchored in citizens’ expectations. (...) Ultimately, Plan-D for democracy, dialogue and debate is a listening exercise so that the European Union can act on the concerns expressed by its citizens. The objective of the Commission is to stimulate this debate and seek recognition for the added value that the European Union can provide. The democratic renewal process means that EU citizens must have the right to have their voices heard<sup>5</sup>.*

Plan-D has been complemented by a further White Paper on a **European Communication Policy**, which aims “to propose a way forward and to invite all these players to contribute their ideas on how best we can work together to close the gap [between the European Union and its citizens]”<sup>6</sup>.

A third key part of the response to the perceived gap between the EU and citizens has been the proposal of a **European Transparency Initiative (ETI)**. Although first flagged by European Commissioner Siim Kallas in March 2005, the ETI has since been explicitly linked to the same EU ‘crisis’:

*At the moment many citizens regard Brussels as a ‘black box’ in which decisions are taken in complete obscurity. Lack of knowledge turns the European Union into an anonymous entity in which unknown people produce mysterious measures. Transparency must open the curtains and enable people to see what is going on<sup>7</sup>.*

A Green Paper on the ETI published on 3 May 2006 asserts the close relationship between, on the one hand, consultation and participation and, on the other, transparency. Transparency is vital as it legitimizes consultation by providing clarity about the scope of what is being discussed, and the effects of that discussion. Furthermore, it exposes the other channels of influence that well-resourced, particularly corporate, actors are able to employ. One element of the public consultation on the ETI began with the launch of the Green Paper, which is an attempt to seek feedback on the General principles and minimum standards for consultation of interested parties.

Plan-D, the European Communication Policy and the European Transparency Initiative together form the major part of the European Commission’s policy response to the rejection of the Constitutional Treaty and the EU’s wider crisis of political legitimacy.

**This report argues that the non-government sector can play an important role in bridging the gap between citizens and the EU and that to be effective, the EU policy response must pay due attention to how NGOs’ input is enabled and how much their views are taken into account.** EU policies will be of higher quality, will be better understood by citizens, and will be more likely to reflect citizens’ wishes and interests if processes of consultation with NGOs are efficient and effective.

### **Looking forward: what are the implications of Article 47 of the Constitutional Treaty?**

A final spur that prompted this research was a particular part of the Constitutional Treaty text. Specifically, **Article 47, the “Principle of Participatory Democracy”**, which specified, among other aspects, that “the Union Institutions shall maintain an open, transparent and regular dialogue with representative associations and civil society”. Although the Civil Society Contact Group takes no single position on the merits or otherwise of the Constitutional Treaty, it is interested in seeing the spirit and terms of Article 47 taken up by the EU institutions and made a guiding principle of their relations with NGOs. In particular, the report aims to review the numerous challenges raised by Article 47 that will need to be answered if it ever comes into force.

<sup>4</sup> <http://www.eu2005.lu/en/actualites/conseil/2005/06/17conseur-decl/index.html>.

<sup>5</sup> European Commission Communication “The Commission’s contribution to the period of reflection and beyond: Plan-D for Democracy, Dialogue and Debate”, COM(2005) 494 final

<sup>6</sup> European Commission “White Paper on a European Communication Policy: Debating Europe, involving people”, COM (2006) 35.

<sup>7</sup> “Transparency Restores Confidence in Europe”, speech of Siim Kallas to the European Policy Institutes Network, at the Centre of European Policy Studies. Brussels, October 20 2005; [http://ec.europa.eu/commission\\_barroso/kallas/doc/speech\\_201005\\_en.pdf](http://ec.europa.eu/commission_barroso/kallas/doc/speech_201005_en.pdf).

## 2. Methodology

The study examines the practices of civil dialogue by looking at five case studies – each one a major EU policy area. Evidence was collected through interviews, questionnaires and desk research between July 2005 and May 2006. In total, 42 people were interviewed in Brussels and 59 in the six focus countries. The vast majority of these interviews were conducted in person, by two researchers in charge of specific parts of the study. While the first three chapters are based on an important level of desk research and a questionnaire that served as a basis for interviews with EU level actors, chapter 4 and 5 are dedicated to case studies and build upon specific questionnaires and interviews with both national and EU level actors.

The report begins with an initial review of the history of dialogue between the EU and NGOs, plotting how this interaction has evolved in the light of both the EU's own 'democratic deficit' and NGOs' growing engagement within the EU, and national policy arena. This first chapter outlines frameworks for dialogue with NGOs used by other institutions such as the United Nations and the Council of Europe, and describes the emergence of a framework at EU level.

The second chapter gives an overview of the range of dialogue, formal and informal, that NGOs conduct with the various EU institutions. Drawn from interviews with NGO representatives, there is no claim to describe all the different types of dialogue NGOs are involved in. Nevertheless, the overview offered is sufficient to justify the conclusion that there is a lack of coherence on how the EU relates to NGOs, not only between institutions, but also within each institution.

Building on this overview, chapter 3 identifies some of the key problems with the current practice of dialogue between the EU and NGOs. Several problems coalesce: the framework for dialogue with NGOs is imperfect, but it is also inconsistently applied and insufficiently known. Although NGOs have a role to play in informing each other about consultative procedures and opportunities, responsibility for securing NGOs' input lies first and foremost with the institutions themselves.

Chapter 4 adds to the breadth of analysis in chapter 3 a more in-depth survey of five particular examples of processes of dialogue. These case studies are the Services Directive, the Open Method of Coordination on Social Inclusion, the DG Trade Dialogue with Civil Society, the Corporate Social Responsibility (CSR) Multi-stakeholder Forum and the European Convention and Constitutional Treaty<sup>8</sup>. These examples were chosen as they each vary in terms of the initiating institution, whether dialogue is linked to a specific legislative proposal, and whether it is part of an ongoing process. Once more, there is no claim that these five cases themselves amount to a comprehensive analysis of types of dialogue. Interviews with Brussels-based and national NGOs represent the main sources of information for this chapter.

Finally, in chapter 5, an examination is made of the extent of the involvement of national NGOs in EU-level policy-making through a focus on six countries – the Czech Republic, Italy, Latvia, the Netherlands, Poland and the United Kingdom. Information is derived from interviews conducted in person with representatives of NGOs in each country. The assessment is centred on the relative importance of different channels for national NGOs' engagement with the EU, whether this is through their own government, through a European network of NGOs of which they are a member, or through direct contact with EU officials and politicians.

<sup>8</sup> Each of the case studies remains, in one way or another, topical: a new Communication on CSR draws on the outcomes of the CSR Forum in a manner that NGOs consider misleading; the Open Method of Coordination is ongoing and a new set of national action plans for social inclusion is in development; a new Forum on Services in the Internal Market seems to learn little

from the shortcomings of consultation on the Services Directive; DG Trade, the sponsor of the Trade Civil Society Dialogue, is itself conducting a review of its scope and method; and the Constitutional Treaty is subject to the period of reflection.

# CHAPTER 1 - THE EMERGENCE OF CIVIL DIALOGUE: CONCEPTS, EVOLUTION AND FRAMEWORKS

The term democracy is familiar to most of us, in particular through the definition coined by Abraham Lincoln, “government of the people, by the people and for the people”. Yet we tend to forget that democracy is above all an ideal, a set of ideas about freedom and participation, which has been implemented through practices and procedures, shaped through a long, often tortuous path, and that its implementation is deeply rooted in a specific historical, sociological and political background. Far from being absolute, the actual forms taken by democracy are by their very nature imperfect and result from choices about the best possible system of governance, choices that are subject to controversies and need to be contextualised. The age-old conflicts between representative and direct democracy, between majority democracy and the rights of minorities illustrate well enough that there cannot be one democratic model, and that perceptions of democracy have considerably evolved throughout history. This first chapter thus aims at tracing back how alternative forms of democratic participation have developed in the last decades in order to tackle the challenges posed by traditional representation channels at national, international and in particular EU level. It does so by focusing on the following issues:

- ◆ What does participatory democracy mean and how does it compare to more traditional forms of representation?
- ◆ Who are its main actors and how do they relate to each other?
- ◆ What types of frameworks have been put in place to support its development?

## 1. From the ‘democratic deficit’ to the emergence of participatory democracy

The emergence of participatory democracy and civil dialogue appears as a direct consequence of the challenges raised by traditional forms of participation in liberal democracy, i.e. by representative democracy. This is particularly the case in the European Union, an “unidentified political object” (according to the words of former European Commission President Jacques Delors) in which democratic representation is based on a mixed approach.

### 1.1 Representative democracy in crisis?

**Representative democracy** – Modern democracy is from an institutional point of view a representative democracy, where citizens choose their representatives through elections. Compared to direct democracy<sup>9</sup>, representative democracy solves the problem of scale that characterizes the modern nation state. Representative democracy is considered “the synthesis of two principles<sup>10</sup>, the democracy principle and the office principle<sup>11</sup>”. The combination of democracy and representation has institutional consequences for the fundamental dimensions of every system of government<sup>12</sup>, the exercise of rule and the choice of rulers. In this context the importance of elections increases, as they make the system democratic by providing citizens with the opportunity to select their representatives. The concept of responsiveness<sup>13</sup> was established to describe this state of affairs, as responsiveness is structurally generated through the periodicity of elections and the possibility of a change in government.

<sup>9</sup> Some of the main characteristics of antique democracy, also known as **direct democracy** were the lasting and comprehensive participation of the demos, marked by a strong ethnic-cultural homogeneity. One cannot ignore that internal exclusion was also one of its main characteristics, as citizenship was denied to women, slaves and the free foreigners living and working in Athens. Three pillars characterize **modern direct democracy**: initiative, referendum and recall. Initiative provides means by which a petition signed by a certain minimum number of registered voters can force a public vote on a proposed statute, constitutional amendment, charter amendment or ordinance. Referendum or plebiscite is a direct vote in which an entire electorate is asked to either accept or reject a particular proposal. A recall election is a procedure by which voters can remove an elected official from office.

<sup>10</sup> Kielmansegg P.G., *Das Experiment der Freiheit. Zur gegenwertigen Lage des Demokratischen Verfassungsstaates*, Klett-Cotta, Stuttgart, 1988.

<sup>11</sup> The office principle means a legally bounded and limited power for the representing people to take decisions on behalf of the represented people. This legal boundness of government ensures the protection of the individual against eventual authoritarian tendencies of the state, as well as the protection of minorities.

<sup>12</sup> Fuchs D., “Models of Democracy: Participatory, Liberal and Electronic Democracy”, Paper prepared for the ECPR Joint Sessions of Workshops, Edinburgh, 28th March - 2nd April 2003.

<sup>13</sup> Dahl R., *Polyarchy. Participation and Opposition*, New Haven, London, 1971.

**The current representation crisis** – Critics have long complained that structural shortcomings of representative democracy prevent the emergence of a real demos, i.e. of a political community. In modern democracies, the demos is not a collective subject but rather appears as a collection of individual subjects<sup>14</sup> or an abstract community. Accountability, organised mostly through elections of a cyclical nature, does not set the basis for a permanent participation of citizens. The role played by political parties as gatekeepers for accessing political life for under-represented sections of society, notably women, is also questionable. More than this, we witness a strong decline in citizens’ political involvement if we consider both the numbers of people voting in elections as well as the membership of political parties. Despite the fact that a crisis of political participation need not be equated with a crisis of democracy<sup>15</sup>, the following question arises: at which point does the low level of participation compromise the functioning of the system?

## 1.2 The case of the European Union: an evolving mix of different democratic models

The issue of a democratic crisis takes on a particular nature when it comes to the European Union, which is based on a mixture of representation channels.

**Diversity of mechanisms and pre-eminence of representative democracy** – Representative democracy is often designed as the main source of legitimacy of the EU. However, rather than one type of democratic representation, the European Union is based on an ad hoc approach, a mixture of different models, which all find their roots in specific types of representation and ways of linking to the citizens, reflected in the nature of its ‘institutional triangle’:

- ◆ Technocracy is rooted in a preference for technical knowledge and planning over perceived short-term political interests<sup>16</sup> and is one of the founding principles of the European Commission.
- ◆ Intergovernmentalism is based on governments’ interests through the democratically elected members of the Council of Ministers and the European Council.
- ◆ Parliamentarism builds upon direct representation of the European people through the European Parliament.

The balance between these mechanisms has considerably evolved over time, which makes it particularly difficult to define the essence of ‘EU democracy.’ Notably, while the High Authority (predecessor of the European Commission) was the cornerstone of the European Coal and Steel Community created in 1952, it was progressively replaced by the Council of Ministers as the key actor of the EU policy process. The European Parliament, directly elected only since 1979, has extended its legislative power considerably in the past 20 years.

The traditional EU policy-making process has also been progressively completed by other mechanisms such as social dialogue<sup>17</sup>, which, as defined by the International Labour Organisation, “includes all types of negotiation, consultation or simply exchange of information between, or among, representatives of governments, employers and workers, on issues of common interest relating to economic and social policy”<sup>18</sup>. Contrary to the mechanisms of the institutional triangle, social dialogue stems from a more corporatist approach, based on negotiations with those that are directly affected by a decision. Yet it is important to note that it cannot be considered a general governance framework for the EU. It applies to a limited number of policy processes, mostly employment-related, and is based on the interaction between clearly identified types of actors.

**The EU ‘democratic deficit’: an information, but also legitimacy crisis?** The complex nature of the European Union and the absence of any comparable political system make it easy to depict the EU as suffering from a ‘democratic deficit’. In particular, the existence of real democratic representation is hindered by the lack of effective checks and balances (resulting from an important distance between policy-makers and citizens), and of national governments’ accountability regarding EU issues, as well as a lack of a

<sup>14</sup> Fuchs D., op. cit.

<sup>15</sup> Sartori G., *The Theory of Democracy Revisited*, Chatham, Chatham House Publishers, 1987.

<sup>16</sup> Rather than a ‘democratic principle’, this approach would be better defined as a ‘legitimacy factor’. See Lord C. and Maignette P. “Notes Towards a General Theory of Legitimacy in the European Union”, Working Paper

39/02, ESC “One Europe or Several Programme”, Brussels, 2002, <http://www.one-europe.ac.uk/pdf/w39lord.pdf>.

<sup>17</sup> See ANNEX IV for more information on the development of EU level social dialogue.

<sup>18</sup> <http://www.ilo.org/public/english/dialogue/download/brochure.pdf>.

European dimension in European elections. Yet we need to note that the term ‘democratic deficit’ was coined in the 90s, at a time when the participation of citizens in the EU policy process had never been stronger, in particular due to the increased powers of the European Parliament. It might be more appropriate to see this as an ‘information deficit’ and a ‘legitimacy deficit’, resulting from the EU’s increasing difficulty to deliver policies that really meet citizens’ concerns and to tackle the economic crisis<sup>19</sup>. In any case, the scale of the disconnection between citizens and policy-makers was dramatically highlighted by exit polls that followed the French and Dutch referenda on the Constitutional Treaty, with the main reason for Dutch voters’ ‘no’ being the lack of information (32%). A Eurobarometer survey published in July 2005 even revealed that 53% of European citizens considered that their voice does not count in the European Union, while only 38% took the opposite view<sup>20</sup>.

### 1.3 Emergence of participatory democracy: a solution to the ‘democratic crisis’?

**Strengthening of alternative forms of participation in the public sphere** – Partly in order to address the obstacles that women and minorities face in representative democracies and to ensure a proper responsiveness of governments, alternative forms of citizens’ participation in public life have increased in the last half-century. They were strongly influenced by the historical experience of the United States, marked by the emergence of the civil rights movements in the 60s, when thousands of citizens realized their own potential to affect their environment, rose up to protest against issues such as racial segregation, to advocate for women’s rights, sexual minority rights and the protection of the environment or to gain more power for university students<sup>21</sup>. The aim of these movements was historically to challenge or complete traditional forms of representation through non-institutionalised participation in public life. Examples of citizens’ direct participation in the public sphere have now multiplied throughout the world, from the local to the global level. Experiences such as the Neighbourhood Governance Councils of the city of Chicago, the participatory budget of the city of Porto Alegre<sup>22</sup>, the Panchayat reforms in West Bengal and Kerala<sup>23</sup>, the street protests of Genoa, or Hong Kong, and the vast number of internet forums during the French referendum on the Constitutional Treaty underline the many ways for citizens to get involved in the public sphere, be it in direct or indirect interaction with public institutions. Despite their diversity, all these processes can be designed as practices of participatory democracy.

**Participatory democracy, a multi-faceted concept** – There is no commonly agreed definition of participatory democracy, a concept which has been theorized in particular by the New Left<sup>24</sup>. Participatory democracy covers a wide range of practices that historically find their roots in a protest dynamic, but also gave birth to forms of partnerships with public bodies at a later stage.

<sup>19</sup> This reflects the division coined by Fritz Scharpf between *input* and *output* legitimacy. At EU level, the lack of input legitimacy, (i.e. legitimacy linked to the actors and structure of the policy making process itself), has been for years compensated by a strong output legitimacy (based on the EU’s success bringing peace and prosperity). This was crucially questioned through the 90s, as was illustrated by the Vilvoorde case in 1997, when Renault announced the closure of its site at Vilvoorde, Belgium, in order to rationalise its production in Europe. The event had a strong impact on public opinion by stressing EU institutions’ difficulty to regulate economic integration and deliver on their promises in terms of employment and prosperity.

For more information on input/output legitimacy, please see: Scharpf F., “Interdependence and Democratic Legitimation”, MPIfG Working Paper 98/2, September 1998, <http://www.mpi-fg-koeln.mpg.de/pu/workpap/wp98-2/wp98-2.html>.

<sup>20</sup> Eurobarometer standard, July 2005, [http://europa.eu.int/comm/public\\_opinion/archives/eb/eb63/eb63\\_en.htm](http://europa.eu.int/comm/public_opinion/archives/eb/eb63/eb63_en.htm).

<sup>21</sup> The present study is focusing mostly on the perspective of NGOs but we should not forget the crucial role played by the trade union movement from the end of the 19th century on, that paved the way to the emergence of these new social movements.

<sup>22</sup> Which enables residents of that city to participate directly in forging the city budget.

<sup>23</sup> Which have created both direct and representative democratic channels that devolve substantial administrative and fiscal development power to individual villages. For more information, please see: <http://econ.lse.ac.uk/staff/mghatak/epw.pdf>.

<sup>24</sup> Scholars supporting this theory view the state as a manifestation of the people and thus their belief is that further integration of the people into the decision-making process will ultimately lead institutions to better serve the needs of the people. The ‘new left’ is a term used in political discourse to refer to left-wing movements from the 1960s onwards. They differ from the earlier leftist movements that had been more oriented towards labour activism, and instead adopted a broader definition of political activism commonly called social activism. Several new left scholars writings could be mentioned for further information on the topic of the participatory democracy: Pateman C., *Participation and Democratic Theory*, Cambridge University Press, Cambridge, 1970, Macpherson C. B., *The life and Times of Liberal Democracy*, Oxford Press, Oxford, England, 1977, Miller J., *Democracy in the Streets*, Simon and Schuster, New York, 1987.



The commonly accepted features of participatory democracy cover the following aspects, which will be taken as a working definition in the next stages of the study:

- Participatory democracy involves **non-state actors**, mainly individual citizens and civil society organisations;
- It seeks to **extend the concept of citizenship** beyond the conventional political sphere;
- It is based on the principle of **policy-makers' permanent accountability** between elections;
- It acknowledges citizens' right to **participate in public life through alternative channels**, to tackle the shortcomings of representative democracy;
- It allows citizens to take **direct responsibility in public life**;
- It is a way for **women or citizens belonging to minority groups** to make their voice heard in the public debate;
- It covers **some practices of direct democracy**. However, participatory democracy also emphasizes the role of civil society organisations as important mediators in debates;
- It is based on the principle of integration and **empowerment of civil society**.

**A substitute for representative democracy?** The challenges raised by participatory democracy should not be overlooked, in particular how they fit in the more general representative democracy framework. Claims against participatory democracy state that no specific models for reforming representative democracy could be derived from it<sup>25</sup>. But while some minority views aim at replacing representation through direct citizens' participation, it is commonly admitted that the core legitimacy of modern democracies lies with representative democracy and democratic elections, while there exist no similar processes for participatory democracy. Both channels are complementary: enhanced knowledge and ownership of public debate can do nothing but increase involvement in traditional representation channels and thus reinforce their legitimacy<sup>26</sup>.

## 2. NGOs' growing role as democratic actors

Contrary to direct democracy, participatory democracy is marked by the strong role of intermediary actors between citizens and public authorities, commonly referred to as organised civil society. Among the wide diversity of civil society organisations, the present study focuses on the specific perspective of NGOs, which have become unavoidable actors of the contemporary political debate, particularly in the European Union. To what extent do NGOs differ from other parts of civil society and what are their main functions?

### 2.1 Civil society: a problematic definition

**State, non-state actors and civil society** – The concept of civil society has attracted considerable attention from lawyers, political scientists and sociologists. Civil society is generally said to include a wide sphere of non-state actors, distinct from governments, which engage in activities of public consequence. These include actors such as non-governmental organisations, charities, parties, social movements, interest groups, families, churches, cooperatives. Trade Unions are most of the time depicted as part of civil society, although they are involved in specific participation processes (social dialogue). This common definition is mostly based on a 'by default' approach, building upon two common characteristics of these groups (their non-profit and non-governmental nature) and fails to tackle their diversity, as well as the role of the third sector and social economy, the activity of which can be defined as profit making, but not capitalistic. One of the key and most discussed issues remains the inclusion of economic actors, which some scholars define as being part of civil society, along with other interest groups. European institutions have generally opted for this wider definition.

The absence of a single approach to civil society can raise considerable problems when it comes to defining how public and private interest should be taken into account by public authorities. NGOs themselves are not exempt from this controversy, but generally tend to define civil society as neither related to the state nor to the market.

<sup>25</sup> Sartori G., *op. cit.*

<sup>26</sup> The French referendum campaign on the Constitutional Treaty can be a particularly relevant example in this

view: initiated through rather 'unconventional' methods (marked by the importance of new technologies and of discussion forums) it triggered a strong involvement of civil society actors in the political debate.

**The working definition used for this study** is that adopted by a number of European Development NGOs in their position *The Role of Civil Society in the EC's Development Policy* published in 2002<sup>27</sup>. Civil society organisations have four main characteristics:

- They are established voluntarily by citizens seeking to promote their concerns, values or identities;
- They are organised around the promotion of an issue or the interests of a particular section of society;
- They are autonomous from the state, which is essential if they are to provide credible contributions from their numerous and diverse constituencies;
- Finally, they do not aim at optimising profits.

**Three main types of functions** – Civil society is generally considered to fulfil three main types of functions:

- ◆ **Democratic functions** - illustrated by the numerous studies that considered the impact of civic culture on political participation<sup>28</sup>. A number of them even mentioned the capacity of civil society to counterbalance governments<sup>29</sup> in order to inhibit tyrannical tendencies;
- ◆ **Stabilizing functions** - Some authors emphasise the importance of civil society in support of a culture of trust and cooperation between governments and citizens in order to stabilize the functioning of democratic institutions;
- ◆ **Economic functions** - Opinions on the economic functions of civil society vary. However, it is generally acknowledged that, although civil society does not have as a key function to provoke economic growth, it has some important effects on it. In certain cases it was proved that civil society has a stimulating effect, as for example in Inglehart's analysis in 43 countries<sup>30</sup>, where the author proved that the relatively dense networks of associational membership seem to be conducive to economic growth but only in earlier stages of development.

## 2.2 NGOs' diversity throughout Europe

**Absence of common definition** – The term NGO covers a diversity of situations, deeply rooted in the history of Member States. A recent study written by the Active Citizenship Network counted more than 30 legal denominations throughout 22 European countries<sup>31</sup>, among others those of 'charities' or 'friendly societies' in the United Kingdom, 'Wohlfahrtsverbänden/Vereine' in Germany or 'Association Loi 1901' in France (as illustrated by the table below). Their emergence followed different steps in Western Europe and Eastern Europe. As the centralized socialist system had prevented the activity of autonomous citizens' movements, independent civil society organisations had to develop in secrecy and thus "social groups formed on the basis of independently articulated interests and goals"<sup>32</sup>. Meanwhile, Western European citizens' organisations developed in different political and sociological contexts which is still reflected in their structures today, as they are frequently divided into four broad models: Rhenish, Anglo-Saxon, Scandinavian, Mediterranean<sup>33</sup>.

<sup>27</sup> To be found on <http://www.eurostep.org/pubs/position/ge2160.pdf>.

<sup>28</sup> Almond G. and Verba S., *The Civic Culture: Political Attitudes and Democracy in Five Nations*, Sage Publications, London, 1980, argued that any membership has an impact on political competence and thus on pluralism, one of the most important foundations of political democracy.

<sup>29</sup> See Montesquieu, Inglehart R., Weigle M. and Butterfield J.

<sup>30</sup> Inglehart, R., *Modernization and Postmodernization: Cultural, Economic and Political Change in 43 Societies*, Princeton, Princeton University Press, 1997, p. 228.

<sup>31</sup> Moro, G., *Public Institutions Interacting with Citizens' Organisations*, Active Citizenship Network, 2004, <http://www.activecitizenship.net/documenti/Final%20NE%20Survey%20Report.pdf>.

<sup>32</sup> Weigle M. and Butterfield J., "Civil Society in Reforming Communist Regimes: the Logic of Emergence", *Comparative Politics*, vol. 25, No 1, October 1992, p 1-23. Since the collapse of the USSR, Eastern and Central European civil society is facing considerable cultural changes, a flourishing of civil movements, partly driven by EU enlargement: "The Europeanisation of interest representation in the new EU member states from ECE. NGOs and Business Interest Associations in comparative perspective", Nieves Pérez-Solórzano Borragán, School of Political, Social and International Studies, University of East Anglia, Norwich, September 2005, work in progress, <http://www.uea.ac.uk/psi/people/Perez-Solorzano%20documents/Europeansiation%20NP-S.PDF>.

<sup>33</sup> Edith Archambault, interview "Quatre grandes cultures associatives en Europe", in *Les initiatives citoyennes en Europe*, Alternatives Economiques, Hors Série Pratique n°19, May 2005.

<b>Tentative classification of NGOs' legal denominations<sup>34</sup>:</b>	
<b>Categories</b>	<b>Denominations</b>
Legal form	Association; federation; foundation; limited liability company; registered society; society; international organization; non-governmental organization; cooperative; collective entity of public law; unincorporated association; trust fund; voluntary organization
Fiscal status	Non-profit organization; public interest organization; charity; collective entity of public utility; public benefit organization

Source: Moro Giovanni (2004), Public Institutions Interacting with Citizens' Organisations, Active Citizenship Network.

Given the absence of a commonly agreed definition, for the purpose of this study, NGOs are defined as organisations which **share most (if not all) of the following features:**

- Non-State actors;
- Non-profit making organisations;
- Democratic organisations (joining is voluntary and free, the functioning of the organisation is based upon democratic rules);
- Independent from the government;
- Act in the public interest;
- Rely on voluntary work and activists' involvement, but often also employ professionals;
- Have a mandate from their constituency.

**The two 'traditional' modalities of NGOs' participation in public life: two sides of the same coin?** When defining the importance of NGOs' participation in public life, it is crucial to stress not only the diverse nature of the issues they deal with, but also the modalities of their participation in public life, in other words, how they contribute to participatory democracy. The modalities of NGOs' work fall within two broad directions:

- ◆ **Service provision** has historically been a key activity of the NGO sector and continues to be, in some specific fields such as the fight against social exclusion, the most visible part of the iceberg. Service providers range from small, local community groups to transnational organisations and are active in an extremely wide scope of fields, which cannot be fully listed here. As millions of citizens throughout Europe are involved in networks of voluntary associations<sup>35</sup> in one way or another on issues of their concern, it is important to note that volunteers make a key contribution to service provision, through such diverse activities as providing social services, giving advice to refugees, protecting the local habitat, running a women's shelter, or organising a project for a community in Africa. Service provision is thus a key element of 'active citizenship'. Beyond service provision, NGOs also play an increasing role in the implementation of public policies, in particular in such fields as development, peace building or human rights.
- ◆ **Political advocacy and lobbying** have become major dimensions of NGOs' work, although the exact terminology of this activity is still highly contested. While both activities aim at influencing public policies, advocacy involves a wide range of activities ranging from research, education, or awareness raising campaigns to direct contacts with policy makers. Lobbying designs a narrower approach, more directly focusing on policy-makers.

Lobby/advocacy and service provision activities should be seen as **complementary rather than mutually exclusive**. The move to political advocacy can in many fields be traced as a secondary move, once it became clear that the political circumstances relating to NGOs' work needed to be changed<sup>36</sup>. It is therefore not surprising that an important number of organisations are involved in both types of activities, particularly as expertise gained through service provision is often an important legitimising factor for NGOs involved in lobbying/advocacy activity.

<sup>34</sup> The original table's last row, presenting policy areas, was deleted.

<sup>35</sup> European Volunteer Centre, *Manifesto for Volunteering in Europe*, [http://www.cev.be/Documents/CEVManifesto\\_EN\\_FR\\_DE.pdf](http://www.cev.be/Documents/CEVManifesto_EN_FR_DE.pdf).

<sup>36</sup> Beger N., "Participatory Democracy: Organised Civil Society and the 'New' Dialogue" (July 2004). Federal Trust Constitutional Online Paper No. 09/04. Available at SSRN: <http://ssrn.com/abstract=581442> or DOI: 10.2139/ssrn.581442.

**Between public and private interest: are NGOs interest groups (like others)?** The diverse functions of NGOs underline significant boundary problems, both in trying to define NGOs and in separating them from other concepts such as interest groups. The considerable overlap between definitions of interest groups and NGOs often leads to confusion<sup>37</sup>. The term interest group is usually considered to cover a broad grouping of entities, which use a wide range of formal (profit and non-profit) and informal organizational models to promote the interests of their constituencies. NGOs are specific non-profit entities that provide a wider range of services than interest articulation. In contrast to other interest groups, NGOs:

- ◆ are driven by values and objectives rather than profit;
- ◆ act in the public interest;
- ◆ represent issues, citizens or stakeholders rather than shareholders and clients;
- ◆ aim not only at representing interests, but also at engaging citizens in the public sphere.

Any attempt to describe the specific relationship between the two concepts would do best to draw on the “fluid nature”<sup>38</sup> of both of them and affirm that many NGOs become interest groups when they begin to articulate and communicate the demands of their constituent population, while at the same time that many interest groups take on a non-profit organizational framework because “persuasion depends on, and needs, organization”<sup>39</sup> and because NGO status usually provides fiscal advantages and social-political legitimacy.

### 2.3 NGOs organise themselves in the EU

The level of NGOs’ involvement in service provision, implementation and/or political advocacy and lobbying is deeply influenced by the different paradigms governing public policies, in particular by a degree of interaction between NGOs and public authorities and by budgetary choices (both in terms of funding of NGOs and in terms of public funding for service provision). These paradigms have considerably evolved in the last years both at EU and national level, resulting from an increased outsourcing of the implementation of public policies, as well as for growing opportunities to influence the policy-making process.

The evolution of EU competences and policies in the last decades had major consequences on the way NGOs relate to what was long perceived as a project driven mainly by the internal market and the implementation of the four liberties<sup>40</sup>. The Single European Act and the treaties that followed marked a considerable extension of EU competences in fields that are directly related to the concerns of organised civil society, in all the ‘pillars’ of the European Union. **The extension of EU competences was also accompanied by the emergence of policies which induced an increased level of re-distribution**, while the EU had been previously focusing mostly on ‘regulatory policies’, based on a legislative approach aimed at lifting the obstacles to the achievement of the free market<sup>41</sup>. As the weight of the Common Agricultural Policy (CAP) within EU expenditure decreased, such public policies have multiplied since the 1980s, which saw the creation or reinforcement of a number of EU funded programmes and the development of cohesion policy. Considering the limited human resources of the European Commission, there was an increasing need for **external actors to deliver those programmes. Service provider NGOs appeared as some of the most relevant actors to implement EU policies**, particularly in some specific fields where citizens’ interests are directly at stake, such as development, public health, gender equality policies or the fight against discrimination.

Taking stock of this growing impact of the European Union on their constituencies (in terms of advocacy, but also service delivery and implementation work), most of the NGOs that are active today on EU matters started working at EU level in order to bring added value to the local, regional, national or international level and organised themselves in the last 15 to 20 years. This was achieved through a wide range of channels:

- ◆ Increasing focus on EU integration by national organisations, some of the largest appointing specialised EU officers and/or setting up a Brussels-based office<sup>42</sup>;
- ◆ Setting up of a representation in Brussels of global INGOs<sup>43</sup> (international NGOs);

<sup>37</sup> Trevor M., “Interest Groups”, in Smith R., *Politics in Australia*, Allen and Unwin, Sydney, 1993.

<sup>38</sup> Wilson G.K., *Interest Groups*, Basil Blackwell, Oxford, 1990.

<sup>39</sup> Pross H., *Protestgesellschaft. Von der Wirksamkeit des Widerspruchs*, Artemis and Winkler, München, 1992.

<sup>40</sup> It is useful in this view to remind that equal pay between

women and men, already included in the Treaty of Rome, was originally perceived as an anti-dumping measure between the Member States rather than a tool to ensure social progress.

<sup>41</sup> Majone G., *Regulating Europe*, Routledge, London, 1996.

<sup>42</sup> Such as the Italian environmental organisation Legambiente, which opened a Brussels office in 1999.

- ◆ Setting up of umbrella organisations bringing together NGOs from all over the EU, working on similar policy issues;
- ◆ In a second step, some umbrella organisations and European branches of INGOs chose to partner with other NGOs active in their specific sector of activity to pool knowledge and expertise on issues of common concerns, which led for example to the setting up of the Social Platform in 1995<sup>44</sup>, of the Human Rights and Democracy Network in 2001.

Today NGOs are estimated to represent between one fifth and one third of the approximately 1500 interest groups active in Brussels<sup>45</sup>, along with social partners, businesses, consultancies, but also regional and local authorities. However, this should not overshadow the fact that a large number of NGOs active on European matters are not based in Brussels.

## 2.4 The resource dilemma

NGOs' financial resources generally derive from three main sources: public sectors funds (generally taking the form of grants from international, national, regional or local administrations), private funds (among others emanating from individuals, foundations or private enterprises) and self-financing (in particular membership contributions or sale of products). The balance between sources of funding varies strongly between EU Members States, some of which have tried to guarantee their independence through specific legislation, for example through the forbidding of regular funding (Greece) or attribution of certain public receipts (e.g. national lottery in the UK or Finland)<sup>46</sup>.

At EU level, it is **particularly difficult to assess the total amount annually granted to NGOs**, and figures generally refer mostly to organisations active in external activities (including development, humanitarian aid, human rights):

*A Commission discussion paper produced in the year 2000<sup>47</sup> estimated that over 1,000 million euros per annum was allocated to NGO projects directly by the Commission. According to the same source, around 400 million euros and by far the largest proportion of this amount was estimated to go to NGOs working in the field of external actions for development cooperation, human rights, food aid and so on. However these estimates contrast directly with others which put the figure as high as 1<sup>48</sup> or even 2 billion euros pa.<sup>49</sup>*

It is important to **distinguish between the types of EU financial support received by NGOs**: in most cases funds are dedicated to the **implementation** of specific policies. This is particularly true in some fields such as food or humanitarian aid, where NGOs play a key role in the implementation phase by carrying such activities as water supply, support to sanitary help. The European Commission's Directorate-General for Humanitarian Aid (DG ECHO) is not acting directly on the ground, but through a network of partners, including UN specialised agencies, international organizations and NGOs. Channeling 51% of ECHO funding in 2005, NGOs appear as the first channel for EU humanitarian aid, followed by the United Nations and other International Organisations<sup>50</sup>. Another important part of EU funding to NGOs is **dedicate to support**

<sup>43</sup> This includes NGOs such as Amnesty International, Oxfam International, ATD Fourth World, Greenpeace, who have opened Brussels offices to strengthen their international lobbying efforts.

<sup>44</sup> Most European NGO sectoral platforms were created in the 90s. Yet we need to note that CONCORD, formerly CLONG (European NGO Platform for Relief and Development), has been active since the mid-70s, receiving economic support from the European Commission since 1976. The European Environmental Bureau was created and has received EU funding since 1974.

<sup>45</sup> Estimations vary: Accountability, UN Global Compact, *Towards Responsible Lobbying*, September 2005, p. 18 <http://www.accountability.org.uk/uploadstore/cms/docs/Towards%20Responsible%20Lobbying%20Full%20Report.pdf>, "The World of EU NGOs and Interest Representation", Justin Greenwood, 2003, <http://www.pol.ulaval.ca/association-lobbying-affaires-publiques/ressources/articles/the%20world%20of%20EU%20ngos%20and%20interest%20representation.pdf>.

<sup>46</sup> *Ethique et responsabilités des associations de la société civile face à la gouvernance européenne*, study commissioned by CEDAC, Fondation Bernheim, Fondation pour les générations futures, Fondation Charles Léopold Mayer pour le Progrès de l'Homme, to be published.

<sup>47</sup> European Commission, "The Commission and Non-Governmental Organisations: Building a Stronger Partnership", COM (2000) 11 Final.

<sup>48</sup> Working Document, "Committee on Budgets", no 10, 2003 says that 1.27 billion or 25% of the EU Budget for External Action was implemented by NGO's. The value of contracts signed with all non-state actors in external actions has been estimated at 2.2 billion euro in 2003.

<sup>49</sup> Soto P., Grupo Alba, *The Commission Could do better*, report commissioned by the Green/European Free Alliance group in the European Parliament, May 2005.

<sup>50</sup> For more information, please see: [http://ec.europa.eu/comm/echo/statistics/echo\\_en.htm](http://ec.europa.eu/comm/echo/statistics/echo_en.htm).

**projects that are part of EU programmes** designed to support its policies (these include for instance EIDHR - European Initiative for Democracy and Human Rights or Daphne Programme to combat violence against children, young people and women). A much smaller amount is dedicated to **support the advocacy activity** of some European networks that deliver on EU policies, by covering up to 90% of their operational costs. These networks include organisations such as the European Women’s Lobby, the European Network Against Racism and the European Environmental Bureau<sup>51</sup>.

The **challenges raised by such a financial relation are numerous**. One cannot deny the risks linked to an over-dependency from one main source of funding which can lead to a competition between organisations, or the likelihood for NGOs to be bound by the institutions’ agenda rather than being able to impose their own priorities. Concerns regarding conflict of interests for organisations receiving EU funding to lobby the Commission have also been regularly put in the spotlight in the last years. Yet these are contradicted by the strong position taken by NGOs on several occasions against the Commission itself<sup>52</sup>. Public funding some European NGOs receive can even be perceived as a guarantee of their independence, by preserving them from being influenced by private interests. In a number of democratic countries, elections campaigns are by law funded exclusively through public money to prevent any risk of corruption and manipulation by strong industrial lobbies, an argument that can be valid for NGOs as well.

