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BY CIVIL SOCIETY IN

EUROPEAN PUBLIC

CONSULTATIONS

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Communication presented by
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***FOR AN ACTIVE PARTICIPATION BY CIVIL SOCIETY
IN EUROPEAN PUBLIC CONSULTATIONS***

**Communication from the Economic, Social and Environmental Council presented on behalf of
the Bureau by Ms Evelyne Pichenot
on behalf of the European Union delegation**

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On 16 December 2008, the Bureau of the Economic, Social and Environmental Council (CESE) entrusted the delegation for the European Union with the task of drafting a communication entitled, For an active participation by civil society in European public consultations.

The delegation for the European Union appointed its chair, Ms Évelyne Pichenot, to be the rapporteur¹.

For additional information, the delegation heard contributions from:

- Ms Viviane de Beaufort, Professor at the ESSEC Business School;
- Mr Jean-Claude Karpelès, member of the Paris Chamber of Industry and Commerce, President of the CCIP Europe Club;
- Ms Brigitte Lacoue-Labarthe, Head of Department for the Internal Market, Consumers, Competition, State Aids at the Secrétariat général des affaires européennes (SGAE);
- Mr Gérard Legris, Head of Unit Transparency, Relations with Stakeholders and External Organisations at the European Commission's Secretariat-General;
- Ms Hélène Michel, Lecturer in political sciences at the University of Lille II.

¹

This communication was adopted by the Bureau at its meeting of 26 May 2009. The outcome of the delegation's vote is set out in Appendix 1.

INTRODUCTION

The European Commission has enjoyed the power of initiative for legislation since the beginning of the European process and, under the terms of the treaties, is obliged to consult the institutions, including the European Economic and Social Committee. It also takes advice from consultative groups and/or committees of national experts. Furthermore, it is increasingly engaging in various forms of public consultation, a trend which has gathered pace considerably since the Treaty of Amsterdam in 1997 which introduced a compulsory consultative phase before decisions are made.

Article 8b (Article 11 of the consolidated treaty) of the Treaty of Lisbon steps up these consultation procedures for the future: *"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. The institutions shall maintain an open, transparent and regular dialogue with representative associations and civil society"*. Whereas, *"The European Commission shall carry out broad consultations with parties concerned in order to ensure that the Union's actions are coherent and transparent"*. This Treaty is still being ratified as this communication is being drafted. In any event, the difficulties raised in the debate on this Treaty in the various countries have pointed to the urgent need for strengthening civic ownership of and citizens' involvement in the European process.

2009 should be a crucial year. After the elections to the European Parliament at the end of the first six months, the appointment of a new European Commission by the European Council and the incoming Parliament will prompt the drafting of a new agenda. Against the difficult background created by the financial, economic and social crisis besetting the European Union, it will be up to this new Commission to define a new five-year European work programme likely to meet the expectations of Europe's citizens.

Our Assembly believes that the European Commission's practice of holding public consultations, which is much more extensive than at national level, particularly in France, helps to enhance its consultative role. It is also an excellent way to encourage ownership through more active involvement of the various constituent groups of civil society upstream from the decision-making process.

The French Economic, Social and Environmental Council (CESE) is already involved in European public consultations in a number of ways. It has replied directly, or via its member groups, to a number of these consultation exercises since 2005. The CESE believes holding such consultations is of major importance. Our Assembly's opinion on the services directive, a classic example of the poor functioning of such consultations - because civil society was not sufficiently involved and/or represented - demonstrated that a poorly-prepared directive could cause serious problems². Plan D "Dialogue, debate, democracy", which had been launched as a major programme to help "bridge the gap", has so far fallen short of expectations.

2

Opinion Proposal for a directive of the European Parliament and of the Council on services in the internal market, prepared by Mr Francis Lemor (January 2005).

By contrast, a number of consultations in the network industries, or, more recently, the drafting of the Reach directive, have shown how effective it can be to consult social partners and, more generally, civil society. Similarly, in a register of supporting competence, the Green Paper on the European digital library was instrumental in speeding up the creation of a European foundation of heritage libraries, museums and archive centres.

As part of its external policy, the European Commission highlights the importance of involving local civil societies. The European Economic and Social Committee makes a substantial contribution in this respect through the networks, round tables and joint committees it has set up under bilateral agreements. Improving consultation as part of the European Union's internal policy helps strengthen this exemplary practice that it advocates in its external policy. The French CESE mainly participates through Tresmed and notes that these exchanges between civil societies are very often intensive and regular since they are less affected by political vicissitudes.

The French CESE has already addressed this question of taking part in public consultations in a number of recent works, particularly in the context of its communications *Contribution of the Economic and Social Council to the White Paper on a European communication policy*, prepared by Mr Jean-Marc Roirant and *From drafting Community legislation to its implementation in national law: the Economic and Social Council's contribution to the debate on "Better law-making"*, whose rapporteur was Ms Catherine Dumont.

This communication looks at the current framework of public consultations with their benefits and limitations. It puts forward proposals aimed at improving the procedures currently used in this context so as to encourage greater involvement by civil society in France and the other Member States. It calls on the French public authorities to strengthen the CESE's role within this framework at a time when reform of this consultative institution is taking shape.

