

White Paper on European Governance
Work Area n° 2
Handling the Process of Producing and Implementing
Community Rules

**REPORT OF WORKING GROUP
«CONSULTATION AND PARTICIPATION OF
CIVIL SOCIETY»**

(Group 2a)

Pilot : L PAVAN-WOOLFE
Rapporteur : M KRÖGER

JUNE 2001

TABLE OF CONTENTS

| | |
|---|-----------|
| EXECUTIVE SUMMARY | P. |
| | 3 |
| INTRODUCTION | 5 |
| PART ONE: OVERALL RATIONALE | 6 |
| PART TWO: THE WORK OF WORKING GROUP 2A | |
| 1. PROCEEDINGS | 9 |
| 1.1. Method applied | 9 |
| 1.2. What is civil society? | 9 |
| 1.3. In-house deliberations | 10 |
| 1.3.1 Good consultation practice in the Commission | 10 |
| 1.3.2. Governance and the Commission's administrative reform | 11 |
| 2. HEARINGS | 12 |
| 2.1. Relations between the Commission and outside civil society organisations | 12 |
| 2.2. Role of the Economic and Social Committee | 13 |
| PART THREE: CONCLUSIONS AND RECOMMANDATIONS | 15 |
| 1. THE COMMISSION'S CONSULTATION PROCESSES | 15 |
| 1.1. Identification of Shortcomings | 15 |
| 1.2. Recommendations | 15 |
| 2. CONSULTATION AND THE OTHER EUROPEAN INSTITUTIONS / BODIES | 19 |
| 2.1 Benefits of good consultation in the legislative process | 19 |
| 2.2. Improving the involvement of the advisory bodies foreseen by the Treaties | 20 |
| 2.2.1.The Economic and Social Committee | 20 |
| 2.2.2. The Committee of the Regions | 20 |

EXECUTIVE SUMMARY

The consultation and participation of civil society in policy-shaping and rulemaking is a subject closely linked to the overall remit of the White Paper on Governance.

OVERALL RATIONALE

Wide consultation of a variety of interested parties is an important means of ensuring that the Commission's proposals are technically viable, practically workable and acceptable to stakeholders. This report points out that this approach is not new and has been reiterated in a number of Commission documents over the years. It is stressed that such consultations in no way detract from the role of the European Parliament.

Coherent and transparent consultation processes contribute to greater accountability. In recent years the recognition has grown that in addition to the traditional forms of accountability, public administrations are accountable towards society as a whole.

It is difficult to find a good definition of civil society. The Working Group decided to adopt the Economic and Social Committee's definition which covers the main categories of organisations of society outside of government and the administration.

THE WORK OF WORKING GROUP 2A

The report details the work of the Working Group which began with an in-house debate during which Commission departments describes the various forms of dialogue and co-operation with civil society which already exist.

Subsequently, a number of hearings were held with representatives of stakeholder organisations (the social partners and NGOs) as well as with academics and representatives of the Economic and Social Committee. All the representatives of civil society stressed the need for the Commission to adopt a more systematic and coherent approach to consultation. They felt that existing formalised or structured consultation procedures should be made more transparent. Some NGOs advocated a legal basis for a structured dialogue through the introduction of a specific article in the Treaty. Opinions on the usefulness or otherwise of an accreditation system were divided.

The Economic and Social Committee is developing a programme to strengthen dialogue with a range of civil society organisations and to make consultation procedures more effective.

CONCLUSIONS

The Group concludes that shortcomings exist in current Commission consultation practices. In particular they point to the large number of consultation forums (roughly 700) and the lack of guidance to encourage departments to apply best practice. They also note that NGOs felt that their role is insufficiently recognized.

RECOMMENDATIONS

The Group recommends a step-by-step approach to improving matters.

Firstly, greater transparency through the establishment of a comprehensive **database** providing information on civil society organisations active at European level. At a second stage a list of all consultative bodies will be added, together with details on the organisations which are members. The civil society organisations will be invited to provide information on their objectives, their membership structure, sources of finance and their methods for consulting their members. This information will shed new light on how the Commission shapes its policy.