Beyond the fact that such practice is far from being specific to the EU, as a number of national governments and international organisations (e.g. World Bank) proceed in a similar way, the added value of EU public funding in strengthening civil society should not be underestimated. Structural funding thus appears as one of the solutions allowing NGOs to make quality input in the policy process, by providing them with essential resources needed to develop a concerted view in full consultation with their national and local groups of citizens directly concerned by these policies.

## 2.5 Representativity and legitimacy: two growing dimensions of the governance debate

NGOs generally enjoy a high level of public trust. However, issues of representativity have become critical in recent years as NGOs speak out to challenge business and governments.

Illustrated by the question “Who elected Oxfam?” raised by the Economist<sup>53</sup>, such a debate is crucial for the future of participatory democracy but often tends to ignore that representative and participatory democracy complement rather than displace each other and that NGOs’ representativity (i.e. ability to speak on behalf of their constituency) cannot be assessed through the traditional analytical grid of representative democracy. NGOs’ ability to take part in the public debate is rooted in a much wider set of principles than that of representation and it seems more relevant to refer to their **legitimacy** rather than **representativity**, which derives from a complex set of factors:

- ◆ **Authority and participation** – Contrary to elected officials, NGOs are not accountable to an electorate and cannot claim overall representation. Yet they do have an authority to speak, which varies from one organisation to the other and can be summed up as follows: **do NGOs speak as, with, for or about specific segments of the population/issues of general interest?** One organisation’s ability to speak on behalf of a constituency stems from a variety of sources, which, for instance, differs between organisations representing a specific segment of the population (in particular those who are usually not heard, e.g. facing discriminations) and those that are service providers or represent issues of public interest (e.g. environmental issues). Besides, as an important part of NGOs are non-membership organisations and NGOs’ legitimacy is not similar to that of elected representatives, tangible support to one organisation can take various forms, which are difficult to quantify (e.g. membership, occasional/regular donors, wider constituency).
- ◆ **Expertise** – beyond representation, a crucial dimension of NGOs’ legitimacy stems from their expertise, as they are recognised as bringing valuable knowledge and skills to the table, gained from direct contact with the grassroots movements, and as providing vital feedback on what works and what does not.

<sup>51</sup> Report written by F.M. Partners Limited on behalf of: Open Society Institute-Brussels, Concord, The Platform of European Social NGOs, SOLIDAR, The European Women’s Lobby, *Striking a Balance. Efficiency, Effectiveness and Accountability. The impact of the EU Financial Regulation on the relationship between the European Commission and NGOs*, April 2005, <http://www.solidar.org/english/pdf/Striking%20a%20Balance%20-%20Final1.pdf>.

<sup>52</sup> See for example the Social Platform’s February 2005 press release following Commission President Barroso’s proposals regarding the future of the Lisbon Strategy, “Mr Barroso, you killed the European dream” [http://www.socialplatform.org/code/en/pres\\_rele.asp?id\\_presse=88](http://www.socialplatform.org/code/en/pres_rele.asp?id_presse=88).

<sup>53</sup> *The Economist*, 23rd September 2000, p. 129.

If authority and expertise are often seen as the two main sources of legitimacy of NGOs, they are reinforced by a number of other sources, in particular their **performance** and other forms of support including **trust** and **reputation**. While the later two are particularly problematic in that they tend to concern only the most established organisations, all of these sources are subjective.

Controversies over NGOs' representativity thus stem from a difficulty to perceive legitimacy in terms other than numbers and election. This is particularly so in a modern political system that is still strongly influenced by majority voting. A significant paradigm change is thus necessary to really comprehend the legitimacy of NGOs in modern democracies.

More than the question of whom they represent, that of **accountability of NGOs** has played an increasing role in the public debate in the last years. If NGOs claim to hold governments and business to account, to whom are they accountable? In other words who are their stakeholders and how do they exercise oversight? Despite strong accountability mechanisms of NGOs towards their members, accountability of politicians vis-à-vis their electorate and of corporate managers towards shareholders appears more direct, contractual and time-bound<sup>54</sup> than that of NGOs, which is an important challenge in the years to come.

### 3. Attempts to define a civil dialogue framework at national, international and EU level

The participation of NGOs in public life varies according to political, social and economic conditions. In the last decades, a more structured involvement in the policy process has developed along with more confrontational relations. For the EU, an ad hoc political object, which constantly has to reinvent its modalities of functioning, national and international experiences were a potential source of inspiration.

#### 3.1 Between confrontation and cooperation: the emergence of 'civil dialogue' as one form of participatory democracy

**Confrontation and dialogue** – While NGOs have long been considered as disruptive rather than constructive forces, they started to be perceived as a source of innovation and added value in the last decades. This shift was motivated as much by the need to develop alternative forms of participation within the policy process (and by their ability to build bridges between institutions and the citizens they are in contact with, represent or directly involve in their advocacy work) as by the acknowledgement of their specific expertise. As a result, fairly structured practices of dialogue between national, EU and international institutions and NGOs were developed beside the traditional forms of lobbying and advocacy work. Such interactions involve not only NGOs but also other types of civil society organisations and are often referred to as '**civil dialogue**'. As the definition of civil society, the **type of actors involved in civil dialogue varies according to definitions**. While a number of NGOs and scholars<sup>55</sup> see it as only involving non-profit making civil society organisations, others include economic actors.

<sup>54</sup> Marschall M., *Legitimacy and effectiveness: Civil Society organisations' role in governance*, <http://www.globalpolicy.org/ngos/credib/2003/0529legit.htm>.

<sup>55</sup> "by civil dialogue one should understand a range of ad hoc, unstructured and flexible consultations, mainly on social policy issues, developed over the years between

the Commission and so called non-governmental associations, or voluntary, non-profit organisations represented at the European level" in Obradovic D., "The distinction between the social and the civil dialogue in the European Union" in *Current Politics and Economics of Europe*, no 9 (1) 36-64, 1999.

The lack of a commonly agreed definition, but also of theorisation of civil dialogue is striking with regard to its increasing role in the governance debate, particularly in the European Union. Developed as a parallel to that of social dialogue, it refers to a wide range of interactions between civil society organisations and institutions rather than a clear-cut set of practices. The following definition will thus be used for the next stages of the study:

- Civil dialogue involves an **interaction between public institutions and civil society organisations**, rather than a unilateral relationship. It thus goes beyond information and communication, and is based on mutual recognition and responsiveness;
- Civil dialogue covers **various degrees of formalisation**, ranging from informal to legally recognised structures, from *ad hoc* to continuous exchange;
- Civil dialogue also covers different **degrees of involvement from civil society organisations**, ranging from information to consultation and active participation;
- Civil dialogue takes place **alongside the whole policy-making process** which includes the following phases: Agenda setting, Policy definition/decision-making, Implementation, Evaluation, Feedback<sup>56</sup>;
- It involves civil society organisations acting in the public interest.

**A number of challenges** – The development of civil dialogue resulted from a more open political opportunity structure and the increased involvement of NGOs in public issues. However, this development also created **new challenges**, which could be divided into three categories:

- ◆ Necessary change of culture within the institutions themselves, to engage in a real form of dialogue;
- ◆ Difficulty of setting up and designing a new participatory structure;
- ◆ Issues linked to NGOs’ legitimacy, transparency and representativity as natural counterparts of increased participation.

### 3.2 Diversity of practices at national level

Cooperation between national governments and NGOs can take various forms, which considerably evolved in the last decade. This diversity can be illustrated by the three examples of the Estonian Civil Society Development Concept, the UK Compact on Relations between the Government and the Voluntary and Community Sector and the French Model CNVA<sup>57</sup>.

**France: the National Council of Associative Life** – The National Council of Associative Life was established in 1983 and is a consultation institution depending on the Prime Minister. A Permanent Commission guarantees permanent dialogue between the Council and the ministries on topics related to associative life. The Council’s missions as they were announced in 1983 are to study and follow relevant topics related to associative life, agree on legislative or regulatory projects, propose useful measures for the development of associative life, and present a report every three years.

**England: Compact on Relations between Government and the Voluntary and Community Sector** – The Compact on Relations between Government and the Voluntary and Community Sector in England was established in 1998. Even though it is not a legally binding document, it provides the basis from which a legal framework might evolve as it sets out a number of principles and undertakings on both government and organisations. The Compact provides a helpful framework to guide the relationship between government and the voluntary and community sector<sup>58</sup>. It clearly recognizes that the government and the voluntary and community sector fulfil complementary roles in the development and delivery of public policy and services. It also stipulates that the government has a role in promoting voluntary and community activity in all areas of national life. Other “compacts” have been developed in Scotland, Wales and Northern Ireland, each one being slightly different from the English model.

<sup>56</sup> Kendall J., “Third Sector European Policy: Organisations between market and state, the policy process and the EU, Third Sector European Policy Working Paper 1”, London, September 2003, published as TSEP Working Paper with minor amendments June 2005.

<sup>57</sup> More details on national dialogue structures will be provided in chapter 5, which reviews how national NGOs engage in European matters.

<sup>58</sup> <http://www.thecompact.org.uk/>



**Estonia: the Estonian Civil Society Development Concept (EKAK)** – Adopted in 2002, EKAK is a document which describes the different roles of the public sector and non-profit sector and their co-operation principles in developing and implementing public policies and building up civil society. Among short-term priorities, EKAK proposes mapping the revision of legal acts related to citizens' associations and the elaboration of different mechanisms for involving citizens' associations in the development and implementation of policies, the promotion of a code of ethics for the non-profit sector, the mapping and systematisation of the necessary conditions for the non-profit sector and its sustainability, for the improvement and cooperation between non-profit sector and public sector and for the systematisation of the financing system for citizens' associations. For the long-term EKAK wants to raise civil education, to foster citizen action and to guarantee the functioning support system for civil initiative.

### 3.3 International organisations: civil dialogue through accreditation

Since their creation, both the Council of Europe and the United Nations have put in place clear structures of cooperation with organised civil society, based on the principle of accreditation of a number of NGOs with a special status.

#### Council of Europe: participatory status for international NGOs

Created in 1949, the **Council of Europe** has provided NGOs with consultative status since 1952. This was replaced by a participatory status<sup>59</sup> in 2003.

**Participants:** Participatory status is open to NGOs that share the Council of Europe's aims, contribute to its work and meet some representativity criteria. Notably they must be international and representative, both geographically and in their sphere of activity, with permanent headquarters, a structured organisation and a secretary general. The decision to grant participatory status to an international NGO is taken by the Secretary General, who may also take into consideration the main priorities of the Council of Europe and the possible proliferation of international NGOs in a given sector of activity. Today, approximately 370 NGOs hold participatory status.

**Participatory rights and duties:** NGO representatives may participate as consultants in various studies or contribute to the work of intergovernmental committees on an institutionalised or ad hoc basis, prepare memoranda for the Secretary General, make oral or written statements to the Parliamentary Assembly's committees and the Congress of Local and Regional Authorities of Europe, as well as address seminars and other meetings organised by the Council of Europe.

**Dialogue framework:** Dialogue is essentially structured through three types of mechanisms. A **liaison committee** created in 1976 and run by NGOs themselves which consists of 25 members, and aims to improve the general cooperation of NGOs within the Council of Europe. Launched in 1977, the **annual Plenary Conference of NGOs** decides on the general lines of action for the year to come and sets objectives for its Liaison Committee. It determines guidelines for improving the functioning of the participatory status and, in the light of these, the Liaison Committee's objectives. In addition, according to their concerns and having regard for the Council of Europe's work programme, the NGOs formed **sectoral groupings** around several interest sectors<sup>60</sup>.

It is particularly interesting to note the division of tasks within the Council of Europe, which are split between structural (dealt with within the liaison committees) and policy issues (dealt with in sectoral groupings in which interlocutors found an expert knowledge). Moreover, European and International NGOs are the preferred interlocutors, at the expense of national, regional and local networks.

<sup>59</sup> <http://www.coe.int/t/e/ngo/public/>

<sup>60</sup> In 2005, the sectoral groupings were the following: European Social Charter and Social Policies, Human Rights, Education and culture, North-South dialogue and

solidarity, Civil society in the new Europe, Countryside and the environment, Health, NGOs towns, Gender equality, Extreme poverty and Social Cohesion.

## United Nations: consultative status within the Economic and Social Council <sup>61</sup>

The structured dialogue between NGOs and the United Nations has been organised mostly through consultative status by the Economic and Social Council (ECOSOC) of the United Nations.

**Participants:** Contrary to the Council of Europe, consultative status is not restricted to international NGOs but also open to national, regional, and sub regional organisations. To be eligible, an NGO must have been in existence for at least two years, must have established headquarters, a democratically adopted constitution, authority to speak for its members, a representative structure, appropriate mechanisms of accountability and democratic and transparent decision-making processes. Consultative status is granted by ECOSOC upon recommendation of the ECOSOC Committee on NGOs, which is comprised of 19 Member States. The number of NGOs with this status has been steadily increasing to reach 2719 organisations in November 2005<sup>62</sup>.

**Participatory rights and duties:** The consultative relationship with ECOSOC is today governed by ECOSOC resolution 1996/31. Non-governmental organisations with a consultative status may attend the relevant international conferences convened by the United Nations and the meetings of the preparatory bodies of the aforementioned conferences. They may also designate persons to represent them at offices of the United Nations. Access can be open to other organisations that do not have this status for specific events.

### 3.4 Belated emergence of a 'soft approach' at EU level

Contrary to the Council of Europe and the United Nations, the EU opted for a more flexible approach characterised by a wider approach to civil society and the absence of any accreditation.

**From consultation committees to multilevel governance: civil dialogue between expertise and participation** – The belated acknowledgement of civil dialogue in the European Union should not overshadow the previous existence of some practices of formal and informal consultation. Along with consultative bodies like the European Economic and Social Committee, as well as social dialogue, European institutions have been working with a wide range of **consultative committees**, including NGOs and other actors<sup>63</sup>. Beyond expert knowledge, the specific added value of participatory democracy was acknowledged in several communications of the Commission throughout the 1990s<sup>64</sup>. Some of them aimed at defining criteria for representativity of organisations that are consulted by the Commission<sup>65</sup>. However, it was not until the **White Paper on Governance** published in 2001<sup>66</sup> that a more comprehensive approach to consultation and dialogue was developed. Based on the analysis of a “widening gulf between the European Union and the people it serves”, the White Paper marked a change of paradigm for the European Union, by clearly defining the EU policy process as the result of different influences and mechanisms of dialogue and participation which are not limited to the institutional triangle, and also by acknowledging the need to foster citizens’ involvement in the EU process. These principles were enshrined in the five **key principles of good governance: openness, participation, accountability, effectiveness and coherence**. Along with other types of actors such as regional and local authorities, the specific contribution of civil society is also recognised, as “giving voice to the concerns of citizens and delivering services that meet people’s needs”. Although the Governance White Paper marked a step beyond expert consultation, the acknowledgement of civil dialogue is once more enshrined as much in a

<sup>61</sup> <http://www.un.org/esa/coordination/ngo/>

<sup>62</sup> Yet potential controversies raised by the accreditation system should not be underestimated. Following an initiative from Iran, backed by several members of the ECOSOC committee on NGOs, several LGBT organisations including the International Gay and Lesbian Association (ILGA) were denied consultative status in May 2006. Currently, the Economic and Social Council (ECOSOC) has not granted this status to a single national or international LGBT organization.

<sup>63</sup> More details can be found in chapter 2.

<sup>64</sup> European Commission “An open and structured dialogue between the Commission and Special Interest Groups”, SEC (92) 2272 final, European Commission “Communication on promoting the role of voluntary organisations and foundations in Europe”, COM (97) 241, European Commission Discussion Paper “The Commission and Non Governmental Organisations: building a stronger partnership”, COM (2000) 11 final.

<sup>65</sup> See chapter 3 for further information on representativity criteria.

<sup>66</sup> European Commission “White Paper on European Governance”, COM (2001) 428 final; [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).

technocratic and functionalist approach as in the need to develop participatory democracy, and is justified by three principles: expertise, good management practices (testing the impact of Commission's proposals) and participation (of civil society organisation's constituency in the policy process).

**Absence of comprehensive framework: Minimum standards, Impact Assessment** – The White Paper on governance was followed by several attempts to define the framework of dialogue. In 2002, as part of the “Better Regulation Action Plan”, the Commission defined a new methodology for **impact assessment**, which gave a specific role to the consultation of stakeholders that are affected by a decision, because of their expert knowledge<sup>67</sup>, but also to involve the constituencies they represent in the policy process. In 2002, the General principles and minimum standards for consultation of interested parties<sup>68</sup> aimed to “define the environment in which the relations (...) between the Commission and interested parties operate”, based on a set of general principles and minimum standards<sup>69</sup>. However, they did not set the framework of a structured, coherent and comprehensive dialogue. This is particularly due to the fact that they do not define the framework of consultation, but rather some key principles bound to govern processes in which consultation already applies. Neither do they constitute any commitment to extend or even define the scope of dialogue, since they focus on its quality.

**Main features** – the main features of the current EU framework for civil dialogue can be summarized as follows:

- ◆ **Commission-focused** – Although the Governance White Paper called on the European Parliament and the Council of the EU to review their practices and contribute to a general reference framework for consultation by 2004 and despite the June 2003 inter-institutional agreement on the “better law-making initiative”, the current framework targets mostly Commission practices;
- ◆ **Voluntary approach** – Given their non-binding nature, respect of the Minimum Standards continues to rely primarily on the good will of individuals within the institutions;
- ◆ **Exact scope to be defined** – The scope of processes where dialogue should apply is still to be defined clearly. While the Minimum Standards stress that consultation should apply to “major policy initiatives”, the “better law-making” action plan aims to “systematise and rationalise the multiple practices and procedures of consultation”;
- ◆ **Absence of binding representativity criteria** – As it did with social dialogue, the Commission made several attempts to define the representativity of NGOs in the 1990s<sup>70</sup>. In particular, it defined criteria and reasons for selecting NGOs<sup>71</sup>. However, it did not lead to the establishment of a list of organizations meeting the criteria, or to any accreditation;
- ◆ **Reject of accreditation system** – Any system of accreditation of specific organisations like those adopted by international organisations, in some Member States or in the field of European social dialogue has been rejected to date. This rejection was justified by the willingness to maintain an open dialogue and by the fact that the EU's legitimacy lies primarily in representative democracy<sup>72</sup>. Civil Dialogue takes place on a case-by-case assessment of parties to be affected by the issue, which is the object of a consultation, and representativity is no pre-condition to dialogue.

<sup>67</sup> See “Communication from the Commission on the collection and use of expertise by the Commission: Principles and Guidelines”, COM (2002) 713 final, [http://europa.eu.int/comm/secretariat\\_general/impact/docs/com2002\\_0713en01.doc](http://europa.eu.int/comm/secretariat_general/impact/docs/com2002_0713en01.doc).

<sup>68</sup> European Commission “Towards a reinforced culture of consultation and dialogue - General principles and minimum standards for consultation of interested parties by the Commission”, COM (2002) 704 final.

<sup>69</sup> For more information on the Minimum Standards of Consultation see ANNEX III.

<sup>70</sup> European Commission “An open and structured dialogue between the Commission and Special Interest Groups”, SEC (92) 2272 final, European Commission “Communication on promoting the role of voluntary organisations and foundations in Europe”, COM (97) 241, European Commission Discussion Paper “The Commission and Non Governmental Organisations: building a stronger partnership”, COM (2000) 11 final.

<sup>71</sup> They comprised: their structure and membership, the transparency of their organisation and the way they work, previous participation in committees and working groups, track records as regards competence to advise in a specific field, as well as their capacity to work as a catalyst for exchange of information and opinions between the Commission and the citizens; European Commission “The Commission and NGOs: Building a Stronger Partnership”, COM (2000) 11 final. [http://europa.eu.int/comm/secretariat\\_general/sgc/ong/docs/communication\\_en.pdf](http://europa.eu.int/comm/secretariat_general/sgc/ong/docs/communication_en.pdf), p. 11.

<sup>72</sup> Specific *registration* mechanisms were put in place by institutions, which are sometimes supported by incentives. In particular, organisations accredited to the European Parliament might get permanent access to the EP building. The CONECCS database, set up by the European Commission, provides information about civil society organisations consulted by the European Commission. Yet they do not involve any type of *recognition*.

- ◆ **Wide definition of civil society** – While EU institutions did not adopt any common definition of civil society, the Commission bases an important part of its work on the definition provided by the European Economic and Social Committee, comprising a wide range of actors, including social partners, socio-economic actors, NGOs, community-based organisations and the religious community<sup>73</sup>.
- ◆ **Stakeholder dialogue** – This wide definition of civil society paved the way for the development of various forms of ‘stakeholder dialogue’, involving different types of interested parties affected by an initiative, ranging from NGOs to socio-economic actors. The role of the EU institutions (in particular that of the Commission) and their leadership in the development of a stakeholder dialogue has varied from ‘process driver’ to ‘honest broker’ within an autonomous self-regulation process<sup>74</sup>.

**Article 47 of the European Constitutional Treaty: the missing link?** Some of these gaps could have been partly filled through Article 47 of the Constitutional Treaty, which acknowledges the principle of participatory democracy. In particular, Article 47 puts a constitutional duty on all EU institutions to consult civil society, rather than only the Commission.

### Article I-47 The principle of participatory democracy

1. The institutions shall, by appropriate means, give citizens and representative associations the opportunity to make known and publicly exchange their views in all areas of Union action.

2. The institutions shall maintain an open, transparent and regular dialogue with representative associations and civil society.

3. The Commission shall carry out broad consultations with parties concerned in order to ensure that the Union’s actions are coherent and transparent.

4. Not less than one million citizens who are nationals of a significant number of Member States may take the initiative of inviting the Commission, within the framework of its powers, to submit any appropriate proposal on matters where citizens consider that a legal act of the Union is required for the purpose of implementing the Constitution. European laws shall determine the provisions for the procedures and conditions required for such a citizens’ initiative, including the minimum number of Member States from which such citizens must come.

However, Article 47 raises a number of questions that will have to be solved if the Constitutional Treaty comes into force:

- ◆ Which type of civil society actors does it refer to? Does it include economic actors?
- ◆ Will it be legally binding and enforceable?
- ◆ In the absence of binding criteria, which are the representative organisations?
- ◆ What types of measures are subject to consultation? Does dialogue include only laws or implementing legislation as well?

These questions appear all the more problematic as the mechanisms to put in place civil dialogue are not clearly referred to in part III of the Treaty, which deals with EU policies.

<sup>73</sup> In its definition provided on the CONECCS website in February 2006, the Commission referred to the wording proposed by the EESC: [http://europa.eu.int/comm/civil\\_society/coneccc/question.cfm?CL=en](http://europa.eu.int/comm/civil_society/coneccc/question.cfm?CL=en). It includes:

- *The so-called labour-market players (i.e. trade unions and employers federations, also called the social partners)*
- *Organisations representing social and economic players, which are not social partners in the strict sense of the term*
- *NGOs (non-governmental organisations) which bring people together in a common cause, such as environmental organisations, human rights organisations, consumer associations, charitable organisations, educational and training organisations, etc.*
- *CBOs (community-based organisations, i.e. organisations set up within society at grassroots level which pursue member-oriented objectives), e.g. youth organisations, family*

*associations and all organisations through which citizens participate in local and municipal life*

- *Religious communities.*

Yet there is no common definition. As an example, in the Science and Society strand of the Sixth Framework Programme (FP6), an “exploratory” call for proposals, announced in the recent revision of the Work Programme (available at [ftp://ftp.cordis.lu/pub/fp6/docs/wp/sp2/t\\_wp\\_200212\\_en.pdf](ftp://ftp.cordis.lu/pub/fp6/docs/wp/sp2/t_wp_200212_en.pdf)) used the following definition: *In the context of this call, civil society organisations are considered to be any legal entity that is non governmental, not-for-profit, not representing commercial interests, and pursuing a common purpose in the public interest.*

<sup>74</sup> For more information on self-regulation, please see chapter 3.

## CHAPTER 2 - THE CIVIL DIALOGUE 'PATCHWORK': A DIVERSITY OF PRACTICES AT EU LEVEL

The previous chapter examined the enabling conditions for the emergence of civil dialogue, as well as the development of its legal framework at national, European and international level. Yet, understanding the nature of civil dialogue requires going beyond a monolithic approach and stressing the diversity of interactions between NGOs and European Union institutions. For NGOs in particular, better assessing the actual practices outside their own policy areas will be crucial for the development of a common horizontal approach such as that required by Article 47 of the Constitutional Treaty, and for finding best practices of consultation and building upon them. Based in particular on interviews with EU level actors, this chapter therefore aims to draw a typology of the different modalities of interactions between NGOs and EU institutions<sup>75</sup>, with a particular focus on the following questions:

- ◆ Is there a similar approach among institutions?
- ◆ Has civil dialogue developed uniformly throughout different policy areas?
- ◆ At which stage of the policy process does it take place?
- ◆ Who are the main stakeholders?
- ◆ What is the degree of openness to the wider public?

Rather than drawing a comprehensive quantitative assessment, it aims to stress the diversity of practices in place and the potential consequences of this diversity for future developments of civil dialogue.

### 1. Typology of interactions between NGOs and EU institutions: a continuum from informal lobbying to structured dialogue

A review of interactions between EU institutions and NGOs reveals that civil dialogue can take various forms, which differ between institutions, but also within them. Yet (and this is the case for all institutions), it is particularly difficult to identify which of these processes can be depicted as 'civil dialogue' in its own right. Therefore, the way NGOs and institutions interact should be seen in terms of a continuum from informal lobbying to structured relations, two points on a spectrum between which no clear line can be drawn.

#### 1.1 European Commission

The relations between NGOs and the European Commission (thereafter European Commission, EC or Commission) vary significantly depending on the different stages of the policy process. They are particularly developed in the proposal phase, in which the Commission is most active.

#### Agenda-setting and policy development

Only some 15% of policy proposals are said to emanate from the Commission itself, despite its monopoly over the right of initiative<sup>76</sup>. NGOs have the opportunity to take part in the development of policy proposals through both formal and informal channels, allowing them to draw the Commission's attention to any specific or emerging issue, but also to discuss its mid-term strategy, in the **agenda-setting phase**. Yet their involvement is **mainly focused on the decision-making**, and more specifically the **proposal phase**<sup>77</sup>.

**Dialogue at "macro-policy" level** – Some forms of macro-level dialogue have been developed in particular with sectoral NGOs platforms, which provide an opportunity to discuss horizontal issues and general policy strategy. In this role, their perceived value is less their direct impact, but rather their ability to build momentum, trust, legitimacy and model roles that can then impact on the daily processes.

- ◆ **Biannual meetings** with the Commission are organised for instance by the Platform of European Social NGOs since 1995, but also by CONCORD, the European NGO Confederation for Relief and Development. Based on a mutually agreed agenda, such meetings allow discussion and debates between the platforms' members and/or secretariat and either the European Commissioner him/herself or high-level officials. In other sectors,

<sup>75</sup> Practices at national level are assessed more specifically as part of the case studies.

<sup>76</sup> Neill N., *The European Commission*, Palgrave, Basingstoke, 2001, pp. 236-237.

<sup>77</sup> I.e. when the Commission is drafting a proposal to be handed over to other institutions.

such meetings take a more ad hoc form and involve a more limited number of participants<sup>78</sup>.

- ◆ **Multi-stakeholder forums** dedicated to a broad policy strategy or process provide another arena for such strategic dialogue to happen. The European Health Forum, set up in 2001, is one of the most recent examples of such structures. Bringing together health professionals' organisations, public health NGOs, patient groups, service providers and funders<sup>79</sup>, it is divided between a Policy Forum with a limited attendance, and an Open Forum, open to the wider public, organised around an annual conference and an exhibition.

**Meso-policy level and technical dialogue** – The opportunities for dialogue at meso-policy level are numerous, but vary considerably regarding their degrees of openness, technicality, the actors involved and their concrete impact. In particular, the channels that are perceived as most influential tend to be seen as less open and more technical.

- ◆ **Consultative committees and expert groups** – The Commission is assisted by three types of committees that are active in the policy development and proposal phase: advisory committees and expert groups<sup>80</sup> (estimated 700<sup>81</sup>), and scientific committees. Chaired and serviced by the Commission, such groups can be formal or informal, permanent or temporary. NGOs are mostly present in advisory committees and expert groups, almost always along with other types of stakeholders, in particular from the corporate sector, consumer organisations, social partners, other national experts, academia, but also from national administrations. The balance between each type of actor varies considerably from one committee to another<sup>82</sup>, and the most common participation is by environmental NGOs, who are involved in some 50 consultative groups<sup>83</sup>. It should also be noted that they act by consensus, and most of the time there are no voting rights for NGOs. The impact of such groups is particularly important, but their rather low degrees of openness, as well as the effective role of NGOs within them raise the question of whether they can truly be considered to be a real participatory democracy tool.

#### **Number of expert groups and consultative committees set up by Directorate-Generals (DGs), March 2006 (Source: register of expert groups)**

DG Employment, Social Affairs and Equal Opportunities: 55 groups

DG Environment: 116

DG Education and Culture: 85

DG Development: 28

DG Health and Consumer Protection: 84

DG Justice, Freedom and Security: 43

<sup>78</sup> As an example, the European Environmental Bureau has had agreements for regular meetings with the Director General for Environment and organised regular meetings with the Commissioner until 2004-2005. Meetings now take place on a more ad hoc basis (except a yearly meeting between the EEB board and the Commissioner), involving the EEB alone or with coalitions. The Green 10, informal grouping of ten leading non-governmental organisations working at EU level has not set up a regular instance for dialogue but meets with institutions in relation to specific issues. Similar forms of meetings are also organised by the European Women's Lobby and the Commissioner/Director or other officials in the Employment Directorate General, but also between Amnesty International and the Justice and Home Affairs Commissioner for instance.

<sup>79</sup> Participation in the Health Policy Forum is thus open to a limited number of organisations. Yet it is particularly interesting to note that membership of the HPF can be withdrawn following two failures to attend meetings.

<sup>80</sup> Which can be created by a Commission decision or another legal act establishing the group, or by a Commission service with the agreement of the Secretariat General in the case of an informal group: the majority of expert groups are informal.

<sup>81</sup> *Guide to the EU decision-making process*, Scottish Parliament, June 2002, p. 4.

<sup>82</sup> As an example, the advisory committee on the Common Agricultural Policy is composed of 60 seats: 22 for farmers' unions, 8 for farmers' cooperatives, 8 for agrofood business, 8 for distribution and trade, 5 workers representatives, 5 consumers' associations, 2 environmental protection associations, 2 defence of animal protection associations. Source: Guéguen D., Rosberg C., *Comitology and other EU committees and expert groups*, Europe Information Service, European Public Affairs series, February 2004.

<sup>83</sup> Beger N., "Participatory Democracy: Organised Civil Society and the 'New' Dialogue" (July 2004), Federal Trust Constitutional Online Paper No. 09/04. Available at SSRN: <http://ssrn.com/abstract=581442> or DOI: 10.2139/ssrn.581442. Such committees include among others the European Committees for Standardisation and for Electro-Technical Standardisation. Other examples of NGO participation in advisory committees and expert groups include also the European Women's Lobby participation in the consultative committee on equal opportunities.

- ◆ **Public internet consultations** (either ‘focused’ or ‘open’) have become a key consultation instrument over the last years and their proliferation was stressed by a high number of interviewees<sup>84</sup>. Organised through the “Your voice in Europe” website<sup>85</sup>, such (open or guided) consultations are held on most major policy initiatives. While they allow outreach to a greater number of actors, the increasing weight of such consultations raises the question of their concrete impact, but also of NGOs’ role as dialogue mediators. For example, the consultation on REACH<sup>86</sup> received more than 6.400 contributions, from NGOs, associations and individual firms and public authorities, but also an important number of individual citizens. Further clarification is still needed on which criteria are used to assess how such different contributions and their representativity are assessed.
- ◆ **Dialogue fora** set up by the Commission offer another important participation channel, which can be open either to NGOs only (such as the Euro-Mediterranean NGO Platform<sup>87</sup> set up in 2003) or to a wider scope of stakeholders, in particular from foundations, industry and other socio-economic actors. Such stakeholder platforms, which aim to build a wide political consensus ahead of the policy-making process, can be either set up on a regular basis (e.g. working groups of the European Health Policy Forum), or temporary basis (e.g. Multi-Stakeholder Forum on Corporate Social Responsibility). While they offer an opportunity to develop dialogue not only with institutions, but also between different stakeholders, such platforms raise crucial issues regarding the balance of interests and resources between actors, as well as the trend towards self-regulation.
- ◆ **Regular information meetings with NGOs funded by a specific programme**, which are increasingly becoming an arena for consultation on political priorities.
- ◆ **Ad hoc meetings on specific issues** involving EC officials and NGOs (and often other stakeholders), on the initiative of either the Commission or NGOs themselves.
- ◆ **Seminars, workshops, and roundtables** – Dealing with more technical issues and open to a rather limited number of participants, they provide NGOs with the opportunity to take part as participants, speakers, but also to be associated to the organisation. While they entail a strong potential for capacity building of civil society organisations, this has to be balanced with the concrete impact the seminars can have on the policy process.
- ◆ **Open hearings, conferences, broad events**, such as the Green Week, organised each spring in Brussels around a wide range of events (conferences, exhibitions, youth events), but also citizens’ summits (organised, for instance, in parallel with the Laeken Summit in 2001) offer an opportunity for exchange between NGOs, institutions, social partners, other stakeholders and the wider public around key political challenges. While they provide important visibility, the opportunities for direct policy outcomes are more limited.
- ◆ **Focus groups, citizens panels** – Developed among others by DG Health and Consumer Protection (SANCO), they bring together a limited number of citizens from different Member States to discuss an issue of public interest (which are more specific in the case of focus groups). While they allow the development of innovative approach and participation of citizens beyond those usually involved in practices of participatory democracy, these tools raise questions linked to the need for mediators of the debate, due to the high level of technicality linked to European issues.
- ◆ **Studies** – Commissioned by the EC as part of the impact assessment procedure, studies built on interviews and consultation with NGOs are often undertaken by external consultants. Some NGOs tend to perceive such studies to be a filter between themselves and the institutions, at the expense of real participation.

Such interactions represent only the tip of the iceberg: along with these structured forms of dialogue, an **important amount of dialogue takes place on a more informal basis**, often through bilateral meetings with EC officials. This is perceived to be a more direct channel to make one’s voice heard, but tends to only be open to the most established networks.

<sup>84</sup> Yet it is difficult to judge whether this is due to an absolute increase of consultation in general or to the growing weight of such consultations compared to other types of practices.

<sup>85</sup> [www.europa.eu.int/yourvoice/index\\_en.htm](http://www.europa.eu.int/yourvoice/index_en.htm)

<sup>86</sup> REACH stands for Registration, Evaluation and Authorisation of CHemicals. This proposal has been designed to establish a more uniform, more transparent and safer management of chemicals in the European Union.

<sup>87</sup> <http://www.euromedforum.org/>

## Implementation

EU level Dialogue with the Commission in the implementation phase appears more limited, although we should take note of the key role played by NGOs in the implementation of EU funded programmes. Such limited dialogue can be explained by the fact that the implementation phase lies primarily in the hands of the Member States (and national mechanisms are beyond of the scope of this assessment), but seem to be true mostly to the first pillar and in relation to internal policies. NGOs are involved in a number of dialogue mechanisms with Member States and the EC delegation in the implementation of external policies. Pan-EU level dialogue mechanisms include:

- ◆ **Informal interactions in the comitology procedure**<sup>88</sup> – The comitology procedure plays a key role in implementing EU legislation, but remains particularly closed to NGOs as well as to the wider public. None of the interviewees referred to participation in these meetings, composed mostly of national experts. However, with the rationalisation of the financial instruments proposed by the Commission in the context of the next Financial Perspectives, these committees will now take decisions of a quasi-legislative nature. It might, therefore, be important to consider how to make the workings of these committees more open to the European Parliament and civil society.
- ◆ **Limited formal relations with European Union agencies** – Depending on their mandate, the agencies can be split between regulatory, monitoring, and executive functions. The degree of formal and informal relations remains low compared to the previous phases of the policy process (although they can take the form of participation in major events, studies, or in consultative fora such as the Stakeholder Consultative Forum set up by the European Food and Safety Authority). This rather low level of dialogue is partly linked to resource problems on the side of NGOs, and agencies being decentralised.
- ◆ **Implementation of framework legislation** – Dialogue in the implementation phase plays an important role in some specific sectors with the increase of framework legislation, for which the details of implementation are left either to national governments or to the comitology procedure, but can be guided by common procedures. This is the case in the environmental field, through for instance the implementation of the Water Framework Directive which gives NGOs a specific monitoring and guidance role through participation in Common Implementation Strategy Meetings of Member States, in which organisations like the European Environmental Bureau and World Wildlife Fund (WWF) are involved.

## Feedback and evaluation

NGOs play a key role as whistle-blowers in monitoring the implementation of EU legislation. Yet, compared to other stages of the policy process, there appears to be limited channels for more formal involvement in the feedback process (although it appears crucial to ensure that policy change really takes place<sup>89</sup>).

- ◆ Beside an online consultation mechanism, **the interactive policy-making initiative** provides a feedback mechanism<sup>90</sup> which aims to give citizens, business and consumer organisations the possibility to report problems and difficulties experienced in relation to EU legislation. Cases are collected through over 300 intermediaries (such as Euro Info Centres, European Consumer Centres and the Citizens Signpost Service). Yet it is above all service-oriented and focuses on issues linked with the implementation of the internal market.

<sup>88</sup> Under the comitology procedure, the Commission is given specific powers in the implementation of EU legislation, but under close monitoring of committees composed of national experts and set up by the Council. Comitology committees have to be differentiated from other committees supporting the Commission's work in that they are under the tight control of Member States. They can be of three types: consultative, management and regulatory committees.

<sup>89</sup> This is for instance illustrated by the EU legislation in the field of equal opportunities. More than two years after the deadline for transposition of the Employment Equality Directive 2000/78/EC (2 December 2003), a number of Members still had not put in place appropriate measures and were condemned by the European Court of Justice (including Germany and Luxembourg) for lack of transposition.

<sup>90</sup> [http://europa.eu.int/yourvoice/ipm/faqs/index\\_en.htm](http://europa.eu.int/yourvoice/ipm/faqs/index_en.htm)



## 1.2 Council of the EU and Member States

In comparison, the level and modalities of dialogue with the Council of the EU (active mostly in the decision-making, but also in the agenda-setting phase<sup>91</sup>) appear particularly limited. There exists no regular and formalised dialogue structure and when dialogue takes place, it is mostly on an ad hoc basis and at the initiative of NGOs. Yet focusing mostly on pan-EU mechanisms might provide a distorted vision of reality, and we should bear in mind that many members of the Council of the EU (hereafter the Council) are involved in strong dialogue mechanisms in their own country. Relations with the Council are rather marked by a lack of pan-European dialogue than a lack of dialogue at all.