I. A SERIES OF CONSULTATIONS BEFORE THE COMMISSION INITIATIVE

Consultations are held before the European Commission's initiative to ascertain whether it is necessary and appropriate to introduce legislation or not, - there may be grounds for not introducing legislation, as was seen in the case of social services of general interest (SSGI) - or to opt for other non-legislative instruments (recommendations, action programmes, common principles, etc.).

A. A GRADUAL BROADENING OF THE ROLE OF CONSULTATIONS

1. A consultative phase upstream from decision-making has been compulsory since 1999

The use of consultation procedures by the European Commission goes back to the origins of the European Community: the European Economic and Social Committee, a consultative assembly representing the economic and social actors, in the words of its first Secretary-general, Mr Jacques Genton³, was established with the 1957 Treaties of Rome; similarly, the involvement of representatives of interest groups and lobbyists in drawing up Commission draft decisions goes back a long way. However, the European consultative process gained considerable ground in the 90s, with the entry into force of the Amsterdam Treaty in 1999 which marked a major development with its inclusion of a compulsory consultative phase upstream of the decision-making process. The Protocol governing the application of the principles of subsidiarity and proportionality appended to the Amsterdam Treaty stipulates that *"the Commission should (...) consult widely before proposing legislation and, wherever appropriate, publish consultation documents"*.

The Aarhus Convention, adopted in 1998 in the context of the UN Economic Commission for Europe (ECE-UN) and ratified by France in 2002, establishes a right to information, access to justice and above all the participation of the "public concerned" in the drafting of environmental legislation at a time *"when all options are open and effective public participation can take place"* (article 6.2.4.). As Loïc Blondiaux has emphasised, although the legal scope of this text in domestic law is still under discussion, its potential as a driving force is undeniable⁴.

The use of the Internet has also contributed to the spread of this process. During the 90s it was perceived to have opened the way to a "radical transformation"⁵ in the relationship between "the governing" and "the governed". For the European Union, this huge geographical entity with its

³ Jacques Genton, *History of the EESC, Fifty years of participatory democracy 1958-2008*, (CESE 2008-01-en) (2008)

⁴ Loïc Blondiaux, *Le nouvel esprit de la démocratie : actualité de la démocratie participative (The New Spirit of Democracy: Recent developments in participatory democracy)*, Seuil, « La République des Idées », (March 2008), p. 21. See also « Convention d'Aarhus : de la négociation internationale à la mise en œuvre nationale » (The Aarhus Convention: from international negotiation to national implementation), in Raphaël Billé, Laurent Mermet, Martine Berlan-Darqué, Nathalie Berny and Alexandre Emerit, *Concertation, Décision, Environnement*, Paris, La documentation Française, 2005, volume III, pp. 57 to 104.

⁵ Quoted by Patrick Flichy, « Les enjeux démocratiques et administratifs d'Internet » (The Internet: democratic and administrative challenges), *Regards sur l'actualité*, No. 327, p. 5, (2007).

numerous and diverse populations, the electronic era really offers new prospects for promoting immediate and direct information about associations and people, together with types of individual or collective participation. They all have a part to play alongside the essential role of those who govern.

In 2001, the White Paper on European Governance marked a decisive point after the Treaty of Nice in bringing Europe closer to its people. It *"proposed opening up the policy-making process to get more people and organisations involved in shaping and delivering EU policy. It promotes greater openness, accountability and responsibility for all those involved"*⁶. Since the Treaty of Nice referred to "organised civil society" (article 257 of the EC treaty on the European Economic and Social Committee), this White Paper proposed a definition of the concept of civil society for the first time: *"civil society includes the following: trade unions and employers' organisations ("social partners"); nongovernmental organisations; professional associations; charities; grass-roots organisations; organisations that involve citizens in local and municipal life with a particular contribution from churches and religious communities"*⁷.

Consultation is still a work in progress. After an experimental phase, these mechanisms become more refined and take on a more definite shape. It is still a relatively recent addition to the shaping of public decisions which puts into practice the Lisbon Treaty's chapter on participatory democracy.

This practice really took off during the Commission's current term of office with more than one hundred consultations a year on a wide range of topics. The use of on-line consultations via the Internet gave the tool a heightened profile with 159 communications and 95 internet consultations in 2004 and 187 communications and 106 consultations via the internet in 2005⁸.

A large number of these consultations take the form of Green or White Papers.

Green Papers are purely consultative discussion papers accompanied by questions presented by the Commission on the reforms it plans so as to launch the debate. Sometimes they are based on replies to questionnaires sent out earlier to members of sectors and administrations in the Member States and circulated before any formal decision and describe the situation in a given sector, identify the problems arising and put forward solutions likely to be applied. In some cases they are precursors of subsequent developments in legislation.

⁶ *White Paper on European Governance*, European Commission, COM(2001) 428 final, 25 July 2001, p. 3.

⁷ *Ibid.*, quoted by Florence Chaltiel, in *Processus de décision dans l'Union européenne (Decision-Making in the European Union)*, La documentation Française, collection « Réflexion Europe », p. 39, (August 2006).

⁸ Council of State's *Public Report 2007*.

The European Commission published eight Green Papers in 2008 on a very wide range of topics.