This should be accompanied by introducing a more coherent system through **guidelines setting minimum standards for consultation procedures** throughout the Commission. These will include what to consult on, how to apply the principle of early consultation, the criteria for identifying the relevant stakeholders, practical guidance on how to carry out the actual procedure, how to present the results of the consultation to the political decision-makers and, last but not least, how to provide feedback to the stakeholders who were consulted. The guidelines will need to be **monitored and evaluated** to ensure maximum effectiveness.

Once these two initial measures have been implemented, the Commission, in co-operation with its civil society partners will decide whether and how to take matters further. One approach might be to develop **mutual arrangements** and the NGOs particularly those in the social and development sectors seem to favour this idea. Such arrangements would be based on the minimum standards referred to above and would provide a stable framework for working together. The consultation partners would also be expected to apply certain minimum standards relating to representativity, accountability and transparency on their side.

The report proposes on the basis of lessons learned, and as a subsequent step, that in the medium term a study should be made as to whether a cross-cutting arrangement (i.e. an overall consultation framework arrangement) between the Commission and all its regular consultation partners might be needed.

The last part of the report deals with the other European institutions, stressing once again the importance of good consultation for producing good legislation which is widely supported. Finally, the report points out the significance of the future roles of both the Economic and Social Committee and the Committee of the Regions with regard to dialogue with civil society.

INTRODUCTION

In line with the work programme on European Governance, the Commission departments contributing to the drafting of the related White Paper were asked to look into ways and means of improving:

“Rules, processes and behaviour that affect the way in which powers are exercised at the European level, particularly as regards **accountability, clarity, coherence, efficiency and effectiveness**”.

It became evident that the procedures through which the Commission allows for the **consultation and participation of outside interested parties** in policy-shaping and rule-making were closely linked to the above overall remit. Working group 2a was therefore entrusted with the particular task of examining the Commission’s consultation processes by taking into account the institutional aspect of this issue.

The working group decided to focus on consultation of those stakeholders which do not belong to the sphere of public authorities (see description of ‘civil society’ in 3.2.). The group’s scope therefore did not include the specific role of regional and local public bodies¹. This decision was taken in order to draw a clear line of separation between non-state interest groups and representatives of public bodies at the infra-national level, which are democratically legitimised through elections.

As a working hypothesis, the Group based its activities on the premise that a formalisation of conditions of involvement in drawing up rules at the EU level was needed. As an additional aspect, the working group also examined whether from this perspective it was possible to give more visibility and acknowledgement to the specific role of civil society organisations in the process of European integration.

¹ NB : Working groups 3b and 4c paid particular attention to the role of regional and local actors from the point of view of European Governance

PART ONE: OVERALL RATIONALE

The process of policy-making at the European level operates within **the institutional framework laid down by the Treaties**, which clearly defines the executive and legislative functions of the European Institutions. Within this framework, **consultation mechanisms** are an important means to ensure outside input and access to expertise. Thus, special **institutionalised advisory bodies**, i.e. the Economic and Social Committee and the Committee of the Regions, were set up under the Treaties.

In addition, all European bodies have a strong tradition of **direct contacts** with outside civil society organisations. These contacts are aimed at contributing to a policy-making process that reflects the diversity of interests, perspectives and needs in the European Union.

In its Communication on "An open and structured dialogue between the Commission and special interest groups"², the Commission pointed out that being accessible to interest groups "...is in the Commission's own interests (...) since interest groups can provide the services with technical information and constructive advice."

Wide consultation of civil society organisations by the **Commission is therefore not a new phenomenon**. In fact, the Commission has a long tradition of consulting outside interest groups in the formulation of its policies. This wide-spread practice is anticipated in the European Union's legal framework, which states that *"the Commission should (...) consult widely before proposing legislation and, wherever appropriate, publish consultation documents"*³.

It is worth noting that under the Treaty (article 138 and 139 TEC), European **social dialogue** plays a particular role for policy and decision making in the field of European social policy. The Commission is thus under the legal obligation to promote social dialogue and to develop consultation of social partners. The consultation process involves in particular a compulsory two-stages consultation on the orientation, first, and, then, on the content of any proposed measure in the social policy field.⁴

A dialogue on how to improve its relations with **NGOs** was instigated by the Commission in its discussion paper *"The Commission and NGOs: building a stronger partnership"*⁵.