- ◆ **Emergence of formalised relations with Council Presidencies** – Some NGOs have developed a form of dialogue with the successive EU Presidencies, which range from the participation in and even organisation of high-profile events linked with the Presidencies' political priorities to regular assessments of their achievements (through, for instance, the Social Platform's Tests and European Environmental Bureau's Memorandum). The organisation of a discussion of the EEB's Memorandum by the UK Presidency could even be seen as the development of a form of accountability, though it depends greatly on the profile of the Presidency. Presidencies can also be involved or support specific projects, such as the "ROCS" initiative in the field of crisis management, which aims to create coherence between public and NGOs sector approaches in civilian crisis management and to propose concrete methodology and practises for a more holistic EU approach to conflicts.
- ◆ **Regular dialogue with the Council** – Beyond relations with the Presidencies, regular meetings between the Council and European NGOs (such as the bi-annual meeting organised by CONCORD between its board and Foreign Affairs Ministers or the Green-10 bi-annual meeting with Environmental Ministers) are rare, and take place at the initiative of NGOs themselves, with a rather low proportion of Council members attending.
- ◆ **Working groups and specialised committees**<sup>92</sup> – Although key actors of the policy process, these committees remain generally closed to NGOs as well as to the wider public. Contacts with NGOs do take place, but on an informal basis, with a strong inter-personal dimension. One of the rare examples of regular contact is that between the Social Platform and the Social Protection Committee or the European Peace Building Liaison Office and CIVCOM (Civilian Crisis Management Committee). Some NGOs can also be invited to contribute in their capacity as experts, such as Amnesty International, FIDH and Human Rights Watch, which have developed regular relations with the Council Working Group on Human Rights (COHOM) ahead of its monthly meetings, but also exchange with the whole committee two or three times a year. While working groups are usually closed to the wider public, NGOs and other stakeholders, but also other EU institutions and bodies have increasingly put the issue on the agenda<sup>93</sup>. Despite this generally high degree of closeness, several examples of good practices should be quoted, such as the opening of a working group on sustainable development to the general public under the British Presidency in the second semester of 2005.
- ◆ **Permanent Representations of Member States** – Meetings with Permanent Representations of Member States are developed either by the Brussels-based secretariats of EU NGOs or by national members. They tend to take place on an ad hoc basis, and are linked to specific dossiers. They are also marked by a strong cultural dimension, which impacts on the degree of openness and the quality of dialogue.
- ◆ **General Secretariat** – The Presidency of the EU is assisted by the General Secretariat, which prepares and ensures the smooth functioning of the Council's work at all levels. Relations with the General Secretariat take place on a mostly informal basis, but their level of quality and openness varies depending on the policy areas (they appear to be stronger in policies linked to the external dimension). This lack of

<sup>91</sup> While Member States have a key responsibility in the implementation phase.

<sup>92</sup> When the Council adopts a Commission proposal, it usually goes through the Permanent Representatives Committee (COREPER), which works with specialised committees and working groups (estimated around 300), preparing its work at technical level. Working groups and committees are Composed of Member States Representatives, Commission and Council Secretariat members.

<sup>93</sup> See in particular the European Parliament Resolution on access to the institutions' texts, 2004/2125 (INI), <http://www.europarl.eu.int/omk/sipade3?TYPE-DOC=TA&REF=P6-TA-2006-0122&MODE=SIP&L=EN&LSTDOC=N>;

European Parliament Resolution on Council Transparency, 2005/2243 (INI), <http://www.europarl.eu.int/omk/sipade3?TYPE-DOC=TA&REF=P6-TA-2006-0121&MODE=SIP&L=EN&LSTDOC=N>.

dialogue appears to be due to the General Secretariat's lack of transparency, but also to the fact that "NGOs have not identified it yet as key target despite its important role", as one interviewee underlined.

### 1.3 The European Parliament

Contrary to dialogue with the Council, contacts between NGOs and the European Parliament (focusing mostly on the decision-making phase) are characterised by a high degree of openness, in particular on issues that are subject to the codecision procedure. Yet their formalisation remains almost as low, although some further structures have been developed in the last decade:

- ◆ **Bilateral dialogue with specific committees** – A number of NGO platforms have set up regular meetings with the standing committees in charge of their main field of activity, such as the Social Platform, whose board meets annually with the Employment and Social Affairs Committees, and CONCORD, who meets biannually with the Development Committee. Human Rights NGOs gathered in the Human Rights and Democracy Network have a permanent consultation structure with the EP subcommittee on Human Rights, DROI, through a structure called the Human Rights Contact Group, which involves regular speaking slots on all DROI topics for the NGOs. Although they can in no way replace day-to-day contacts on specific dossiers, such meetings are perceived to be an opportunity to discuss the broader agenda and develop mutual understanding.
- ◆ **Coordination of intergroups** – Dialogue with parliamentary intergroups is characterised by a low degree of formalisation and transparency<sup>94</sup>, which contrasts with their role as the main existing structured dialogue channel between Members of the European Parliament (MEPs) and civil society organisations. Informal cross-party groupings, they provide a space for MEPs to discuss shared interests which are not represented in standing committees. The secretariat of intergroups is often provided by external stakeholders of different types (NGOs<sup>95</sup>, but also industry federation or consultancies) which represents an important resource commitment in particular for NGOs. While the impact of intergroups is limited in that they are not authorised to express the official view of the European Parliament or to use its logo, they are perceived as a particularly effective channel for NGOs to reinforce trust and create a culture of dialogue.
- ◆ **Hearings** are organised by standing committees on a number of major developments or issues that affect more specifically civil society organisations (e.g. Constitutional Treaty, Financial Regulation, Gender Institute). While they provide important visibility, their one-off nature is generally not perceived to be a sufficient basis to develop more stable lasting relations. In addition, there needs to be greater clarity over the reasons for inviting specific networks to hearings and other official consultations.

It is interesting to note that many interviewees did not see the formalisation of relations with the European Parliament as a priority. Rather, they wish to establish relations of trust, which are seen as being at stake, in a climate which is perceived to be deteriorating with some political groups<sup>96</sup>.

<sup>94</sup> In particular, no list of intergroups is available on the European Parliament's website, which can be explained by the fact that they are not official EP bodies. Neither are the rules governing the establishment of an intergroup, changed in 2004.

<sup>95</sup> To name just a few: Health and Consumer Protection intergroup, coordinated by the European Public Health Alliance and the European Consumer Office BEUC since 2005: <http://intergroup.ephpa.org/>. Its terms of reference can be found on: [http://intergroup.ephpa.org/IMG/pdf/HCI\\_ToR.pdf](http://intergroup.ephpa.org/IMG/pdf/HCI_ToR.pdf).

Disability intergroup created in 1980, coordinated by the European Disability Forum: <http://www.edf-feph.org/apdg/index-en.htm>.

Anti-racism diversity intergroup, coordinated by the European Network Against Racism: <http://www.enar-eu.org/anti-racism-diversity-intergroup/index2.html>.

<sup>96</sup> As illustrated by a Written Declaration on the Financial Transparency of NGOs and Social Partners tabled by centre-right MEP Silvana Koch Mehrin in September 2005. Expressing concerns that "many NGOs do not practice the necessary financial transparency", and "about the fact that a disproportionately large number of NGOs that are hostile to globalisation and economic development receive funding from governments and European bodies, such as the European Commission", the proposal was supported by only 71 MEPs and failed to pass. Yet, a few months later, Graham Watson, President of the ALDE group, underlined in an answer to Amnesty International EU Office that "her sentiments are shared in varying degrees by more than a few of (ALDE) colleagues".

### European Economic and Social Committee (EESC)

The EESC saw its role of intermediary between organised civil society and EU decision-makers enhanced by the Nice Treaty which specified that the EESC consists of “representatives of the various economic and social components of organised civil society” (Article 257). As perceived by the EESC itself, this gives it increased responsibility for “organising discussions between representatives of civil society with different motivations” and “facilitating a structured and continuous dialogue between the European organisations and networks of organised civil society and the EU institutions”<sup>97</sup>. It thus facilitates dialogue within civil society, but also between civil society and the institutions, through four main channels:

- ◆ **Membership in Group III** – Along with employers (Group I) and employees (Group II), Group III of the EESC brings together 99 representatives of “other sections of civil society”<sup>98</sup>. Members of Group III are nominated by the Council on a proposal by national governments (i.e. not by civil society itself). Although nominations should be equally shared between the three groups, it is up to each Member State to decide on the make up of their delegations, in particular the distribution between business and non-profit organizations, which can result in the latter often being under-represented in the delegation of smaller countries. Group III members participate in their individual capacity and might not be bound by any mandatory instruction.
- ◆ **Participation in EESC consultations, hearings and conferences** – The EESC has played an increasing role in organizing consultations, conferences and hearings<sup>99</sup>, in partnership with other institutions, in particular the Commission. While such events provide a real opportunity to develop dialogue within civil society itself, the role of the EESC as an intermediary between the EU institutions and civil society raises a number of issues, among others, the potential dilution of impact, and that the outcomes of discussions may be ‘filtered’ before they reach the decision-makers.
- ◆ **Participation in expert groups** appointed by the EESC in relation to a specific policy proposal/project.
- ◆ **Participation in the Liaison Group** – Since 2004, the EESC has set up a Liaison Group between the EESC and the “representatives of the main sectors of European organised civil society”<sup>100</sup>. Composed of both representatives of the EESC and 14 members of civil society organisations, the Liaison Group acts primarily as an exchange body, facilitating dialogue within civil society and with the EESC. It also organizes hearings and seminars, and provides expertise on issues linked to participatory democracy and trans-sectoral issues (e.g. financial regulation, Lisbon Strategy, and funding). While an important ‘added value’ of the Liaison Group is its ability to build dialogue within civil society, and to strengthen this dynamic through the provision of facilities, it raises important challenges linked, in particular, to the multiplication of discussion fora and their concrete impact.

<sup>97</sup> European Economic and Social Committee, “Opinion on the representativeness of European civil society organisations in civil dialogue”, 14 February 2006. In particular, the “Protocol of Cooperation” signed between the European Commission and the EESC in November 2005 confirmed “the Committee’s role as an institutional intermediary between the EU institutions and organised civil society”, and states that the “Commission supports the Committee’s commitment to strengthen dialogue with civil society, not least by means of the liaison group it has set up”.

<sup>98</sup> “Small businesses, the crafts sector, the professions, cooperatives and non-profit associations, consumer organisations, environmental organisations, associations representing the family, voluntary associations, persons with disabilities, the scientific and academic community and non-governmental organizations”.

<sup>99</sup> Such as a hearing on the Constitutional Treaty organised jointly with the European Parliament in November 2004, and the stakeholder forum *Bridging the Gap: How to bring Europe and its citizens closer together?*, organised in cooperation with the European Commission in November 2005.

<sup>100</sup> Mandate of the liaison group, to be found on: [http://www.esc.eu.int/sco/group/documents/Reunion\\_constitutive\\_en.pdf](http://www.esc.eu.int/sco/group/documents/Reunion_constitutive_en.pdf):

1. Exchange of information and views on the respective work programmes and important events;
2. Identifying themes on which cooperation would be appropriate and possible;
3. Examining the feasibility of and practical arrangements for an increased involvement the networks in the EESC’s consultative work;
4. Consultation or cooperation on preparations for certain hearings, seminars, conferences, etc.;
5. Studying any other matters of common interest, e.g. in the context of dialogue with the EU institutions, such as:
  - the role of organised civil society in the democratic life of the Union;
  - interpretation and implementation of Article I-47 of the draft constitutional treaty on the principle of participatory democracy: how to put participatory democracy into practice and how to organise civil dialogue;
  - the representativeness of civil society organisations other than the social partners;
  - funding of NGOs.

A list of members of the EESC can be found on: <http://www.esc.eu.int/sco/group/documents/list.doc>.

A number of obstacles might prevent the EESC from playing a stronger role in the EU civil dialogue framework, notably the need for a more general reform of the EESC to reinforce its legitimacy (in particular its appointment procedure) and the need for increased transparency over the Liaison Group membership. The 'balance of powers' between different institutions and bodies will also play a crucial role in its future, with some organisations preferring to target those EU bodies that are perceived to be more influential than the EESC. A number of NGOs have, thus, decided not to get involved in the Liaison Group as it now stands. These include, in particular, human rights organizations gathered in the large Human Rights and Democracy Network and environmental organizations that are members of the Green 10<sup>101</sup>.

## Committee of the Regions

Relations with the Committee of the Regions are rather developed on an ad hoc basis, despite strong common interests, in particular, on issues such as sustainable development, social cohesion and culture.

## 2. Lack of a coherent approach between and within institutions

One of the most striking impressions that emerge from this overview is the lack of a common approach between institutions, but also within them, according to the specific policy processes at stake. Currently, civil dialogue ranges from information-sharing and consultation to real participation, and each offers different opportunities for making policy impacts. This 'patchy' picture results from a convergence of legal and institutional, but also political, historical and cultural factors which strongly interact with one another.

### 2.1 Imbalance throughout the policy process

The strongest EU level civil dialogue takes place at the decision-making phase (and in particular, at the period when proposals are developed), followed by the agenda-setting phase. NGOs' formal involvement in dialogue around the implementation as well as the evaluation phase remains more limited. Throughout each of these stages, dialogue fulfils a specific function as illustrated by the table below:

Linking policy stages and third sector 'functions' <sup>102</sup>	
Policy stage	Potentially relevant third sector 'functions'
Agenda setting	Advocacy, Innovation (demonstration effects)
Decision making	Advocacy, Innovation (demonstration effects)
Implementation	Service delivery, community building
Evaluation	Advocacy
Feedback effects between stages	Synergies resulting from multi-functionality (Evers, 1993)

Source: KENDALL J., *Third Sector European Policy: Organisations between market and state, the policy process and the EU*.

<sup>101</sup> In a position towards the European Economic and Social Committee published in May 2005, the then G-9 declared that "A year ago, the G-9 (then G-8) was invited to join a liaison group of European civil society organisations, hosted by the EESC. The G-8 decided not to do so. It was not clear then – or still now - what practical benefit the time investment would have for the G-8 as it has other ways to discuss issues of common interest with other European civil society organisations, without the facilitation of a third party (example:

Civil Society Contact Group). It also does not want to contribute to a possible tendency for a stronger role for the EESC that might eventually limit opportunities for direct consultation with Commission and other institutions for groups such as the Green 9. And the time investment would have to be considerable at a time when existing staff resources are over-stretched".

<sup>102</sup> Kendall J., op cit.

<sup>103</sup> Majone G., *Regulating Europe*, Routledge, London, 1996.

This imbalance in EU level civil dialogue between policy stages is due to the fact the dialogue is still mostly focused on the Commission, the motor of decision-making, but it might also reflect the more general nature of the EU policy-process, which continues to put particular focus on EU level regulation<sup>103</sup>. Yet, there might be a shift towards other phases of the policy process with the development of framework regulations<sup>104</sup>, soft law<sup>105</sup> as well as of an enhanced monitoring and evaluation culture.

## 2.2 Diversity among institutions

**A dialogue that focuses mostly on the Commission** – The picture of EU civil dialogue is marked by a strong divergence of approaches between institutions, in particular within the institutional triangle formed by the Commission, the European Parliament and the Council. Formal, but also less formal mechanisms are developed primarily with the Commission, which is generally perceived as the most pro-active institution. While the European Parliament is also perceived to be particularly open to NGOs and their concerns, most relations take place on an informal and ad hoc basis, linked to specific dossiers. One important obstacle to the establishment of a ‘culture’ of dialogue with the EP appears to be the difficulty to create horizontal structures when party and national affiliations remain dominant in driving policy decisions. The Council is often depicted as the most closed institution, “untouched by the concept of dialogue”, as one interviewee pointed out. Also, concerns regarding the Council remain one stage behind those linked to other institutions, i.e. focus mainly on improving transparency and access to documents rather than on the forms and quality of dialogue<sup>106</sup>. It is, thus, not surprising that relations with the Council are marked by strong inter-personal and cultural aspects, and the extent and quality of dialogue is much greater with countries that have a stronger culture of openness within their national public administration (in particular from Northern Europe). This contrasts with the attitude of the European Economic and Social Committee, which increasingly sees itself as a champion of civil dialogue (through the development of more structured interactions) and a source of inspiration for other institutions<sup>107</sup>.

**Technical and political rather than legal explanations?** The absence of a comprehensive legal framework<sup>108</sup> appears to be a consequence rather than as the cause of such diverse stances, which should be sought in the existence of an open opportunity structure as well as the possibility of a real impact in the policy process.

**The need for strong input in the decision-making phase** – A strong incentive for dialogue appears to be the need for specialised input at an early stage in the policy process, which is precisely when the Commission is most active. This is driven both by the search for expertise (the Commission is largely composed of non-specialised officials who change responsibilities on a regular basis), but also by the desire to ‘test’ policy proposals to ensure that there is a certain degree of consensus at an early stage of the process. This is perceived by NGOs as a win-win situation, since input in the early stage of the policy process appears to be the most cost-effective.

**Civil dialogue as a legitimacy factor?** The search for expertise does not, in itself, sufficiently justify the high degree of formalised civil dialogue (as is illustrated by the largely ad hoc approach adopted by the European Parliament, despite its search for expert input). Another strong incentive to the development of civil dialogue seems to be its potential as a legitimising factor. This hypothesis is illustrated

<sup>104</sup> Which already started in the mid-80s following as part of a “new approach” to regulation and mutual recognition.

<sup>105</sup> By contrast with “hard law”, soft law is based on “rules of conduct which in principle have no legally binding force but which nevertheless may have practical effects”. Snyder F., “Soft Law and Institutional Practice in the EC” in Martin S., *The Construction of Europe*, Kluwer Academic Publishers, 1994.

<sup>106</sup> Although the nature of exchange with the Council considerably improved with the legislation on access to documents, including a better access to minutes of working groups, it is generally considered insufficient to ensure a real participatory democracy. This is due in particular to the delay to access of document, as well as to the closeness of working groups and COREPER procedures and conciliation committees, which play a key part in the legislative process. While the British presidency did not achieve a change of the Council’s Rules of Procedure despite an opening up in December 2005, Council transparency and access to documents should be high on the agenda of the Finnish Presidency to start in July 2006.

<sup>107</sup> As demonstrated by the recent publication of an EESC Position on the representativity of civil society organisations taking part in civil society dialogue: [http://eescopinions.esc.eu.int/EESCopinionDocument.aspx?id=entifier=ces\sous-comite\sc023%20representativite%20or g%20sco%20contexte%20dialogue%20civil\ces240-2006\\_ac.doc&language=EN](http://eescopinions.esc.eu.int/EESCopinionDocument.aspx?id=entifier=ces\sous-comite\sc023%20representativite%20or g%20sco%20contexte%20dialogue%20civil\ces240-2006_ac.doc&language=EN).

<sup>108</sup> It should be noted that, although the Governance White Paper called on the European Parliament and the Council to review their practices and contribute to a general reference framework for consultation by 2004, and despite the June 2003 Inter-institutional agreement on the “better law-making Initiative”, the current legal framework concerns primarily Commission practices.

<sup>109</sup> Whose legitimacy lies within a clear mandate and accountability mechanisms towards citizens. Yet we should recall the fragmented nature of the Council’s accountability, based on national interests and mechanisms.

by the low level of structured dialogue within those institutions that are perceived to be the most legitimate (i.e. the Council and the European Parliament<sup>109</sup>), and it is particularly developed within the two bodies that face legitimacy shortfalls, namely the Commission<sup>110</sup> and the European Economic and Social Committee<sup>111</sup>. This is further reflected by the fact that civil dialogue has particularly developed over the past two decades, at a time when the legitimacy of these bodies has been increasingly questioned<sup>112</sup>. At the same time, one must be aware that the legitimacy potential of formal civil dialogue could become an obstacle to its own development, and fears that it might undermine one institution's position in the policy process should not be overlooked. This was particularly the case of the European Parliament, which, despite its regular support to voluntary organisations, initially opposed the establishment of a legal basis for civil dialogue in the Amsterdam Treaty, as it feared being sidelined in the dialogue process<sup>113</sup>, as is partly the case with social dialogue.

**Balance of power between institutions and NGOs' strategic choices** – The actual development of dialogue is not only driven by institutions' choices, but also by NGOs' own strategy. Equipped with limited resources to engage in fragmented processes with EU institutions, NGOs tend to invest in the processes that are perceived to be the most cost-effective, i.e. firstly, with the Commission (considering the opportunity for early input), followed by the key actors of the legislative process (European Parliament and the Council). Despite its strong degree of openness, the European Economic and Social Committee is thus often perceived to be a facility provider rather than a key political target.

### 2.3 Differences between policy areas

Beyond the strong diversity between institutions, the degree and forms of interactions vary within institutions themselves, and there are at least as many forms of dialogue as there are different policy competences within the EU's remit.

**Historical path** – High levels of structured dialogue can be found within the most historically anchored EU policies, most specifically environment (an EU competence since the Single European Act in 1986, but already well developed in the 1970s), development (where collaboration with NGOs started with the signing of the Lomé Convention in 1975)<sup>114</sup>, and equality between women and men (which has been a community competence since the Treaty of Rome signed in 1957), with lower formalised interactions in fields such as Justice, Freedom and Security, or culture, which only found a Treaty basis in the 1990s. Yet the time factor alone is not a sufficient explanatory factor, as can be illustrated by the rapid growth of dialogue within the public health sector or external affairs and the rather high level of structured dialogue in social policies, where major policy developments occurred in the 1990s.

**Type of EU competences** – Most structured relations are found within Pillar 1 (Community competences), compared to Pillar 2 and 3 (Common Foreign and Security Policy and Justice, Freedom and Security)<sup>115</sup>, due to the driving role of the Commission in the 'community method'. This explains the evolving nature of dialogue in fields such as migration and asylum, which have been progressively integrated into the community method since the Amsterdam Treaty which came into force in 1999. Dialogue also appears to be more developed in fields where the EU enjoys exclusive competences (such as in trade) and competences shared with the Member States (e.g. environment, development, social affairs, equality between women and men, migration, visas, asylum) than in fields where the EU has only supportive competence (e.g. culture). Yet

<sup>110</sup> Mainly due to its technocratic and knowledge-based approach, as well as its lack of political accountability (despite the European Parliament's right of censorship).

<sup>111</sup> This is generally attributed to the nomination procedures of its members, but also to its rather low political influence.

<sup>112</sup> As suggested by the definition provided by Lipset S. M., "the capacity of the system to engender and maintain the belief that the existing political institutions are the most appropriate ones for the society", legitimacy should not be perceived as absolute but appears as a construct, resulting from a process of legitimation. The legitimacy of a political system can thus evolve over time, but also be put into question. This was particularly the case for the Commission in the 90s, characterized by the end of the "permissive compromise", when the economic performance of the EU to some extent overshadowed the low democratic character of the Commission as an institution. Source: Lipset S. M., *Political man* (expanded edition), John Hopkins University Press, Baltimore, 1981.

<sup>113</sup> Obradovic D., "The distinction between the social and the civil dialogue in the European Union" in *Current Politics and Economics of Europe*, no 9 (1) 36-64, 1999, <http://www.essex.ac.uk/ecpr/events/jointsessions/paperarchive/mannheim/w19/Obradovic.PDF>, p. 12.

<sup>114</sup> Which explains why the European Environmental Bureau was founded as early as 1974, and CLONG, predecessor of CONCORD, the Development and Relief NGO confederation, in 1976.

<sup>115</sup> In these pillars, relations with the Council appear more developed than in pillar one. This is reflected in a higher level of interactions of human rights and peace-building NGOs with the Council, compared to other sectors.

the fact that specific concerns (such as equality between women and men, environment, consumer protection, public health, culture, fight against poverty) should be integrated horizontally into all community policies leaves the door open for a broader civil dialogue that is not vertically limited in terms of the policy area.

**Policy instruments and regulatory tools** – The scope of EU policy tools is particularly wide and has considerably evolved over the last decade, to range from non-regulatory (e.g. action programmes and structural funds) to regulatory instruments (in particular, social dialogue, legislation, and more recently, the Open Method of Coordination). Civil dialogue appears to be notably developed in fields where the EU enjoys regulatory competences, which is partly linked to the fact that impact assessment focuses mainly on legislative initiatives. Yet this does not mean dialogue is limited to regulation through hard law. There has also been the emergence of new soft law tools, such as the Open Method of Coordination in the fields of social affairs, employment, youth and lifelong learning, but also immigration, which places a particular focus on the involvement of civil society at EU, but also at national, regional and local level, and thus opens the door for a new type of multi-level civil dialogue. The lower level of civil dialogue in the cultural field illustrates the difficulty of developing interactions when policy instruments rather focus on community programmes. Besides, specific dialogue frameworks have been put in place in some policy areas, most notably development<sup>116</sup> and environment.

### **The Aarhus Convention<sup>117</sup>: improving participation in environmental matters**

Since 2005, the European Union has been party to the United Nations Economic Commission for Europe (UNECE) Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters<sup>118</sup> adopted in 1998. In particular, parties to the Convention should ensure:

- the right of everyone to receive environmental information that is held by public authorities (“**access to environmental information**”). Applicants are entitled to obtain this information within one month of the request and without having to say why they require it. In addition, public authorities are obliged, under the Convention, to actively disseminate environmental information in their possession;
- the right to participate in environmental decision-making. Arrangements are to be made by public authorities to enable the public affected and environmental non-governmental organisations to comment on, for example, proposals for projects affecting the environment, or plans and programmes relating to the environment, these comments to be taken into due account in decision-making, and information to be provided on the final decisions and the reasons for it (“**public participation in environmental decision-making**”);
- the right to review procedures to challenge public decisions that have been made without respecting the two aforementioned rights or environmental law in general (“**access to justice**”).

Participation in international fora is guided more specifically by the Almaty guidelines, adopted in May 2005, which do not apply to the European Union, at the demand of Member States. However, a Regulation to apply the Aarhus Convention to the EU Institutions has been adopted recently. According to environmental organisations, the Regulation is not implementing the Convention sufficiently, as access to justice is not sufficiently provided. Yet, already before the entry into force of the regulation, the Aarhus Convention has made a difference, as DG environment consults and publishes documents in a more systematic way.

**Level of organisation of civil society** – The development of civil dialogue cannot be dissociated from the level and type of organisation of civil society itself in specific fields, in particular from three factors that are deeply inter-linked: the existence of European platforms, the level of resources, and the type of resources. The existence of a strong European network, perceived as legitimate and representative, provides a strong incentive to develop a form of structured dialogue, and all the more so if this organisation has the resources and capacity to get involved and act as mediator with wider civil society.

<sup>116</sup> In 2004, the European Commission published “Guidelines on Principles and Good Practices for the Participation of Non-State Actors in the development dialogues and consultations”, to be found on: [http://ec.europa.eu/comm/development/body/organisation/docs/guidelines\\_principles\\_good\\_practices\\_en.pdf](http://ec.europa.eu/comm/development/body/organisation/docs/guidelines_principles_good_practices_en.pdf).

<sup>117</sup> <http://www.unece.org/env/pp/documents/cep43e.pdf>

<sup>118</sup> <http://ec.europa.eu/environment/aarhus/>

However, the role (including financial) played by the Commission in the development of such platforms cannot be overlooked. Indeed, formal relations (especially on a bilateral basis) were mostly reported by networks which see part of their operational costs funded by the Commission<sup>119</sup>.

## **Conclusion: A difficulty to rationalise the process**

The overall general picture of dialogue between NGOs with EU institutions is that of an ad hoc development, a mushrooming of processes, rather than a coherent and comprehensive approach. The following questions should be considered in any future developments, in particular if Article 47 of the Constitutional Treaty ever comes into force:

- ◆ Where does participatory democracy stop and expert consultation begin? Which processes should be open to the wider public?
- ◆ Which type(s) of consultation should be applied to different policies and stages of the policy process?
- ◆ Should dialogue be more developed after the proposal development phase, or would this undermine the position of the most legitimate institutions, namely the Council and the European Parliament?
- ◆ The lack of a common approach between institutions results in overlap between the different stages of the policy process, but also between the institutions, and may represent a waste of resources for both NGOs and the institutions. Should this be rationalised? What are the dangers of overlooking the specific approach of each institution?
- ◆ Should more structures for horizontal dialogue between civil society organisations themselves be developed?

<sup>119</sup> Although it should be noted that the programmes funding part of the organisations' operational costs are not always under the responsibility of the DG with which they engage in dialogue: the Social Platform for instance is funded by the programme "Active European Citizenship", managed by DG Education and Culture.



## CHAPTER 3 - HOW TO MAKE IT WORK BETTER: IMPROVING CURRENT PRACTICES

Taking as a ground basis the five Minimum Standards for Consultation, this chapter aims at reviewing how dialogue at EU level works in practice and could be improved within the current institutional framework<sup>120</sup>. Building mostly upon a series of interviews, it does not aim to provide a comprehensive assessment but rather to stress some of the most common experiences gained by European NGOs in engaging with institutions, as well as examples of good practices. Four main aspects are considered:

- ◆ Does the process itself enable a wide participation?
- ◆ Does dialogue take place on the most relevant issues?
- ◆ Does it bring citizens back into the policy process?
- ◆ Does civil dialogue make a difference? What is its impact on the policy process?

### 1. Procedural aspects: the need to enhance ownership, clarity and coherence

Procedural aspects play a key role in ensuring that access to civil dialogue goes beyond the happy few. But while straightforward recommendations can be made to ensure clarity and coherence of consultation, there remains a tension between on the one hand ensuring quality and focused contributions and on the other hand opening up the process.

#### 1.1 Lack of knowledge about the current participatory framework

Most of the NGOs interviewed focus on policy issues, rather than on governance, which generally results in a lack of awareness of the general participatory democracy framework. This is particularly striking in the case of the Minimum Standards, which remain largely unknown. Even if only a limited number of interviewees had “never heard” of them, most were unaware of their exact content. Only a minority actually made use of them, mostly through a negative rather than pro-active approach (i.e. when they are not respected) and in relation to time limits problems. This can be explained by five main factors:

- ◆ Lack of tailored communication tools fostering understanding and “ownership” of the standards;
- ◆ Difficult interpretation of their scope;
- ◆ Difficulty to assess completion of the criteria and thus to contest it;
- ◆ Lack of enforceability and thus reduced incentives to use them;
- ◆ Need to develop a common understanding of the standards between NGOs and the Commission.

Although some interviewees remained sceptical about the concrete impact of the standards, a consensus emerged on the need to enhance awareness and concrete knowledge that will allow NGOs to use them as a real participatory tool.

#### 1.2 Clear content

Clear content of the consultation process (Standard A): “All communications relating to consultation should be clear and concise, and should include all necessary information to facilitate responses”.

**Finding the right balance between expertise and wide participation** – The completion of this criterion is generally seen as satisfying for EU networks with expert/technical knowledge. Yet both NGOs and EU institutions are facing a clear tension between expertise and participation. While a willingness to open the process to national organisations and the wider public (notably in the case of open consultations) often

<sup>120</sup> This chapter focuses primarily on the relations with the Commission, with whom most formal channels have been developed. Unless it is explicitly stressed, the following comments and recommendations refer to this specific institution. Besides, providing a relevant comprehensive assessment of practices at national level was above the scope of this chapter: national level dialogue will thus be dealt with as part of chapter 5.

leads to more closed or semi-guided questions, supposedly more accessible, it is often seen as problematic to provide a constructive and innovative input. In the particular case of open consultations, a mixture of 'technical' and 'political' questions, targeted to different types of networks (in particular EU/National) was also stressed. A better differentiation between technical and political level might facilitate access to such questionnaires<sup>121</sup>, which could be also enhanced by more systematic and comprehensive information, such as links to key documents and the broader political context of a consultation. Language and accessibility also remain key obstacles to an increased participation. In particular, open consultations too rarely take place in several official languages and build upon consultation channels that are accessible to disabled people.

**Lack of momentum and clarity** – With the exception of specific processes such as the Convention on the Future of Europe, civil dialogue is often perceived as a never-ending exercise, lacking momentum. More systematic information on the objectives of a consultation, how contributions will be taken into account and details over the next stages would support NGOs to make a full and timely contribution. The Roadmaps<sup>122</sup> put in place since 2005 constitute a promising development in this direction. Yet they contain only limited information on actors and procedures. They also remain static documents<sup>123</sup> rather than interactive tools providing updated information on the evolution of the policy process.

### **Making the process more readable and transparent: DG SANCO's Scoping Paper**

Since July 2005, DG SANCO (Health and Consumer Protection) has put in place Scoping Papers, which aim to provide in a single document all the necessary information to discuss and launch an initiative, from its conception to its implementation. A Scoping Paper is required for all legislative acts and non-legislative initiatives leading to a Commission decision. Each paper should specify who is consulted, on what, how and when a consultation is planned<sup>124</sup>.

In addition to this, DG SANCO has launched a stakeholder involvement peer review group, chaired by its Director General Robert Madelin. Meeting between June and December 2006, the peer review group aims to assist DG SANCO, amongst others, in reviewing its consultation practices and identifying areas of improvement.

## **1.3 Publication: how to target the 'hard to reach'?**

**Publication (Standard C):** "The Commission should ensure adequate awareness-raising publicity and adapt its communication channels to meet the needs of all target audiences. Without excluding other communication tools, open public consultations should be published on the Internet and announced at the 'single access point'."

**Increasing awareness of public consultations** – The "Your Voice in Europe" website was tailored to better involve citizens in the EU policy process and has simplified access to electronic consultations. At the same time it should be given a stronger visibility and remains largely unknown beyond Brussels. Beside, consultations are not always announced on the front page, which becomes problematic for organisations that do not have sufficient resources to monitor the different developments of each DG: its front page is thus not a reliable source of information as such. Notably, this was the case in the July 2005 consultation on a Code of Conduct for Non Profit Organisations to Promote Transparency and Accountability Best Practices, announced on the Website of DG Justice, Security and Freedom, which many NGOs outside the human rights sector are not familiar with. Press releases are also regularly used to announce the launch of a consultation, but also face difficulties to reach out to a wide audience. Such dissemination failures could be partly remedied by the setting up of an information list, classifying organisations by field of expertise, which could provide them with regular information updates and avoid time-consuming monitoring.

<sup>121</sup> Yet with the risk of leading to a two level process.

<sup>122</sup> Roadmaps replaced *Preliminary Impact Assessment* in January 2005. They must provide an estimate of the time required for completing the impact assessment, a brief statement on the likely impact of each policy option. They also indicate which impacts warrant further analysis and outline the consultation plan.

<sup>123</sup> The 2006 Roadmaps can be found on: [http://europa.eu.int/comm/atwork/programmes/docs/wp2006\\_roadmaps.pdf](http://europa.eu.int/comm/atwork/programmes/docs/wp2006_roadmaps.pdf)

<sup>124</sup> More information on the Scoping Paper can be found on: [http://teamwork.intbase.com/0509\\_01/docs/SANCO\\_scoping.pdf](http://teamwork.intbase.com/0509_01/docs/SANCO_scoping.pdf)

## The Social Platform's 'process tracker'

The 'process tracker' has been designed by the Social Platform Secretariat to enable its **members** to easily follow a number of key policy processes. It includes information about institutional contacts and procedures, and relevant documents from institutions and other stakeholders. Regularly updated, this interactive tool (available to members on the Social Platform's website) is a way of better sharing resources between the Secretariat and members, and better trace back the different consultations in which the Platform took place and their concrete result.

**Better circulating information on expert groups** – Beyond public consultations, several interviewees reported on the lack of openness and information around expert meetings taking place. While NGOs themselves usually ensure the circulation of such information, they face particular problems such as the lack of a systematic approach, the lack of access for those who are not integrated in a European network, but also a potential competition of influence in specific cases.

**Lack of clearly identifiable standards** – Beyond access to information, the lack of a common approach, standards and visuals appears detrimental to awareness and understanding of consultation processes. A striking example is that of the White Paper on Communication<sup>125</sup>, which uses specific dissemination channels rather than build upon existing tools.

### 1.4 Timing

**Time limits for participation (Standard D):** "The Commission should provide sufficient time for planning and responses to invitations and written contributions. The Commission should strive to allow at least 8 weeks for reception of responses to written public consultations and 20 working days notice for meetings".

**Need for better respect of time limits** – A recurrent problem appears to be the lack of respect of the time limits, be it for open consultations<sup>126</sup> or meetings. Such shortcomings, which are a direct consequence of the time pressure the Commission is facing, as well as of the lengthy inter-service consultation procedure, turn out to have particularly negative effects on the openness, representativity, and the quality of the consultations. Meetings announced less than one week in advance often result in participation being centred around Brussels-based organisations and secretariats, which limits the opportunity of involving organisations and members with more specific expertise and gather quality input.

**Right timing** – Formal respect for the standard is not in itself sufficient to ensure effective consultation. Consultations organised over major holiday periods<sup>127</sup> are still too frequent and hinder a proper democratic consultation within NGOs, especially their ability to consult with their membership. However, it should be noted that although the Minimum Standards have only been in place since 2003, practices with the Commission have improved in recent years and differ considerably from one service to another.

## 2. The scope: are stakeholders' voices heard when they should?

Contrary to social dialogue that is applied to a clearly defined range of issues, civil dialogue can potentially take place throughout the wider range of EU competences. This poses a major challenge, as institutions face strong obstacles to ensure horizontal coordination.

<sup>125</sup> [http://europa.eu.int/comm/communication\\_white\\_paper/index\\_en.htm](http://europa.eu.int/comm/communication_white_paper/index_en.htm)

<sup>126</sup> "In June 2005, 9 out of 40 open internet consultations allowed less than eight weeks to respond", in *Get Connected - effective engagement in the EU – UK Better Regulation Taskforce Report*, September 2005, <http://www.brc.gov.uk/downloads/pdf/getconnected.pdf>.

<sup>127</sup> As it happened with the Consultation on "Draft Recommendations to Member States Regarding a Code of Conduct for Non Profit Organisations to Promote Transparency and Accountability Best Practices" that took place in the Summer 2005. The consultation timeframe was extended after protest from several NGOs but this announcement was too short-noticed to fundamentally increase participation.

## 2.1 The ambiguous scope of the standards: a tendency not to consult on controversial issues?

**Blurred perception of the standards' scope** – We noted a lack of understanding of the exact scope of the Minimum Standards among interviewees. This is reinforced by their ambiguity and inconsistency with the impact assessment guidelines, which have evolved since 2003. The Communication on Minimum Standards should indeed apply to “major policy initiatives” and in priority to those subject to impact assessment. It poses a major problem as a policy initiative can be considered as ‘minor’ but have a considerable impact on specific sections of the population. Moreover, this definition is not consistent with that given in the New Impact Assessment Guidelines published in June 2005, which are said to apply to “all regulatory proposals, White Papers, expenditure programmes and most negotiating guidelines for international agreements listed in the Commission’s work programme”. Such inconsistency results in a major difficulty for interviewees to assess whether they are consulted when they should according to the legal framework<sup>128</sup>.

**A needs-driven approach?** Several interviewees reported on dialogue being too often needs-driven. For instance consultations are often conducted when institutions have a natural interest to consult with them or are lacking expertise (particularly in the case of the European Parliament). As a consequence, dialogue on the most controversial issues (such as LIFE +<sup>129</sup>, the Service Directive, and the Directive on gender equality beyond the field of employment) seem to be avoided. Besides, civil dialogue is no exception to the limited democratic scrutiny over some other major initiatives, such as the Broad Economic Policy Guidelines, the Lisbon Strategy, and the Common Foreign and Security Policy, over which the European Parliament has only limited control<sup>130</sup>.