In 2008:

- *European workforce for health*⁹;
- *Management of bio-waste in the European Union*¹⁰;
- *Consumer collective redress*¹¹;
- *Agricultural product quality: product standards, farming requirements and quality schemes*¹²;
- *Territorial cohesion: turning territorial diversity into strength*¹³;
- *Copyright in the knowledge economy*¹⁴;
- *Migration and mobility: challenges and opportunities for EU education systems*¹⁵;
- *The transparency of debtors' assets*¹⁶.

The European Commission had previously published 11 Green Papers in 2007, 12 in 2006, 14 in 2005, six in 2004, three in 2002 and eight in 2001. The consultations accompanying a Green Paper form an essential part of the impact assessment, an internal Commission procedure that precedes any initiative¹⁷.

At a later stage in formalising its proposals, the European Commission publishes White Papers. These are documents setting out proposals for Community action in a specific area and sometimes follow on from a Green Paper published to trigger a consultation process at European level. Whereas Green Papers set out a range of ideas for public debate, White Papers contain a set of proposals in specific political areas and are a vehicle for a debate on their relevance and practicability.

⁹ COM(2008) 44, December 2008.

¹⁰ COM(2008) 811, December 2008.

¹¹ COM(2008) 794, November 2008.

¹² COM(2008) 641, October 2008.

¹³ COM(2008) 616, October 2008.

¹⁴ COM(2008) 466, July. 2008.

¹⁵ COM(2008) 423, July 2008.

¹⁶ COM(2008) 128, March 2008.

¹⁷ Mr Gérard Legris' hearing before the European Union delegation, 14 April 2009.

The European Commission published one White Paper in 2008 and three in 2007. They dealt with the following topics:

- *Damages actions for breach of the EC antitrust rules*¹⁸;
- *Together for Health. A Strategic Approach for the EU 2008-2013*¹⁹;
- *Sport*²⁰;
- *A Strategy for Europe on Nutrition, Overweight and Obesity related health issues*²¹.

The Commission published two White Papers in 2006, one of which was on A European Communication policy, to which our Assembly replied²², two White Papers in 2005, two in 2004, one in 2003 and four in 2001.

Several of these White or Green Papers have led, or subsequently led to texts of positive law, regulations or directives.

A recent study carried out by the Robert Schuman Foundation revealed that between June 2004 and February 2009, the number of legislative acts adopted by the European Parliament and the Council of the European Union amounted to 142 directives and 145 regulations in total, with an additional 60 directives and 652 regulations adopted by the Council alone. During this period, the main areas covered, by number of acts, were:

- Industrial policy and the internal market (49 directives and 40 regulations);
- The environment and consumer protection (48 directives and 23 regulations);
- Right of establishment and the freedom to provide services (32 directives);
- Transport policy (21 directives and 19 regulations);
- Free movement of workers and social policy (14 regulations)²³.

18 COM(2008) 165, April 2008.

19 COM(2007) 630, October 2007.

20 COM(2007) 391, July 2007.

21 COM(2007) 279, May 2007.

22 *Communication Contribution du Conseil économique et social au Livre blanc sur une politique de communication européenne*, (Contribution from the Economic and Social Council on the White Paper on a European Communication policy) prepared by Mr Jean-Marc Roirant (July 2006).

23 Yves Bertoncini and Thierry Chopin, « *Les élections européennes de juin 2009 : un triple choix* » (The June 2009 European elections: a triple choice), article published in *L'État de l'Union en 2009 – Rapport Schuman sur l'Europe* (April 2009). Statistical sources: Eulex data. The calculations were made by the two authors.

2. Work programming and assessment tools

At regular intervals, the European institutions, and the Commission in particular, put forward a strategic plan and an annual work programme, a programming exercise which enables them to make clear which topics will be dealt with and when. It allows informed and concerned observers to anticipate events.

Every five years, the Commission produces a strategic action plan. In January 2005 it thus published its "Strategic Objectives 2005-2009: Europe 2010: a Partnership for European Renewal. Prosperity, Solidarity and Security". This programming exercise is ongoing and is brought up-to-date with the annual work programme, drawn up in conjunction with the Council and the European Parliament, which includes the list of legislative and non-legislative initiatives (including Green and White Papers) planned during the year ahead and proposals for texts likely to be submitted to the Council and European Parliament for scrutiny. In February 2008, the Commission published the communication *Annual Policy Strategy for 2009*²⁴, setting out for the benefit of the European Parliament, the European Council, the European Economic and Social Committee and the Committee of the Regions the key actions, centred on seven topics, which it envisaged for the last year of its term of office.

This forward-looking approach is strengthened by the fact that European legal texts, for the most part, form part of a logical series: texts are not adopted in isolation but are part of a continual flow of texts announced in advance and following on logically from one another.

As part of its strategy on "*Better law-making*"²⁵ the European Commission has been setting up in-depth impact assessment studies since the beginning of 2005 to assess, *a priori* and *a posteriori* the effectiveness of the planned measures in terms of the desired goals.

*"The Commission's impact assessment system aims at ensuring evidence-based policy making inside the Commission through an integrated and balanced assessment of problems and alternative courses of action"*²⁶

²⁴ *Annual Policy Strategy for 2009*, communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, COM(2008) 72 final.