The benefits of being open to outside input are thus already recognised. The Commission incorporates external consultation into the development of almost all its policy areas. This takes place with formal consultation partners officially established by the Commission, or with other structured consultation groupings recognised by the Commission, as well as through ad hoc consultation exercises with invited

² OJ C 63 of 5/3/1993

³ Protocol (N° 30) on the application of the principles of subsidiarity and proportionality, adopted via the Amsterdam Treaty.

⁴ NB : Working group 2c specifically examined the role of social dialogue in **legislative processes**

⁵ COM(2000) 11 final

representatives of the relevant sectoral interests. It is estimated that the Commission has up to 700 structured consultation groupings as dialogue partners.

Broader public consultations (of both interest groups and individuals) are carried out on the basis of consultation documents, i.e. Green and White Papers, in particular.

It is nevertheless apparent that the **decision-making process in the EU is first and foremost legitimised by the legislator, i.e. the elected representatives of the European people**. As far as the responsibilities of the European Parliament are concerned, a member of this institution recently emphasised: “Parliamentarians have [...] the duty to conciliate the interest of individuals and the general interest [...]” **Consultation processes** run by the Commission **can therefore never be a substitute for political mediation**.

However, consultation, if carried out properly, can provide valuable expertise laying the ground for - technically - sound decisions⁶. In particular, consultation helps reconcile the views and concerns of different actors throughout the policy-cycle (i.e. in policy-shaping, implementation and evaluation), thereby obtaining wide support and social acceptance for decisions. Consultation is therefore an important means to improve **effectiveness and efficiency** of the Commission’s activities.

Coherent and transparent consultation processes also imply an aspect of **accountability**. In this context, it is necessary to further clarify the various notions of accountability. The past two decades have seen many new ideas on public administration and the role of the public sector in general. These ideas and the changes they have produced have had a considerable impact on one of the central concepts of public administration **accountability**. Traditionally, public administrations are subject to two types of accountability: **Political accountability** and **accountability at the administrative level**.

Political accountability describes the responsibility of those entrusted with the political decision-making process and has two aspects: A more general kind of accountability towards the public (and the electorate, in particular) and a form of political accountability towards institutional organs of control. Regarding the latter point, at Community level the Commission’s duties vis-à-vis the European Parliament are of particular importance.

Accountability at the administrative level basically describes the obligation of the Commission and its officials to act in accordance with the law and to apply the rules and procedures laid down in Community legislation. The respect or otherwise of this duty is subject to control by the Courts. One element of major importance in this context is the ‘right to good administration’ as laid down in Article 41 of the European Charter of Fundamental Rights.

The two types of accountability referred to above are well known. However, a new type of accountability has appeared in recent years. This is **accountability towards citizens or society as a whole** and it provides the rationale for a new approach towards relationships between public administration and citizens. Such accountability

⁶ NB: Working group 1b has specifically examined the role of expertise, including scientific expertise, in the context of European Governance

recognises that citizens are **no longer passive objects** of the administrative process but have an **active role** to play ("stakeholders").

Information technology has given opportunities for greater scrutiny of public administration performance by providing citizens with new instruments of communication and information. Public administration both at national and at European level is now more open and transparent than it was until recently. However, greater openness has also changed citizens' expectations and they are now more demanding of information, explanations and justifications than hitherto.

This new form of **direct accountability of public administration can never be aimed at replacing or sidelining the concept of political accountability**. In fact, transparent and coherent consultation processes run by the Commission constitute a **win-win option** in this respect: They not only increase the **acceptability** of Commission proposals as far as the general public is concerned, they also enhance the **possibility of scrutiny** of the Commission's activities by the legislator (e.g. by making available documents summarising the outcome of the consultation). In other words, **more transparent consultation processes will foster the Commission's political accountability rather than diluting it**.