## 2.2 Structural fragmentation and difficulty of ‘mainstreaming’ dialogue

**Failures to ensure a horizontal approach** – It is particularly striking that most of the consultation processes where problems were noted<sup>131</sup> present a strong horizontal dimension and involve different Commission Directorate General (DGs) with conflicting interests. Beyond a lack of willingness to engage in a real dialogue, poor formalised consultation might thus also result from the difficulty to efficiently integrate horizontal concerns, in other words, to ‘mainstream civil dialogue’.

Many of the NGOs interviewed have developed strong relations with specific DGs dealing with their core concerns, in particular Employment and Social Affairs (EMPL), Environment (ENV), Development (DEV), Health and Consumer Protection (SANCO). Although not all of them have a civil servant in charge of relations with civil society, relations are generally based on trust and mutual understanding. Conversely, most interviewees reported a lower level and quality of interactions with other DGs such as DG Enterprise or Internal Market and Services, which tend to favour dialogue with “stakeholders” that fall more directly within their scope and thus not to consider NGOs as relevant interlocutors. Contacts with such DGs were described as limited to large events with less direct impact (e.g. fora with civil society organised by DG External Relations alongside major summits), rather than day-to day work<sup>132</sup>. This lack of horizontal dialogue can be explained by a wide range of factors, notably:

- ◆ Structural obstacles such as institutional fragmentation and lack of entry points for discussion on cross-cutting issues;
- ◆ Lack of knowledge of and trust in relevant stakeholders outside one’s direct field of activity;
- ◆ Lower pressure from NGOs themselves, which tend to focus primarily on DGs that are directly linked with their field of activity;
- ◆ Rationalisation of dialogue within the Commission itself, each DG favouring talks with stakeholders that fall directly within its scope of activity (informal organisational rule);
- ◆ Diverging cognitive frames between DGs, which makes officials less responsive to the concerns raised by NGOs.

<sup>128</sup> Rather than on the scope of the Minimum Standards, the following remarks will thus focus on a wider scope of initiatives than those covered by the Minimum Standards.

<sup>129</sup> EU financial Instrument for the Environment.

<sup>130</sup> Yet the flexible nature of civil dialogue should not be instrumentalised to legitimise poorly democratic processes and bypass representative democracy.

<sup>131</sup> Such as the Directive on gender equality beyond the workplace (“Council Directive 2004/113/EC implementing the principle of equal treatment between men and women in the access to and supply of goods and services”) adopted in December 2004. Going beyond the workplace for the first time and dealing with a broader range of issues, it was marked by an impressive lobbying strategy from business, in particular from the insurance sector.

<sup>132</sup> Yet one interviewee reported on dialogue with such DGs being easier on a technical than on a political level, given NGOs’ ability to provide technical input.

A striking example of this limited horizontal dimension was the revision of the Television Without Frontier Directive by DG Information Society, in which stakeholders who overwhelmingly emanated from the broadcasting industry were brought together in focus groups marked by an under-representation of consumer and health protection organisations. On the other hand, the Sustainable Development Strategy developed by the Secretariat General of the European Commission was stressed as a positive example as it ensured the participation of actors from different sectors and supported ownership.

**An over-focus on the less influential DGs?** The problems raised by this lack of an adequate horizontal approach are numerous. First, NGOs do not have the opportunity to make their voice heard in processes that affect their constituency. This breaches not only the Minimum Standards, but also the EU and EC Treaties, according to which specific concerns, values and principles should be integrated horizontally into the formulation of EU and EC policies<sup>133</sup>. The lack of dialogue on cross-cutting issues is all the more problematic as it reflects the more general balance of powers within the Commission itself, and civil dialogue is being focused on those perceived as the least influential actors. It might be partly improved by the creation of an inter-service network<sup>134</sup> on civil society participation so as to increase coherence of approaches and awareness. However, this appears rather unlikely with the current trend towards a reduction of staff expenditures within the EC.

Overall, the fragmented nature of civil dialogue appears to reflect a general difficulty for the Commission to ensure a horizontal dimension in the policy process. NGOs also remain conscious of the potentially negative consequences that a more direct confrontation with DGs outside their 'direct' remit might have, notably a dilution of their voice through a direct confrontation with less convinced actors. In other cases this confrontation takes place between Commission services themselves.

### 2.3 Problems to live up to expectations in quantitative terms: towards a consultation fatigue?

Are NGOs really capable to live up to the horizontal dialogue they seek? In the hypothesis of increased dialogue on cross-cutting issues, they would probably face numerous obstacles to live up to expectations, as is already the case for a number of them. More participation does not necessarily imply better participation. Therefore it should be a priority of institutions to ensure an enabling environment that will allow a horizontal consultation whilst at the same time avoiding overlaps and time-consuming processes. This is all the more acute considering that channelling the voices of members from the local to the European level, which is the basis of a real participation in advocacy work, requires human and financial resources for advocacy work, which many organisation do not have. This potential overload is presented mostly as a **resource problem** but it also raises the question of **NGOs' strategic choices** as well as the consequences of focusing more specifically on one section of the Commission.

## 3. Actors: does civil dialogue really bring citizens back into the policy process?

Civil dialogue emerged from a willingness to tackle the shortcomings of representative democracy. However, can this really be achieved on such a wide geographical spread as the EU? Besides, which other actors do NGOs face when they participate?

Consultation target groups (Standard B): "When defining the target group(s) in a consultation process, the Commission should ensure that relevant parties have an opportunity to express their opinions".

### 3.1 An ex ante selective process: the issue of pluralism

**A limited number of open processes** – While participatory democracy emerged from a willingness to tackle the shortcomings of representative democracy, the principles of plurality and access are increasingly confronted with requests for efficiency. Up to where should and can pluralism be ensured? At EU level, the degree of openness varies enormously, with only few dialogue channels, such as open consultations, the Green Week or the Convention Forum, open to a wide number of participants. This often

<sup>133</sup> This concerns primarily environment, gender equality, fight against poverty, but also consumer protection, public health and culture.

<sup>134</sup> Some coordination mechanisms already exist, in particular a horizontal high-level coordination group, as well as inter-service steering groups put in place to ensure the coherence of policy proposals.

results in NGOs being reduced to one single voice in the debate, despite the great diversity of issues and views they represent.

**Ex ante selection rather than real competition?** Despite the lack of accreditation and binding representativity criteria, civil dialogue is de facto of a selective nature, with selection operating on an ex ante rather than ad hoc basis in a theoretically open environment. This is so as only a limited number of networks can afford getting involved in European matters, which results in the setting up of European umbrella organisations and broad coalitions playing a key role in pooling resources. As suggested by the examples of CONCORD, the HRDN, Social Platform or the European Environmental Bureau<sup>135</sup>, the presence of a wide umbrella organisation is often a way for the Commission to rationalise its relations with civil society by allowing a more targeted and coherent input. EU level civil dialogue thus seems characterised by a semi-corporatist approach where specific interest groups organised at EU level generally manage to make their voice heard, be it on their own or through a coalition<sup>136</sup>.

A key challenge remains the participation of those organisations that are not organised at EU level or not based in Brussels, because they either cannot or do not want to. A particularly striking example of such a gap is the quasi absence of a network such as ATTAC in the EU civil dialogue mechanisms, which contrasts with their crucial influence in the French constitutional debate. This seems to result from a strategic choice rather than from the flaws in the process as such.

### 3.2 From the 'NGO only' to the 'stakeholder' dialogue

**Concerns raised by equality of access and balance of interests** – While some interviewees understand civil dialogue as a direct relation between NGOs and European institutions, the reality is often that of a broader 'stakeholder dialogue' involving socio-economic actors, in particular from the corporate sector. Concerns regarding equality of access were mostly expressed by NGOs that are more frequently involved in processes where public and private interest compete directly, in particular by environmental, public health, but also to a lesser extent social and development NGOs<sup>137</sup>.

**Balancing structured relations** – The question of balance arises primarily within structured relations. As reported above, non-profit organisations often do not feel that they are considered as important stakeholders in specific processes, such as those linked to industry or competition policy. Cars 21, an expert group that consists of Commission officials, chief executive officers and lobbyists from the automobile industry, is only one of the numerous examples of such a prioritisation that can be quoted. Rather than the total absence of NGOs in such processes (often remedied after protests), they report about an imbalance and over-representation of business, which seems to be the case particularly in consultative committees and expert groups<sup>138</sup>. Despite this claim for a better balance, several interviewees also stressed concerns that a better balance should not reduce alternative voices within business itself (such as those favouring a stronger regulation of chemicals in the REACH debate). Whether the new Impact Assessment Guidelines published in June 2005 will contribute to this is an open question, since they focus on the technical aspects of the consultation rather than on how to select stakeholders and set up a balanced consultation. In particular, it is regrettable that the opening of the process to new stakeholders is not evoked.

**Lobbying 'behind the stage'** – Concerns regarding the balance of interests are often linked with informal relations. This is all the more acute as NGOs often do not feel that they have sufficient resources to efficiently challenge industry, for whom lobbying is an investment rather than a cost. The scope of the present study does not allow to draw more extensive conclusions on this point, except that increased

<sup>135</sup> Although it is important to note that the European Environmental Bureau works closely with other environmental organisations, members of the informal Green 10 coalition.

<sup>136</sup> The hypothesis of a competition between NGOs cannot be totally discarded, but seems more relevant regarding funding issues than participation in civil dialogue. This is due to the fact that NGOs tend to favour cooperation and exchange of knowledge, which appears a pre-condition to make their voice heard and is illustrated amongst others by the example of the Human Rights and Democracy Network, grouping of NGOs operating at EU level in the

broader areas of human rights, democracy and conflict prevention.

<sup>137</sup> See CONCORD response to the European Commission "Communication on the Participation of Non-State Actors in Development policies", COM (2002) 598 final. The development of the concept of non-state actor, judged "confusing", "too broad and imprecise" in the position, appears as a result of this evolution towards an increased role of private sector actors.

<sup>138</sup> Such as that on standardisation, where governments send federations of national standardisation committees, but in practice very few NGOs.

transparency over informal consultation would contribute to lifting suspicions and to reinforcing the legitimacy of EU policies.

**A trend toward co- and self-regulation** – Interactions between stakeholders also have to be seen in the light of the current debate over co- and self-regulation<sup>139</sup>, two alternative regulatory methods which were already developed in a number of fields, most notably technical standards, professional rules, environment or Corporate Social Responsibility. They were given a new impetus by the 2003 Inter-Institutional Agreement on Better Law Making, which **specifies the conditions under which alternatives** to law may be applied<sup>140</sup>. Several interviewees expressed strong reservations against what they perceive as a trend towards self-regulation, in particular health and consumer organisations. While co- and self-regulation provide advantages such as stakeholder ownership, commitment and better implementation, they raise a **number of concerns** linked to:

- ◆ the diminution of the role of the law and its “privatisation” on issues of public interest;
- ◆ weak enforcement mechanisms;
- ◆ democratic accountability (in particular a weak role of the European Parliament);
- ◆ representativity (contrary to social dialogue, absence of clear criteria);
- ◆ the length of the process, requiring a level of resources that NGOs are not always able to provide;
- ◆ a reduction of engagement towards the public good.

Rather than being perceived as a participatory process, self-regulation is often seen as a way to undermine public interest. Despite this reluctance, not getting involved is viewed a risky alternative, which NGOs often choose not to take.

### 3.3 The need for increased transparency over who stakeholders are

**A discretionary selection of stakeholders** – Most of the time, selection criteria are not known by stakeholders themselves, although they might be mentioned during the process. Although the Commission developed some non-binding criteria at the beginning of the 90s, as well as a database of civil society organisations (CONECCS) and other tools<sup>141</sup>, most interviewees were not aware of these criteria being used. In particular, the CONECCS database appears not to be updated frequently enough to give a relevant overview of an organisation’s expertise. The same applies to the European Parliament, where participation in hearings is sometimes based on specific links developed with MEPs more than on broader acknowledgement. Many reported selection to be based on “common sense”, in particular “acknowledgement”, “seriousness” and “geographical spread”, as well as past collaboration, which can result in the absence of major actors. While this is not perceived as an obstacle for those networks that are widely acknowledged, it poses problems in terms of newcomers’ access and pluralism. It is also a concrete obstacle to the mainstreaming of specific issues, since it potentially blocks access to stakeholders outside usual circles.

**Controversies raised by accreditation and partnership** – The development of some forms of accreditation or partnership with institutions might appear as a solution to the absence of clear selection criteria and was advocated by some networks such as the European Environmental Bureau and the Social Platform in their answer to the Governance White Paper<sup>142</sup>. However, it seems that a few years later such a partnership has been dropped from the agenda, partly because it de facto exists. Yet accreditation remains particularly controversial and, quite remarkably, was rejected by a majority of interviewees from the European

<sup>139</sup> Co-regulation was defined by the *Inter-Institutional Agreement* as a “mechanism whereby a Community legislative act entrusts the attainment of the objectives defined by the legislative authority to parties which are recognised in the field, such as economic operators, the social partners, non-governmental organisations, or associations”. Self-regulation was described as the “possibility for economic operators, the social partners, non-governmental organisations or associations to adopt themselves and for themselves common guidelines at European level, particularly codes of practice or sectoral agreements”. Source: “Inter-institutional agreement on Better Law-Making between the European Parliament, the Council and the Commission”, 2003/2131 (ACI).

<sup>140</sup> In particular co-regulation and self-regulation:

- must be consistent with Community law, represent added value for the general interest, meet the criteria of transparency and representativeness;
- cannot be used where fundamental rights or important political options are at stake or in situations where the rules must be applied in a uniform fashion in all Member States,
- cannot affect the principles of competition or the unity of the internal market.

<sup>141</sup> Yet on a decentralised basis throughout the Commission, each DG being responsible for its own tools.

<sup>142</sup> [http://www.socialplatform.org/module/filelib/platform\\_response2whitepaper\\_governance.doc](http://www.socialplatform.org/module/filelib/platform_response2whitepaper_governance.doc)

branches of international NGOs, which were far more reluctant towards what was perceived as a “capture” of the independence and fluid nature of civil society, as well as a “privileged” access which they refuse and denounce when it is perceived to apply to other actors, notably the private sector.

### **The need for a paradigm change: towards qualitative representativity and relevance**

Claims for stronger representativity criteria for NGOs have increased in the last decade, going hand-in-hand with their stronger role in the policy process. Yet the establishment of clear criteria would require a paradigm change that has hardly taken place so far, neither within institutions nor within NGOs themselves, who face difficulty to agree on a common proactive rather than reactive approach. Among the criteria recently developed by the European Economic and Social Committee<sup>143</sup>, some appeared problematic to NGOs. In particular the need to have members in half of the Member States, to describe how many citizens are directly or indirectly reached by the organisation and the need for national member organisations to respect the accountability mechanisms of the EU level network are seen as difficult. NGOs have so far developed a rather reactive approach in the development of representativity criteria, which might be explained by their strong division on this issue. While some interviewees stressed the need for a better representativity (being themselves faced with networks that are perceived as not representative or present themselves as grassroots NGO coalitions but are financed by business<sup>144</sup>), they fear such criteria might “capture” the fluid nature of civil society, but also block access to smaller organisations.

Despite this diversity of approaches, a consensus seems to emerge on the following issues:

- ◆ Representativity is not a matter of number, but rather a mixture of expertise gathered on the ground and ability to channel members’ voices;
- ◆ There cannot be absolute criteria;
- ◆ Representativity on specific issues should not be the monopoly of European networks. On many issues, valuable input has to be sought from single issue NGOs which do not always exist Europe-wide;
- ◆ Representativity should thus be rooted on a qualitative approach based on relevance to specific processes and issues.

The discrepancy between the ambitious representativity criteria proposed by the European Economic and Social Committee and the relative discretion in which access to dialogue currently operates is striking. Many interviewees thus stressed that **enhanced transparency over stakeholders and the reasons for consulting them should be the key priority and might partly solve the representativity dilemma**. This should be particularly the case in expert groups and advisory committees, for which information on membership, selection criteria and contacts remain largely secret, despite new developments in 2005<sup>145</sup>. However, this might not be enough to avoid the representativity debate in the longer term.

**Tackling critics and taking a leadership role in the transparency debate** – Transparency also appears as a particular challenge for NGOs themselves in the years to come, as critics of their own commitment appear to have gained visibility. Critics focusing mainly on financial aspects, such as the use of EU funds and potential fraud cases were soon discredited<sup>146</sup>. In a letter to CONCORD, Commissioner Kallas contradicted his March 2006 allegations against NGOs’ financial transparency by acknowledging that “Statistics do not show any disproportionate number of [fraud] cases involving NGOs” as compared to other forms of undertakings. Indeed, “out of 3000 enquiries into different sectors benefiting from European funding investigated by OLAF since 2001 and passed on to the competent authorities for legal prosecution, only 10 concerned Non-Governmental Organisations”. Besides, it should be recalled that NGOs dealing with EU funds are subject to particularly strict rules, which make it difficult for them not to be transparent<sup>147</sup>.

<sup>143</sup> European Economic and Social Committee “Opinion on the representativeness of European civil society organisations in civil dialogue”, [http://eescopinions.esc.eu.int/EESCopinionDocument.aspx?identifier=ces\sous-comite\sc023%20representativite%20org%20sco%20contexte%20dialogue%20civil\ces240-2006\\_ac.doc&language=EN](http://eescopinions.esc.eu.int/EESCopinionDocument.aspx?identifier=ces\sous-comite\sc023%20representativite%20org%20sco%20contexte%20dialogue%20civil\ces240-2006_ac.doc&language=EN).

<sup>144</sup> Two examples of such campaigns can be found on: <http://www.corporateeurope.org/lobbycracy/prc4c.html>.

<sup>145</sup> Following a commitment of Jose Manuel Barroso, the Secretariat General of the Commission set up a public register of expert groups, to be found on [http://europa.eu.int/comm/secretariat\\_general/regexp/index.cfm?lang=EN](http://europa.eu.int/comm/secretariat_general/regexp/index.cfm?lang=EN).

[http://europa.eu.int/comm/secretariat\\_general/regexp/index.cfm?lang=EN](http://europa.eu.int/comm/secretariat_general/regexp/index.cfm?lang=EN). It entails basic structural information on these groups, such as the lead service in the Commission, policy area and composition of the group in general terms as well as the group’s tasks. It classifies the participants in broad categories (scientists, academics, practitioners, industry, NGOs...) but does not contain any information on individual experts. Although it increases visibility and transparency, the information basis provided is not sufficient to know more about the balance of interests within each expert group.

<sup>146</sup> See p. 32 regarding MEP Koch Mehrin allegations on NGO transparency.



However, it must be stressed that sound financial management and transparency towards the wider public are two different dimensions. Most European NGOs that expressed their view in the transparency initiative debate so far are strongly in favour of enhanced transparency through information disclosure and the adoption of enhanced ethical rules, which should in their view target all types of lobbyists and not only business. Although NGO accountability and transparency has greatly improved in the last years (as illustrated by the current development of an International NGO Accountability Charter amongst others by Greenpeace and Amnesty International<sup>148</sup>), this has apparently not been sufficient or not sufficiently visible to completely lift suspicion about how NGOs operate. While NGOs should be accountability leaders, the risk is high for them to be perceived as one step behind public affairs firms and industry federations, which have been so far the only organisations to develop their own Code of Conduct (which are yet rather weak as they are based on self-regulation). Transparency and accountability could also be strengthened by the creation of a statute of a European Association, which would contribute to establishing a common framework for democratic functioning and an accurate evaluation of public financial support. However, on 27th September 2005 the European Commission included the proposal for a European Association (launched in 1991) in a black list of 68 propositions to be withdrawn because they have become “largely obsolete”<sup>149</sup>.

### 3.4 Internal challenges faced by NGOs to make the link with grassroots organisations

Beyond challenges linked to representativity and transparency, the relationship between European NGOs and national-based members also poses the question of the extent to which Brussels-based secretariat and national members mutually reinforce each other to efficiently facilitate participation. This has several dimensions:

- ◆ those based in Brussels consciously sort out and might unconsciously ‘filter’ information provided to national NGO colleagues, and so may skew assessments as to how important any particular process is;
- ◆ national NGOs face difficulties to understand and prioritise for EU debates, of which practical consequences appear vague and far in the future;
- ◆ national NGO representatives with responsibility to decide the priorities of their European network may not have the knowledge to properly make such assessments;
- ◆ in turn, European secretariats may only partially comprehend and therefore represent the subtleties and complexities of the environment in each Member State where they have members;
- ◆ following the biggest simultaneous enlargement in the EU’s history, a number of EU NGOs are still building their membership in the ten new Member States. New Member States NGO representatives may thus be under-represented on European networks’ boards and participate less vocally in meetings than their old Member States colleagues;
- ◆ for some organisations, the gaps in knowledge of national settings of EU NGO staff and of EU settings of national staff may be enhanced by a difference in competencies between EU NGOs staff skilled in politics and lobbying and national staff rooted more in service delivery.

The inadvertent effect of this may be that some Brussels-based offices develop greater autonomy and operate more like an NGO in its own right than the nodal point within an organization or the central coordinating structure of a network. This may not necessarily create any major problems as there is a good rationale for the division of tasks between European and national NGO units that evolves out of their varying expertise and competence. One of the keys is the extent to which NGOs have systems and structures in place to ensure on an ongoing basis that European NGOs are representing the views and interests of their (national) members and that (national) members are able to fully hold them to account. Yet beyond this, it is crucial to stress that the relation between national and European structures is based on mutual dependence and strengthening. European offices and networks rely on national-level expertise and mobilisation, while in turn national NGOs rely on European partners to facilitate their entry into EU-level processes, but also to build up their own capacity to participate. A number of EU NGOs have thus strengthened their capacity-building activities, in particular to tackle the enlargement challenge.

<sup>147</sup> For more information, see the Report written by F.M. Partners Limited on behalf of: Open Society Institute-Brussels, Concord, The Platform of European Social NGOs, SOLIDAR, The European Women’s Lobby, *Striking a Balance. Efficiency, Effectiveness and Accountability. The impact of the EU Financial Regulation on the relationship between the European Commission and NGOs*, April 2005, <http://www.solidar.org/english/pdf/Striking%20a%20Balance%20-%20Final1.pdf>.

<sup>148</sup> More information can be found on: <http://news.amnesty.org/index/ENGPOL306062006>.

<sup>149</sup> For more information, see European Commission “Outcome of the screening of legislative proposals pending before the Legislator”, COM (2005) 462, [http://europa.eu.int/comm/enterprise/regulation/better\\_regulation/docs/en\\_br\\_final.pdf](http://europa.eu.int/comm/enterprise/regulation/better_regulation/docs/en_br_final.pdf).

## 4. Impact: does dialogue really matter?

As civil dialogue is still often opposed to informal lobbying, a crucial issue that will drive its future development is that of its impact. In particular, is its main function to achieve policy change?

### 4.1 Direct impact on the policy process: a window dressing exercise?

**Acknowledgement and feedback (Standard E):** “Receipt of contributions should be acknowledged. Results of open public consultations should be displayed on websites linked to the single access point on the Internet”.

**Lack of concrete feedback** – A serious obstacle to NGOs’ commitment to civil dialogue appears to be the lack of relevant feedback and accountability. This concerns primarily public consultations and might result, in the longer term, in NGOs’ disenchantment and disengagement from a time-consuming process as they have no guarantee that their voices will be heard. Beyond the absence of any feedback, also the lack of relevant and constructive feedback was stressed<sup>150</sup>. In particular, it is crucial to report on why certain proposals (especially when widely supported) were discarded. While arguments for rejecting a proposal might be political or more technical (such as the absence of a legal basis), it is crucial for NGOs to know them in order to be able to improve their input, but also to be sure that consultations do matter. The feedback processes used on the Minimum Standards on Consultation or on the Health Policy Strategy were referred to as particularly positive examples in that they drew an overall assessment of contributions received and explained the reasons behind the Commission’s choice in selecting only some of the proposals made.

**Timing issues** – Many interviewees reported on consultations taking place when the major part of the proposal is already drafted, making consultation seem like a purely formal exercise. This should not overshadow the diversity of practices among the DGs as well as the fact that an important consultation happens at an earlier stage, on an ad hoc basis or through expert groups. The right timing for a more open process appears particularly difficult to find, since too many consultations might be detrimental to visibility and impact.

**Accountability and enforceability** – Even when institutions are bound to consult, they are never bound to listen. This might appear a strong disincentive, as noted by several interviewees, one of them deploring that consultation “go where the institutions wanted anyway”. The consultation on the Fundamental Rights Agency appeared to a number of NGOs as particularly frustrating in this view, since principles supported by a number of respondents to the public consultation were discarded by the Commission<sup>151</sup>. Yet, the development of such a form of accountability appears problematic as long as participation is not complemented by clearer criteria that would enhance the legitimacy of civil dialogue towards the wider public. This might explain the different stances among NGOs regarding the relevance of enforceability mechanisms. Beyond controversies over enforceability of consultation outcomes, different interviewees stressed the need for a better monitoring and mediation mechanism. Such a mechanism is being proposed at national level as part of the UK Compact<sup>152</sup> and, at EU level, could be left in the hands of an independent body or of the European Ombudsman<sup>153</sup>.

**Strong inter-personal dimension: the need to foster better mutual understanding** – In the absence of any enforceability mechanisms and systematic open feedback, many interviewees reported the impact of civil dialogue being based on a strong inter-personal (built over the years), but also cultural dimension. The absence of common cognitive frames among NGOs and EU civil servants was stressed, which

<sup>150</sup> As suggested by the 2004 *Better Law-making* report, which found that two thirds of the explanatory memoranda reviewed contained too little about how responses were taken into account or why they were discounted. Source: European Commission report *Better Law-Making 2004* pursuant to “Article 9 of the Protocol on the application of the principles of subsidiarity and proportionality”, COM (2005) 98 final, [http://europa.eu.int/comm/secretariat\\_general/impact/docs/com2005\\_0098en01.pdf](http://europa.eu.int/comm/secretariat_general/impact/docs/com2005_0098en01.pdf).

<sup>151</sup> In particular the United Nation Paris principles on national institutions for protection and promotion of human rights, which guarantee the core values of independence and pluralism. For more information, see

a common NGO letter: <http://www.socialplatform.org/module/FileLib/VERSIONFINALjointletteronFRA.doc>.

<sup>152</sup> See proposal from the National Council for Voluntary Organisations: <http://www.ncvo-vol.org.uk/vsmagazine/news/index.asp?id=1823&fID=140>.

<sup>153</sup> Actions towards the Ombudsman by NGOs are far from being common practice, as 95% of complaints come from individuals and only 5% from associations and business. While this body appears so far relevant to NGOs mostly in relation to payment issues, consultation practices so far remain out of its remit.

can become an obstacle to common work and is worsened by the difficulty of setting stable relations with civil servants bound to change position on a regular basis. In particular, a lack of knowledge of how NGOs work can result in disproportionate expectations and frustrations from both sides. The need to foster better mutual understanding appears all the more important at a time of perceived scepticism towards the work of NGOs throughout all institutions<sup>154</sup>.

**Is informal lobbying more efficient?** Questioning the impact of civil dialogue unavoidably leads to assessing the balance of powers between formalised relations and informal lobbying. One interviewee stated that “why they need to talk to us is clear, but why we need to talk to them is less clear”. In fact, engaging in formalised processes is not always a win-win situation for NGOs, in particular when they appear to be stuck in a resource-consuming process, the outcomes of which are not clearly perceived. The more open processes are, the more individual NGOs’ voices are diluted. Influential organisations might want to exercise their power to influence through more direct, bilateral and less formalised channels<sup>155</sup>.

## 4.2 Beyond immediate impact, the added value of civil dialogue as a process

**Developing trust** – If civil dialogue’s main strength is not its ability to achieve policy change, then where does its added value lie for NGOs? First, in its ability to build networks and capacity. Formalised forms of dialogue with institutions provide momentum and structures for NGOs to reinforce mutual understanding, but also to identify common interests and develop cooperation rather than a competition of influence. They also strengthen trust between institutions and NGOs, by reinforcing their legitimacy and seriousness, and by creating model roles that pave the way for better interactions through less formal channels.

**Opening up to ‘outsiders’** – Despite its frequent lack of coherence, civil dialogue also provides clarity and momentum to participatory democracy. It is also undoubtedly a way to make the policy process more transparent to the wider public, and open it up to “outsiders” such as organisations that are seen as less established or powerful (and thus less likely to achieve their goal through informal channels). However, this is mostly true for open consultations, and to a much lesser extent for expert groups and consultative committees. Opening up the policy process is thus also in the hands of those NGOs that have access to closer forms of dialogue.

## Conclusion and future prospects

The current EU civil dialogue framework is marked by important challenges linked to resources, impact, balance of actors, and to the ability of both institutions and NGOs to link “Brussels” to the grassroots. It is also characterized by a low degree of horizontality, notably a limited number of structures allowing NGOs to develop dialogue among them and obstacles to make dialogue happen on cross-cutting issues. Article 47 of the Constitutional Treaty is precisely based on a more comprehensive and horizontal stance, which will require new approaches and, potentially, new structures.

Although it might appear more resource-efficient, the opportunity of a new horizontal dialogue body remains subject to caution. This is first so because its potential rigidity might run counter to the flexible nature of civil society, and second, because such a rationalization could overlook the specific nature of each institution and in the end dilute the impact of dialogue. Alternative proposals were made to avoid this ‘rigidity trap’, whilst at the same time making consultation become the norm. In particular that of a European Compact or “Concordat”<sup>156</sup>, negotiated between NGOs and the institutions would have the advantage to develop ownership, the involvement of all institutions (through for instance an annual report to the European Parliament and regular events with the Council). Yet it remains to be seen how it can be rooted in existing practices, as well as how the different institutions would make use of it.

<sup>154</sup> The case of the European Parliament was stressed previously. Interviewees perceived a similar trend within the European Commission, after the two previous decades were marked by strong hopes in the ability of NGOs to bring the citizens back in the policy process. Yet it remains difficult to assess the spread of this phenomenon.

<sup>155</sup> One interviewee, representing the European branch of an INGO, indeed stressed that their “objectives are seldom reached through structured dialogue”.

<sup>156</sup> See proposal by NCVO, the National Council for Voluntary Organisations: [www.ncvo-vol.org.uk/europeaninternational](http://www.ncvo-vol.org.uk/europeaninternational) ; proposal by ECAS, European Citizen Action Service: <http://www.ecas.org/product/91/default.aspx?id=244>.

## CHAPTER 4 - FIVE CASE STUDIES

Five examples of processes of dialogue between the EU and NGOs represent a means of exploring in more depth the issues and challenges flagged in chapters 2 and 3. The chosen case studies are: the European Convention and Constitutional Treaty; the Corporate Social Responsibility Multi-stakeholder Forum; the Open Method of Coordination on Social Inclusion; the Services Directive; and the DG Trade Dialogue with Civil Society. This choice is intended to offer a range of experiences: the cases vary in terms of the initiating institution, in terms of whether dialogue is linked to an actual legislative proposal and in terms of an initial perception of the value of each process. However, this process was in no way meant to prejudge the views of NGO representatives whose input was sought. The case studies take in an examination of both the technical process of dialogue – how dialogue is structured, how participants are chosen and so on – and also the politics of dialogue, that is the reasons behind different actors' choice to participate and the value that they accord to dialogue. The particular involvement of NGOs at national level in dialogue related to these case studies and the enabling environment for national NGOs to participate in EU-level policy development is explored in chapter 5.

### 1. The European Convention and Constitutional Treaty

Whilst means were put in place for NGOs at all levels to follow and contribute to the work of the Convention (mainly via websites), the often abstract and technical nature of the debate, together with the need to respond rapidly to developments, meant that it was usually those NGOs with a permanent Brussels presence who were able to make the most effective contributions. Those who engaged had to have in-depth knowledge of EU processes and the time and rationale to focus on what was a fairly broad level debate on the role and structure of the EU amongst Convention members. NGOs that were able to access this inner circle found the Convention process open and accessible and were able to secure changes to the draft Constitution text. Assessments of the Convention per se are broadly positive. But the failure to engage national NGOs or to organise national-level debates meant that there was a gulf in the perceptions held by those in and those outside of Brussels. That this gulf was never addressed rebounded on those behind the Constitutional Treaty when it was rejected in France and the Netherlands in the first half of 2005. Despite the symbolic importance of the Constitutional Treaty as a first in terms of NGO input to the development of a European treaty, the failure to take the debate outside Brussels ultimately defines the assessment of the Convention as an example of civil dialogue.

#### 1.1 The involvement of NGOs in the elaboration of the Constitutional Treaty

The Convention on the Future of Europe was established by the European Council in its Laeken Declaration on the Future of the European Union of December 2001. The Convention was tasked with “resolv[ing] three basic challenges: how to bring citizens, and primarily the young, closer to the European design and the European institutions, how to organise politics and the European political area in an enlarged Union and how to develop the Union into a stabilising factor and a model in the new, multipolar world”<sup>157</sup>. The Convention was composed of representatives of Member States, national and European Parliaments and the Commission. The political heart of the Convention was the Praesidium, whose role was to “lend impetus to the Convention, prepar[e] draft agendas for plenary sessions, and oversee the activities and organisation of the Forum”<sup>158</sup>. This last was the instrument specified in the Laeken Declaration for receiving civil society's views: “in order for the debate to be broadly based and involve all citizens, a Forum will be opened for organisations representing civil society. (...) It will take the form of a structured network of organisations receiving regular information on the Convention's proceedings. Their contributions will serve as input into the debate”<sup>159</sup>.

NGOs sought to take advantage of the recognition of their contribution given by the Laeken Declaration in order to gain regular and structured dialogue with the Convention – and beyond that to secure the concept of civil dialogue within the revised Treaties in much the same way as trade unions and employers had had their ‘social dialogue’ recognised within the Treaties ten years earlier. A broad range of rights and value-based NGOs organised themselves into a Civil Society Contact Group to press these demands for a structured dialogue with the Convention and beyond.

<sup>157</sup> “Laeken Declaration on the Future of the European Union”, annex to Presidency Conclusions, 14-15 December 2001.

<sup>158</sup> The Praesidium was made up of the Convention President and Vice-Presidents, representatives of the states holding the Council Presidency during the Convention and two representatives each from national parliaments, the European Parliament and the Commission, <http://european-convention.eu.int/praesidium.asp?lang=EN>.

<sup>159</sup> [http://europa.eu.int/constitution/futurum/documents/offtext/doc151201\\_en.htm](http://europa.eu.int/constitution/futurum/documents/offtext/doc151201_en.htm)

Although NGOs' input was not formalised as such, the general impression they hold of the Convention is that it seemed to operate in a way that "showed it to be in favour of civil dialogue and of being open and transparent (...) [it was] a case of knocking at the door, an open door, we could see in, though we were not in the room". Although the web element of the Forum was itself simply a repository of position papers, Convention meetings – though not meetings of the Praesidium – were public and the opportunities for informal lobbying considerable. NGOs could follow changes to the draft Constitutional Treaty text as they were being made. Individual members of the Convention were generally accessible and often turned to NGOs for assistance in developing amendments to the text as it was being drafted.

Jean-Luc Dehaene, Vice-President of the Convention and a former Prime Minister of Belgium, was given the task of liaising with civil society. Regular meetings were organised through the European Economic and Social Committee (EESC) – the self-styled 'House of Organised Civil Society'. Although some NGOs seem to have resented the EESC taking on this intermediary function, the meetings themselves were felt to have been useful as progress reports – though not generally as a mechanism for NGOs to have an influence on the Convention's work.

The opportunity for direct NGO input to the Convention came with a series of public hearings organised in June 2002. Although the limited time accorded to each NGO speaker meant that their input could only ever serve as a pointer to the issues that NGOs wanted addressed, the hearings were felt to have a significant symbolic value: this was "the first time a treaty is made with such input (...) [it is] a sign of an evolving process, of an evolving willingness to structure dialogue with civil society"<sup>160</sup>. Further plenary sessions of interest to NGOs followed – on social Europe in November 2002 and on participatory democracy in April 2003.

The generally positive view of the Convention is tempered in that NGOs felt that their input was being sought, but that there was not a substantial two-way exchange of views. The more frustrated of NGOs felt that "interaction with the Convention is proof positive of the existence of black holes. You send something but nothing ever comes out. [There was] no answer to any letters. No acknowledgement of receipt. Nothing"<sup>161</sup>.

There is also a sense that while at the level of the full Convention the public hearings seem to have led to tangible outcomes – that on social Europe prompted the formation of a Working Group on Social Policy and that on participatory democracy to draft articles on civil dialogue – these were gains too easily won and which may not have taken root: for one NGO, "it reflected the weakness of the process that they gave way quickly". Once the Convention itself completed its business in July 2003, Inter-Governmental Conferences in October 2003 and June 2004 represented a closed forum where changes could be made beyond the knowledge and influence of NGOs. For some this was the "main problem", that is, that the Inter-Governmental Conferences "could undo everything [so you] have to question what it really meant to involve NGOs [in the Convention]".

In terms of the outcome of the Convention – the final Constitutional Treaty text – NGOs felt that they had won the inclusion of an article defining a responsibility for the EU institutions to consult with civil society. Article I-47 indicated that "the institutions shall maintain an open, transparent and regular dialogue with representative associations and civil society [and t]he Commission shall carry out broad consultations with parties concerned in order to ensure that the Union's actions are coherent and transparent"<sup>162</sup>. Further, the same Article spelled out the possibility of citizens themselves proposing legislative initiatives to the Commission, providing that the proposal is in line with the Commission's competence and that those supporting the call are more than a million in number and reasonably spread across the Member States. For the European Platform of Social NGOs, Article I-47 "can encourage participation of citizens [which is] also likely to strengthen the content of the policies adopted by the EU (...) the recognition of participatory democracy is a significant step forwards towards broadening participation in the EU"<sup>163</sup>.

The real problem, at the heart of the Constitutional Treaty's rejection in referenda in France and the Netherlands, was the failure to adequately communicate the process to European citizens, a symptom and cause of which was the lack of any meaningful direct involvement of national-level NGOs.

<sup>160</sup> Until the end of the study, quotes between double quotation marks, which are not attributed, are taken directly from interviewees.

<sup>161</sup> Krzeczunowicz P., Polish NGO Office in Brussels, quoted in *The Participation of Civil Society in the Debate on the Future of Europe: Rhetorical or action frames in the discourse of the Convention?*, Lombardo E. [www.unizar.es/union\\_](http://www.unizar.es/union_)

[europea/files/workPapers3\\_UE.pdf](http://europea/files/workPapers3_UE.pdf).

<sup>162</sup> Constitutional Treaty text available at [http://europa.eu.int/constitution/index\\_en.htm](http://europa.eu.int/constitution/index_en.htm).

<sup>163</sup> Social Platform intervention before the Constitutional Affairs Committee, 25 November 2004, <http://act4europe.horus.be/module/FileLib/constitution%20intervention%20november%202004%20FINAL.pdf>.