²⁵ In addition to the various forms of public consultation, the other parts of this strategy include "cleaning-up" Community law by removing texts deemed obsolete and an action programme for reducing administrative burdens in the Union (see the communication *From drafting Community legislation to its implementation in national law: contribution from the Economic and Social Council to the discussions on "Better Law-making"*, prepared by Ms Catherine Dumont, pages 103 to 130).

²⁶ *Report for 2007* by the Impact Assessment Board, European Commission.

Since 2005, the main draft regulations or directives have therefore had to be accompanied by an impact analysis estimating their costs and benefits for the European economy. This practice is aimed at:

- acting at the appropriate level in accordance with the principles of subsidiarity and proportionality, by considering the possibility of not taking any action at European level or by favouring alternatives to legislation;
- seeking coherence with the other European policies under the three pillars of sustainable development (economic, social and environmental), the effects on the economy, the social dimension and the environment being analysed, even if the emphasis is on economic competitiveness, in line with the refocusing of the Lisbon Strategy that occurred in 2005²⁷.

DG Employment and Social Affairs has drawn up a practical guide for officials and consultants to evaluate the social impact of any planned measure, including regulations.

Impact assessments are now carried out systematically and an impact assessment board was set up in November 2006. Its role is to provide qualitative support and, through the opinions it delivers, to monitor the quality of the European Commission's impact analyses. Appointed by and accountable to the Commission president, board members carry out their tasks independently of the Commission, commissioners and pressure groups, with due respect for the distinction between their role as Commission officials and board members. The board makes transparency a priority. Its recommendations can be consulted by all Commission staff and are officially part of the Commission's internal decision-making procedure. Its opinions are also made available to the other institutions and the general public once the corresponding initiative has been adopted by the Commission²⁸.

The board began its activities in 2007 and since then has delivered 112 opinions on impact assessments accompanying Commission initiatives²⁹. In 2008, it delivered 182 opinions on impact assessments accompanying Commission initiatives (including 41 simplification initiatives, 43 opinions on re-submitted draft impact assessments and 4 opinions on impact assessments³⁰). It has also formulated various recommendations to help perfect the methodology used for impact assessments³¹.

²⁷ *Report to the Prime Minister by the Working Group instructed to consider the follow-up to the Council of State's 2006 Public Report*, Appendix IV, p. 1.

²⁸ 2007 report by the impact assessment board, European Commission, p. 3.

²⁹ General report on the activity of the European Union in 2007, p. 20.

³⁰ General report on the activity of the European Union in 2008, pp. 13 and 21.

³¹ 2007 report by the impact assessment board, European Commission, p. 4.

B. PUBLIC CONSULTATIONS WHICH ARE PART OF A BROADER CONSULTATION FRAMEWORK

Despite its focus on forms of public consultation developed over the last decade among the relevant stakeholders, this communication aims to be thorough; accordingly, it portrays the overall consultation framework, including the institutional forms of consultation enacted by the treaties which also specify the parties involved.

1. Institutional consultations: EESC and CoR

The European Economic and Social Committee (EESC) was established in 1957 by the Treaty of Rome and according to the Treaty of Nice is the institutional body responsible for representing organised civil society. It is an advisory body and is currently made up of 344 members³², divided into three groups (I. Employers, II. Employees and III. Various interests) and appointed by the Council of the EU on a proposal from each of the 27 Member States (Art. 259 of the TEC) for a four-year renewable term of office.

The EESC advises the European Parliament, the Council of the European Union and the Commission, and the Commission and Council are required to consult it in the areas indicated by the Treaty (Art. 262 of the TEC). The Maastricht and Amsterdam treaties extended the number of policies subject to mandatory consultation, and this now applies to the following areas: internal market, social policy, work, training, economic and social cohesion, environment, public health and consumer protection policies, research, industrial policy, transport, report on citizenship of the EU and taxation. The EESC can also be consulted on any issue judged appropriate by the Commission, Council and European Parliament (the latter since the Treaty of Nice). It can also issue opinions on its own initiative and the exploratory opinions drawn up at the request of the other EU institutions enable it to make suggestions on a given subject which may lead to a Commission proposal. It also responds to consultations presented in the form of a green or white paper.

Preparations for these opinions may involve public hearings, held to sound out the views of a wide range of stakeholders. The opinions are adopted by simple majority of the plenary assembly, after in-depth discussion by study groups and sections, and are then published in the Official Journal and forwarded to the Commission, the Council and the European Parliament. 150 to 170 opinions are adopted each year.

An expert is chosen by a Committee member to help shape the opinion, and this choice will have a major impact on the final result.

At the request of the European Commission, the Committee also holds conferences and hearings prior to the preparation of formal consultations.

³²

The Treaty of Nice limited the number of EESC members to 350.

It also hosts hearings and conferences with civil society representatives from outside the EU in the form of round tables and joint committees (EPA, India, China, etc.)³³.