PART TWO: THE WORK OF WORKING GROUP 2A

1. PROCEEDINGS

1.1. Method applied

The working group carried out its activities in three subsequent stages: The **inception phase** was characterised by an **in-house debate** and built upon the expertise available in the different Commission departments participating in the working group. This stage had the twofold objective of **taking stock** of the current state of play of civil society involvement and to **identify – on a preliminary and tentative basis - a certain number of options** on how to frame participatory rights of civil society organisations.

At the next stage, these findings were then **validated by carrying out** various **hearings** aimed at giving a broad range of interested parties the opportunity for input and critique. Participants at these hearings consisted of a variety of stakeholder representatives (the Social Partners and NGOs), academics and representatives of the Economic and Social Committee.

In parallel, members of both the Governance Team and the working group attended a series of conferences and meetings, which civil society organisations had organised at their own initiative with a view to discussing the issue of new forms of European Governance. In addition, the working group assessed several position papers submitted by interested parties.

The working group finally wrapped up these activities by drawing conclusions from the various consultations and discussions, including the formulation of recommendations.

1.2. What is civil society?

For the purposes of its activities, the Working Group borrowed the description of different categories of civil society organisations arrived at by the Economic and Social Committee in its Opinion of 22 September 1999⁷:

“Civil society organisations include:

- *the so-called labour-market players, [i.e. trades 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*

⁷ Official Journal of the European Communities (1999/C329/10)

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.”*

It is evident that this description of categories brings together the **principal structures of society outside of government and public administration**, including economic actors not generally considered to be “third sector” or NGOs. Logically, it has to exclude not only public authorities at the European and national level but also representatives of regional and local public bodies (see 1.). However, to the extent that the latter have established (NGO-like) pan-European groupings and are consulted by the Commission outside the institutional framework in the strict sense (e.g. prior to a Commission proposal and not via the Council), many of the findings of the working group also apply to these kinds of consultation.

1.3. In-house deliberations

1.3.1 Good consultation practice in the Commission

Several Commission departments presented the ways in which they organise their co-operation with civil society organisations.⁸ It was made clear that in some cases civil society involvement in the Commission’s activities is also governed by instruments under international law.⁹

- The main conclusion drawn from these presentations was that there was no single uniform model, which could be applied to the dialogue between the Commission and civil society organisations. Without prejudice to consultation practices laid down in the Treaty (such as the European social dialogue), good practice had rather been tailored according to the needs of each policy area and was largely dependent on the following three parameters:

⁸ DG EAC emphasised the role of associations active in the field of education (students, teachers, parents etc), the social partners and youth organisations, all of which are closely involved in the implementation of programmes run by DG EAC. DG ENTR presented stakeholders’ participation in the consensus-building mechanism in European standardisation bodies. DG EMPL outlined the functioning of co-operation with the Social Partners and draw attention to the importance of the role of Social Dialogue in policy-shaping and rule-making, in particular with regard to the possibility for the social partners to conclude binding agreements. DG TRADE informed the members of the working group about the framework under which its structured dialogue with civil society organisations on external trade policy takes place. DG REGIO stressed the role of the partnership between European and national public authorities and civil society in the implementation of the Structural Funds. DG RTD is guided in the implementation of the 5th Framework Programme by Expert Advisory Groups, composed of scientists, stakeholders and users, both the composition and the advice they deliver are made public on the Internet.

⁹ DG DEV explained the role of civil society in the implementation of the Cotonou Agreement. DG ENV outlined the obligations that will arise from the «UN/ECE Convention on access to information, public participation in decision-making and access to justice in environmental matters», the so-called Aarhus Convention, once it is ratified by the EC.

- The **different stages of policy-making** (policy-shaping, implementation and evaluation)
- the **role of the Commission** in these processes (ranging from acting as a public authority to being a facilitator for –voluntary – co-ordination).
- the **role of the different stakeholder groups** under the Community framework, (while taking into account the specificity of the European social dialogue).

1.3.2. Governance and the Commission's administrative reform

The working group's took note of the fact that its remit was closely linked to a number of actions envisaged by the White Paper on the administrative reform of the European Commission, which was adopted in March 2000. This document also contained several measures related to the Commission's consultation processes. In this context, DG MARKT (responsible for action n° 8b: electronic tools for on-line consultation, i.e. the 'inter-active policy-making initiative') and the SG (in charge of action n° 4 – best practice in consultation – and action n° 5- database on advisory fora) presented the progress achieved so far on these actions.