## 1.2 Lack of resonance outside Brussels

For an interviewee working at a European NGO, the Convention process was “absolutely not known at national level. Although European NGO networks did produce briefings for their national members and did try to solicit their opinions on policy papers lodged with the Forum, these efforts were up against the perception of national NGOs that the Convention and its product, the Constitution text, had little to do with them. NGOs with specific, national-level goals do not have the capacity or the in-depth knowledge of EU matters to follow general ‘role of the EU’ debates”.

The Convention did little itself to take the debate out of the circle of intimates to which it was limited. In theory, Convention members were supposed to communicate their work to, and seek input from, civil society in their own countries. However, reports made to the Praesidium in March 2002, supposedly to contribute to the June hearings with civil society, amounted only to quantitative descriptions of meetings or fora held, rather than acting as a means for national NGOs’ opinions to be fed into the process<sup>164</sup>. Prior to the June 2004 Inter-Governmental Conference, the Platform of European Social NGOs sent a prescient message to heads of state:

*Even if agreement between Heads of Government is reached, it is clear that ratification will prove very difficult. One of the reasons for this is the lack of connection and communication between EU-level governance and people. Many people are still unclear of the role of the EU, and how it relates to their lives and concerns. Meanwhile, the Future of Europe debate continues to turn on institutional and organisational matters, rather than the question of what the EU can do to address European’s real concerns – so no wonder people ask ‘what is the point of the EU’? As NGO networks we have worked hard to act as a conduit between national and local level citizens’ organisations and the EU process over the past two years, but our experience has been that it has proved difficult to engage people in the debate on the Future of Europe due to its lack of transparency<sup>165</sup>.*

Despite these warnings, governments proceeding with the process of ratifying the Constitutional Treaty after its signature in Rome in October 2004 appear to have operated under a false sense of security, and were not prepared for the arguments of groups prominent in French and Dutch campaigns to reject the Treaty but who had been largely absent from the Convention process. Ratification campaigns became focused around issues – the potential accession of Turkey, the Services Directive – which made sense to citizens thinking in terms of the purpose of the EU, but which seemed mystifying to those who had for two years been caught up in debate about the technical minutiae of a European Constitutional Treaty. The Convention and then governments also missed a beat in the use of the word “constitution”: what seemed to capture the ambitions and aspirations of the Convention, citizens found alienating.

## 1.3 The effect of the rejection of the Constitutional Treaty

After the ‘no’ votes in France and the Netherlands, Member States and the Commission have gone into a ‘period of reflection’ to better understand the gap in perceptions between citizens on the one hand and politicians and officials on the other, indicated in the reaction to the Constitutional Treaty. The ‘period of reflection’ “should, in a first stage, be used for a broad and intensive debate on European policies. Any vision of the future of Europe needs to build on a clear view on [sic] citizens’ needs and expectations”<sup>166</sup>. The way to close the gap is situated in “democracy, dialogue and debate”, a Plan-D to “involve citizens in a wide-ranging discussion on the European Union – what it is for, where it is going and what it should be doing”<sup>167</sup>. Plan D and the associated White Paper on Communicating Europe, both written by the Commission, represent the most substantive response to the rejection of the Constitutional Treaty. As such, initiatives are being taken by those to whom the Constitutional Treaty matters most. But NGOs feel that leadership by the Commission risks repeating, not resolving, the gap to citizens that the Convention suffered from and that the Commission is itself an institution from which citizens have become alienated. Its thinking tends towards the assumption that its proposals are rejected only because they are poorly communicated and citizens have misunderstood; solutions are believed to be needed only at the level of communication and

<sup>164</sup> Will C., Crowhurst I., Larsson O., Kendall J., Olsson L.E. and Nordfeldt M., “The challenges of translation: the Convention and debates on the future of Europe from the perspective of European third sectors”, in *Third Sector European Policy Working Paper*, no 12, June 2005; see [www.lse.ac.uk/collections/TSEP/Open%20access%20documents/12%20TSEP.pdf](http://www.lse.ac.uk/collections/TSEP/Open%20access%20documents/12%20TSEP.pdf), p. 14.

<sup>165</sup> <http://www.socialplatform.org/code/en/camp.asp?Page=664>

<sup>166</sup> European Commission, “The Commission’s contribution to the period of reflection and beyond: Plan-D for Democracy, Dialogue and Debate”, COM (2005) 494.

not of content. But with citizens, as with civil society groups, the issue is not the number of communication mechanisms and fora, but the quality of debate and the extent to which their input is taken heed of.

The Commission itself recognises that “the primary responsibility for responding to the call for a period of reflection rests with Member States. All have committed to undertake broad ranging national debates on the future of Europe”<sup>168</sup>. It has also made clear its view that “Europe also needs to find its place in the existing national, regional and local ‘public spheres’ and the public discussion across Member States must be deepened. This is first and foremost the responsibility of the public authorities in the Member States. It is the responsibility of government, at national, regional and local level, to consult and inform citizens about public policy – including European policies and their impact on people’s daily lives – and to put in place the forums to give this debate life”<sup>169</sup>.

However, this is a responsibility that Member States seem little inclined to take on. All were obliged to report to the Council at the end of 2005 the measures that they had taken to initiate national debate since the French and Dutch ‘no’ votes. But like the March 2002 reports to the Convention, these serve only to list events and describe information tools which NGOs, let alone citizens, have little awareness of<sup>170</sup>.

The European Economic and Social Committee is trying to build on the niche it carved out for itself during the Convention – but which it saw as threatened by the mooted treaty articles on civil dialogue – and to reinforce its mediating position between the EU institutions and civil society. In February 2004, a Liaison Group was established with the remit “to ensure that the EESC has a coordinated approach vis-à-vis European civil society organizations and networks and the follow-up of joint initiatives. It should also reinforce the visibility of the EESC’s work as regards these organizations and networks”<sup>171</sup>. Although NGOs question the effectiveness of the EESC and the appropriateness of it taking on this function, some ultimately take the pragmatic view that it at least creates a new channel and a public arena for dialogue. It is a forum that many will participate in, but with the caveat that they do not wish it to become the predominant mechanism by which their opinions are aired. A stakeholder forum, Bridging the Gap, organized in November 2005 illustrates how the EESC is trying to position itself close to the Commission and as the main conduit for civil society input: “the [European Economic and Social] Committee and the Commission are convinced that civil society organizations have a vital role to play in bridging the gap between Europe and its citizens and are therefore determined to listen to the views and analyses that such organizations can bring to the reflection process via the organisation of events such as the stakeholder forum”<sup>172</sup>.

## 1.4 Conclusion

The process of developing a European Constitutional Treaty was a muddled one. It was not clear at the start that a Constitutional Treaty was to be the final product of the Convention and there was no clear map of the whole process. This loose way of operating created space for NGOs to position themselves as groups offering expertise of value to those shaping the text. But NGOs’ warnings that the Constitutional Treaty did not resonate with citizens went unheard. Member States seem to have underestimated the scope of the Convention’s work and to have failed to predict the way it would be received. National governments’ interest in the Constitutional Treaty has lagged behind that of first the Convention and then the Commission. Their interest in seeing the Constitutional Treaty revived is conditional on local and shorter-term political imperatives. For citizens to feel a greater stake in a European Constitutional Treaty, greater and better efforts need to be made to address the mental distance that they feel from the EU. NGOs cannot alone bridge the gap between governing and governed, but greater dialogue with them can help governments in the task of making Europe more meaningful and of making the national political space more European.

<sup>168</sup> European Commission, “The Commission’s contribution to the period of reflection and beyond: Plan-D for Democracy, Dialogue and Debate”, COM (2005) 494.

<sup>169</sup> European Commission, “White Paper on a European Communication Policy: Debating Europe, involving people”, COM (2006).

<sup>170</sup> Interim report on the national debates during the reflection period on the future of Europe, 12 December 2005.

<sup>171</sup> European Economic and Social Committee press release “Civil Dialogue: EESC’S Bureau adopts significant proposals”, 24 February 2004, [http://www.esc.eu.int/sco/group/press/index\\_en.asp](http://www.esc.eu.int/sco/group/press/index_en.asp).

<sup>172</sup> Stakeholders’ Forum co-organised by the European Economic and Social Committee in co-operation with the European Commission, on “Bridging the Gap: How to bring Europe and its citizens closer together?”, 7 & 8 November 2005, [http://www.esc.eu.int/stakeholders\\_forum/index\\_en.asp#presentation](http://www.esc.eu.int/stakeholders_forum/index_en.asp#presentation).

## 2. The Corporate Social Responsibility European Multi-stakeholder Forum

The Corporate Social Responsibility European Multi-stakeholder Forum (hereafter the Forum) was in many ways an innovative mechanism of dialogue on what had become a hot issue in EU circles. But from its very conception the Forum was seen by NGOs as a “dialogue of groups that won’t agree (...) a recipe for frustration”, as stressed by one interviewee. Whether cast as internally divided and unclear as to what it wanted from the Forum, or as having intentionally created an instrument bound to fail, the Commission’s role was insufficient and unhelpful. Most of the lessons to be drawn from the experience of the Forum are negative ones, aspects of dialogue that should not be repeated.

### 2.1 The origins of the Forum

A Green Paper released in July 2001 first signalled the Commission’s intent to take a position on corporate social responsibility (CSR)<sup>173</sup>. CSR was considered of concern to the EU in that it could make “a positive contribution to the strategic goal decided in Lisbon [that is, of becoming, by 2010] the most competitive and dynamic knowledge-based economy in the world, capable of sustainable economic growth with more and better jobs and greater social cohesion”<sup>174</sup>. Interest in CSR was maintained by the profile accorded the Working Document of the European Parliament’s Committee on Employment and Social Affairs developed in response to the Green Paper<sup>175</sup> and by the particular interest of the then-Commissioner for Employment and Social Affairs, Anna Diamantopoulou.

The Green Paper itself suggested the creation of a Forum in that it “aim[ed] to launch a wide debate on how the European Union could promote Corporate Social Responsibility at both the European and international level (...) it suggests an approach based on the deepening of partnerships in which all actors have an active role to play”<sup>176</sup>. In collating comments received on the Green Paper, the Commission reported that “numerous responses from various stakeholder groups called for the launch of a European Multi-stakeholder Forum on CSR”<sup>177</sup>. Three round-table meetings were held in mid-2002 as “part of the experimentation of a future European Multi-Stakeholder Forum on CSR”: on codes of conduct (22 April), on CSR instruments and standards (27 May) and on CSR reporting (24 June)<sup>178</sup>. Under the auspices of DG Employment and Social Affairs, the round-table meetings were typically attended by some 40 to 50 stakeholders, coming under the categories of ‘employers’, ‘trade unions’, ‘consumers’, ‘civil society’, ‘business networks’, ‘experts’ and ‘other organizations’. At the first meeting in April 2002, the stakeholders expressed a desire to comment on the process and functioning of the Forum; in response, the Commission circulated a background document, which described the proposed objectives and composition of the Forum and allowed a period of around a month to respond<sup>179</sup>. This was probably the high point of NGOs’ impression of the Forum, as they felt that they were negotiating the formal objectives and working methods of the Forum and doing so with success, including the adoption of the Platform of Social NGOs’ recommendation that the Forum be split between high-level ‘political’ meetings and more technical ‘issue groups’<sup>180</sup>. In contrast, the main employers association, the Union of Industrial and Employers’ Confederations of Europe (UNICE), considered discussion on the Forum early in the process of holding experimental round-table meetings to be “premature and rushed” and the idea of a Forum itself “duplicating ongoing discussions and [having] no legitimacy”<sup>181</sup>.

A Commission White Paper of July 2002 drew on the comments to the Green Paper and situated the aim of a CSR Forum as being to “promot[e] transparency

<sup>173</sup> In the “Green Paper on Promoting a European framework for Corporate Social Responsibility” COM (2001) 366, CSR is identified as “essentially a concept whereby companies decide voluntarily to contribute to a better society and a cleaner environment”. The later European Commission White Paper COM (2002) 347 refined the definition of CSR as “a concept whereby companies integrate social and environmental concerns in their business operations and in their interaction with their stakeholders on a voluntary basis”.

<sup>174</sup> European Commission, “Green Paper on Promoting a European framework for Corporate Social Responsibility”, COM (2001) 366, page 3.

<sup>175</sup> [http://www.eurosif.org/pub2/lib/2002/3rdparty/workingdocument\\_rh1.pdf](http://www.eurosif.org/pub2/lib/2002/3rdparty/workingdocument_rh1.pdf)

<sup>176</sup> European Commission, “Green Paper on Promoting a European framework for Corporate Social Responsibility”, COM (2001) 366.

<sup>177</sup> [http://europa.eu.int/comm/employment\\_social/soc-dial/csr/csr\\_esf\\_en.html](http://europa.eu.int/comm/employment_social/soc-dial/csr/csr_esf_en.html)

<sup>178</sup> [http://europa.eu.int/comm/employment\\_social/soc-dial/csr/csr\\_esf\\_en.html](http://europa.eu.int/comm/employment_social/soc-dial/csr/csr_esf_en.html)

<sup>179</sup> [http://europa.eu.int/comm/employment\\_social/soc-dial/csr/consultationletter.pdf](http://europa.eu.int/comm/employment_social/soc-dial/csr/consultationletter.pdf)

<sup>180</sup> [http://europa.eu.int/comm/employment\\_social/soc-dial/csr/socialplatform.pdf](http://europa.eu.int/comm/employment_social/soc-dial/csr/socialplatform.pdf)

<sup>181</sup> [http://europa.eu.int/comm/employment\\_social/soc-dial/csr/unice.pdf](http://europa.eu.int/comm/employment_social/soc-dial/csr/unice.pdf)



and convergence of CSR practices and instruments, through: “exchange of experience and good practice between actors at EU level; bringing together existing initiatives within the EU, and seeking to establish common EU approach and guiding principles, including as a basis for dialogue in international fora and with third countries; identifying and exploring areas where additional action is needed at European level.”<sup>182</sup>

By the time the Forum first met officially on 16 October 2002, these objectives had been further refined: “with the overall aim to foster corporate social responsibility, the CSR EMS Forum shall promote innovation, transparency and convergence of CSR practices and instruments through:

- *improving knowledge about the relationship between CSR and sustainable development (including its impact on competitiveness, social cohesion and environmental protection) by facilitating the exchange of experience and good practices and bringing together existing CSR instruments and initiatives, with a special emphasis on SME specific aspects;*
- *exploring the appropriateness of establishing common guiding principles for CSR practices and instruments, taking into account existing EU initiatives and legislation and internationally agreed instruments such as OECD Guidelines for multinational enterprises, Council of Europe Social Charter, ILO core labour conventions and the International Bill of Human Rights”<sup>183</sup>.*

Having this second objective included at all, however loosely it was worded, was felt by NGOs to have been a ‘real battle’ won.

## 2.2 Membership and procedures

The business of the Forum proceeded through a mix of high-level meetings designed to review, at a political level, the Forum’s progress towards achieving its objectives and a series of round-table meetings looking in more technical depth at four themes: improving knowledge about CSR and facilitating the exchange of experience and good practice; fostering CSR among Small and Medium-sized Enterprises (SMEs); diversity convergence and transparency of CSR practices and tools; and development aspects of CSR. Membership of the Forum was accorded to four sectors: trade unions, employers, NGOs and ‘business organizations’. This balance of stakeholders, in particular the inclusion of the new ‘stakeholder family’ of business organizations, is felt by some NGOs to have created a “structural imbalance in the Forum”. Other NGO participants acknowledge that the balance of members was inappropriate, but do not believe that this in itself determined the outcome of the Forum.

Among NGOs, places were divided among those working on social, development, environmental, human rights and consumers’ issues. Where the Commission felt it had a clear interlocutor – as for social and environmental NGOs – it was happy to let the NGOs themselves decide exactly who attended. Where there was not such an EU-level platform in existence, as was then the case for development NGOs, places were directly and arbitrarily assigned to specific groups, in this case Oxfam International and the Fairtrade Labelling Organization. There were no formal criteria against which organizations were tested prior to being invited to join the Forum. Two representatives of each sector were invited onto a Coordination Committee intended to organize the preparation of Forum meetings. Environmental groups were not originally included on the Coordination Committee and only secured a place after stressing that the scope of CSR includes environmental, as much as social, aspects. The NGOs’ places were in the end allocated to representatives of the Platform of European Social NGOs and its equivalent for environmental groups, the then Green 8. NGOs rapidly and fruitfully organized their own set of meetings to share perspectives and to inform their representatives on the Coordination Committee.

Although funding was available for groups based outside Brussels to attend the Forum, responsibility for engaging with the dialogue process mostly rested with NGOs’ Brussels staff. NGOs may have informed their national-level partners and members about the progress of the Forum, but saw little need or value in consulting them, and the meetings were too ad hoc to warrant such consultation. Typically, “information about the Forum was communicated at key points, but there was little national member input – it was not a priority for them”.

The demands on the time of NGO participants were generally acknowledged to be reasonable; each NGO decided how much time it would choose to invest in preparing for, and engaging with, the Forum. The

<sup>182</sup> European Commission, “Communication from the Commission concerning Corporate Social Responsibility: A business contribution to Sustainable Development”, COM (2002) 347, July 2002.

<sup>183</sup> [http://forum.europa.eu.int/irc/empl/csr\\_eu\\_multi\\_stakeholder\\_forum/info/data/en/CSR%20Forum%20Rules.htm](http://forum.europa.eu.int/irc/empl/csr_eu_multi_stakeholder_forum/info/data/en/CSR%20Forum%20Rules.htm)

exception was those holding places on the Coordination Committee who faced a considerable draw on their time, particularly when it came to the process of agreeing the scope and content of the final Forum report. Taken as a whole, the process was drawn out over a period of more than two years, with the sequencing of meetings of each round table, then a high-level meeting, meaning that participants only attending one part of the Forum might go six months between meetings. For one participant, the Forum “probably should have taken half the time that it did”.

### 2.3 The outcome of the Forum

NGOs rapidly grew frustrated with the progress of the Forum, which, to some, served as a “glorified showcase for companies PR”, with NGOs unprepared to respond in depth to slick presentations of examples of CSR in practice. Anyway having more resources to be able to devote to the Forum, business stakeholders increasingly came to outnumber NGO representatives as the latter grew disgruntled and less inclined to attend all the meetings.

The report “European Multistakeholder Forum on CSR: Final Results and Recommendations”<sup>184</sup> was, according to a member of the Coordination Committee, the product of a “painful process” of negotiation. It does not appear to have been clear to the stakeholders that the report was intended to be a consensus document. While an NGO representative on the Coordination Committee argued for the report to include the diversity of views articulated during the course of the Forum, others on the Committee – especially UNICE – blocked that approach. The effect was to make the report a description of the “lowest common denominator” of stakeholders’ positions and “the final process of drafting and negotiation ignored the reality and subtleties of debates in the round-tables, and reflected more directly the preconceived positions of key EU civil servants and the most influential lobbyists (the business groups)”. In the wake of the protracted process of finalizing the report, momentum on CSR as an issue tailed off; the Communication supposed to follow from the Forum was only forthcoming nearly two years after the final meeting of the Forum. This lack of follow-up was “clearly very disappointing” for NGO participants. Several – especially those from outside Brussels – found the Forum an alienating experience and have since opted either to “avoid the CSR bandwagon” or to refrain from engaging in EU consultation processes altogether.

NGO scepticism is also reflected in the fear that the compromise nature of the report could mean that an “unrealistic consensus [is] abused to justify the continuation of irresponsible and unsustainable business models”. Even prior to the launch of a new Communication on CSR on 22 March 2006, NGO participants to the Forum talked of it being based on the predominant input of DG Enterprise and/or UNICE, but drawing legitimacy from a purported continuity with the Forum report. On 9 March, the Platform of Social NGOs, Amnesty International and the European Trades Union Confederation raised their concern that “having so far not received any response on the points that have remained unresolved in the debate after the Forum, the organisations signing this declaration wish to state their reasoned fear of an imbalanced, unilateral approach to CSR that only takes account of the views of a single actor”<sup>185</sup>. These fears appear well-founded – the new Communication situates CSR as being “increasingly important for the smooth functioning of the market economy”, its value not to be measured in social or environmental benefits, but in its contribution to the development of a “more entrepreneurial and business-friendly Europe”<sup>186</sup>. NGOs obtaining a copy of the Communication prior to its official launch were quick to refute its characterization of the Forum process as one that had concluded in agreement: “the EU proposal states that the Multi-stakeholder Forum in 2004 came to a consensus on voluntary commitments of industry. This is wrong. NGOs have consistently been arguing that binding legal measures are necessary to establish a general incentive for responsible corporate behaviour”<sup>187</sup>.

<sup>184</sup> European Multistakeholder Forum on CSR, “Final Results and Recommendations”, 29 June 2004 [http://forum.europa.eu.int/irc/empl/csr\\_eu\\_multi\\_stakeholder\\_forum/info/data/en/CSR%20Forum%20final%20report.pdf](http://forum.europa.eu.int/irc/empl/csr_eu_multi_stakeholder_forum/info/data/en/CSR%20Forum%20final%20report.pdf).

<sup>185</sup> Declaration of the European Trade Union Confederation, the Platform of Social NGOs and Amnesty International, 9 March; [www.socialplatform.org/module/FileLib/CSRjointdeclarationmarch2006.pdf](http://www.socialplatform.org/module/FileLib/CSRjointdeclarationmarch2006.pdf). In a subsequent statement, the Platform of Social NGOs “slam[med] the Commission for taking a U-turn on CSR”, accusing it of abandoning a “balanced, multistakeholder approach” for a “narrow and exclusionary approach”; 22 March, [http://www.socialplatform.org/code/en/pres\\_rele.asp?id\\_presse=113](http://www.socialplatform.org/code/en/pres_rele.asp?id_presse=113).

<sup>186</sup> European Commission, “Implementing the Partnership for Growth and Jobs: Making Europe a Pole of Excellence on Corporate Social Responsibility”, COM (2006) 136, 22 March 2006, p. 2.

<sup>187</sup> Coalition of NGOs working on corporate accountability “Commissioner Verheugen hijacks EU process on CSR - Corporate Social Responsibility plan EU totally lacks substance”, 13 March 2006.

## 2.4 The rationale behind establishing the Forum

NGO respondents generally agree that the first objective of the Forum – sharing knowledge and experience of CSR practices – was largely achieved. The failure to make any progress towards the second objective has shaped NGOs' assessment of the whole process – gaining a wider understanding of other stakeholders' perspectives on CSR is felt to be an insufficient justification for a series of meetings spread over two years. At the heart of why the Forum is perceived as a failure is the role adopted by the Commission. It initiated the process, brought stakeholders together, but then essentially took a backseat. The stakeholders at the Forum fundamentally disagreed about whether CSR should be a purely voluntary initiative of companies, or a framework of legal standards and responsibilities applied and overseen by public authorities. Since the Commission is the public body that would be responsible for developing and overseeing any EU-level framework on CSR and since for NGOs the purpose of the Forum was to identify the role of the Commission on CSR, for it to stand on the sidelines of this debate was at best disingenuous and at worst a deliberate steering of the process towards a sterile exchange of entrenched positions. Those on the Coordination Committee suffered most acutely from a lack of guidance from the Commission at the time the final report was being drafted. The report was in effect speaking of the EU's role on CSR without any meaningful input from the Commission as to the limits of what was possible; rather it would have been better if “near the end the Commission would have departed from its facilitating role and [itself] drawn conclusions for further discussion”.

The kinder interpretation of the Commission's motives sees it as under pressure to move forward in some way on CSR and that to set up a consultation process was a “logical next step”. Since different Directorates-Generals disagreed as to the value of CSR and the Commission's role in it, it served as “a bit of a reprieve for the Commission to pass it on” to a broad set of stakeholders. This view finds evidence in the experimental nature of the round-table meetings that preceded the formal establishment of the Forum: the Commission was testing out a format that it was unfamiliar with. That there was a certain novelty about this way of working and that the Commission had a far from uniform position on CSR was shown in that each round-table meeting was attended by 10 or 11 Commission officials, drawn from a total of eight Directorates-Generals (Personnel and Administration; Enterprise and Industry; External Relations; Trade; Environment; Economic and Financial Affairs; Internal Market and Services; as well as Employment, Social Affairs and Equal Opportunities). (...) The Forum “was new for everyone [and there was] a certain sense of ‘making it up as we go along’”.

A variation of this view sees the Commission as being at the start genuinely committed to moving towards a framework on CSR, with the Forum a means to that end by concluding with a demand for the Commission to take on such a mandate, but that the political climate has now evolved towards a more purely pro-business orientation to CSR that does not see any place for frameworks and regulations.

The view that the Commission was essentially well-meaning in setting up the Forum contends that the Commission should have been an active participant in the Forum, rather than acting simply as a facilitator. However, the characterization of the Commission's role as facilitative is refuted by other groups, who believe that the “whole thing was set up to spin wheels in the sand” and that it is an “established tactic [to create] chaotic and long-winded processes” that waste NGOs' time without leading anywhere. Contrary to the central elements of a facilitative role, for one respondent, the Commission:

*neither provid[ed] neutrality (it had to employ external facilitators to win trust in the process), nor enabl[ed] effective participation by those with limited resources. I was consistently frustrated by biased and incomplete ‘summaries’ offered by Commission staff chairing particular meetings at all levels (steering group, round-tables, high level). It was as if they had been attending a completely different meeting in which the only contributions had come from employers’ and business organizations. In addition, the pretence that the Commission was ‘facilitating’ enabled Commission staff to avoid making contributions or offering opinions which would have helped the Forum understand the political context in which it was operating.*

To the obvious question as to why they engaged at all, this set of NGOs felt themselves to have been “lead into a trap with their eyes open [and it was] not unreasonable to engage with your eyes open, to see if any good might come of it”. It was difficult for NGOs to refuse to join, to say outright at the start that they thought the process would have no value. Although some NGOs argued for withdrawing from the Forum, it was difficult to reach consensus. Some organizations sought to avoid responsibility falling on NGOs for the failure of the Forum; others found that attendance at least gave them an answer when their members asked what they were doing on CSR at the Brussels level. The benefits of hindsight are also part of this: “NGOs have been critical since, but at the time it was the only show in town (...) [NGOs] got sucked into it (...) the diversity of

groups made it hard to pull out”.

## 2.5 The organizational challenges facing NGO representatives

NGO representatives at the Forum had multiple obligations – to their own NGO and to the wider network of which it was a part and in whose name they would speak. NGO networks contain a range of opinions; their representatives lack the flexibility to negotiate positions quickly within processes like the Forum. The representatives of business and employers, in contrast, were by their nature able to invest more time and energy into preparing their attendance and their strategies were less encumbered by internal representational challenges. Several NGO participants therefore speak of a sense in which business and employers were able to “play the game better”. The set of meetings established by NGOs to prepare themselves and their representatives on the Coordination Committee are recognized as having been an effective response to an emerging coordination challenge. The establishment of a new NGO network, the Coalition of NGOs working on Corporate Accountability, indicates that there is still a need for a mechanism to coordinate NGO strategies. That its establishment has been driven mostly by national platforms of NGOs suggests a determination to close the gap between Brussels processes and interested national NGOs. At the same time, there is an intent to value Brussels processes more from a national perspective and so to avoid participating in them just because that is what Brussels NGOs do.

## 2.6 Conclusion

For NGO participants in general, the Forum “functioned as an opportunity for learning and developing new contacts [but] NGOs would not have joined for the sake of learning, but for a political outcome, which was not clear or forthcoming”. The logic of the process beginning with the Green Paper that gave birth to the Forum was that the Forum’s purpose and that of the final document was to determine what the EU could do to advance CSR. The passive approach of the Commission – wilful or not – shifted the focus of the Forum to the simple exposition of opposed positions: “the starting point and objectives of the different sectors involved were too far apart to be able to establish much common ground”. With the scope of the Forum evading its own role in CSR, the Commission is left to answer “why would it expect such [a range of] stakeholders to come up with a common viewpoint and what is the purpose of having a document like th[e final report]?”. The new Communication<sup>188</sup> claims to draw upon agreements reached and recommendations made at the Forum. By doing so, it has prompted what is described on the EU news site, Euractiv, as an “open dispute between [the] Commission and NGOs on CSR”<sup>189</sup>. By affirming the voluntary nature of CSR and by “giv[ing] recognition to enterprises as the primary actors in CSR”, the Commission may find NGOs sceptical about attending the review meeting it proposes to hold in 2006 to “take stock of the progress made in relation to the recommendations of the CSR Forum”<sup>190</sup>.

## 3. Open Method of Coordination on Social Inclusion

Applying the Open Method of Coordination (OMC) to the issue of social exclusion was, for one interviewee, a “good and innovative” policy response to the limited EU competence in the area and one which has allowed for the considerable involvement of NGOs. Engagement with the OMC takes place in the context of the generally open and cooperative relationship between DG Employment and Social Affairs and NGOs. However, the OMC remains a “potentially valuable, but weak instrument”<sup>191</sup>. Always dependent on the political will of national governments, it suffers further from a shift in the political climate in Europe, where the new Lisbon Strategy curtails the social and environmental dimension of its predecessor to focus more narrowly on growth

<sup>188</sup> “Implementing the Partnership for Growth and Jobs: Making Europe a Pole of Excellence on Corporate Social Responsibility”, COM (2006) 136, 22 March 2006.

<sup>189</sup> Euractiv, “Open dispute between Commission and NGOs on CSR”, 23 March 2006, <http://www.euractiv.com/Article?tcmuri=tcm:29-153622-16&type=News>.

<sup>190</sup> “Implementing the Partnership for Growth and Jobs: Making Europe a Pole of Excellence on Corporate Social Responsibility”, 22 March 2006, p. 2.

<sup>191</sup> European Anti-Poverty Network, “Back to the Future? The Implementation Reports on the National Action Plans on Social Inclusion – an EAPN Assessment”, October 2005.

and jobs.

### 3.1 Origins of the Open Method of Coordination on Social Inclusion (OMC/incl)

The OMC operates as soft law, seeking progress through the setting of common objectives, the sharing of good practice and peer review of performance, rather than through the imposition of legislation. The successive Finnish and Portuguese Presidencies of the European Council in the second half of 1999 and the first half of 2000 had given impetus to an increased role for the EU in social policy. The Lisbon Council of March 2000 introduced the OMC “as a means of spreading best practice and achieving greater convergence towards the main EU goals”, to be applied in the areas of pensions and health care, as well as social inclusion, all areas where Community powers are limited. As such, the OMC on Social Inclusion “is revolutionary, bridging the gap” (as stressed by one interviewee) between the typical preserves of economic policy as a Community responsibility and social policy as Member States’ responsibility.

#### What is the Open Method of Coordination?<sup>192</sup>

The OMC is a process designed to help Member States develop better policy. It involves:

- fixing objectives for the Union combined with specific timetables for achieving the goals which they set in the short, medium and long terms;
- establishing, where appropriate, quantitative and qualitative indicators and benchmarks against the best performing, tailored to the needs of different Member States and sectors as a means of comparing best practice;
- translating these European objectives into national and regional policies by setting specific targets and adopting measures, taking into account national and regional differences;
- periodic monitoring, evaluation and peer review organised as mutual learning processes.

This Method has applied since 2006 to the areas of pensions and health care, as well as social inclusion. Key elements of the OMC/incl are:

- common Objectives on poverty and social exclusion;
- national Action Plans against poverty and social exclusion;
- joint Reports on Social Inclusion and regular monitoring, evaluation and peer review;
- common indicators to provide a means of monitoring progress and comparing best practice;
- a Community Action Programme to encourage cooperation between Member States to combat social exclusion.

Under the OMC/incl, the Council sets common objectives which Member States use as the basis for National Action Plans (NAPs). A Social Protection Committee (SPC), composed of two delegates from each Member State and the Commission, has the aim of “serving as a vehicle for cooperative exchange between the Commission and the Member States of the EU about modernising and improving social protection systems”<sup>193</sup>. The SPC, whose Secretariat is provided by the Commission, oversees the process by which Member States submit their National Action Plans. The NAPs in turn form the basis of a Joint Report on Social Inclusion, which is the shared responsibility of the Council and Commission.

The Nice Council of December 2000 identified common objectives, grouped under the areas of “facilitating participation in employment and access by all to the resources, rights, goods and services; preventing the risks of exclusion; helping the most vulnerable; mobilizing all relevant bodies”. This last objective included the intent “[to] promote dialogue and partnership between all relevant bodies, public and private, for example: by involving the social partners, NGOs and social service providers, according to their respective areas of competence, in the fight against the various forms of exclusion (...)”<sup>194</sup>. For the second round of NAPs (2003-5), these objectives were retained in themselves, but Member States were instructed to take into account both the specific vulnerabilities of migrants and the role of gender in the preparation and delivery of the Plans. New Member States

<sup>192</sup> For more information on the OMC on social inclusion, see [http://europa.eu.int/comm/employment\\_social/soc-prot/soc-incl/index\\_en.htm](http://europa.eu.int/comm/employment_social/soc-prot/soc-incl/index_en.htm).

<sup>193</sup> [http://europa.eu.int/comm/employment\\_social/social\\_protection\\_committee/index\\_en.htm](http://europa.eu.int/comm/employment_social/social_protection_committee/index_en.htm)

<sup>194</sup> European Council “National Action Plans 2001-2003”, Nice, December 2000 [http://europa.eu.int/comm/employment\\_social/social\\_inclusion/docs/approb\\_en.pdf](http://europa.eu.int/comm/employment_social/social_inclusion/docs/approb_en.pdf).

developed National Action Plans for the period 2004-6 while the old Member States submitted an update for 2005-6, to bring all the Member States into line for the next round, 2006-8.

### 3.2 'Streamlining' the OMC on Social Inclusion

The 2006-8 round of NAPs will reflect the effects of a process of 'streamlining' (bringing together the processes relating to social exclusion, pensions, and health-care), whose rationale, laid out in a Communication of May 2003, was to respond to a risk that the apparent plethora of initiatives and policies on related areas of social and economic policy "creat[e] greater complexity, duplication of effort and a lack of clarity in overall messages. Furthermore, the Communication had separately identified the need to focus more on implementation and less on simply creating more policy guidelines"<sup>195</sup>. In a section on "Openness: the involvement of actors", the Communication endorsed the role of NGOs in the OMC process:

*reflecting the high degree of organisation of civil society in relation to social exclusion, plus the fact that policies in this area are delivered in diverse and often decentralised ways within the Member States, the process places strong emphasis on the involvement of a range of actors - the involvement of social partners and consultation with NGOs and representatives of sub-national branches of government. This is an approach which could usefully be applied across the entire range of the future social protection process<sup>196</sup>.*

There was, however, no immediate formal opportunity for NGOs to comment on the Communication. Rather they were left to publish letters and briefings intended to influence the Communication's endorsement first by the SPC and then by the Council. NGOs were consulted on the future of the OMC as part of a mid-term review, but only after Member States had already expressed their agreement with the broad thrust of this [streamlining] initiative. A questionnaire was issued in February 2005 and responses solicited from government agencies, social partners and NGOs. The British Department for Work and Pensions, for example, promoted the questionnaire for the input of national level NGOs, but such engagement was unusual amongst Member States.

NGOs' assessment of the process of consultation on streamlining the OMC is typified in the view of one respondent: "as a process, [it] was ok, there were no absurd timelines. Very often the problem is lack of follow up (...) we are just left to hope comments are taken up, there is no debate about what you are sending in". This last point was borne out in that an early, informal draft of the Communication showed that many NGOs' concerns were not in fact taken on board. However, NGOs mobilised on this issue, using informal channels of influence, as well as the Round Table on Social Inclusion held in Glasgow under the UK Presidency. The official draft issued in December 2005<sup>197</sup> showed significant improvements on the leaked October version, but this was more the result of fortuitous access to an early draft, rather than to consultation processes.

### 3.3 The involvement of NGOs in the National Action Plans

Most of the questions in the evaluation of the OMC dealt with issues such as the appropriateness of objectives and indicators, but part of the evaluation was also to look at the role of the OMC in "mobilising all actors and co-operation at national level", particularly whether "the OMC [has], on the national level been implemented effectively and in a way conducive to better coordination between different government departments and levels, and to greater mobilisation of stakeholders?"<sup>198</sup>

Responses are positive about the theory, but flag concerns about some aspects of the practice of involving NGOs in NAPs. Favourably compared with the pensions OMC, "the Social Inclusion OMC is truly an open method of coordination since the Commission and national ministries work with civil society organisations such as networks of service providers, service users, regional authorities, local authorities and trade unions"<sup>199</sup>. The nature of the OMC itself and the consultation on streamlining seems

<sup>195</sup> European Commission, DG Employment, Social Affairs and Equal Opportunities, "Strengthening the social dimension of the Lisbon strategy: Streamlining open coordination in the field of social protection", 27 May 2003 [http://europa.eu.int/comm/employment\\_social/social\\_protection/index\\_en.htm](http://europa.eu.int/comm/employment_social/social_protection/index_en.htm).

<sup>196</sup> "Strengthening the social dimension of the Lisbon strategy: Streamlining open coordination in the field of social protection", 27 May 2003, [http://europa.eu.int/comm/employment\\_social/social\\_protection/index\\_en.htm](http://europa.eu.int/comm/employment_social/social_protection/index_en.htm).

<sup>197</sup> European Commission "Working together, working better: new framework for the open coordination of social protection and inclusion policies in the European Union", COM (2005) 706.

<sup>198</sup> Questionnaire for the evaluation of the open method of coordination (OMC) on social inclusion in order to prepare the streamlining in the field of social protection.

to usefully demand complementary roles from national and European NGOs: the latter engage with policy developments in Brussels on the basis of their national members' direct involvement in many cases in service delivery (though this varies from one network of the other). This both suggests a vital facilitative function for Brussels-based networks and at the same time a risk that NGOs less well-connected through Brussels-based platforms are not so able to become involved. European networks - notably EAPN, which has mobilised NGOs on the OMC since its commencement - "have proved to be a key force behind the process, for example in ensuring the two-way flow of information between national and local NGOs, and the European institutions. This has helped enable national and local NGOs to participate in the OMC, which is an essential element in ensuring that the OMC/Incl ultimately results in concrete outcomes"<sup>200</sup>. The network of organisations working on homelessness, FEANTSA, is explicit about how the success of the OMC depends on its role of providing a bridge between NGOs as service deliverers and policymakers:

*As a European thematic NGO developing expertise in the area of homelessness and housing exclusion, FEANTSA involves its national members in the NAPs/Incl preparation, in the peer reviews, in the Round Table on Social Inclusion, in international seminars on homelessness. FEANTSA has in fact been working as facilitator of the OMC in the area of homelessness and housing exclusion. The national member organisations of FEANTSA – all homeless service providers – can not only provide real expertise, but also ensure follow-up and implementation of EU objectives at local level<sup>201</sup>.*

Without a connection to Brussels, national NGOs struggle to get involved in the OMC. One respondent working for a European network is "quite confident that – without a link in Brussels – [our] members in the Member States would not be able to follow any of this. [The network] is for them indispensable to get accurate information about what is going on in Europe". In general terms, NGOs operating at a local level only and/or those in New Member States are most likely to be excluded from the OMC/incl process. That the involvement of national NGOs in the OMC/incl has relied heavily on the mobilising role of European networks is reflective of a problem of "the lack of awareness at national level in some of the countries participating in the process. There is not real commitment and there is no real impact in society"<sup>202</sup>. The primary responsibility for this lack of awareness lies not with NGOs, but with national authorities.