The Committee of the Regions (CoR) was established in 1994. Governed by Articles 263 to 265 of the TEC, it has the same number of members with the same breakdown by Member State as the EESC. CoR members represent local and regional authorities and must hold an electoral mandate or be accountable to an elected assembly (Art. 263 of the TEC). Although the distribution between the tiers of local and regional government is left up to each Member State, the national delegations must reflect the political, geographical and local balance.

The CoR must be consulted by the Commission and the Council as stipulated by the Treaty and whenever the proposals envisaged deal with cross-border cooperation. Commission proposals on education, culture, public health, trans-European networks, economic and social cohesion, cohesion and social funds, the goals of the Structural Funds, social issues, employment, vocational training, the environment and transport policy must be referred to the CoR. It may be consulted by the Commission, the Council and the European Parliament when one of these institutions feels that this is desirable. It may also issue an opinion when the Committee itself feels that it would be appropriate (Art. 265 of the TEC).

The Committee of the Regions issues three other types of act:

- resolutions, enabling it to express its views on major topical issues;
- outlook and impact reports, which can only be requested by the president or members of the European Commission and which enable the CoR to take action upstream of the decision-making process. As soon as the Commission decides to prepare a document of interest to the towns and regions, the CoR carries out research at local level;
- studies, drafted with the assistance of external experts, on various aspects of the regional and local dimension of the European Union³⁴.

The Treaty of Lisbon, currently in the process of being ratified, will give the CoR the right to appeal to the Court of Justice of the European Communities (ECJ) in the event of failure to comply with the subsidiarity principle³⁵.

³³ *The EESC, a bridge between Europe and organised civil society*, Office for Official Publications of the European Communities and EESC website.

³⁴ *L'Union européenne* (The European Union), under the direction of Mr Louis Dubouis, Les notes de la documentation française (2004), and *The Committee of the Regions at a glance*, Committee of the Regions website, www.cor.europa.eu.

³⁵ *Cinquante ans du Comité économique et social européen* (Fifty years of the European Economic and Social Committee), special report by *Europolitique*, No 3538 of 28 May 2008, p. 8.

2. The specific role of the European social partners

The European Commission is required to consult the European social partners before submitting proposals on social matters, under Article 138 of the TEC.

The following partners are currently recognised: for employers, BusinessEurope (European association of employers), the European Centre of Enterprises with Public Participation and of Enterprises of General Economic Interest (CEEP) and the European Association of Craft and SMEs (UEAPME); for employees, the European Trade Union Confederation (ETUC)³⁶ and the liaison committee for Eurocadres/European Managers (CEC).

The consultation must focus on the direction taken by a Community measure in the social field and then, if judged appropriate, on its content. This procedure applies to all rules on employment, labour law and conditions of employment, the rights of trade unions and collective bargaining. The European social partners can indicate their preference for a contract and then have a renewable period of nine months to reach an agreement.

However, the social partners are not formally involved in the working groups responsible for drafting incentive policies based on recommendations and coordination, nor do they take part in the open methods of coordination implemented by the Commission on social policies, particularly in the areas of retirement or employment policies, with the exception of the tripartite social summit³⁷. In France, prior consultation of the social partners on these coordination methods is conducted within the Committee for Social Dialogue on European and International Issues (CDSEI)³⁸. In some cases, agreements reached by the social partners can become European directives; for example, the framework agreement of 18 March 1999 on fixed-term work resulted in Directive 99/70/EC of 28 June 1999.

3. Comitology

The Treaty of Rome stated that the Council conferred on the Commission implementing powers for rules established by the Council and that it could, in specific cases, exercise those powers itself. In practice, this involved setting up committees comprising representatives of the Member States to frame the work of the European Commission – a process known as "comitology"³⁹.

³⁶ Five French trade union platforms (CFDT, CFTC, CGT, CGT-FO and UNSA) take part in the work of the European Trade Union Confederation (ETUC) and CFE-CGC is a member of European Managers (CEC); some of these organisations have an office for permanent representation to the European Union.

³⁷ Opinion on *What social powers and which players in the enlarged European Union?*, drawn up by Ms Évelyne Pichenot (October 2002).

³⁸ *Rapport public du Conseil d'État 2007* (2007 public report of the French Council of State), p. 258.

³⁹ Christian Lequesne and Alejandro Ribo Labastida, *Les institutions de l'Union* (The institutions of the Union), notice No 2, *L'Union européenne – Édition du Traité de Lisbonne* (The European Union – the Treaty of Lisbon), under the direction of Jacques Ziller, La documentation Française, collection « Les Notices », pp. 18 and 19 (2008).

Since 2006, the European Parliament and the Council of the European Union can block decisions relevant to areas subject to co-decision.

There are four types of committee:

- **consultative committees** direct their opinions to the Commission which must endeavour to take them into account;
- **management committees:** when the measures adopted by the Commission do not comply with the opinion delivered beforehand by the management committee, the Commission must forward them to the Council, which may make a different decision by qualified majority according to a schedule established in the act;
- **regulatory committees:** when the measures envisaged by the Commission do not comply with the opinion delivered beforehand by the regulatory committee, the Commission must forward them to the Council and, for information, to the European Parliament. The Council can signal its agreement or make changes within three months; should the Council not make a decision, the Commission adopts the implementing measures unless the Council signals its opposition. In this case, the Commission may submit a revised or new proposal or re-submit the same proposal;
- **regulatory committees with scrutiny** give the Council and the Parliament the right of scrutiny prior to the adoption of general measures intended to modify non-essential aspects of an act adopted under the co-decision procedure. Should one of these institutions express opposition, the Commission cannot adopt the proposed measure; however, it can submit a revised or new proposal.