As far as actions under the leadership of the SG were concerned, it was decided to integrate these into the more holistic approach to be developed by working group 2a. This would provide the **coherence** needed and, at the same time, **increase the positive impact** of the actions initially identified in the Reform White Paper.

2. HEARINGS

2.1. Relations between the Commission and outside civil society organisations

The comments and suggestions voiced at the various hearings, which the working group carried out, can be divided into three main clusters:

Firstly, all representatives of the different civil society organisations involved stressed the need for the Commission to adopt a **more systematic and coherent approach** to its consultation processes. Though it was felt that many examples of best practice in consultation could be found within the Commission, stakeholders urged the Commission to establish an **overall framework** by setting out **principles** and **criteria** to give structure to its consultation policy. This could ensure, in particular, a wider application of best practice throughout all Commission departments.

In this context, several ideas on how to achieve such a more systematic approach were floated:

- The Social Partners, whilst insisting on their specific role under the Social Dialogue, suggested drawing up an overall **Code of Conduct on consultation** providing for specific criteria to define the organisations to be consulted, including transparent rules of representativeness.
- Some NGOs advocated a **checklist** or **guidelines** for consultation processes in order to make these more transparent and to enable the Commission departments to follow a harmonised approach.

Secondly, it was unanimously argued that the functioning of the existing **formalised or structured consultation arrangements** (i.e. advisory committees, expert groups or other consultation forums consisting of civil society representatives) should be made **more transparent** as well as properly **evaluated**. Some stakeholder organisations were of the opinion that these structures could be usefully simplified and that a multiplication of these kinds of forum should be avoided.

Finally, some NGOs called upon the Commission to propose a **legal base** for a structured dialogue with the NGO community (in the form of an Article in the Treaties or a Council Regulation). It was made clear that such a legal base should be aimed at **recognising the role of NGOs** in consultation with the Commission. In other words, **the objective was not to establish procedural rights**, the respect of which would be subject to judicial control and review.

Quotes from NGO representatives:

“What we want is to know the Commission’s agenda and to be able to have our say, without depending on the discretion of officials.”

“Let me for the sake of clarity also say that we get worried by discussions about the ‘droit participatif’. What we are talking about is a practice of consultation, but we would be concerned if the language used opened the door to the possibility of legal challenge by an individual or group because their right to participation has not been fulfilled.”

A legal base, applying to all NGO sectors, should rather allow for the **accreditation** of European NGOs (to be managed by a horizontal unit within the Commission). The legal base should also prescribe an annual conference with NGOs and a provision encouraging Directorates-general to form framework arrangements with NGOs in their sector, as well as encouraging the a general framework for a cross-cutting dialogue with NGOs.

However, there was a lack of consensus on the issue of an **accreditation system**. Some NGOs opposed the idea of a formal consultative status or accreditation schemes by pointing to the fact that consultation tended to concentrate on Brussels-based European umbrella organisations. According to this viewpoint, there was therefore a risk of communicating only with the “Brussels establishment”, which not always was able to provide the necessary experience and expertise.

The **European social partners** emphasised the importance of ensuring a sufficient level of representativeness for the organisations that participate to the consultation process. They jointly stressed that their participation in the consultation process under the Treaties is subject to a permanent scrutiny by the European Commission.

2.2. Role of the Economic and Social Committee

The Treaty of Nice will enhance the role of the Economic and Social Committee (ESC) as an institution representing the economic and social components of civil society. In order to fulfil this mandate, the ESC has started a comprehensive review of its working methods. Representatives of the ESC debriefed working group 2a on the state of play in this respect. Subsequently, the ESC also adopted an Opinion entitled “Organised civil society and European governance: the Committee’s contribution to the drafting of the White Paper”, which includes a series of concrete measures to be implemented.¹⁰

On the basis of this information, working group 2a identified the following building blocks of the ESC’s approach:

- Establishment of a **stable framework to facilitate a more co-ordinated and structured dialogue** within the ESC as well as between the ESC as an institution and the whole range of civil society organisations.
This should promote, inter alia, a better involvement of civil society organisations

¹⁰ CES .535/2001 of 25 April 2001

See also the ESC’s Opinion «The role and contribution of civil society organisations in building Europe» (CES 851/99)

through hearings to be held in Brussels and in the Member States - in the preparation of important opinions, in particular of those having wider societal implications.