### 3.4 The political backing accorded the OMC on Social Inclusion

Experience with the OMC on social inclusion varies from Member State to Member State and reflects the degree of political importance applied to both the issue of social inclusion and the practice of involving NGOs in the development of policy. The relative lack of commitment to the OMC/incl is evidenced in a number of ways:

- ◆ in a number of countries, the relevant ministry sets the boundaries of NGOs' involvement at 'consultation, not participation';
- ◆ the involvement of NGOs is limited to the preparation, not implementation or evaluation of National Action Plans<sup>203</sup>;
- ◆ National Action Plans can become simply a collating and reporting of existing initiatives, with nothing new added in terms of strategy, so that, as one respondent put it, it is "not clear what it being added, just a case of material being repackaged. It is a mechanism for rationalising how a certain amount of information is communicated [and] collating existing information".

The effect is that national NGOs might tend to question the value of the OMC, as suggested by one

<sup>199</sup> FEANTSA, *Evaluation of the Open Method of Coordination in the field of social protection. OMC applied to homelessness: strong interest, great potential, and results guaranteed*, [http://www.socialplatform.org/module/FileLib/MB\\_FEANTSAresponseOMCQ.pdf](http://www.socialplatform.org/module/FileLib/MB_FEANTSAresponseOMCQ.pdf).

<sup>200</sup> Platform of Social NGOs, [http://www.socialplatform.org/module/FileLib/05-07OMCEvaluationContribution\\_FinalEN.pdf](http://www.socialplatform.org/module/FileLib/05-07OMCEvaluationContribution_FinalEN.pdf).

<sup>201</sup> FEANTSA, *Evaluation of the Open Method of Coordination in the field of social protection. OMC applied to homelessness: strong interest, great potential, and results guaranteed*, [http://www.socialplatform.org/module/FileLib/MB\\_FEANTSAresponseOMCQ.pdf](http://www.socialplatform.org/module/FileLib/MB_FEANTSAresponseOMCQ.pdf).

<sup>202</sup> Response of the European Disability Forum to the questionnaire for the evaluation of the open method of coordination; [www.socialplatform.org/module/FileLib/EDFOMCresponseEN.doc](http://www.socialplatform.org/module/FileLib/EDFOMCresponseEN.doc).

<sup>203</sup> "Where NGOs have been involved by Member State governments, this has been mainly in the production of the NAPs. NGOs need to be involved in a more continuous way, in the implementation, monitoring and evaluation of the policies contained in the NAPs and NSRs"; [http://www.socialplatform.org/module/FileLib/05-07OMCEvaluationContribution\\_FinalEN.pdf](http://www.socialplatform.org/module/FileLib/05-07OMCEvaluationContribution_FinalEN.pdf).

interviewee: “the importance of the process is not clear to national NGOs (...) [they] simply don’t see the value [of the OMC on social inclusion]”. It seems apparent that European NGOs are finding it increasingly difficult to mobilise their members to play a significant role in the OMC as the process itself is perceived to become politically more marginalised. If the OMC/incl was first initiated because of the priority accorded it by a number of governments and the generally favourable political climate, “there are now strongly political reasons for cutting it back”. The rationale for the streamlining process is thus situated less in the Commission’s difficulties in processing a greater volume of information on social exclusion after the enlargement of the EU and more in a belief that the OMC “has snowballed into something bigger than they want”.

### 3.5 Conclusion

Throughout the period of consultation on the streamlining proposal, NGOs had a broad range of opportunities to raise their points with the Commission - at bilateral and multi-lateral meetings with DG Employment and Social Affairs - and with the SPC. Even though the experience of NGOs seeking to be involved in the development and delivery of NAPs has been patchy, the NAPs process “can create open and transparent procedures which NGOs can get involved in”<sup>204</sup>. The generation of comparative information on poverty is useful and where national governments are determined to tackle social exclusion, they can make use of the OMC targets and good practice examples to make progress. But NGOs have become wary of the value to be accorded the OMC/incl:

*Most networks consider the NAP Inclusion to have enabled the launch of innovative developments in dialogue and lobbying and they are engaged in trying to strengthen these, especially in regards to the participation of people in poverty and to increasing accountability. But social NGOs may need to consider carefully how much effort they put in to the NAP Inclusion process without a clearer idea of what is the mechanism to output from the process that has value for people in poverty<sup>205</sup>.*

NGOs will disengage from a process, even when it is relatively open and their input sought, if they do not see much likelihood of an outcome. The streamlining of the OMC could represent a last chance to motivate NGOs to become involved in this policy initiative.

## 4. The Directive on Services in the Internal Market

The absence of any organized dialogue on the Directive on Services in the Internal Market appears to reflect that the originating institution – the Commission’s DG for the Internal Market and Services – underestimated the controversy that the draft Directive would provoke and had little sense of the value of consulting with NGOs. This failure to see the need to explain the draft Directive and properly assess its likely impacts added to NGOs’ confusion and hostility towards it. NGOs were able to mobilize other actors, particularly the European Parliament, to achieve key amendments to the draft. Both NGOs and the Commission would have benefited from the exchange of views and greater mutual understanding that a structured process of dialogue on the Commission’s proposals for services in the internal market would have brought.

### 4.1 Parallel processes on services

On 21 May 2003, DG Employment and Social Affairs within the Commission launched a Green Paper on Services of General Interest. NGOs were invited to respond to thirty questions appended to the Green Paper. According to the Commission itself, “the official consultation period was almost four months in length and considerably exceeded the minimum duration of eight weeks that the Commission established as a minimum standard for this type of consultation”<sup>206</sup>. NGOs’ concerns focused mostly on the insufficiently specific treatment of social services within the Green Paper, which they felt was more based on the needs and experience of network services. The Platform of Social NGOs shared the view articulated by its member, the National Red Cross Societies of the EU Member States, that “the nature of the provision of social services can not be assimilated with the principles related to

<sup>204</sup> Platform of Social NGOs, [http://www.socialplatform.org/module/FileLib/05-07OMC/EvaluationContribution\\_FinalEN.pdf](http://www.socialplatform.org/module/FileLib/05-07OMC/EvaluationContribution_FinalEN.pdf).

<sup>205</sup> European Anti-Poverty Network *Back to the Future? The Implementation Reports on the National Action Plans on Social Inclusion – an EAPN Assessment*, October 2005.

<sup>206</sup> European Commission staff working paper “Report on the public consultation on the Green Paper on Services of General Interest, SEC (2004) 326.



‘services of general economic interest’, because: social services cannot be considered as consumer goods; they target in particular vulnerable people and they allow individuals to enjoy their fundamental rights. Consequently, the National Red Cross Societies would ask for a Communication from the Commission, which should focus on social services as such and not only linked to services of general interest in general”<sup>207</sup>.

A White Paper on Services of General Interest, drawing on the comments received to the Green Paper, showed that the Commission was willing to take on board this recommendation, “[t]he Commission is of the view that it is useful to develop a systematic approach in order to identify and recognise the specific characteristics of social and health services of general interest and to clarify the framework in which they operate and can be modernised. This approach will be set out in a Communication on social services of general interest, including health services, to be adopted in the course of 2005”<sup>208</sup>.

However, the relative openness of the Commission to NGO concerns on services of general interest was rendered moot by the inclusion of social services within the proposed Directive on Services in the Internal Market, launched by the then-Commissioner responsible for the Internal Market, Frits Bolkestein in January 2004. It is hard to avoid the conclusion that the left hand of the Commission – DG Internal Market – did not know what the right hand – DG Employment and Social Affairs – was doing. At the same time as the White Paper on Services of General Interest advocated a Communication specifically on social services, the draft Directive took a horizontal approach, treating all services as the same, all to be subject to a liberalization designed to allow service providers to operate across borders without restriction.

NGOs were confused by what amounted to the Commission’s “contradictory process”<sup>209</sup>: while “it had been a nice process with the Green and White Paper, the Services Directive would have done away with all of it”. In shifting their attention to resisting the Services Directive, NGOs found DG Internal Market unwilling to listen and seeming to consider that they were not sophisticated enough to properly understand the proposal. In contrast to the process established for the Green Paper on Services of General Interest, “there was no attempt at dialogue on the Directive”.

## 4.2 The rationale behind the Services Directive

DG Internal Market and Services of the Commission first proposed an Internal Market Strategy for Services in a Communication of December 2000<sup>210</sup>. A lengthy consultation was conducted and an impact assessment made of the Directive. The objective and audience of these exercises demonstrated the economic and business imperative behind the Directive: “the objective of the consultation was to collect information on problems encountered by providers and users engaged in any sort of economic services activity in the EU, in other words including manufacturers, consumers or any other economic operator”<sup>211</sup>. Commissioner Bolkestein, quoted in the press release announcing the launch of the Directive, positioned it squarely in terms of the delivering the Lisbon Agenda: “we cannot expect European businesses to set the global competitiveness standard or to give their customers the quality and choice they deserve while they still have their hands tied behind their backs by national red tape”<sup>212</sup> which prevents them from offering services across borders or from establishing premises in other Member States.

The draft text situated the objective of the proposed Directive as being “to provide a legal framework that will eliminate the obstacles to the freedom of establishment for service providers and the free movement of services between the Member States”<sup>213</sup>.

<sup>207</sup> Red Cross comments to the European Commission Green Paper on Services of General Interest; <http://www.redcross-eu.net/internet/en/detail.asp?doss=A&SM=369&AI=189>.

<sup>208</sup> European Commission “White Paper on Services of General Interest”, COM (2004) 374.

<sup>209</sup> Statement of the Platform of Social NGOs to a public hearing of the internal market and consumer protection parliamentary committee, 11 November 2004, <http://www.socialplatform.org/code/en/camp.asp?Page=309>.

<sup>210</sup> European Commission “An Internal Market Strategy for Services”, COM (2000) 888.

<sup>211</sup> European Commission staff working paper “Extended impact assessment of proposal for a directive on services in the internal market”, SEC (2004) 21.

<sup>212</sup> European Commission proposal “Directive to cut red tape that stifles Europe’s competitiveness”, IP/04/37, 13 January 2004.

<sup>213</sup> Proposal for a “Directive of the European Parliament and of the Council on services in the internal market”, SEC (2004) 21.

### 4.3 Inadequate impact assessment

The Services Directive fits under the criteria of policy proposals requiring an assessment of its economic, social and environmental impacts. As such, the General Principles and Minimum standards on Consultation by the Commission would apply. Reflecting its thinking that the Directive was about competitiveness and growth and that its key stakeholders were service providers, DG Internal Market's impact assessment and the groups with which it sought to engage were very limited in scope.

The assessment of economic and social impacts was confined to measures of innovation, productivity, growth and jobs. The assessment of the effects of the Directive on social services providers and users was therefore "inadequate"<sup>214</sup>. Referring specifically to health, a paper ratified by the European Health Policy Forum (EHPF), a broad grouping of health NGOs, industry, unions and professional associations, stressed the gap between the Commission's policy on impact assessment and the quality of the process employed with the Services Directive:

*As stated in a number of Commission Communications, from 2001 onwards all proposals with a particular relevance to health should 'include an explanation of how health requirements have been addressed, normally by including a statement in the proposal's explanatory memorandum. The aim would be to show clearly how and why health considerations were taken into account and the expected health impact'. A proper impact assessment on health and health systems of any initiative at EU level is both a legal requirement and an essential aspect of policy-making. From the point of view of EHPF members, the Commission proposal for a Directive on Services in the Internal Market lacks of such an assessment*<sup>215</sup>.

The opinion of the Committee on Women's Rights and Gender Equality reiterated this point: "the impact assessment, made by the Commission, is rather ambiguous. While recognising that it is very difficult to provide a reliable estimate of the effect of barriers to services on the EU economy, it states that millions of jobs will be created. There is still no comprehensive analysis on the problematic of creation of jobs and better quality of jobs within the EU. The social dimension and an impact assessment of social and employment effects are missing"<sup>216</sup>. The effect of the absence of a thorough treatment of the social impacts of the Directive was that the impact assessment appeared to one NGO respondent to "read like a reason for the Directive, prepared by the same people who drafted the Directive".

The second Minimum Standard, referring to consultation with target groups is that most clearly breached in the case of the Services Directive. This states that "for consultation to be equitable, the Commission should ensure adequate coverage of the following parties in a consultation process: those affected by the policy; those who will be involved in implementation of the policy, or bodies that have stated objectives giving them a direct interest in the policy"<sup>217</sup>. It is hard to see how social service providers, among other groups working closely with and represented by NGOs would not fall under this categorisation of parties to be consulted.

In the face of growing criticism from civil society about its willingness to engage and explain the thinking behind the Directive and the inclusion of social services in particular, DG Internal Market and Services published in August 2004 a checklist aiming to "correct some myths about the Commission proposal". This was followed by some "Frequently Asked Questions" and a guide to clarify what activities the Directive covered in October 2004 and various "diagrams explaining important aspects of the Directive" in November 2004<sup>218</sup>. DG Internal Market and Services did eventually meet with NGOs, but its slowness to engage was indicative of an apparent struggle to understand why NGOs might be interested in, and very concerned about, the Directive.

### 4.4 Bypassing the Commission

In seeking changes to the draft Directive, NGOs focused their influencing strategies on the European Parliament and Council. In particular, NGOs found that **"the Parliament was the most open of all institutions and its viewpoints were situated a lot closer to ours than those in the draft Directive or spread by different Member States"**. Many MEPs

<sup>214</sup> Social Platform *First comments on the proposed Directive on Services in the Internal Market*, September 2004.

<sup>215</sup> European Health Policy Forum *Recommendations on health services and the internal market*, May 2005.

<sup>216</sup> "Opinion of the Committee on Women's Rights and Gender Equality for the Committee on the Internal Market and Consumer Protection on the proposal for a directive of the European Parliament and of the Council on services in the internal market", 4 May 2005, [http://www.europarl.eu.int/comparl/imco/services\\_directive/050504\\_opinion\\_femm\\_en.pdf](http://www.europarl.eu.int/comparl/imco/services_directive/050504_opinion_femm_en.pdf).

<sup>217</sup> European Commission "General principles and minimum standards for consultation of interested parties by the Commission", COM (2002) 704.

<sup>218</sup> [http://europa.eu.int/comm/internal\\_market/services/services-dir/guides\\_en.htm](http://europa.eu.int/comm/internal_market/services/services-dir/guides_en.htm).

were receptive, shared NGOs' concerns and indeed were felt to "rely on NGOs for expertise once the Directive became politically important". Within the European Parliament, the Committee on Employment and Social Affairs became the key actor and ally for NGOs. In a Working Document of March 2004, the Committee's rapporteur, Anne van Lancker, proposed that "a 'social assessment' be carried out. (...) This should include examination of the implications of the directive for the social and employment situation of citizens in each Member State, for social security systems in the Member States, in particular health care systems and also the social economy, for consumer protection, protection of the environment, quality of service provision and services of general interest. In this connection, a hearing should be held in September giving all those concerned the opportunity to put forward their comments"<sup>219</sup>.

The later Opinion of the [Parliamentary] Committee on Employment and Social Affairs of May 2005<sup>220</sup> drew on the findings of both a study that the Committee commissioned into the legal repercussions of the Directive and the points raised by NGOs at a Parliamentary hearing which took place in November 2004. This first reaffirmed NGOs' main problem with the Directive: "the provisions of this horizontal draft do not take into account typical features of certain services, such as health care services, welfare services and labour market services (...) the text of the draft does not contain sufficient guarantees that it will safeguard the right to manage social security systems, such as health care systems and social welfare systems. Excluding these services from the draft would certainly bring it closer to the engagements of the Commission in its White Paper on services of general interest"<sup>221</sup>. The public hearing of the Internal Market and Consumer Protection Committee in the European Parliament and the later seminar on "Social Services, Quality in Services and the Services Directive: What options for revising the draft?" organised by the Social Platform and the Green/EFA Group in April 2005 gave NGOs the opportunity to present their concerns to influential MEPs.

As well as engaging with the key MEPs on the key Committees, NGOs mobilized their members to lobby their respective MEPs. Although the Internal Market and Consumer Protection Committee of the Parliament went against the recommendation of its own rapporteur, Evelyne Gebhardt, as well as the report of the Committee on Employment and Social Affairs, in voting in November 2005 to retain social services within the Directive, the Parliament as a whole overturned this decision in a plenary vote on 16 February 2006. A sufficient number of Member State governments had suffered from negative press associated with the Directive, most especially in France where the Directive became a focal point of opposition to the Constitutional Treaty, as to ensure that the European Parliament's ultimate decision was upheld by the Council.

The focus on the European Parliament did not mean that NGOs gave up on the Commission altogether. Several NGO platforms have close ties and regular meetings with other DGs in the Commission, for example the Social Platform with DG Employment and Social Affairs, and the European Public Health Alliance (EPHA) with DG Health and Consumer Protection, and would raise their objections to the Directive in these meetings. The European Public Health Forum, whose paper was strongly critical of the Directive and its limited impact assessment, is an instrument established by DG Health and Consumer Protection, to hear the views of civil society. For some NGO platforms the Directive was a trigger for seeking for the first time to meet with DG Internal Market and Services. Both the EPHA and Solidar report that arranging to meet DG Internal Market and Services was not achieved without some effort: "DG Internal Market was quite cold at first, it felt that EPHA should deal with SANCO only (...) [there was also a sense that] DG Internal Market and Services was driven by business and felt that NGOs lack expertise".

#### 4.5 Reaching beyond an expert audience

That DG Internal Market was disinclined, until late in the process, to seek NGO input was compounded by the extremely technical nature of the Directive itself. Broad NGO platforms like the EPHA did not initially engage with the Directive, as the implications for its particular sector were not immediately clear. The lack

<sup>219</sup> Committee on Employment and Social Affairs, "Working Document on the proposal for a Directive of the European Parliament and of the Council on services in the internal market", 25 March 2004, [www.europarl.eu.int/meetdocs/committees/empl/20040405/521614en.pdf](http://www.europarl.eu.int/meetdocs/committees/empl/20040405/521614en.pdf).

<sup>220</sup> "Draft opinion of the Committee on Employment and Social Affairs for the Committee on the Internal Market and Consumer Protection on the proposal for a

directive of the European Parliament and of the Council on services in the internal market", 10 May 2005, [http://www.europarl.eu.int/meetdocs/2004\\_2009/documents/pa/566/566667/566667en.pdf](http://www.europarl.eu.int/meetdocs/2004_2009/documents/pa/566/566667/566667en.pdf).

<sup>221</sup> Wouter G., "Towards a European Directive on Services in the Internal Market: Analysing the Legal Repercussions of the Draft Services Directive and its Impact on National Services Regulations", Institute for European Law, Catholic University Leuven, 24 September 2004.

of dialogue is felt to have lowered the level of debate: NGOs frustrated at the lack of openness from the Commission tended to fall back on general positions on the inclusion of social services rather than investing more to develop alternatives.

National NGOs generally lacked the capacity to engage with a complicated, distant EU Directive and were reliant on briefings from their Brussels offices or platforms. The consultation organized by the Department of Trade and Industry in the United Kingdom was an exceptional attempt to engage national NGOs. In France and elsewhere, the Directive became a hot issue because of, rather than in spite of, the lack of any organized consultation process.

#### 4.6 The reasons for the lack of dialogue

Although some may argue that the Services Directive was an intentionally provocative document, a radical proposal issued in order that at least some of it would be achieved, with the lack of consultation a part of this strategy, the predominant view of NGOs is that the failure of DG Internal Market to make any attempt to solicit their opinions is due more to a lack of realisation that such consultation might be valuable than any wilful evasion of their input. Likewise, though NGOs may wonder if the confusion and lack of coordination between the Services Directive and the Green and White Papers on Services of General Interest was deliberate, this is felt more likely to reflect the “key issue of lack of communication among [different] DGs”. None of this excuses, but does go some way to explaining, what is a breach of the Minimum Standards. DG Internal Market “thought it did not need to consult much, as it underestimated NGO interest and felt the impact assessment was sufficient”. The Services Directive demonstrates that the idea of consulting with NGOs has only been absorbed by some DGs, such as SANCO and Employment and Social Affairs. The Directive is also then an example of a danger of pigeonholing, that NGOs in a sense ‘belong’ to certain DGs and are not likely to be approached by other branches of the Commission.

#### 4.7 The European Forum on Services in the Internal Market – a lesson learned?

The Commission is now in the situation of looking at how it should go about implementing the new version of the Directive that incorporates the amendments of the European Parliament. DG Internal Market has established a European Forum on Services in the Internal Market (EFOSIM) with the function of acting “as a sounding board and forward-looking ‘think-tank’ on the service economy in Europe. Discussions in the Forum will aim to facilitate the necessary exchange of views and information between stakeholders, and should lead to more targeted actions meeting the requirements of service providers and users, taking into account the specific framework conditions applying to the individual activities. (...) The Forum will be composed of professional organisations, workers representations, research institutions and other enterprise-related stakeholders”<sup>222</sup>. The EFOSIM replaces an earlier European Forum on Business Related Services (EFBR), composed of representatives of business, research centres and trade unions. The EFOSIM first met on 21 March 2006, but NGO participation was limited to EPHA. The Forum will be organised around working groups that will examine and report back on specific issues. At the first meeting, the relevant Head of Unit, Jean Bergevin, stressed that “the reaction and the feedback of the stakeholders are for us very important; that is why it is necessary to continue and to strengthen initiatives such as the European Forum of the Services in the Internal Market”<sup>223</sup>. The very restricted composition of the EFOSIM and general attitude of the Commission in the meeting – that the Directive was opposed by NGOs because they did not understand it – belies this statement.

#### 4.8 Conclusion

The paradox of the Services Directive is that while on the one hand it represents “an extreme case” of lack of structured consultation with NGOs, the end result in terms of the final text approved by the Council is acceptable to most. For one respondent, there was “not much in the way of organised consultation, but lots of debate, and Ann van Lancker was looking for groups to help her draft her report. Routes were not clearly established, but there were opportunities (...) that the [European] Parliament has been able to amend the Directive reflects NGOs’ input”.

<sup>222</sup> From the terms of reference of the EFOSIM; communication from Lara Garrido-Herrero, European Public Health Alliance.

<sup>223</sup> [http://www.clpue.org/en/index.php?option=com\\_content&task=view&id=38&Itemid=52](http://www.clpue.org/en/index.php?option=com_content&task=view&id=38&Itemid=52)

This view that informal interaction with the Parliament and national governments has achieved a reasonable result and that therefore the relative absence of organised consultation with the Commission is not so important, does not contradict the view that having had such consultation would at least have made things easier, as well as the fact that it is something that the Commission had committed itself to under the EC General Principles and Minimum Standards for Consultation. Applying the General Principles and Minimum Standards would benefit the Commission as well as NGOs, for example, the Commission “would have saved itself a lot of problems if it had not just thrown out the text like that”. To the extent that some NGOs benefit from a close relationship with a particular Commission counterpart, they bear some of the responsibility for this. Besides, the indirect consequence of such a lack of consultation on the French constitutional debate should be stressed, as the Service Directive became one of the campaign’s key debates. For NGOs feeling optimistic about the lessons to be drawn from the Services Directive, the Commission “may have learned to scan their political documents of high public interest with scrutiny and coordinate internal processes better to avoid such a political flop then played out during these two past years”. The composition of the EFOSIM works against any sense of optimism and suggests that the idea of consulting with NGOs has yet to take root in DG Internal Market and Services.

## 5. DG Trade Dialogue with Civil Society

DG Trade of the Commission first initiated a process of dialogue with civil society in 1998. As the earliest example of a structured dialogue process whose membership is broader than the social partners traditionally consulted on economic and employment policy, it warrants recognition as a “novel approach”. But NGOs appear concerned that “the meetings turn into briefings rather than dialogue” and that DG Trade is motivated more by an intent to manage relations with NGOs and give the appearance of consultation, rather than by a desire to allow policy to be shaped in the light of NGO input or to have its policies subject to scrutiny by NGOs.

### 5.1 Origins of the dialogue

The Trade Dialogue was established in reaction to the collapse of the Organisation of Economic Cooperation and Development (OECD)’s proposed Multilateral Agreement on Investment (MAI). Opposition in OECD Member States organized by civil society was felt to have been a significant factor in governments’ withdrawal from negotiations on the MAI<sup>224</sup>. The failure to agree a new Millennium Round of trade talks at the World Trade Organisation (WTO) Ministerial Conference of Seattle in late 1999, also in part attributable to an effective mobilization of NGOs, further concentrated the Commission’s mind on the need to engage more with civil society.

The backing of the then-Trade Commissioner, Pascal Lamy, added to the momentum behind the Trade Dialogue: Lamy was “the first to appoint a member of his cabinet to take responsibility for civil society liaison [and] broke new ground by persuading the Council of Ministers that the Contact Group of DG Trade’s policy dialogue should be included in the EU’s delegation to Seattle”<sup>225</sup>.

The objective of the Trade Dialogue is “to develop a confident working relationship between all interested stakeholders in the trade policy field and to ensure that all contributions to EU trade policy can be heard”<sup>226</sup>.

<sup>224</sup> For the scope of the MAI, the process that led to its abandonment and the role that NGOs played, see Oxfam, What was the MAI?, [http://www.oxfam.org.uk/what\\_we\\_do/issues/trade/maidec98.htm](http://www.oxfam.org.uk/what_we_do/issues/trade/maidec98.htm).

<sup>225</sup> WWF European Policy Office, *Civil Society and Trade Diplomacy in the “Global Age” The European Case: Trade Policy Dialogue between Civil Society and the European Commission*; September 2002, <http://www.iadb.org/int/DRP/ing/Red1/documents/InsaustiMemorandoSociedadCivil09-02eng.pdf>.

<sup>226</sup> [http://www.europa.eu.int/comm/trade/issues/global/csd/dcs\\_proc.htm](http://www.europa.eu.int/comm/trade/issues/global/csd/dcs_proc.htm). Yet it is worth noting that different DG Trade documents state different objectives. See for instance the leaflet Responsive Policy: dialogue with Civil Society, which states the following objectives: “consult widely; address civil society concerns on trade policy; improve EU trade policy-making through structured dialogue; improve transparency”, [http://trade.ec.europa.eu/doclib/docs/2005/june/tradoc\\_113527.pdf](http://trade.ec.europa.eu/doclib/docs/2005/june/tradoc_113527.pdf).

## 5.2 Structure and evolution

The procedures underpinning the Trade Dialogue have evolved over the years that it has been running. Through 1999 a number of essentially ad hoc, but high level, meetings took place while a proper structure was being developed. From 2000, the Trade Dialogue was organised through several types of meeting:

- general Meetings, attended by the Trade Commissioner and so of a more 'political' nature, usually taking place twice a year;
- meetings of 'thematic groups' to hold more technical discussions on particular topics;
- ad hoc meetings on emerging issues not otherwise covered.

The thematic groups ran from June 2000 to November 2001, covering the issues of trade and public health, trade in services, trade and agriculture, environment and sustainable development (June 2000 – January 2001) and investments, WTO reform and transparency, TRIPS and competition (February 2001 – November 2001).

Since 2002, regular meetings have focused almost exclusively on the Doha Development Agenda. In the Commission's own words, the process of dialogue is now that "regular meetings take place in clusters about once every two months, with ad hoc meetings in between if timely and appropriate. (...) The Commissioner for Trade calls general meetings to discuss the state of play at strategic points in the process"<sup>227</sup>. Over time, the Trade Dialogue process has "evolved into a pattern which allows for both formal and informal contacts between civil society and the Commission"<sup>228</sup>.

Participation in the Trade Dialogue is open to any interested group; meetings draw representatives from trade unions, consumers' associations, farmers' associations, business and services associations, as well as NGOs from the development, health, social, and environmental sectors. Since 2002, it has been necessary to register online, providing certain basic organizational information.

In April 2000, a Civil Society Contact Group was established to "function as a facilitator and sounding board for DG Trade. Its task is to contribute to transparency in both directions, and to help with the circulation of information to the wider group of their constituencies"<sup>229</sup>. It was composed of representatives of four groupings: NGOs, consumers' organizations, trade unions and employers' organizations, as well as the European Economic and Social Committee. Contact Group members are selected by their 'constituencies', though some NGOs have concerns with DG Trade's definition of the different constituencies in the first place. In 2002, membership of the Contact Group was extended to other groups and sectors of civil society, including Chambers of Commerce and animal protection NGOs<sup>230</sup>.

## 5.3 The scope of the dialogue process

Discussion in the Trade Dialogue is centred on EU policy towards multilateral trade instruments and decisions. Other branches of the Commission and wider EU either meet regularly with NGOs, examples include the European Community Humanitarian Office and EuropeAid, or seek their input prior to specific events, as with the Civil Society and Private Sector Steering Group set up by DG Environment prior to the World Summit on Sustainable Development in 2002. This generates a concern about gaps in the issues that NGOs are consulted about and a lack of coordination among the different institutions holding some form of dialogue process. NGOs appear to have made a limited gain in demanding that the EU's approach to bilateral trade with developing countries also be considered within the Trade Dialogue. In response to a request in July 2002 of European development and environmental NGOs for "regular and timely dialogue and briefing meetings with DG Trade on the ACP-EC negotiations throughout their duration", this issue was put on the agenda in November 2002 and March 2003. However, that one meeting each year in 2004 and 2005 also addressed ACP-EC negotiations still falls short of the NGO proposal that meetings on these negotiations

<sup>227</sup> [http://www.europa.eu.int/comm/trade/issues/global/csd/dcs\\_proc.htm](http://www.europa.eu.int/comm/trade/issues/global/csd/dcs_proc.htm)

<sup>228</sup> Alhadeff G. and Wilson W., *European Civil Society Coming of Age*, Global Policy Forum, May 2002, <http://www.globalpolicy.org/ngos/int/eu/2002/05civsoc.htm>.

<sup>229</sup> [http://www.europa.eu.int/comm/trade/issues/global/csd/dcs\\_proc.htm](http://www.europa.eu.int/comm/trade/issues/global/csd/dcs_proc.htm)

<sup>230</sup> WWF European Policy Office, *Civil Society and Trade Diplomacy in the "Global Age". The European Case: Trade Policy Dialogue between Civil Society and the European Commission*; September 2002, <http://www.iadb.org/int/DRP/ing/Red1/documents/InsaustiMemorandoSociedadCivil09-02eng.pdf>.

<sup>231</sup> [http://trade-info.cec.eu.int/doclib/docs/2005/april/tradoc\\_122280.doc](http://trade-info.cec.eu.int/doclib/docs/2005/april/tradoc_122280.doc)

“could be organized on a quarterly basis, or in other words during every other bi-monthly session of the current dialogue process”<sup>231</sup>.

Many of the major European development and aid networks have articulated the aspiration for the Commission to “mak[e] the effort to have a coherent Commission-wide approach, formalizing best practice of policy dialogues organized by the different Commission services. This should be structured, with the participation of all Commission services, so that relevant groups from civil society can engage in dialogue with the decision-makers in all policy areas that have an impact on developing countries”<sup>232</sup>. The absence of such a comprehensive approach creates challenges for both the Commission and NGOs. Both are required to make coherent positions and policies out of the outcomes of multiple processes.

NGOs have been frustrated by the tendency for meetings of the Trade Dialogue to “bec[o]me short on dialogue and painfully long on rhetoric. Commission officials conduct the meetings more like briefings than fora for genuine two-way discussion about the fundamentals of EU trade policy”<sup>233</sup>. For a member of the Contact Group, the subjects to be addressed at the meetings are crucial: “if the topic is the latest WTO news, it is obvious it will not be a meaningful dialogue, but if the topic is something for example that the DG is drafting a communication about, or a topic on which there is no process or major attention, then it can be more meaningful”.

## 5.4 Expectations of the dialogue

NGOs’ attitude towards the Trade Dialogue reflects what they are expecting and hoping to get out of it. Some are quite satisfied to benefit from a regular, structured process of hearing the latest Commission activities and policies. It is possible to ask the Commission to hold an ad hoc meeting on a particular issue with a strong chance that they will agree. These groups are quite open that they do not expect to achieve change directly through the Trade Dialogue process. Some, sceptical of the Commission’s motives, see the Trade Dialogue as simply “not an interesting political arena”; rather it is for them a forum for picking up intelligence on the positions and intentions of the Commission and other stakeholders. Others, sharing the view that the direct results of the Trade Dialogue will be minimal, situate its real benefits in terms of longer-term attitudinal change. By meeting regularly with NGOs, the Commission comes to understand them better and its opinion of them has softened.

Other groups are concerned, however, that information sessions risk being passed off as a genuine two-way exchange where the possibility exists that Commission policy could be adapted on the basis of discussions with NGOs. The absence of feedback on NGO input creates, or reinforces, the impression among some NGOs that the Trade Dialogue is a “completely controlled Commission process (...) [it is] not really dialogue, not about listening or understanding”. The motives behind the Trade Dialogue become situated more in terms of managing NGO criticism of Commission policies, amounting to “co-opting an enemy to control its threats”. At the same time, the ability of DG Trade to articulate that it has held how ever many meetings with how ever many stakeholders and that it paid for how ever many of them to travel from outside Brussels risks “boil[ing] down to a quantitative analysis of dialogue”, an exercise in ‘ticking the consultative box’.

Scepticism about the Trade Dialogue process has deepened with the appointment as Trade Commissioner of Peter Mandelson. Even where the dialogue is felt to have always been partly about window-dressing, there is recognition that, under Pascal Lamy, “there was also a genuine point to it and [meetings] did have high level DG Trade attendance”, including Peter Carl, Director-General for DG Trade and Robert Madelin, Head of Unit with responsibility for civil society relations, as well as Pascal Lamy himself. Under Commissioner Mandelson, the quality of the meetings appears to have deteriorated, with debate not going much beyond the restatement of positions available on the DG Trade website. Dissatisfaction with the Trade Dialogue in turn risks creating a vicious circle that NGOs retreat to simply adopting a “posturing attitude”. Whether attributed to the change in Commissioner, a lack of commitment on the side of senior DG Trade officials or a failure for real political will to be invested in the process, many NGOs now feel that the Trade Dialogue has become stale. Adding to the scepticism of some NGOs is the perception that business groups receive “additional access (...) through groups such as the Trans-Atlantic Business Dialogue and the European Services Forum,

<sup>232</sup> The development and aid networks contributing to the paper were the Liaison Committee of NGOs, Solidar, APRODEV, Eurostep, Euronaid, Voice, CIDSE and WIDE, *The Role of Civil Society in the EU’s Development Policy*; <http://www.eurostep.org/pubs/position/ge2160.pdf>.

<sup>233</sup> <http://www.corporateeurope.org/hallofshame/dialogue.html>

<sup>234</sup> Quaker Council on European Affairs briefing paper *How is EU trade policy decided?*, <http://www.quaker.org/qcea/briefings/trade/tradebriefing1.htm>.

which have been credited with heavily influencing the positions adopted”<sup>234</sup>. That business stakeholders also attend the Trade Dialogue gives them the chance to hear NGOs’ positions and then use their privileged access to policy-makers to directly refute NGO arguments.

## 5.5 Conclusion

The focus of NGO concern is less on problems with the Trade Dialogue meetings themselves, which are generally regarded as useful and time-efficient, but more on the purpose and use made of the meetings – by the Commission to say that it has consulted with NGOs despite the process being only one-way and by the Commission and business in gaining intelligence on NGO policies which they can together counter in their own separate discussions. Some NGOs are “satisfied with the structural nature of the consultation procedure, but did not see that [their] concerns were being taken on board by DG Trade”<sup>235</sup>. The meetings offer NGOs information and intelligence. It seems that a certain change in attitude is needed on all sides to reinvigorate the Dialogue. Greater mutual trust would allow for franker and more in-depth discussions. From the side of the Commission there would need to be some intent to add to the existing information provision function of the Dialogue the elements of two-way exchange and openness to policy change. NGOs have a responsibility too: to demand what is within the realms of the possible in terms of the Commission’s own powers and competence. The issue is not that the Commission should agree with what NGOs propose, but that it should invest more in indicating the reasons why NGOs’ arguments are or are not accepted, taken into consideration or reflected while shaping policies and negotiating positions. Exposing and ending the privileged access of business through other channels would itself legitimize the Trade Dialogue process and rebuild NGOs’ belief in the process being valuable.

<sup>235</sup> The view of WWF, Oxfam and CIDSE, as given in Kent K., *EU Trade Policy-Making: What Role for Civil Society?*, Institut Européen des Hautes Etudes Internationales, <http://www.iehei.org/bibliotheque/memoires/KENT.pdf>.



# CHAPTER 5 - THE INVOLVEMENT OF NATIONAL NGOs IN EU-LEVEL DIALOGUE

## 1. Introduction

An important element of this study has been the extent to which national NGOs have been able to participate in dialogue processes related to the five case studies. This has three main dimensions: the extent to which national NGOs have been involved directly in dialogue with the EU institutions related to the case studies, the role that their national government has played in collecting opinions to feed into Brussels and the coordinating and enabling role of European networks towards their national member organizations. Six countries were chosen for particular focus: the Czech Republic, Italy, Latvia, the Netherlands, Poland and the United Kingdom. The set of countries was intended to offer a range of experience in terms of the perceived ‘culture’ of consulting with NGOs, as well as to have a mix of New and Old Member States. Although experience naturally varies across the focus countries, some general points can be made:

### **What enables national NGOs to be involved in EU dialogue processes:**

- ◆ An attitude of respect and willingness to listen to NGOs on the part of their national government. Among old Member States, the informality of consultation processes and occasional hostility towards at least a proportion of NGOs in Italy contrasts markedly with the more respectful and structured engagement that the British and Dutch governments have with NGOs. Among the three new Member States, there is a sense that governments have yet to fully develop the habit of seeking NGOs’ opinions, but that progress is being made in Latvia, to some extent in the Czech Republic and hardly at all in Poland;
- ◆ Information, intelligence and capacity-building in lobbying provided by a European network. For many NGOs, and not just those in New Member States, European networks are the primary source of information about the EU and the actions they prompt are the most likely form of interaction with the EU. European networks offer advice and training, in some cases with the effect that “they help us to create cooperation with our own MEPs”;
- ◆ Obligations or strong signals to consult civil society that come with EU processes, such as the National Action Plans for social inclusion and the structural funds;
- ◆ Personal links to specific individuals, most typically MEPs, but also, for example, Commissioner Spidla in the case of Czech social NGOs, or Guiliano Amato, Vice-President of the European Convention in the case of Italian NGOs;
- ◆ Expertise and direct experience which may be difficult for a national government to itself possess. Across the six focus countries, groups with a direct service provision role and groups with field presence in terms of international development find that this may increase their access to decision-makers, including to discuss EU policy;
- ◆ The immediate resonance of an issue being discussed at EU level for a national NGO. Groups with a narrow focus will engage at any level on their particular issues of concern, an example being the Netherlands Institute for Southern Africa, which clearly divides those issues which it will lobby directly on, and the more general trade and development policies which it is content to leave to European networks of which it is part.