4. **Emergence of networks of European platforms**

A European movement of associations has been around for a long time. Associations were set up very early on, largely to promote European integration (European Movement, Robert Schuman Foundation, Notre Europe, Houses of Europe, Europe and Society, Europartners, etc.). Some of these were in place prior to the Treaty of Rome.

From the beginning, European civil society organisations and networks working on specific issues were established due to the realisation that a new tier of government had emerged, operating at supranational level. Examples of this are the Confederation of Family Organisations in the EU (COFACE), the European Consumers' Organisation (BEUC) set up in 1962, and the European Women's Lobby.

These organisations and networks formed close links and so gradually became privileged consultative partners of the Commission and its directorates-general (DG). As an example of this, the platform of European NGOs in the social sector, set up in 1995 and comprising some forty associations and networks, has become a benchmark partner of DG Employment, social affairs and equal opportunities.

The European Standing Conference of Co-operatives, Mutual Societies, Associations and Foundations (CEPCMAF), now known as Social Economy Europe (SEE), a platform representing the social economy at European level, was set up in 2000.

Most of the Commission's directorates-general have established structured dialogue with the major civil society platforms, by means of consultations with platforms specialising in specific areas.

The education platform (EUCIS-LLL) has thus contributed to the common principles of the European Qualifications Framework in close cooperation with the Education and Culture DG.

A major step forward was taken in 2002 when several major European associative networks joined on a voluntary basis so as to take a cross-cutting, and no longer sectoral, approach to societal issues and contribute to the debate on the construction of a more democratic and social Europe. This platform, the Civil Society Contact Group⁴⁰, was involved in the work of the Convention on the future of Europe in 2003 and still acts as interface between European associations and EU institutions.

The liaison group with the European Economic and Social Committee comprises the following 17 European platforms: CONCORD (development), European Women's Lobby, EFAH (arts and heritage), EUCIS-LLL (education), *Coopérative Europe*, EDF (disabilities), COFACE (families), European Youth Forum, BEUC (consumers), AIM (mutual assistance), International European Movement, Group of social service providers in Europe, European Civic Forum, Rurality-Environment-Development, European Older People's Platform, Rights of the Child, European Association for Human Rights.

An additional step in giving European associations a voice on cross-cutting issues was taken with the drafting of the Manifesto for a real European civil dialogue. Signed by twenty of the largest European civil society networks⁴¹, the manifesto was presented during an event held at the European Economic and Social Committee building on 14 April 2009, in partnership between the signatory networks and the EESC's Group III bureau and with the participation of representatives of the European Parliament's main political groups.

This unprecedented gathering was a forerunner of a platform of European associative networks which wish to play their part fully in European public consultations on issues of interest to them all.

⁴⁰ The Civil Society Contact Group brings together eight major European networks of NGOs: Platform of European Social NGOs, European NGO Confederation for Relief and Development (CONCORD), green 10 (environmental NGOs), European Women's Lobby (EWL), European Public Health Alliance (EPHA), Human Rights and Democracy Network (HRDN), Culture Action Europe (formerly the European Forum for the Arts and Heritage) and European Civil Society Platform for Education and Training (EUCIS-LLL).

⁴¹ European Civic Forum, COFACE, Platform of European Social NGOs, European Association for Human Rights (EAHR), European Youth Forum (EYF), Eurochild, BEUC, ILGA Europe, Human Rights and Democracy Network (HRDN), European Civil Society Platform for Education and Training (EUCIS-LLL), European Movement (EIM), European Foundation Centre (EFC), European Disability Forum (EDF), European Women's Lobby (EWL), SOLIDAR, CEDAG, European Association of Service Providers for Persons with Disabilities (EASPD) and Rurality-Environment-Development International Association (RED).

5. Informal consultations, lobbying and interest and pressure groups

The report on French presence and influence in the European institutions pointed out that Brussels has become the global capital of lobbying: in an area of only 3 to 4 square kilometres, there are nearly 10 000 lobbyists, 700 professional associations, 400 interest and pressure groups, 150 consultancies, 150 law firms specialising in European affairs, 30 chambers of commerce and almost 1 000 accredited journalists⁴².

Many studies have analysed the new activity of lobbying, often stressing that significant human and financial resources are needed to ensure permanent follow-up. In her book entitled "*Lobbying: portraits croisés*", Ms Viviane de Beaufort uses the definition of lobbying current in Canadian law: contacting decision-making bodies with a view to pursuing private or special interests. In our indirect democracies, she says, lobbying is useful in that it enables individuals to defend their position and provides politicians with expertise so that they can make decisions in full knowledge of the facts and to balance interests which, although partial, are legitimate. Lobbying is a way of making politicians aware of the issues at stake, the practical problems facing companies and the reality on the ground, in order to ensure better applicability and enhanced effectiveness of policies and legislation⁴³.