- Progressive association of organised civil society in the applicant countries to the work of the ESC and stepping up the ESC's support for civil society and consultative structures in those countries as well as in other geographical areas with which the EU maintains structured relations
- Intensifying the ESC's co-operation with Economic and Social Councils and similar institutions in the Member States
- **Consultation** of the ESC **at an early stage** of policy-shaping on the basis of exploratory opinions, as well as on still unexplored and complex issues related to the future of the EU.

PART THREE: CONCLUSIONS AND RECOMMENDATIONS

1. THE COMMISSION'S CONSULTATION PROCESSES

1.1. Identification of Shortcomings

As outlined in the above, stakeholder consultation by the Commission constitutes a widespread practice, which has been increasingly applied over the last decades. In other words: Consultation is the Commission's day-to-day business. The working group found, on the other hand, that the current approach is suffering from various shortcomings, which can be characterised as follows:

- Specific **consultation forums** (advisory committees, expert groups) have mushroomed: to date there exist roughly 700 of these bodies, the composition, activities and impact of which remain rather opaque. By their vary nature, these forums provide privileged access to the Commission's policy-shaping process for a limited number of stakeholder organisations. A minimum requirement of transparent Governance will be to shed more light on these existing consultation mechanisms.
- Whether a consultation procedure is carried out in a meaningful manner is **too much dependent on the capacity of the individual Commission departments**. Whilst there are undoubtedly examples of excellency, appropriate guidance and assistance is lacking for those who are less experienced in running consultation processes.
- Excellency in consultation has not been exploited with a view to building an **institutional memory** of best practice.
- NGOs feel that their role is **insufficiently recognised** and that the Commission is often paying lip service to the need of improving the dialogue with civil society without providing the **guarantees needed for a stable framework** in this respect.

1.2. Recommendations

It is apparent that this analysis by the working group contains many elements that correspond directly to expectations and suggestions that had been forwarded at the various hearings. However, as has been emphasised, the Commission is not starting from scratch when it comes to stakeholder consultation.

Logically, improvements in this area will have to be built first and foremost on the Commission's existing practice. Inter alia, policy development related to consultation processes could build upon the experience from the social dialogue and should also aim at creating synergies between the European social dialogue and wider civil society consultation mechanisms.

Rather than being a one-off exercise, new measures will have to be implemented gradually. Working Group 2a is therefore proposing a **step-by-step approach** in order to give more structure to the Commission's consultation procedures. Such a process should include the following elements:

- Where the Commission is providing privileged access to information and consultation, in particular in the context of **advisory forums**, the possibility of outside scrutiny must be ensured. A database of these bodies including information about their remit, composition and working methods should therefore be made accessible on the Internet.

In line with the request forwarded by some civil society organisations, this stock-taking should lead to a rationalisation of the number of existing fora. This should be aimed at overcoming a DG-by-DG approach to consultation, thereby avoiding overlapping and fragmentation of consultation mechanisms. By contrast, the Commission – as a whole – should strive to foster dialogue on cross-cutting issues. For instance, an annual debate on the Commission's work programme might be an appropriate occasion in this respect.