### **What hinders national NGOs from being involved:**

- ◆ Lack of resources, time, money, expertise and information. While all NGOs have finite budgets and a likely dependence on volunteers, financial pressures are most acute in New Member States, especially in Poland where government funding is rare. But a scarcity of information about and expertise in how the EU works places a ceiling on involvement in EU dialogue in old Members States as much as in new Member States. The sense typical in New Member States is of NGOs shying away from institutions and processes that they tend to consider “hard to follow and understand and even harder to influence (...) we are just starting, trying to find [our] best role”. But the perspective of Old Member State NGOs is often strikingly similar: “tapping into the EU is a new world, there is a huge amount of information, so it is hard to identify what is most important (...) we don’t know how significant EU policies are and how they dovetail with national policy”;

- ◆ The complexity and unstructured nature of EU processes. Related very much to the previous point, NGOs' lack of understanding of the importance of the EU and trepidation at engaging with what appears to be a multitude of fora and initiatives inevitably contrasts with the familiarity they have with national level processes, particularly where these are conducted in a more transparent and structured way. One interviewee notably stated that "every institution has a way of behaving, it requires a certain investment to know how an institution works. We find direct engagement very difficult, due to [there being] no formal processes, no follow up (...) consultation is much lower quality than [we are used to]";
- ◆ The lack of visibility of the Commission delegations in Member States. It was stated that, "The [Commission delegations] are very hard to get hold of (...) we do not have a good cooperation, there is no fixed process of consultation. (...) Perhaps they need to find a new role";
- ◆ The lack of relevance of the European Economic and Social Committee: one interviewee stated that, "We are going to withdraw, since it does not serve to promote NGO views" (...) "we cannot say it is giving a lot for our work".

## **2. The experience of NGOs in the Czech Republic**

Czech NGOs have little direct engagement with European policy processes. While this may simply reflect that "NGOs are quite apprehensive about the EU, have not thought about EU-level work [and it] will take some years for NGOs to 'Europeanise'", it is nonetheless also possible to understand the strategic rationale behind the relative non-engagement of Czech NGOs with the EU. Czech NGOs have both more immediate objectives within the Czech Republic and also European partners and networks to provide information and coordinate their involvement in European campaigns.

### **2.1 Involvement in dialogue relating to the case studies**

Czech NGOs are happy to let other partners engage directly in the Trade Civil Society Dialogue. There has been no engagement with, and apparently little awareness of, the Services Directive. Attitudes to the OMC on social inclusion mirror those of European NGOs. The Joint Memorandum on Social Inclusion which laid the foundations for the Czech Republic's participation in the OMC had recognised that "non-profit non-governmental organisations play an important role in the provision of social services. (...) The activities of NGOs are more and more significant in the area of social inclusion"<sup>236</sup>. For most NGOs, there is a sense that the OMC is a "very useful tool" with an openness to NGOs' involvement reflecting their expertise and shared interest with the government. Other NGOs, while recognising that the OMC allows for useful exchange with the government, feel that the National Action Plan is not accorded much political importance and that other processes matter more. For one NGO involved in planning the 2004-6, it was a case of "once done, just put it to one side, there is little benefit in saying 'it's in the NAP' when lobbying".

In terms of the European Convention, some NGOs did have a limited engagement with Czech Convention members, usually at the request of European NGO partners, who also had the role of providing updates on the evolving constitutional debate. But the more prevalent attitude towards the Constitutional Treaty is that it "seems to me so far from real life of people in CR" and that it was not something that would have a direct impact on their constituencies. There was no proper campaign to explain the Constitutional Treaty, either from the Commission or from the Czech government; the latter, a coalition, did not itself have a united position. A 'mini-convention' organized by the Czech government and public hearings organized by the upper chamber of Parliament saw the participation only of a limited number of NGOs. The events seemed more suited to think-tanks and "NGOs did not feel pressure to get involved [and] did not feel negative consequences of not doing so". A public debate organized in response to the Dutch and French 'no' votes does not appear to have addressed the problem of the gap between government communications about Europe and its citizens, in that it was pitched at "political leaders and opinion makers"<sup>237</sup>. Information is available to the public and NGOs through 'Eurocentres' and other media initiatives, but few are actively seeking this information out. The Constitutional Treaty, now stalled, seems simply too broad an issue for Czech NGOs to engage with.

<sup>236</sup> Czech Ministry of Labour and Social Affairs and DG Employment and Social Affairs "Joint Memorandum on Social Inclusion", 18 December 2003, [http://europa.eu.int/comm/employment\\_social/soc-prot/soc-incl/cz\\_jim\\_en.pdf](http://europa.eu.int/comm/employment_social/soc-prot/soc-incl/cz_jim_en.pdf).

<sup>237</sup> Czech government contribution to the "Interim report on the national debates during the reflection period on the future of Europe", 12 December 2005.

## 2.2 The role of the Czech government

The coalition nature of the Czech government makes it “hard to [for NGOs] see any unity of opinion”. Representatives of different parties in the coalition head up different ministries and NGOs’ sense that their views are being taken into account varies accordingly. Elections in June 2006 also mean that differences of opinion within the coalition about the Constitutional Treaty come more to the fore and likely hinder attempts to ‘communicate Europe’.

More structurally, consulting with NGOs is felt to be “still not in the culture”, as one interviewee stressed. The prevailing attitude of the government, albeit one which is gradually softening, is that it “does not like to open debate to public opinion and believes people should trust [it]”. Another dimension to this may be the dependence of the vast majority of NGOs on government funding. This can create the impression among elements within the government that NGOs “are not real partners, since they do not have the resources to be independent and therefore to be useful in making decisions”.

However, NGOs do feel that there has been a shift in the attitude of the Czech government towards greater respect for them. This is most immediately detected where the government has a certain dependence on NGOs with expertise and direct experience, whether of service delivery or of implementing development projects. Having goals that are relatively in common also helps to bring NGOs and the government closer.

The government has established a Government Council for Non-state Non-Profit Organizations (GCNGO). Initially established as a Council for Foundations in 1992, the GCNGO took on its current name and broader functions in 1998. These are essentially procedural and financial including the rules that NGOs must follow and the sources of funding that they might tap into. In 2002, the GCNGO set up a Committee for Co-operation with the EU, with the aim of “gather[ing] information on the status of NGOs in the EU, on the process of integration into the EU in the area of NGOs and on related financial sources. It co-operates with central state administration authorities responsible for the administration of financial sources of the EU in the [Czech Republic]. Its task is to propose measures supporting the utilisation of these financial sources by NGOs”<sup>238</sup>. Both the GCNGO and the Europe Committee are composed jointly of government officials and NGO representatives. Reflecting the relatively limited remit of the GCNGO and the Committee, NGOs follow their discussions and decisions in order to keep abreast of the latest procedures, but concentrate their energies on other, more specific government-NGO fora, including the Council for Human Rights, the Council for Handicapped People, the soon-to-be-established Council for Seniors and the Council for the Development of NGOs in the Social Field. NGOs see these Councils more as a source of information and contacts to use in informal lobbying than a direct lobbying opportunity themselves, since they are “not a strong voice” and “have little power”.

## 2.3 Czech platforms and the role of European NGO networks

Most significantly in terms of civil dialogue, however, three NGO members of the GCNGO – Green Circle, the Centre for Community Organising and the Nadace Rozvoje Občanské Společnosti (NROS, Foundation for the Development of Civil Society) – have developed principles for consultation between NGOs and the government, drawing on, and adapting to the national setting, various elements of the General principles and Minimum Standards for Consultation by the Commission and the Aarhus Convention. At the time of the interviews, the NGOs hoped that these principles would be adopted before the June 2006 national elections and that they would provide a framework for more systematic consultation.

The NROS is an important source of information and funding for NGOs. From 1993, the NROS had the function of administering the Civil Society Development Programme under the EU’s PHARE programme. Although many of the grants dispersed were for service delivery, “the basic aim was not only to support specific publicly beneficial projects in the given spheres, but above all to reinforce and develop the non-profit sector in the Czech Republic”<sup>239</sup>. The NROS runs a website ([www.ngo-eu.cz](http://www.ngo-eu.cz)) designed to provide Czech NGOs with information about EU policy developments and funding opportunities.

The development of Czech NGO platforms has come in two main bursts – in the late 1990s as the government sought to rationalise which groups it talked to and funded, and in 2003-4 in the run-up to EU accession.

European networks play a vital role to support and enable the participation of Czech NGOs in EU processes.

<sup>238</sup> <http://wtd.vlada.cz/scripts/detail.php?id=3948>

<sup>239</sup> <http://www.nros.cz/>

These networks filter and convert the morass of EU documents into concise summaries, which often form the primary source of information on the EU for Czech NGOs. As well as this advisory function, some networks coordinate lobbying towards the Czech government or Czech MEPs at key moments to complement efforts in other capitals and in Brussels. European NGO networks are typically felt to have “undoubtedly a key intermediary role”. The initiative of FEANTSA to invite Czech government officials to a meeting in Budapest, on ‘neutral territory’ and away from the pressures of one-to-one meetings, was critical to making those officials “able to better see the value of [the national homeless platform Sdružení Azylových Dom]’s work”. Czech NGOs are of course themselves stakeholders in European networks, but feel that, in comparison, NGOs in old Member States are “further ahead, more confident”. In consequence, most Czech NGOs relate to European networks as recipients of information and as participants in centrally coordinated campaigning activities and seem only rarely to seek to actively shape their networks’ positions.

## 2.4 Conclusion

Although there is an element of Czech NGOs separating too much national from European issues and missing some of the linkages between them, it is still an entirely rational division of labour for Czech NGOs to concentrate on seeking to influence Czech government policy and practice and for their European network partners to take up similar issues with the European institutions. Although relations with the Czech government are moving in the right direction, further attitudinal change is needed to normalise the idea of consulting with NGOs so that “all sides learn that there are no walls between us”. More structured consultation is needed around key policy and legislative proposals, “the most important thing [the Czech government] can do is set up real professional consultation”. Where European proposals, such as the Services Directive, would so deeply affect the national environment, these too should be the focus of serious national level dialogue.

## 3. The experience of NGOs in Italy

NGOs in Italy rely overwhelmingly on informal contacts as the basis of their national advocacy work and on European NGO networks for their engagement with EU policy processes. Europe was absent from the long campaign which preceded the elections of April 2006. The disinterest of the government of Silvio Berlusconi in consulting with NGOs is reflective of the worst of a culture of avoiding formal contact with NGOs outside of a small number of privileged groups. For Italian NGOs, Europe seems to exist mostly as a set of policies and standards which they can seek to employ in pressing for action at the national level. NGOs are relatively resource-poor and on that basis have to choose to focus on national policy.

An important exception is the environmental group, Legambiente. Since 1999 it has operated an office in Brussels, responding to the shifting of competence on transport and other environmental issues from the national to the EU level. Legambiente is a large, well-resourced organization, with thousands of local activists in Italy. Its approach is concentrated on maintaining close ties with Italian MEPs and influencing the positions that the Italian government takes at Council meetings. Pressure at the national level and lobbying in Brussels complement each other. Engagement with the Commission is limited to information gathering.

### 3.1 Involvement in dialogue relating to the case studies

The Italian National Action Plan on social inclusion appears to have been written by the government with little if any consultation with NGOs. Reflecting the considerable devolution of responsibility for social service provision to local authorities, NGOs have engaged instead at this level. While for most NGOs this is a matter of developing cooperative relationships with local officials for the planning and delivery of services, the Italian Anti-Poverty Network (CILAP) has gone further in explicitly trying to connect what is happening on the ground to the goals and methods of the OMC, in effect reasserting a European dimension.

Where relevant to their organizations, Italian NGOs have followed from a distance the Trade Civil Society Dialogue and the Corporate Social Responsibility Multi-Stakeholder Forum. Some made interventions in debates around the Services Directive, mostly geared towards Italian MEPs, in support of lobbying efforts coordinated by Brussels-based partners. Hostile to, and not consulted on, the Directive, trade unions, ATTAC Italia and other groups led a strong and public campaign against the Directive in Italy, often with the support of local authorities<sup>240</sup>. Legambiente’s focus on the Council and MEPs for influencing the Services Directive

reflected its overall approach to advocacy and was not driven by the lack of organised consultation from DG Internal Market.

Italian NGOs' engagement with the European Convention was limited and usually in response to either initiatives of Giuliano Amato, Vice-President of the Convention, or demands of their European NGO counterparts to lobby around particular amendments. Member States' discussions of the Constitutional Treaty during the Italian Presidency of the European Council were also the occasion of NGOs' attempts to put forward their perspectives. But NGOs struggled to see the importance of a process which was reduced in the eyes of the media and the public to the controversy about references to Europe's 'Christian roots'. An Observatory on European Citizenship has attempted to raise awareness of the Constitutional Treaty both during the Convention and since. Likewise, since the French and Dutch 'no' votes, the Commission delegation in Italy has organised meetings on governance and European citizenship. Nevertheless, NGOs' assessment is that it remains the case that "the [Italian] people don't really know about Europe (...) this government [i.e. that of Silvio Berlusconi] has done nothing to help people develop a European consciousness".

### 3.2 The role of the Italian government

NGOs participate in a number of government consultative committees, such as the Committee on Public Transport and the Associazioni di Promozione Sociale, but in general do not consider these a success. The heart of the problem about NGOs' lack of dialogue on national or European policy identified by one respondent is that "the government is not interested to have the opinions of civil society. The government makes positions independent of our position". Part of this seems to reflect that state agencies and the church take on more of the functions that in other countries are devolved to NGOs. Primarily though, it comes down to there being no habit or culture of consultation with NGOs. Decisions are influenced and taken following informal contacts. Personal ties are an important aspect of this: "this is Italy, everything goes through personal relationships". Over time, links between government ministries and certain organizations become cemented and these well-established groups are consulted even on issues that they are not specialist on. While groups which never had close ties to the government say that they essentially gave up on lobbying the Berlusconi administration, even NGOs which traditionally work closely with the government were marginalized: "under Berlusconi, not even Caritas is consulted". Outside of groups with which its officials have links, the Berlusconi government did also seem to consult with large organizations to pre-empt opposition and the mobilisation of their popular base. Interaction between NGOs and the new government coming into power in May 2006 is felt to continue to be organised through mostly informal channels, but with the difference that the new government is more likely to be receptive to NGOs' input.

### 3.3 Italian NGO platforms and the role of European NGO networks

A Forum of the Third Sector (Forum del Terzo Settore) with more than 60 member organizations drawn from three main groupings – national volunteer organizations, not-for-profit organizations providing social services and social cooperatives – works to raise the profile of NGOs and to improve the environment in which they operate. The Forum did receive official recognition and a status comparable to trade unions and employers' associations in becoming part of budget negotiations<sup>241</sup>. But the Forum too has suffered under the Berlusconi government: ignored, it is reported to have in effect been left to fight among itself.

Italian NGOs have a close and complementary role with European networks of which they are members. Representatives of Italian NGOs seem to be visible and active in the Boards of European networks.

### 3.4 Conclusion

The political culture in Italy stresses informal contacts above structured consultations. That NGOs have adapted to this culture – and will themselves sometimes benefit from it – does not contradict the fact that they would like the government to engage them more openly on major policies be they national or European. EU standards and precedents of civil dialogue are useful to Italian NGOs in making such demands. A structure of regular meetings and consultation on major policy initiatives – with

<sup>240</sup> See, for example, the description of opposition to the Services Directive described by the European Federation of Public Services Unions, [www.epsu.org/a/1466](http://www.epsu.org/a/1466).

<sup>241</sup> Servizio Civile, "Italian Third Sector: History and Overview", [www.arciserviziocivile.it/download/card2.pdf](http://www.arciserviziocivile.it/download/card2.pdf).

the scope of such consultation clearly defined – would complement informal lobbying. It remains to be seen when the dust has settled from an election campaign that “has meant nothing has been normal for the last year” whether there is any substantial change in the attitude and practice of the government. A re-energised Forum of the Third Sector can and should take the lead in pushing for a closer and more open interaction between NGOs and government.

## 4. The experience of NGOs in Latvia

Latvian NGOs generally lack the information and resources necessary to engage in EU policy processes in any great depth. However, relationships with the Latvian government are proceeding in a generally positive direction, while a well-organised national NGO platform and their links with European networks mean that Latvian NGOs do not feel the distance to Europe as acutely as their counterparts in other New Member States.

### 4.1 Involvement in dialogue relating to the case studies

The Latvian Parliament ratified the Constitutional Treaty in June 2005. Prior to this decision, the government had run an information campaign, but this captured the attention neither of NGOs nor the public, reflecting both the Constitutional Treaty’s technical nature and the government’s chosen method of ratifying it. Trade unions were consulted by the Ministry of Welfare on the Services Directive, but the government’s position – in favour of the Directive – was dictated more by the Ministry of Economics. NGOs are involved in the National Action Plans for Social Inclusion, but sense a reduction in the quality of consultation and of the Plans themselves since the process was first started. NGOs’ assessment that “the Latvian NAP inclusion is a good programme, but contains no practical measures”<sup>242</sup> leads them to focus more on other processes.

### 4.2 The role of the Latvian government

Although experience varies depending on the specific ministries towards which they focus their energies, the impression that NGOs hold of their government is generally a positive one. The sense of one respondent is that the government “has finally accepted the existence of NGOs” and that the relationship between NGOs and the government is going in the right direction. A Declaration of the Cabinet of Ministers signed on 1 December 2004 to mark a new term of office and reflecting also recent membership of both NATO and the EU indicated a commitment to “improvement of legal basis for promoting trust in policy decisions. More intense consultations with NGO’s in developing legislative acts. Introduction of the requirement to provide justification in annotations of draft acts, if there have been no consultations with NGO’s during its development”<sup>243</sup>. The Council of Ministers also defines the roles of NGOs in the four stages of policy-making: agenda-setting, policy creation, decision-making and implementation.

Seeking to further cement these commitments, NGOs drafted and negotiated with the government a Cooperation Memorandum between Non-governmental Organizations and the Cabinet of Ministers. According to the Cabinet of Ministers itself “[t]he current wording includes proposals of NGOs, as well as suggestions and editorial changes by the State Chancellery. During the preparation of the text, more than 40 organizations expressed their opinion and submitted proposals. The Memorandum was signed on June 15, 2005 by the authorized representative of the Government, Prime Minister Aigars Kalvitis, and representatives of 57 NGOs”<sup>244</sup>. The Memorandum’s objective is “to facilitate operation of an efficient public administration system that meets the interests of the society by ensuring involvement of civil society in the decision-making process at all levels and stages in public administration, thus promoting development of the basic element of a democratic country – civil society”<sup>245</sup>. On the part of the Cabinet of Ministers, there is a commitment to “support the involvement of non-governmental organizations and their cooperation networks in policy making in the framework of respective programmes and cooperation agreements”, while for their part, NGOs are supposed to “undertake to promote effective exchange of opinions among non-governmental organizations and ensure constructive cooperation between non-governmental organizations, the society, and the

<sup>242</sup> European Anti-Poverty Network, *Back to the Future? The Implementation Reports on the National Action Plans on Social Inclusion – an EAPN Assessment*, October 2005.

<sup>243</sup> <http://www.mk.gov.lv/index.php/en/?id=1243>

<sup>244</sup> <http://www.mk.gov.lv/index.php/en/?id=1693>

<sup>245</sup> <http://www.mk.gov.lv/index.php/en/?id=1693>

Cabinet". This is an implicit call from the government for the process of consultation to be rationalised and concentrated in the hands of a few representative groups or platforms.

The Memorandum is itself only declaratory, offering a framework that needs to be matched by further attitudinal change, which would affect some ministries more than others. Under the Memorandum, NGOs' and government representatives are meant to "at least twice a year jointly assess the course of implementation of the Memorandum and discuss issues concerning further promotion of cooperation". The onus will be on these meetings to act as a mechanism by which NGOs try to ensure that the Memorandum lives in reality as well as on paper.

NGOs appear to have open and structured relationships with several ministries. The Ministry of Environment held annual meetings with civil society, at which the idea of a more regular exchange was discussed and agreed, resulting in the establishment of an Environmental Advisory Council (EAC) in 2003. Composed of representatives of NGOs and professional associations, notably employing a broad definition of civil society that includes business, the EAC has the role "to promote public participation in environmental decision-making and informing the public on environmental issues"<sup>246</sup>. Although it serves mostly the purpose of exchanging information as the proposals that it submits for amendments to tabled legislation are not binding, the EAC is reflective of an attitude of openness and green NGOs have constant meetings with the Ministry. Similarly, the Ministry of Foreign Affairs is judged to be open to the input of NGOs, through informal and formal channels. It has established a Development Cooperation Advisory Board and seeks NGOs' comments on policy proposals.

On 30 March 2006, the Latvian Parliament also signed a Declaration on Developing a Civil Society in Latvia and Cooperating with non-governmental organizations whose stated goal is to "ensure, on the basis of mutual understanding and support, the development of a civil society in Latvia, to improve the cooperation between the Saeima and NGOs and to emphasize the important function of NGOs in a democratic state". Under the Declaration, the Parliament proposes to involve NGOs' representatives in the work of Parliamentary Committees and for annual meetings to review progress in the relationship.

If the Memorandum and these other positive examples are signs that 'the ice is breaking up', there is still further to go in terms of instilling a tradition of fruitful cooperation in other ministries, with examples cited including in particular the Ministries of Health and of Children and Family Affairs.

Since 2004, a Bureau of European Affairs within the Ministry of Foreign Affairs has been tasked to develop a 'Latvia in the European Union' strategy. Seminars and debates have been held across the country, citizens invited to complete an internet survey and meetings held with key organizations, including the main NGO Platform, Latvijas Pilsoniskā Alianse (Latvian Civic Alliance). A draft strategy developed on the basis of these consultations is to be circulated for further debate, alongside a specific Communication strategy given new impetus by the Commission's papers on Plan-D and Communicating Europe<sup>247</sup>.

Although these initiatives go some way to filling Latvian NGOs' information gap about Europe, there are other aspects to enabling their fuller participation in EU-level policy processes. As stressed by the Latvian Civic Alliance in its meeting with the Ministry of Foreign Affairs, the administrative base from which NGOs operate needs to be strengthened, in terms of funding and skills and expertise and in terms of structures for sharing experience and working together.

### 4.3 Latvian platforms and the role of European NGO networks

The Latvian Civic Alliance, founded in 2004, is the main NGO platform. As well as playing the leading role in lobbying for greater respect for NGOs from the government, including in the discussions that resulted in the Memorandum, the Latvian Civic Alliance circulates information about general EU debates that NGOs with more specific remits do not have the capacity to cover. Other sector-specific platforms have been established, including for Development NGOs. This group well illustrates the close and mutually beneficial relationships that have evolved. Notably, it is happy to let the Latvian Civic Alliance engage for them on general EU issues (especially funding) and on the national framework for cooperation with government; likewise, it works closely with the European platform, Concord, which coordinates its lobbying towards the EU, including by providing campaign materials and advice.

<sup>246</sup> <http://www.varam.gov.lv/vide/KONV/Eorhusa.htm>

<sup>247</sup> <http://www.mfa.gov.lv/en/news/press-releases/2005/november/23-2/>

## 4.4 Conclusion

Latvian NGOs may not yet have a huge involvement in EU policy processes, but an environment is being created where this becomes more possible. The progressive attitude towards them shown by some parts of the government needs to be embedded across all ministries. The financial capacity and organizational structures of NGOs in Latvia need to continue to develop so that the choices about whether and when to participate in EU processes can become easier.

## 5. The Experience of NGOs in the Netherlands

Dutch NGOs benefit from inclusion in a polder model of decision-making by negotiation and consensus. Civil society is well-entrenched, the government is open to its views and relies on it for significant aspects of service provision. But the ‘no’ vote in the referendum exposed the gap between the government’s close ties with NGOs at national level and its understanding of citizens’ views of Europe. NGOs’ ability to speak for citizens at national level is imperfect and this is even more the case on European issues, where NGOs have interacted with the EU only for specific reasons and at specific moments.

### 5.1 Involvement in dialogue relating to the case studies

While some Dutch NGOs did engage with the European Convention as part of centrally coordinated lobbying efforts, others struggled to see its importance. Those later directly involved in campaigning for a ‘no’ vote question its legitimacy. One interviewee stated that “Those involved in drafting of the Convention should have an explicit mandate to develop a Constitutional Treaty and be democratically accountable for what they do; this was not the case. It was a top down process”. But among NGOs, this tends to be a minority view as they most simply were not interested enough to be upset by any perceived lack of involvement. Many may indeed have shared the government’s assumption that the Constitutional Treaty would be accepted. Views vary as to how much the government’s misreading of public opinion reflected complacency, divisions within the ruling coalition, or a peculiar, but in some ways admirable, decision not to initiate debate in order to itself remain neutral and not to influence the process. Whatever the precise reasons behind the government’s thinking, the effect for respondents was that “people have no understanding of the EU and there was no attempt to address this”, “everyone working on [the Constitution] felt it was so clear, [they] could not understand how others could not think the same. The referendum was almost pitched as a rhetorical question - say yes or you just don’t understand”.

After the rejection of the Constitutional Treaty, NGOs sense that the government is paralysed, but that their own relationships with it are unaffected since they themselves had little role in articulating concerns about the Constitutional Treaty or the process behind it. The government’s efforts to engage citizens focus on a website where citizens are invited to tell the government what they want from Europe and on an intent to strengthen the partnership between the EU institutions and the Dutch parliament<sup>248</sup>.

As with the European Convention, neither the Dutch government nor Dutch NGOs seem to have ascribed much importance to the Services Directive. The government perhaps judged that its services sector was already pretty liberalised and that the relative effects of the Directive would be less in the Netherlands. Among NGOs, the Nederlands Instituut voor Zorg en Welzijn (NIZW, Netherlands Institute for Care and Welfare) did choose to follow the Green Paper on Services of General Interest and tried to flag its importance to other NGOs, but report that “it was hard for other organizations to imagine it as relevant, hard to make them understand what it was about”. The Services Directive in turn appeared even more distant and obtuse and NGOs were likely to engage only in limited activities under the prompting of European networks.

NGOs feel that their involvement in National Action Plans on social inclusion has been inadequate and that the NAPs themselves are of limited utility. Their experience of being consulted on the draft NAPs is that this has always been a rushed process, lying behind which is the attitude of the government that the NAP is an obligation it can get around by rehashing existing plans. One interviewee stated that “The government thinks it can achieve the goals by doing what it was doing anyway. No one knows about it, so no one can criticise [the government] for failing”. Implicit in the criticism of one NGO that the NAP is “barely existent” in the Netherlands and that “it

<sup>248</sup> Dutch government contribution to the “Interim report on the national debates during the reflection period on the future of Europe”, Council of the European Union, 12 December 2005.



is a well-kept secret” particularly at local level is a desire to see the NAP taken more seriously. For other NGOs, the NAP is always likely to be “more an obstacle than an encouragement to an active anti-poverty policy” on the grounds that quantitative comparisons with other Member States are not so helpful. Issues of poverty in the Netherlands are felt to be less about numbers and more about the isolation of those concerned and solutions demand more of a qualitative analysis than the NAP offers.

Dutch NGO representatives have attended both the CSR Forum and the DG Trade Dialogue with Civil Society, the former most often on behalf of European networks rather than in their own right. For one NGO, the Trade Civil Society Dialogue is felt to be only rarely a source of interesting information and the inclusion of business as symptomatic of too broad a definition of civil society.

## 5.2 The role of the Dutch government

The polder model works on the basis of a process of negotiation implicit to which is the assumption “that you will take responsibility and reach agreement because you were consulted”. NGOs are often included in these negotiations and their impression of the attitude of the government towards them is largely positive. This way of working puts a certain emphasis on NGOs’ own judgment about whether and when to stick to their positions or to agree to a consensus. In this regard it was stated that, “Dutch NGOs tend not to think through the process that well (...) [it is a] national habit to start compromising”.

NGOs identify two problems relating to the system of consultation that they have with the government. Firstly, it was pointed out that there can be insufficient structure to the negotiations which they join, as “there is an input, but not a clear structure, no feedback, no obligation to say what is done with the input - this is the key problem”. The second problem is that there seem to be blind-spots in the government’s view of NGOs and the issues which it should discuss with them. Consultation proceeds on some issues and at some levels only. A particular concern is the perceived exclusion of NGOs from national-level discussions on social issues. Here the tripartite Sociaal Economische Raad (SER, Social and Economic Committee) is the predominant locus of debate. In contrast, important consultations on social issues and social services happen at local level and on many other policy areas, such as international development, at national level.

## 5.3 Dutch platforms and the role of European NGO networks

There is no overarching NGO platform in the Netherlands dealing with, and lobbying on, cross-sectoral issues. Twenty NGOs have formed themselves into *De Nieuwe Dialoog* (New Dialogue) a loose structure aimed at joint campaigning on issues of social and international development policy. Together with the coalition *Keer het Tij* (Turn the Tide), which defends supposed Dutch multiculturalism and solidarity against what it sees as the government’s anti-social asylum seeker policy – and *De Sociale Alliantie*, an alliance of around fifty social welfare organizations, it took a lead in setting up the *Nederlands Sociaal Forum*, modelled on the World Social Forum of several years standing.

Despite their often considerable resources, Dutch NGOs do not have the capacity to follow general EU-level debates. The division of tasks that they have with European networks is of mutual benefit.

## 5.4 Conclusion

The Dutch government retains a high level of respect for NGOs and involves them in many policy-making processes. Despite this, there is room for improvement in terms of timescales allotted to consultations and the feedback given afterwards. The Netherlands would have benefited from the EU-level endorsement of the value of consulting with NGOs in article 47 of the Constitutional Treaty, in that these could have been used to lobby for refinements to how consultations are run at national level.

## 6. The experience of NGOs in Poland

Polish NGOs operate in a difficult environment of limited resources and where they feel that their government “has no habit or tradition of working with NGOs”. In general terms, funding is available only for service provision, not for advocacy. Few Polish NGOs have policy officers and are mostly volunteer-dependent. Even when the Polish government seeks the views of NGOs, they can struggle to be able to afford to participate. A relative lack of interest in EU-level policy is “a capacity and priority issue”, but one where capacity is measured not just in terms of funds, but of information to be able to assess the relative importance of EU processes. NGOs are usually relatively recently established and lack resources and some feel that “since we have existed there have been changes all the time in the government, in policy (...) we have so much to do, so I guess we concentrate on national issues, [but we do] try to use EU standards in lobbying our own government”. Polish NGOs have themselves organised to try to address this situation, but neither the EU nor the Polish government have done much to assist them.

One NGO more oriented towards the EU (and one relevant to another of the other focus countries, the Czech Republic) is CEE Bankwatch, a network of social and environmental groups from 11 Central and Eastern European Countries, including six New Member States and the candidate countries Bulgaria and Romania. CEE Bankwatch campaigns “to prevent the environmentally and socially harmful impacts of international development finance, and to promote alternative solutions and public participation”<sup>249</sup>; the EU is one of the institutions that CEE Bankwatch focuses on, particularly in terms of its Structural and Cohesion Funds. Together with Friends of the Earth, the Worldwide Fund for Nature and Birdlife International, CEE Bankwatch established the Coalition on EU Funds to try to influence the process and especially the purpose behind EU funds to New Member States and underdeveloped regions. With its own representative in Brussels, CEE Bankwatch is able to directly lobby the Commission and to engage in consultation processes without needing to go through a network. As a sign of its connection to Brussels networks, CEE Bankwatch joined the main environmental NGOs’ grouping, which thereby became the Green 10, in June 2005.

### 6.1 Involvement in dialogue relating to the case studies

Of the case studies, it is only in the development of National Action Plans (NAPs) under the open method of coordination that Polish NGOs have had any substantial role. NGOs value their engagement in the development of the NAPs as an advance on their level of involvement in other policy processes. It was stated that, “for the first time in Poland NGOs could participate. (...) There were many meetings, openness and every representative could participate. All the participants have had their input”. NGOs feel that they have been able to have a “very active participation in the National Action Plan” and achieved successes in terms of the priority accorded their particular issue. However, NGOs share the concerns of European networks about the level of political will behind the NAP and about a certain lack of coordination between, or integration of, a multitude of initiatives on social exclusion.

There was no process of consultation on the Services Directive, though there was some media attention when the ‘Polish plumber’ became the symbolic focus of opposition to it.

The European Constitutional Treaty has not been a priority either for NGOs or for the Polish government. NGOs which did attempt to engage with Polish Convention members either on their own initiative or following a request from their European partners are the exception. The Office of the Committee for European Integration (OCEI), tasked since 1996 to prepare Poland for accession and since 2004 having as one of its goals to “inform the public about the implications of EU membership”<sup>250</sup> did offer grants to NGOs for awareness work relating to the Constitutional Treaty, but as one respondent put it, “one grant competition does not make such a difference”. The funding stream was reoriented after the Dutch and French ‘no’ votes. The OCEI has more recently established an interactive website where “citizens can express their opinions on drafts of legal solutions debated in the European Institutions”<sup>251</sup>, but this has yet to win the engagement of NGOs, let alone citizens. If the Constitutional Treaty itself never resonated in Poland, it remains the case that NGOs feel that “there is nobody in Poland that will take care of the gap between EU policy and Polish citizens. (...) If there is anyone responsible for explaining Europe, getting closer to citizens, it is the last thing on their list”.

<sup>249</sup> <http://www.bankwatch.org/about/>

<sup>250</sup> <http://www2.ukie.gov.pl/WWW/en.nsf/0/FD3E837173275164C1256E8300256BE9>

<sup>251</sup> Polish government contribution to the “Interim report on the national debates during the reflection period on the future of Europe”, Council of the European Union, 12 December 2005.

## 6.2 The role of the Polish government

While some members of the government are openly hostile to NGOs, accusing them of promoting “pacifism, ecological and anti-war sloganeering [which] carr[ies] harmful educational content”<sup>252</sup>, NGOs’ predominant perception is to see the government’s failure to engage in dialogue as reflecting more the lack of any habit or tradition of working with NGOs. There is “no consultation culture and the few people [within the government] that do understand [the need to consult] lack the power to introduce cultural change”. In a context of NGOs being generally reliant on project-based funding which offers little scope for core tasks such as policy and advocacy work, invitations to comment on proposals with very little notice are extremely unhelpful. One interviewee stated that “It often happens that they send us 300 pages of EU proposals and say ‘send us comments’ (...) it’s impossible, we don’t have the staff, these are phoney consultations”.

A Law on Public Benefit Activities and Volunteerism passed in 2004 does define the basis for cooperation and partnership between NGOs and the authorities. A Council on Public Benefit Activities, consisting of 5 members of the central administration, 5 representatives of local government authorities and 10 representatives of NGOs, has the function of reviewing the implementation of this law. Its tasks are essentially procedural, though it does provide an opportunity for NGOs to raise concerns about the law and related issues to do with funding. The remit of the Council on Public Benefit Activities is similar to the Governmental Council for Non-state, Non-profit Organizations set up in the Czech Republic. In contrast to the Czech Republic though, there are not the same set of committees looking at specific issues (disability, human rights etc) which offer NGOs a regular forum of focused interaction with the government.

Another contrast with the Czech Republic lies in the funding of NGOs. In Poland, government funding for NGOs is generally for specific projects only. The lack of core funding – at one NGO, staff have to queue to use phones or computers – places a ceiling on the range and amount of activities that NGOs can engage in. NGOs rely instead upon funding from the EU and also from US foundations such as the Polish American Freedom Foundation. Government funding for capacity-building and awareness-raising is limited and often poorly managed. A Civic Initiatives Fund was established in 2005 with goals including to “support cooperation between NGO and public sectors, provid[e] financial support to NGO activities to enable the use of the EU funds and support comprehensive endeavours in the area of civic initiatives, demanding integrated forms of NGO activities”<sup>253</sup>. However, although useful, the total sums available feel to NGOs like “a drop in a sea of needs” in terms of the institutional development of NGOs in Poland. The process of seeking and then assessing applications for the Civic Initiatives is considered “a mess as the government did not know what it was for and projects were awarded by accident”. This matches the assessment of a Ministry of Foreign Affairs grant programme, which was perceived to have been “poorly conducted, an organizational mess with no strategic thinking behind it”, suggesting that this is a structural symptom of the government’s incapacity to engage with NGOs.

Only for the planning of National Development Plans for the implementation of EU Structural Funds is there an obligation on the Polish government to consult with NGOs. Although an earlier consultation process under the then-Deputy Prime Minister Jerzy Hausner involved an “unprecedented series of meetings with NGOs and local government”, the new government elected in September 2005 seems not to be inclined to use the findings of a process devised by its predecessor. The obligation to consult on the National Development Plan has not yet converted into a serious process. It was stated that “The government knows that it has to consult on the NDP, but treats it as a purely formal responsibility (...) nothing is taken out of it”.

## 6.3 Polish NGO platforms and the role of European NGO networks

Polish NGOs rely heavily on information provided by European networks and engage with EU institutions most frequently in response to requests for action from these networks. Polish NGOs do not sense that they are necessarily an equal stakeholder in European networks – new Member States’ representatives are “not active, only listening on the side”. Some NGOs, generally those with fewer resource constraints, are moving beyond this purely reactive participation in EU advocacy. Amnesty International Poland has a designated (though volunteer-based) EU lobby team and takes on a lobbying training responsibility towards Amnesty International branches in other new Member States.

<sup>252</sup> Letter by Zieliński J., Deputy Minister of Education, sent out to education supervisors, warning against inviting certain NGOs to schools, reported in the Warsaw Voice, 5 April 2006, <http://www.warsawvoice.pl/view/11044>.

<sup>253</sup> Polish Department of Public Benefit, <http://www.pozYTEK.gov.pl/What,is,FIO,581.html>.

Between 2001 and 2005, the Forum for Non-government Initiatives (FIP) operated a Polish NGOs office in Brussels with the function of “gathering and providing NGOs with the important information on European issues and bringing third sector’s interests into national and European administration”<sup>254</sup>. Around 30 NGOs were fee-paying partners in the office, though the communication of information between Brussels and Poland was not limited only to the partners. Most NGOs, whether they were a direct stakeholder in the office or not, look upon the experience as having been interesting and reasonably useful. The information circulated by the Office was general in nature and once NGOs had made contact with direct EU counterparts, they would rapidly move to concentrate on these contacts, which could offer more in the way of specific information and advice. NGOs in Brussels have a similar perception – that the Polish NGOs office helped them in the first instance establish contacts with Polish groups, which they then pursued directly. The FIP continues its work from Warsaw, with an EU-related information, training and advocacy role, especially in relation to NGOs’ participation in the use of the structural funds. It runs the [www.eu.ngo.pl](http://www.eu.ngo.pl) website focused on information about EU funds and the consultation process for the next round of structural funds.