Interest, pressure and lobby groups have rapidly extended their sphere of activities to include Europe: European funding and contracts, partnerships with European counterparts, opening offices in Brussels, forming formal networks which operate across Europe, based on models in various Member States. A study on *Les groupes de réflexion et d'influence en Europe* (Think tanks and lobby groups in Europe) lists over 80 French and 120 European think tanks, and analyses their structure, funding and real influence in 2008⁴⁴.

An article published on Novethic.fr puts the number of professional lobbyists in Brussels at between 12 000 and 20 000 and notes that the activity of a lobbyist falls into two main categories. The first is monitoring, whereby the lobbyist monitors ongoing draft directives, looks for relevant information which may be of interest to the interest and pressure groups that he represents and tries to participate as far upstream as possible in the framing of European directives, especially green and white papers, through contacts with Commission officials. The second category consists of advice: he meets

42 *Rapport d'information sur la présence et l'influence de la France dans les institutions européennes* (Report on French presence and influence in the European institutions), presented by Mr Jacques Floch, deputy, on behalf of the delegation of the National Assembly for the European Union, No 1594 (12 May 2004). (The 2007 public report of the French Council of State puts the number of accredited journalists at over 1 300 in 2006, of which only 85 were French, far behind Germany and the United Kingdom).

43 Viviane de Beaufort, *Lobbying : portraits croisés. Pour en finir avec les idées reçues* (Lobbying: putting an end to received wisdom), Édition Autrement (2008).

44 Pierre-Emmanuel Mogg, *Les groupes de réflexion et d'influence en Europe* (Think tanks and lobby groups in Europe), in cooperation with the Fondation Prométhéus, L'Expansion (2008).

officials, MPs and more generally European politicians to give the lobby's view on a particular aspect of a text and if appropriate, suggests changes⁴⁵.

Naturally, French stakeholders play their part on this stage: the Circle of permanent French delegates (*Cercle des délégués permanents français*, CDPF), set up in 1994, includes nearly 200 representatives of companies, local and regional authorities, professional, consular and agricultural organisations, research bodies, law firms and consultancies present in Brussels, with ties to the French permanent representation to the European Union⁴⁶. French local and regional authorities are also present: 20 of the 22 metropolitan regions have opened an office in Brussels.

Mr Pierre Sellal, ambassador and permanent representative of France to the European Union, stressed that another category of influence players is made up of think tanks, descendants of the "thinking groups" of the 18th and 19th centuries, which crossed the Channel and the Atlantic in both directions. Our political culture has had to change and accept that in Brussels, such bodies play a part in forming the "general frame of mind", the "soil" from which decision-makers draw their inspiration upstream of the legislative process. Academics, lawyers, officials, corporate representatives and practitioners meet and discuss ideas, guidelines and projects openly and freely. It is important not to overlook this framework of influence because the Commission and the European Parliament often base their ideas on discussions and exchanges by think tanks. In a very European spirit faithful to the pragmatic and progressive approach of Jean Monnet, ideas underpinned by experience are the most likely to be influential.

The permanent representation of France to the European Union regularly publishes a "panorama" of Brussels-based think tanks summarising the main contributions, publications and conferences of European think tanks.

There are concerns about this dimension, primarily the fear that France is not as present on the scene as our main partners, and a more general concern regarding the relative opacity of the system.

Mr Jean-Claude Karpélès's report entitled *Le lobbying des entreprises françaises à Bruxelles : quels progrès depuis 2002 ?* (Lobbying by French companies in Brussels: progress since 2002?), finds that despite some progress (better position in Brussels lobbying, higher level of professionalism), there are persistent failures (action often taken too late when it should in fact be taken as soon as the green papers are published, poor use of French MEPs and seconded national experts, low level of response when calls for tender are published in English, inadequate presence of SMEs and SMIs, etc.). The 2007 public report of the French Council of State refers to fragmented and low-profile representation of French local and regional authorities, while a study carried out in 2004 by the Notre Europe

⁴⁵ Laurent Fargues, *Bruxelles : le royaume des lobbies* (Brussels: kingdom of lobbies), article available online on the Novethic website at: <http://www.novethic.fr/novethic/site/dossier/index.jsp?id=80719> (23 August 2004).

⁴⁶ Report on *Lobbying européen : le grand marché des influences* (European lobbying: the influence market), in *L'Interconsulaire*, No 100, p. 27 (December 2007).

association found that of the 149 think tanks present in Brussels, only seven were French, as opposed to 16 for the United Kingdom and 23 for Germany.

However, efforts have been made to boost the effectiveness of lobbying activities undertaken by French operators and improve follow-up. The assembly of French chambers of industry and commerce has brought out a guide for companies and particularly SMEs on mechanisms whereby European institutions can consult companies, entitled *Entreprises, faites entendre votre voix en Europe!* (Companies: make your voice heard in Europe). The guide describes the European decision-making process and stakeholders defending the interests of SMEs in Europe, as well as how SMEs can make their voice heard before and after the adoption of European laws.