- In parallel, the Commission should develop the appropriate **tools** to ensure a coherent consultation practice throughout the Commission and to assist Commission staff in carrying out stakeholder consultation.
 - The Commission's existing voluntary data-base on special interest groups should be transformed into a more **comprehensive data-base on European civil society organisations**. Stakeholder organisations will therefore be invited to supply the Commission with information about their objectives, membership structure, sources of financing and the way in which they involve their members in the decision-making process. Such a database will eventually help the Commission in identifying relevant civil society organisations, i.e. those that might be interested and/or affected by a Commission proposal. The data will be linked to the database on advisory forums (see above).
 - As part of its approach to openness and accountability, the Commission has been stressing that the processes of administration and policy-making must be visible to the outside world if they are to be understood and have credibility. This is particularly true of the consultation process, which acts as the primary interface with civil society interests. Good consultation processes must, therefore, also be transparent, both to those who are directly involved and to the general public. A set of **minimum standards** for the conduct of consultation should be developed and endorsed by the Commission to be applied throughout all Commission departments.

Inter alia, those minimum standards should make clear:

- What the Commission wishes to consult on
- How the Commission intends to apply the principle of early consultation
- The criteria to identify the relevant stakeholders

- How involvement in consultation processes can be facilitated (issues that ought to be addressed in this context are, for instance: the need for proper publicity, the link between appropriate information and consultation, the technical means for consulting stakeholders, and the role of e-consultation in particular).
 - How the results of consultation processes are to be brought to the attention political decision-makers
 - How the Commission intends to provide for feedback to the stakeholders, who were consulted.
- Once adopted by the Commission, the implementation of such minimum standards should be accompanied by two additional measures:
 - **Co-ordination and monitoring** through a **network** of representatives of the different Commission departments, to be chaired by the Secretariat-General. This would allow for a framework for review and assistance and would establish the institutional memory as well as mechanisms for the dissemination of good practice, which is urgently needed.
 - In some sectors civil society organisations, and particularly NGOs, see the need to base consultation processes on **mutual arrangements**. The minimum standards could form the starting point for such arrangements. This seems to be the case, in particular, in the fields of classic NGO interests (e.g. environmental, social and development policies).

Possible main features of mutual arrangements on a sector-by-sector basis:

Title (to be determined):

‘Partnership arrangement’, (‘*Lien de partenariat*’), ‘Framework for Partnership’

Nature:

Legally non-binding political commitment for co-operation (commitment to ‘best efforts’), consequently not subject to judicial review

Objectives:

To give political acknowledgement/recognition to the role of NGOs

To structure exchanges of views/dialogue between the Commission and these NGOs (on the basis of good practice *de facto* already applied at the Commission)

Parties:

DG and NGOs organised at the European level (umbrella NGOs, networks)

The working group recommends the conclusion of such arrangements, which should be built on and be in line with future cross-cutting minimum standards (see above)¹¹. For both the Commission and its consultation partners such an

¹¹ Existing models such as the Memorandum of Understanding between the Commission and the European Co-operation for Accreditation and the Framework Partnership Contract between ECHO and Humanitarian Organisations should also be taken into account in this context.

approach would entail **various advantages**:

NGOs would be provided with a **stable framework** ensuring that they are heard and have their say. At the same time, their specific role would be made more visible and properly recognised.

On the other hand, the Commission would be able to insist on certain principles with regard to the **representativity, accountability and transparency on the side of our consultation partners**. In addition, such arrangements would obviously constitute an incentive for the NGO community to organise themselves in pan-European structures, a fact which would help the Commission streamline its consultation processes.

The drafting and implementation of these arrangements could usefully be co-ordinated by a horizontal department in order to ensure the consistency needed.

- A major exercise of this kind will need some time to complete and will be a learning exercise for both the Commission and its consultation partners.

In this context, it should also be noted that the European Community signed the UN/ECE Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (the so-called Aarhus Convention) in June 1998. The so-called “second pillar” of the Convention relates to public participation in environmental decision-making. The Commission is considering what measures will be needed to enable ratification of the Convention by the European Community. Therefore, experience gained in the environment sector in the area of public participation will certainly provide another valuable contribution within the recommended gradual approach.

On the basis of lessons learned and as a second step, the Commission, in co-operation with all stakeholder organisations, should examine whether **further measures** might be needed. This applies above all to the issue of a more formalised and/or solemn commitment for co-operation and dialogue **on a cross-cutting basis**. Such an **overall consultation framework** would then be subscribed to by both the Commission and all stakeholders organisation which the Commission is dealing with on a regular basis and might have the advantage of further increasing the consistency of the Commission’s approach.