## 6.4 Conclusion

That Polish NGOs consider themselves “under-represented in Brussels” and that “the EU is on the margins of their activities” is a reflection less of the role on the Polish NGOs office, which only ever had an information and facilitative function, and more the consequence of the prevailing environment in which they are operating. An attitudinal shift is needed in the Polish government, away from suspicion and reluctance to consult, towards greater support for a vibrant third sector. The government needs to value NGOs more – for their expertise and for the bridge they can provide to citizens. Engaging in structured dialogue with NGOs and increasing the size and flexibility of funding streams would be signs of the government’s greater openness. At a time when it needs NGOs to help communicate Europe, the EU can play a prompting and supporting role, pressing the government to take consultation and civic participation in the political process seriously. There is an onus too on European networks to ensure genuine participation of new Member States’ partners in network decision-making.

## 7. The experience of NGOs in the United Kingdom

NGOs in the United Kingdom benefit from a close and structured relationship with the British government. Although not perfect, processes of consultation function well and appear to be invested with considerable political will. Although the government does consult on European policy proposals, Europe has not entered the foreground of political debate – or rather, has only entered the debate in a negative way – and NGOs reflect this in their relative lack of engagement with the EU institutions. European debates may be followed, but only occasionally entered into. One major NGO platform reports that most of the members of its European Policy Group are passive recipients of information only. British NGOs need to take on board a greater sense of the importance of European policy-development and how it connects to British processes; in turn, the UK can offer models of consultation from which lessons can be drawn for the European level.

### 7.1 Involvement in dialogue relating to the case studies

The British government held public consultations on both the Services Directive and on the proposal to streamline the open method of coordination for social inclusion. The former, lead by the Department for Trade and Industry (DTI), included presentations in six cities, as well as the opportunity to submit comments to the DTI’s website. The DTI’s report of the consultation indicates that 71 of 116 responses received came from ‘industry/consumer representatives’, a categorization that makes it difficult to quantify NGO engagement.

The consultation on streamlining the open method of coordination – run by the Department for Work and Pensions – is significant in that it took national NGO input beyond that of direct involvement in the National Action Plans (NAPs). Social NGOs have organized themselves into a Social Policy Task Force (SPTF) to operate as “a joint working vehicle for following up the National Action Plans on Social Inclusion (NAP/incl). The SPTF meets regularly to develop its NAP/incl agenda and the organisations involved have held a number of events including NAP/incl awareness seminars and workshops on indicators of child poverty”<sup>255</sup>. The SPTF meets regularly with

<sup>254</sup> <http://www.ngo.pl/x/161422>

the Department for Work and Pensions, and together the Department and the SPTF have set up the Get Heard project, “a participatory process designed to enable people with experience of social exclusion to express their views on government anti-poverty initiatives and policies for inclusion in the next National Action Plan on Social Inclusion”<sup>256</sup>. For one NGO platform, the Get Heard project is a sign both specifically of “an acceptance of [a] philosophy of participatory democracy for people with experience of poverty” and more generally, that “the government [has] accepted the added value of dialogue with civil society bodies”<sup>257</sup>.

Representatives of several British NGOs have attended meetings either of the Corporate Social Responsibility Forum or the Trade Civil Society Dialogue, but often only on behalf of European networks. Some of those involved in the CSR Forum appear to have reviewed the extent of their engagement with the EU institutions after this experience.

NGOs – particularly NGO platforms – did engage with the European Convention, but on their own initiative, without any real encouragement from the government. NGOs felt that if they put effort into informal lobbying, they were able to achieve results in terms of text amendments.

## 7.2 The role of the British government

The Cabinet Office has a Code of Practice on Consultations, centred on six key criteria<sup>258</sup>. The Code is not legally enforceable but “it should otherwise generally be regarded as binding on UK departments and their agencies, unless Ministers conclude that exceptional circumstances require a departure from it”<sup>259</sup>. The Code is reflective of what one respondent feels is “a culture instituted by this government to ensure the public has its say”.

The Cabinet Office indicates that this Code is to be used in conjunction with the Code of Good Practice on Consultation and Policy Appraisal developed as part of a broader Compact on relations between the government and the voluntary and community sector (the Compact). The origins of the Compact lie in the Deakin Commission, set up by NGOs in 1996 to investigate and report on the Future of the Voluntary Sector. The Labour party government elected in 1997 responded favourably to the findings of the Deakin Commission and this sense of common purpose was codified in 1998 in the Compact which states that “an expression of the commitment of Government and the voluntary and community sector to work in partnership”<sup>260</sup>. The Compact is made up of a general set of principles and a series of Codes of Good Practice, of which that on Consultation and Policy Appraisal is one<sup>261</sup>. For the chief NGO driver behind the Compact, the National Council of Voluntary Organizations (NCVO), it is significant that, with its origins in the Deakin Commission, the Compact was “set up by the sector, for the sector”.

Yet it should be noted that the Compact, as such, covers only England. Similar agreements exist in Scotland, Wales and Northern Ireland, each of them being slightly different from the English one. All of them are being used as a basis for the British government’s relation with civil society.

Like the Cabinet Office Code, the Code of Good Practice on Consultation & Policy Appraisal, finalised in 2000, is non-binding. However, this is said to reflect the spirit behind the Compact, which is the view that cooperation should be recognised as being of mutual benefit. On paper, the Code addresses many of NGOs’ typical demands for consultation processes, including early involvement in the policy-making process, precision about the scope of the exercise, feedback on the views received and the results of the consultation.

<sup>255</sup> <http://www.ukcap.org/whatwedo.htm#sptf>

<sup>256</sup> <http://ukcap.org/getheard/#who>

<sup>257</sup> [http://www.eapn.org/module/module\\_page/images/pdf/pdf\\_publication/EAPN%20Publications/GA/LiverpoolSPT-KD.ppt](http://www.eapn.org/module/module_page/images/pdf/pdf_publication/EAPN%20Publications/GA/LiverpoolSPT-KD.ppt)

<sup>258</sup> The criteria are: (i) consult widely throughout the process, allowing a minimum of 12 weeks for written consultation at least once during the development of the policy; (ii) be clear about what your proposals are, who may be affected, what questions are being asked and the timescale for responses; (iii) ensure that your consultation is clear, concise and widely accessible; (iv) give feedback regarding the responses received and how the consultation process influenced the policy; (v)

monitor your department’s effectiveness at consultation, including through the use of a designated consultation co-ordinator; (vi) ensure your consultation follows better regulation best practice, including carrying out a Regulatory Impact Assessment if appropriate, <http://www.cabinetoffice.gov.uk/regulation/consultation/code>

<sup>259</sup> <http://www.cabinetoffice.gov.uk/regulation/consultation/code/introduction.asp>

<sup>260</sup> <http://www.thecompact.org.uk/>

<sup>261</sup> The other Codes are on Funding and Procurement, Community Groups, Volunteering, Black and Ethnic Minority Voluntary and Community Organizations. Local based networks and local government authorities are also encouraged to develop local codes.

The Code also puts a certain responsibility on NGOs to organise themselves efficiently, to demonstrate their legitimacy and to themselves consult their own constituents.

A Compact Working Group of NGO representatives meets annually with the government to review progress and address any emerging problems, including in the implementation and promotion of the various Codes. Between these meetings NGOs can refer concerns to, in the first instance, Voluntary and Community Sector Liaison Officers<sup>262</sup> and, with more serious complaints, to departmental Compact Champions.

The commitment of government departments to consulting with NGOs does vary. Notably, the Foreign and Commonwealth Office, is seen as less open than the Department for International Development. However, the predominant complaint of NGOs is that there are actually too many processes where their input is sought. Consultations on complicated new legislation can drag on for several years, alienating NGOs which invest in processes which struggle to reach a tangible conclusion. The pressures of time are felt most acutely where NGOs want or are expected to consult with their own members or service users. While there are perhaps limits to how much NGOs can complain about overload of consultation when it is this involvement that they have long asked for – and elsewhere still aspire to – several indicate that they would like to see a shift from responding to government proposals towards greater participation in the agenda-setting phase.

NGOs benefiting from the culture of openness expressed in the Compact may have little awareness of the specific commitments undertaken in the Codes of either the Compact or the Cabinet Office. One stated that, “All I know is that there is meant to be a minimum time period allowed”. The NCVO itself acknowledges that there is a lack of awareness about the Compact and its constituent Codes. As a response to this, the Home Office in March 2005 launched a Compact Plus whose key features would be the appointment of a Compact Commissioner to “support organisations in implementing the commitments and adjudicate when disagreements occurred (...) and a kitemark to act as a visible sign of good practice. (...) To qualify for the kitemark, organisations would have to go through a process of self-assessment or independent assessment by another body”<sup>263</sup>.

Although NGOs are consulted on major EU legislative proposals, the relative lack of engagement with NGOs during the European Convention was followed by a relatively closed – in terms of NGO input – UK Presidency of the EU in the second half of 2005, presumably reflecting sensitivities about both the Constitutional Treaty and the draft budget. In April 2006, the Foreign and Commonwealth Office launched a new website ([www.europe.gov.uk](http://www.europe.gov.uk)) aimed at providing information and stimulating debate on Europe.

### 7.3 UK NGO platforms and the role of European NGO networks

NGO platforms are an important source of information about Europe, as well as being advocates for an open consultative framework with the British government and the national assemblies. As well as the NCVO<sup>264</sup>, which covers only England, similar platforms are in operation in Scotland (the Scottish Council of Voluntary Organisations), Wales (the Wales Council for Voluntary Action) and Northern Ireland (the Northern Ireland Council for Voluntary Action). The NCVO shares information among a European group of about 300 NGO representatives whose work in one way or another involves engagement with the EU. The development NGO platform BOND has a similar European Policy Group. BOND too is developing a set of Guidelines on Engagement and Consultation.

NGO platforms and large NGOs have the capacity to follow closely European developments. But in a context where national policy consultations call on their time and where the EU is felt to be opaque, it is not unusual for smaller NGOs to “need [our] EU office to tell us how to do it” and for them to be “heavily reliant” on their European network partners.

<sup>262</sup> The responsibilities of the Voluntary and Community Sector Liaison Officers include to “spread knowledge and assist in mainstreaming Compact and Codes of Good Practice within departments; be involved in designing and facilitating Compact/Codes awareness raising initiatives and training activities in particular departments, if not directly attending; [and] facilitate improved working relationships with the VCS by providing organisations with a

sense of where Government engages with the sector and to identify appropriate contact points”; [http://www.thecompact.org.uk/C2B/document\\_tree/ViewACategory.asp?CategoryID=52](http://www.thecompact.org.uk/C2B/document_tree/ViewACategory.asp?CategoryID=52).

<sup>263</sup> *Strengthening Partnerships: Next Steps for Compact*, 23 March 2005, as described at <http://www.ncvo-vol.org.uk/policy/index.asp?id=1192&fid=96>.

<sup>264</sup> [www.ncvo-vol.org.uk/europeaninternational](http://www.ncvo-vol.org.uk/europeaninternational)

## 7.4 The idea of a European ‘compact-style agreement’<sup>265</sup>

The lack of debate on the European Convention is at odds with the British government’s general willingness to consult NGOs. For the NCVO, this demonstrates the case for a Europe-wide agreement (‘Concordat’) on consultation, modelled on the Compact. Asserting that “Civil Society can put the spark back into Europe”, the NCVO calls on the EU institutions to “continue to recognise and support the important role played by civil society organizations in informing and implementing EU policy in key areas that affect EU citizens. The principle of civil dialogue (...) should be upheld and implemented by the EU institutions”<sup>266</sup>. The NCVO believes that the EU institutions should not wait for any revival of the Constitutional Treaty to fulfil the spirit of its articles on participatory democracy. It was stated that “the EU should develop a compact-style agreement between its institutions and civil society organizations to ensure proper consultation procedures and transparent working practices are in place”<sup>267</sup>. An important aspect to this campaign is the determination to preserve the specific perspective of national NGOs and to counter the direction suggested by the criteria of the CONECCS<sup>268</sup> database and those mooted by the European Economic and Social Committee. The NCVO does not believe that an EU ‘compact-style agreement’ should be binding, but would rely on both a shift in attitudes to greater respect for NGOs’ input and some form of scrutiny by the European Parliament to make it effective.

## 7.5 Conclusion

NGOs used to a culture of structured dialogue with the British government seem to struggle to adapt to EU-level processes. To engage with the EU requires an investment of time and energy to become acquainted with how the EU operates and to be able to weigh the relative importance of a large number of policies and processes. Since interacting with the EU usually involves working in a way that is less formal and less structured than in the UK and from which it may be hard to discern any outcome, NGOs are often happy to leave it to their Brussels-based counterparts. The proposal for an EU ‘compact-style agreement’ resonates well with the current debates on transparency and ‘communicating Europe’ and suggests a way to draw in national NGOs by making EU policy-making and its importance better understood. As the English Compact and the Commission’s General Principles and Minimum Standards demonstrate, raising awareness and securing the full application of any such ‘EU Compact’ will be as much the key to success as the principles and commitments agreed themselves.

<sup>265</sup> <http://www.ncvo-vol.org.uk/policy/international/index.asp?id=2810>

<sup>266</sup> <http://www.ncvo-vol.org.uk/press/releases/index.asp?id=1059&fID=38>

<sup>267</sup> <http://www.ncvo-vol.org.uk/press/releases/index.asp?id=1059&fID=38>

<sup>268</sup> Consultation, the European Commission and Civil Society, [http://ec.europa.eu/comm/civil\\_society/coneccs/index\\_en.htm](http://ec.europa.eu/comm/civil_society/coneccs/index_en.htm).

# STEPS TO IMPROVING CIVIL SOCIETY PARTICIPATION IN EU POLICY-MAKING

## 1. Reviewing and strengthening civil dialogue

- ◆ EU Institutions should build upon the recognition of participatory democracy in the draft Constitutional Treaty (Art. 47) and should each report to the Commission the steps they are taking to build stronger participatory democracy, with the results being reviewed by the Commission on an annual basis.
- ◆ EU institutions should recognize the specific added value of engaging with NGOs representing the general interest (in particular their contribution to participatory democracy), and take steps to facilitate their engagement, in order to ensure a real balance of stakeholders within civil society participation.
- ◆ If needed, the European Commission should support European NGOs to participate in dialogue on EU policy-making by putting in place adequate funding mechanisms, in order to ensure a balance of stakeholders within debates.

## 2. Putting in place an efficient and effective dialogue structure

- ◆ NGOs and institutions should together explore ways to build upon the existing framework for participation so as to enhance ownership and concrete use of existing instruments. This should include reviewing the Commission's Minimum Standards, access to documents, the functioning of the CONECCs database, the "Your Voice in Europe" website, and other initiatives, but also better informing on their content through tailored tools that will support their effective use.
- ◆ The scope of the Minimum Standards for Consultation of Interested Parties should be clarified and made consistent with the Impact Assessment Guidelines. In particular, they should apply to any measure with a significant impact on a group of stakeholders, and all key policy documents.
- ◆ The European Commission and European NGOs should work together to strengthen the Commission's Minimum Standards for Consultation, in particular by adding to those standards a section on how to guarantee that civil dialogue goes beyond one-off collection of expertise. This should include:
  - regular meetings which have the purpose of exchange of information on current and imminent policy processes;
  - structured consultation on major policy initiatives, following the terms of the General Principles and Minimum Standards for Consultation.
- ◆ Such consultation should:
  - be premised upon a clear exposition of the scope of the proposal and the process of consultation;
  - follow a common format that spells out the objectives of the consultation, how contributions will be taken into account and details over the next stages of the consultation process.
- ◆ The Commission should take particular steps to facilitate the involvement of marginalised groups within the EU policy-making process, in particular through increased capacity building and by supporting the outreach work achieved by NGOs to gather views of particular target groups.
- ◆ EU officials involved in consultation exercises should be given specific training and support, with the aim



of familiarising them with the values and ways of working of NGOs, including those engaged on issues outside their direct remit.

- ◆ EU Institutions should recognise explicitly that the Economic and Social Committee cannot take the place of direct dialogue and participation between civil society and the EU Institutions.

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### **3. Making participation matter**

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- ◆ Public electronic consultation may generate interesting opinions, but cannot be relied upon as a representative consultation and should not become a substitute to more appropriate manners to gather qualitative input.
- ◆ Constructive collective feedback on how responses were taken into account and why they were discounted should be provided for all public consultations.
- ◆ The Commission should systematically publish the list of organizations that responded to a consultation, as well as their contributions. This would increase awareness and transparency vis-à-vis the general public and allow a better assessment of the balance of views that were expressed and considered.
- ◆ The Commission should appoint a liaison officer for each consultation, in charge of dealing with requests and concerns about process and outcomes. This would contribute to a reduction in the number of potential complaints about the consultations.
- ◆ The Commission should explore the development of a complaint procedure for cases of non-compliance with the General Principles and Minimum Standards for Consultation, which could involve resort to the European Ombudsman, provided that this procedure is clear and timely.

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### **4. Increasing transparency and stakeholder balance**

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- ◆ The Commission should increase transparency over the choice of stakeholders invited to join a consultation process, so as to enhance the legitimacy of the decisions taken.
- ◆ The Commission should ensure a better balance between business and NGOs working in the general interest within consultative committees and expert groups as well as other consultation channels.
- ◆ The European Parliament should increase transparency over the choice of stakeholders invited to join a hearing and official consultations.
- ◆ The European Parliament should increase transparency over intergroups, in particular by publishing a list of existing groups and of their internal rules.
- ◆ European and national NGOs should be clear and transparent about whom and what they represent when they are engaging in dialogue on policy-making.
- ◆ European and national NGOs should demonstrate and formalize their commitment to transparency and accountability by taking a leadership in the debate on transparency.

## **5. Opening up the Council**

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- ◆ The Council should systematically implement the European Council's decision to change its working methods so that the meetings in which it acts in a legislative capacity are open and accessible to the public. This should cover as well COREPER and conciliation committees.
- ◆ Increased and simplified access to Council documents is a necessary first step towards the setting up of a sound dialogue with the Council. The Council should follow the European Parliament's resolution with recommendations to the Commission on access to the institutions' texts (2004/2125(INI)).
- ◆ The work of the Member States' Committees (as part of the 'comitology' procedure) should be more open and accessible to the European Parliament and civil society.

## **6. Ensuring a real consultation on horizontal issues**

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- ◆ The Commission should ensure that there is better communication and cooperation among Directorate-Generals and that consultation is not limited to those organisations with whom particular DGs have well-established relations due to their direct link with their field of activity.
- ◆ Each Directorate-General of the European Commission should have a unit responsible for relations with civil society, in charge of ensuring good consultation with a wide range of stakeholders and monitoring compliance with the Minimum Standards.

## **7. Ensuring an enabling environment for national NGOs to participate in European debates**

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- ◆ Member States should encourage non-profit organisations to participate in dialogue on EU policy-making by putting in place adequate funding mechanisms, in order to ensure a balance of stakeholders within debates.
- ◆ EU institutions should encourage the development of participatory democracy in Member States and in the countries covered by its development programmes by sharing examples of good practice and standards of consultation.
- ◆ European NGO networks should continue to take steps to ensure that member organizations from new Member States have a full and equal political stake in the activities of the network.
- ◆ The Commission should ensure more systematic reimbursement to travels to all consultation channels and avoid as much as possible short-noticed meetings, so as to ensure a more active participation beyond Brussels; this should also apply to developing countries' citizens willing to make their view heard on an EU policy impacting their own country.
- ◆ The delegations of the European Commission in Member States and its delegations in third countries should be better-resourced to take on a more visible and active role of ensuring awareness of open consultations' key messages and coordinate with national institutions to organise consultations on major initiatives.

## ANNEX I

### List of respondents

Name	Organization	Location
Agnès Philippart	CONCORD	Belgium
Andreas Vogt	CONCORD	Belgium
Anne-Sophie Parent	AGE Platform / Platform of Social NGOs	Belgium
Cécile Gréboval	European Women's Lobby	Belgium
Denise Auclair	<i>Coopération Internationale pour le Développement et la Solidarité</i> (CIDSE, International Cooperation for Development and Solidarity)	Belgium
Dick Oosting	Amnesty International EU office	Belgium
Dirk Jarré	Adviser to Anne-Marie Sigmund, President of the European Economic and Social Committee	Belgium
Duncan McLaren*	Friends of the Earth Europe	Belgium
Eivind Hoff	World Wildlife Fund (WWF) EU office	Belgium
Florent Sebban	Eurostep	Belgium
Florence Berteletti Kemp	European Respiratory Society	Belgium
Francesco Longu	European Public Health Alliance	Belgium
Freek Spinnewijn	<i>Fédération européenne des Associations Travaillant avec les Sans-Abri</i> (FEANTSA, European Federation of National Organisations working with the homeless)	Belgium
Geert de Cock	AGE Platform	Belgium
Giampiero Alhadeff	Solidar	Belgium
Guillaume Legaut	<i>Coopération Internationale pour le Développement et la Solidarité</i> (CIDSE, International Cooperation for Development and Solidarity)	Belgium
Ian Derry	Solidar	Belgium
Jelle Reynaert	EASPD	Belgium
Jens Nymand Christensen	European Commission, Secretariat-General	Belgium
Jim Murray	BEUC	Belgium
John Hontelez	European Environmental Bureau	Belgium
Jorgo Riss	Greenpeace	Belgium
Juliette Kamper	European Women's Lobby	Belgium
Karine Henrotte	University Women of Europe	Belgium
Kathleen Spencer Chapman	Platform of Social NGOs	Belgium
Katrin Hugendubel	Solidar	Belgium
Lara Garrido Herrero	European Public Health Alliance	Belgium
Liz Gosme	FEANTSA	Belgium
Mariano Iossa	ActionAid International	Belgium
Martin Kröger	European Commission, Secretariat General	Belgium
Mauro Albrizio	Legambiente	Belgium
Olivia Lind Haldorsson	Save the Children International Alliance	Belgium
Owen Epsley**	Quaker Council of European Affairs	Belgium

Patrick de Bucquois	<i>Comité Européen des associations d'intérêt général</i> (CEDAG, European Council for Non-Profit organizations)	Belgium
Patrizia Brandellero	European Anti-Poverty Network	Belgium
Roshan di Puppo	Platform of Social NGOs	Belgium
Roxana Radulescu	European Public Health Alliance	Belgium
Sabine Frank	European Forum for the Arts and Heritage	Belgium
Susanna Heinäsmäki	Eurodiaconia	Belgium
Suzy Sumner***	Solidar	Belgium
Tony Long	World Wildlife Fund (WWF) EU office	Belgium
Tony Venables	European Citizen Action service	Belgium
Virginie Giarmana	Coalition of NGOs Working on Corporate Accountability	Belgium
David Kral	Europeum	Czech Republic
David Stulik	<i>Nadace Rozvoje Občanské Společnosti</i> (NROS, Foundation for the Development of Civil Society)	Czech Republic
Filip Karel, Martin Kryl, Zdeněk Rudolský	Amnesty International Czech Republic	Czech Republic
Ivo Procházka	Czech AIDS Society	Czech Republic
Mileny Černé, Renata Dohnalova	<i>Spolek Oborové Konference nestátních neziskových organizací působících v sociální a zdravotně sociální oblasti</i> (SKOK, The Association of Non-Governmental, Non-Profit Organizations Active in the Areas of Social Assistance and Social Health Care)	Czech Republic
Oldřich Staněk,	Zivot 90	Czech Republic
Petr Janoušek	<i>Sdružení Azylových Dom</i> (SAD, National Homeless Platform)	Czech Republic
Václav Krása	Czech National Disability Council	Czech Republic
Veronika Divišová	People in Need / Czech Development NGOs Platform	Czech Republic
Zuzana Drhová.	Green Circle	Czech Republic
Christiane Fischer	BUKO PharmaKampagne	Germany
Carmine Lucciola	<i>Federazione Italiana Pensionati Attività Commerciali</i> (FIPAC, Italian Federation of Business Pensioners)	Italy
Elio d'Orazio	<i>Associazione Nazionale Centri Sociali, Comitati Anziani e Orti</i> (ANCESCO, National Association of Social Centres and Committees of the Elderly)	Italy
Laura Radiconcini	<i>Amici della Terra</i> (Friends of the Earth)	Italy
Letizia Cesarini Sforza	<i>Collegamento Italiano di Lotta alla Povertà</i> (CILAP, Italian Anti-Poverty Network)	Italy
Ludovica Botarelli	European Women's Lobby - Italian coordination	Italy
Agnese Knabe	<i>Latvijas Pilsonisk Alianse</i> (Latvian Civic Alliance)	Latvia
Alda Ozol-Matule	Latvian Green Movement	Latvia
Inga Skestere	The Latvia Umbrella Body for Disability Organizations - SUSTENTO	Latvia
Ingrida Skuja	<i>Latvijas Platforma attīstītās sadarbības</i> (LAPAS, Latvian Development NGO Platform)	Latvia
Inguna Ebele	Latvian Save the Children	Latvia
Inta Gjavarina	<i>Latvijas veselības un sociālās aprūpes darbinieku organizācija</i> (LVSADA)	Latvia
Janis Polis	Latvian Youth council	Latvia
Karlis Bormanis	<i>Latvijas Pensioneru Federācija</i> (Latvian Pensioners Federation)	Latvia
Saulcerite Briede	<i>Savstarpējās Palīdzības Sabiedrība</i> (Public Health Protection Centre)	Latvia

Erik Wesselius	Dutch Committee for the No Vote; Corporate Europe Observatory	Netherlands
Hilke Molenaar	Amnesty International Netherlands	Netherlands
Izabella Toth	Cordaid	Netherlands
Judith Sargentini	<i>Nederlands Instituut voor Zuid Afrika</i> , (NIZA, Netherlands Institute for Southern Africa)	Netherlands
Koosje Verhaar	Amnesty International Netherlands	Netherlands
Marius Ernsting	Humanitas	Netherlands
Michiel Karskens	<i>Consumentenbond</i> , Consumers' Association	Netherlands
Sneska Quaadvlieg-Mihailovic	Europa Nostra	Netherlands
Stefan Verwer	Both Ends	Netherlands
Tanja Mlaker	EUNetArt	Netherlands
Thea Meinema	<i>Nederlands Instituut voor Zorg en Welzijn</i> , (NIZW, Netherlands Institute for Care and Welfare)	Netherlands
Alexander Kedra	Institute of Sustainable Development	Poland
Anna Dworakowska	CEE Bankwatch	Poland
Anna Koziel	<i>Forum Inicjatyw Pozarządowych</i> (FIP, Forum of Non-governmental Initiatives)	Poland
Anna Maciejczyk, Malgorzata Zdunek	Amnesty International Poland	Poland
Anna Rozborska	Polish Disability Forum	Poland
Barbara Dudzinska	Barka Foundation	Poland
Jacek Kucharczyk	Institute of Public Affairs	Poland
Julia Pitera****	Transparency International Poland	Poland
Justyna Janiszewska	<i>Grupa Zagranica</i>	Poland
Marjan Huc	<i>Zavod Center za informiranje, sodelovanje in razvoj nevladnih organizacij</i> (CNVOS, the Centre of non-governmental organisations of Slovenia)	Slovenia
Annette Lawson	National Alliance for Women's Organizations	UK
David Stone, Marcus Robertson	MIND	UK
Euan Wilmshurst, Kathryn Llewelyn	Action for Southern Africa	UK
Fiona Gooch	Traidcraft	UK
Mikaela Gavas	British Overseas NGOs for Development	UK
Nolan Quigley	National Council for Voluntary Organizations	UK
Peter Frankental	Amnesty International UK	UK

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## ANNEX II

# EU and international frameworks governing relations with civil society

### European Institutions

Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents, [http://ec.europa.eu/comm/secretariat\\_general/sgc/acc\\_doc/docs/1049EN.pdf](http://ec.europa.eu/comm/secretariat_general/sgc/acc_doc/docs/1049EN.pdf)

### European Commission

#### Communications and legal framework:

Green Paper on Transparency,

[http://europa.eu.int/comm/commission\\_barroso/kallas/doc/com2006\\_0194\\_4\\_en.pdf](http://europa.eu.int/comm/commission_barroso/kallas/doc/com2006_0194_4_en.pdf)

Communication to the European Commission from the President, Ms Wallstrom, Mr Kallas, Ms Hubner and Ms Fischer Boel proposing the launch of a Transparency Initiative,

[http://europa.eu.int/comm/commission\\_barroso/kallas/doc/etik-communication\\_en.pdf](http://europa.eu.int/comm/commission_barroso/kallas/doc/etik-communication_en.pdf)

Annex to Communication proposing the launch of a European Transparency Initiative, SEC (2005) 1300 final, [http://europa.eu.int/comm/commission\\_barroso/kallas/doc/transp\\_report\\_en.pdf](http://europa.eu.int/comm/commission_barroso/kallas/doc/transp_report_en.pdf)

Communication Action Plan “Simplifying and improving the regulatory environment”, COM (2002) 278 final, [http://europa.eu/eur-lex/en/com/cnc/2002/com2002\\_0278en01.pdf](http://europa.eu/eur-lex/en/com/cnc/2002/com2002_0278en01.pdf)

Communication on the collection and use of expertise by the Commission “Principles and Guidelines”, COM (2002) 713 final,

[http://europa.eu.int/comm/secretariat\\_general/impact/docs/com2002\\_0713en01.doc](http://europa.eu.int/comm/secretariat_general/impact/docs/com2002_0713en01.doc)

Communication “Towards a reinforced culture of consultation and dialogue - General principles and minimum standards for consultation of interested parties by the Commission”, COM (2002) 704 final, [http://europa.eu/eur-lex/en/com/cnc/2002/com2002\\_0704en01.pdf](http://europa.eu/eur-lex/en/com/cnc/2002/com2002_0704en01.pdf)

“White Paper on European Governance”, COM (2001) 428 final,

[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)

Communication “The Commission and Non-Governmental Organisations: Building a Stronger Partnership”, COM (2000) 11 final,

[http://europa.eu.int/comm/secretariat\\_general/sgc/ong/docs/communication\\_en.pdf](http://europa.eu.int/comm/secretariat_general/sgc/ong/docs/communication_en.pdf)

Communication on adapting and promoting the social dialogue at Community level, COM (1998) 322, [http://europa.eu.int/comm/employment\\_social/social\\_dialogue/docs/com322\\_en.pdf](http://europa.eu.int/comm/employment_social/social_dialogue/docs/com322_en.pdf)

Communication on promoting the role of voluntary organisations and foundations in Europe, COM (1997) 241, [http://europa.eu.int/comm/enterprise/library/lib-social\\_economy/orgfd\\_en.pdf](http://europa.eu.int/comm/enterprise/library/lib-social_economy/orgfd_en.pdf)

Communication “An open and structured dialogue between the Commission and Special Interest Groups”, SEC (1992) 2272 final,

[http://europa.eu.int/comm/secretariat\\_general/sgc/lobbies/docs/v\\_en.pdf](http://europa.eu.int/comm/secretariat_general/sgc/lobbies/docs/v_en.pdf)

## **Consultation tools and databases:**

CONECCS database

[http://europa.eu.int/comm/civil\\_society/coneccs/index\\_en.htm](http://europa.eu.int/comm/civil_society/coneccs/index_en.htm)

Your Voice in Europe website

<http://europa.eu.int/yourvoice/>

Register of expert groups

[http://ec.europa.eu/comm/secretariat\\_general/regexp/](http://ec.europa.eu/comm/secretariat_general/regexp/)

## **International organisations**

Council of Europe, Committee of Ministers, “Resolution on Participatory status for international non-governmental organisations with the Council of Europe”, Res (2003) 8,

[http://www.coe.int/T/E/NGO/public/Participatory\\_status/Resolution\\_%282003%298/Resolution\\_2003\\_8.asp#TopOfPage](http://www.coe.int/T/E/NGO/public/Participatory_status/Resolution_%282003%298/Resolution_2003_8.asp#TopOfPage)

Rules of procedure of the Plenary Conference of International Non-Governmental Organisations enjoying consultative status with the Council of Europe,

[http://www.aceeeo.org/missions/meetings/4\\_rules\\_of\\_procedure.doc](http://www.aceeeo.org/missions/meetings/4_rules_of_procedure.doc)

ECOSOC Resolution on “Consultative Relationship between the United Nations and non-governmental organizations”, Res 1996/31,

[http://www.un.org/esa/coordination/ngo/Resolution\\_1996\\_31/index.htm](http://www.un.org/esa/coordination/ngo/Resolution_1996_31/index.htm)

## ANNEX III

### **General Principles and Minimum Standards for Consultation of Interested Parties**

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Full content of the Minimum Standards can be found on:

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

The **general principles for consultation** are: participation, openness, accountability, effectiveness and coherence.

The five **Minimum Standards** are the following:

#### **A. Clear content of the consultation process**

“All communications relating to consultation should be clear and concise, and should include all necessary information to facilitate responses.”

#### **B. Consultation target groups**

“When defining the target group(s) in a consultation process, the Commission should ensure that relevant parties have an opportunity to express their opinions.”

#### **C. Publication**

“The Commission should ensure adequate awareness-raising publicity and adapt its communication channels to meet the needs of all target audiences. Without excluding other communication tools, open public consultations should be published on the Internet and announced at the ‘single access point’.”

#### **D. Time limits for participation**

“The Commission should provide sufficient time for planning and responses to invitations and written contributions. The Commission should strive to allow at least 8 weeks for reception of responses to written public consultations and 20 working days notice for meetings.”

#### **E. Acknowledgement and feedback**

“Receipt of contributions should be acknowledged. Results of open public consultation should be displayed on websites linked to the single access point on the Internet. (...) Contributions to open public consultations will be made public on the single access point. Results of other forms of consultation should, as far as possible, also be subject to public scrutiny on the single access point on the Internet. The Commission will provide adequate feedback to responding parties and to the public at large.”



## Glossary of key concepts

The concept of « civil dialogue » raises as many questions as it solves. Here is a summary of the working definitions adopted throughout the study<sup>269</sup>:

**Civil society**<sup>270</sup> - Civil society organisations have four main characteristics:

- ◆ They are established voluntarily by citizens seeking to promote their concerns, values or identities;
- ◆ They are organised around the promotion of an issue or the interests of a particular section of society;
- ◆ They are autonomous from the state, which is essential if they are to provide credible contributions from their numerous and diverse constituencies;
- ◆ Finally, they do not aim at optimising profits.

**Participatory democracy** covers the following commonly accepted features:

- ◆ Participatory democracy involves non-state actors, mainly individual citizens and civil society organisations;
- ◆ It seeks to extend the concept of citizenship beyond the conventional political sphere;
- ◆ It is based on the principle of policy-makers' permanent accountability between elections;
- ◆ It acknowledges citizens' right to participate in public life through alternative channels, to tackle the shortcomings of representative democracy;
- ◆ It allows citizens to take direct responsibility in public life;
- ◆ It is a way for women or citizens belonging to minority groups to make their voice heard in the public debate;
- ◆ It covers some practices of direct democracy. However, participatory democracy also emphasizes the role of civil society organisations as important mediators in debates;
- ◆ It is based on the principle of integration and empowerment of civil society.

**Non-Governmental Organisations (NGOs)** - NGOs are defined as organisations which share most (if not all) of the following features:

- ◆ Non-State actors;
- ◆ Non-profit making organisations;
- ◆ Democratic organisations (joining is voluntary and free, the functioning of the organisation is based upon democratic rules);
- ◆ Independent from the government;
- ◆ Act in the public interest;
- ◆ Rely on voluntary work and activists' involvement, but often also employ professionals;
- ◆ Have a mandate from their constituency.

**Civil dialogue**

- ◆ Civil dialogue involves an interaction between public institutions and civil society organisations, rather than a unilateral relationship. It thus goes beyond information and communication, and is based on mutual recognition and responsiveness;
- ◆ Civil dialogue covers various degrees of formalisation, ranging from informal to legally recognised structures, from ad hoc to continuous exchange;
- ◆ Civil dialogue also covers different degrees of involvement from civil society organisations, ranging from information to consultation and active participation;
- ◆ Civil dialogue takes place alongside the whole policy-making process which includes the following phases: Agenda setting, Policy definition/decision-making, Implementation, Evaluation, Feedback;
- ◆ It involves civil society organisations acting in the public interest.

<sup>269</sup> Which should be understood as working definitions rather than prescriptive concepts. Please refer to the study itself regarding information sources.

<sup>270</sup> Definition adopted by a number of European Development NGOs in their position The Role of Civil Society in the EC's Development Policy published in 2002. To be found on <http://www.eurostep.org/pubs/position/ge2160.pdf>.

### **Social Dialogue, source of inspiration for civil dialogue?**

Social dialogue developed on an ad hoc basis at a time when the involvement of social partners was considered as a pre-condition to the successful achievement of the internal market. While European social partners have been organised for several decades, several tri-partite summits were convened from 1985. The protocol on social policy annexed to the Maastricht Treaty, integrated into the Amsterdam Treaty, recognised social partners the right to negotiate binding framework agreements. For social partners, this meant a shift from lobby to participation in the policy process.

#### **Process: different types of dialogue and increasing ‘autonomisation’**

In its broadest interpretation, the concept of European social dialogue refers to the “institutionalised consultation of the social partners by the Commission and other Community institutions”:

**Tripartite concertation** takes place among management, labour and Community institutions (e.g. on European Employment Strategy).

The **bipartite dialogue** between management and labour organised at European level can take place through the procedure established in Articles 138-139 EC, but also independently from any Community initiative, based on the autonomy of the social partners. It may lead to European collective agreements. Recent developments in this field have underlined its **increasing autonomy**, social partners setting up their own agenda and work programme instead of the European Commission.

In addition to this involvement at the European level, the social partners also play an important role in **implementing European policy at national level**. In particular, directives resulting from EU level collective agreement can be implemented at national level through collective agreements.

#### **The choice of representativity criteria and accreditation**

Although the Treaty does not refer to representative organisations, the Commission took the option of developing this criterion for identifying the relevant organisations taking part in social dialogue. According to the criteria set out in 1993<sup>271</sup> and reiterated in 1998<sup>272</sup>, representative organisations should:

- ◆ be cross industry or relate to specific sectors or categories and be organised at European level;
- ◆ consist of organisations, which are themselves an integral and recognised part of Member State social partner structures;
- ◆ have adequate structures to ensure their effective participation in the consultation process.

A detailed list of **organisations complying “broadly with these criteria”** was published, which amounted to setting up a system of accreditation. Currently 58 organisations are entitled to take part in European social dialogue.

#### **Major differences between the two processes**

While social dialogue has sometimes been perceived as a source of inspiration for the development of civil dialogue, the following key differences need to be noted:

- ◆ while the scope of social dialogue is limited mostly to employment and social affairs, this is not the case for civil dialogue;
- ◆ social dialogue is so far the only process that benefits from a legal basis in the EC Treaty (article 138 CE);
- ◆ social dialogue has been organised around representativity criteria and accreditation, contrary to civil dialogue;
- ◆ while social dialogue has been marked by an increased autonomisation of social partners from institutions, civil dialogue has mostly developed between civil society organisations and institutions. However, a similar trend might be developing for civil dialogue, marked in some policy areas by a trend towards self-regulation (although some question self-regulation’s contribution to strengthening participatory democracy).

<sup>271</sup> “Communication concerning application of the Agreement on Social Policy”, COM (93) 600 final, Brussels, 14 December 1993.

<sup>272</sup> Communication of 20 May 1998, on adapting and promoting the social dialogue at Community level.



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