However, the working group discarded the option of a Commission-wide NGO **accreditation schemes** along the lines of the current systems of the UN or the Council of Europe. Apart from corresponding to requests by only a limited number of NGOs, such a mechanism was regarded as being too exclusive and potentially jeopardising open access to consultation processes.

(Nevertheless, regarding access to specific consultation mechanisms, some inherent **elements** of accreditation, in the form of criteria such as representativeness rules for the organisations, are obviously relevant at the Commission, particularly as far the social dialogue is concerned).

In any case, working Group 2a is convinced that the pros and cons of such cross-cutting arrangements need further in-depth analysis and discussion. Many existing

shortcomings are likely to be addressed through the implementation of minimum standards on consultation and sector-by-sector arrangements. However, this should not be used as a pretext to simply discard the additional options mentioned-above. The Commission should therefore fix a **clear timetable** for the different actions it intends to undertake:

| | |
|--|------------------------|
| Drafting of minimum standards: | September 2001 |
| Consultation on standards: | October/ November 2001 |
| Completion of consultation data-base: | Autumn 2001 |
| Adoption of minimum standards by the Commission (in the form of a Commission Communication): | December 2001 |
| This would be followed, if appropriate, by the negotiation and implementation of sector-by sector arrangements | |
| Proposal for rationalising the existing consultation forums: | Spring 2002 |
| Review of strengths and weaknesses of new system, including assessment of further measures: | 2003 |

Finally, the Commission – together with the other European Institutions and the Member States - might wish to consider whether increased visibility and political recognition of co-operation with NGOs will require an **Article in the Treaties** highlighting the importance of dialogue with civil society.

2 CONSULTATION AND THE OTHER EUROPEAN INSTITUTIONS / BODIES

2.1 Benefits of good consultation in the legislative process

As has been emphasised on several occasions in this report, the objective of improving the Commission's practice of consulting outside interest groups is not to alter the Commission's role in the institutional framework. In fact, **good consultation corresponds to the Commission's duties** according to the Treaties and ensures that sound proposals are put forward to the legislator.

Pros and cons voiced by stakeholders and the composition of the groups consulted should be **made accessible** to all Institutions involved in the legislative process. It follows that the more the Commission runs its consultation processes in a transparent and coherent manner, the more the legislator will be in a position to scrutinise whether the Commission has carried out its tasks properly. Consequently, the weight the Commission has given to the different views as well as the political decision its

has finally taken on such a basis will come out more clearly. This will obviously facilitate the political decision-making by the legislator.

Against this backdrop, it is obvious that sound and timely consultation is the appropriate option also under a cost-benefit perspective. Though good consultation requires considerable investments in terms of time and resources, it can be expected to smooth the legislative process as well as the implementation of rules.

It is hoped that a more coherent and transparent approach applied by the Commission could encourage the other European institutions to review their own practices relating to consultation processes.

2.2. Improving the involvement of the advisory bodies foreseen by the Treaties

2.2.1. The Economic and Social Committee

As emerged from the hearings, the ESC has embarked on a reform process in order to strengthen its role as a forum for organised civil society. The Commission should fully support and encourage this internal process. In particular, the Commission – by building on previous examples of this kind – should establish mechanisms through which an early consultation of the ESC can be ensured. Synergies could also be sought by co-operating with the ESC in the consultation of outside stakeholders. The recent joint consultation on a strategy on sustainable development is a striking example in this respect.

The working group took note of the fact that such practices are in the process of being formalised through an agreement between the Commission and the ESC.

2.2.2. The Committee of the Regions

As explained above, under the Community framework sub-national public authorities are actors in their own right and cannot be assimilated to civil society organisations. In order to provide these actors with an appropriate forum, the Committee of the Regions was set up. However, when assessing the role of civil society in the EU, it should be borne in mind that local and regional authorities are the privileged dialogue partners of grassroots civil society organisations. The Committee of the Regions is therefore able to act as a mouthpiece for these organisations at the European level.

Against this background, similar arrangements to those proposed for the ESC (see 2.2.1.) should also be developed for the Committee of the Regions to strengthen its impact.