In her book entitled *Le processus de décision dans l'Union européenne* (The decision-making process in the European Union), Florence Chaltiel found in 2006 that there is a definite lack of comprehensibility. Where can you find the list of pressure groups? How can an individual or small firm find out about the means of action open to them or the groups which could represent them? A second problem is connected to the uneven playing field for pressure groups. European integration initially focused almost exclusively on economic issues, and this has resulted in the current over-representation of economic interests. Last but not least of the difficulties connected to the system is the need for a renewed code of conduct to prevent a poorly regulated system from drifting off course.

II. IMPROVEMENTS HAVE BEEN INITIATED IN THE CONSULTATION PROCESS

A. THE EESC'S INTERINSTITUTIONAL AGREEMENT WITH THE COMMISSION

In 2005, the European Commission and the European Economic and Social Committee signed a protocol of cooperation to step up the relations between these two institutions.

This protocol records the Commission's support for a stronger consultative role for the Committee, both upstream and downstream of the Community policy and legislation shaping process, which *"means in particular that the Committee may be involved in impact analyses and contribute more to evaluating the implementation of the legislation."*

The Commission and the Committee cooperate in the development of participative democracy at Union level with the aim of boosting its democratic legitimacy. The Commission supports the Committee's initiatives to promote and structure dialogue and consultation with European organised civil society and reinforce relations with the economic and social councils and similar institutions in the Member States, so that the Committee can play its full part as a vector for the expectations and aspirations of organised civil society."

This results in stronger institutional and administrative relations. The President of the Commission presents the five-year strategic objectives to the Plenary Assembly at the start of the Commission's term, and either he or the vice-president responsible for relations with the Committee presents the Commission's annual policy strategy and the salient points of its annual work programme to the

Plenary Assembly each year; in addition, an annual meeting is held between the Committee President and the President or a vice-president of the Commission with the aim of examining the two bodies' respective priorities and assessing the implementation of the protocol.

The Members of the Commission are invited to take part in the Committee's work, and in particular to attend plenary sessions to discuss strategies in their areas of competence.

The Commission's representatives are involved with the Committee's work on the dossiers for which they are responsible; the coordinators or managers appointed by each Commission department and the Committee section secretariats regularly exchange information; they meet at least once a year to review medium-term Commission initiatives to which the Committee could provide a substantial contribution.

When framing EU policies and programming its work, the Commission may ask the Committee for exploratory opinions in areas of particular importance for organised civil society. It monitors the process in order to gauge the added value of such opinions for EU decision- and policy-making.

In order to give its opinions a higher profile, the Committee, for its part, endeavours to highlight more clearly the specific changes it wishes to be made in Commission legislative proposals and outlines the main recommendations and proposals that it makes.

The Commission systematically explains, periodically and in writing, why proposed changes and content suggestions contained in Committee opinions have or have not been taken into consideration.

The Commission and the Committee also work together to boost the involvement of organised civil society in the EU's policy-making and legislative processes, and in implementing these policies and laws. In this connection, the Commission also supports the Committee's undertaking to strengthen and formalise the dialogue with organised civil society, particularly by means of the Liaison Group that it has set up.

The Liaison Group between the EESC and the representatives of the main sectors of European organised civil society was set up in 2004. At present, in addition to the 19 EESC representatives (including the EESC president, the three Group presidents and the six section presidents), it has 17 members from the main organisations and networks active in the sectors of European civil society represented within the Liaison Group⁴⁷.

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The members of the Liaison Group at the European Economic and Social Committee are as follows: the European NGO Confederation for Relief and Development (Concord); the European Youth Forum (YFJ); the European Women's Lobby (EWL); the European Civil Society Platform on Lifelong Learning (EUCIS-LLL); the Confederation of Family Organisations in the European Union (COFACE); the European Movement International (EMI); the European Consumers' Organisation (BEUC); the Association of NGOs providing social services; Cooperatives Europe; the International Association of Mutual Benefit Societies (AIM); Culture Action Europe; the European Civic Forum (ECF); the European Disability Forum (EDF); Rurality-Environment-Development (RED); the European Children's Network (Euronet); the European Older People's Platform (AGE) and the European Federation of Older Persons (EURAG); and the European Association for Human Rights (EAHR).

The role of this group, whose remit is to be both a channel of communication and a forum for political dialogue, is to guarantee a coordinated, structured EESC approach vis-à-vis European civil society organisations and networks, and to follow up joint initiatives.

It goes without saying that the establishment of this Liaison Group and its activities are completely without prejudice to other initiatives by the EESC or other bodies to improve and strengthen dialogue between EU institutions and civil society or to the cooperation already in place between the Committee and a number of other stakeholders. That would, in any case, be impossible, in view of the structure and make-up of the Liaison Group.

Its primary objectives are to enable the members to exchange information on their various work programmes and priorities, to provide opportunities to tackle certain problems and to form opinions on issues facing civil society as a whole. It also aims to identify themes on which it would be possible to organise joint events and activities.

The aim of this initiative is to give transnational organised civil society greater visibility and influence at European level and to support the EESC in its role as the institutional representative of organised civil society and as an intermediary for its hopes, concerns and expectations.

The new Cooperation Protocol with the European Commission, which was signed in November 2005, gave the Committee an additional dimension in fulfilling its role in representing organised civil society. One of the primary focuses of this Protocol is the development of structured dialogue between the EESC and European civil society organisations, particularly by way of the Liaison Group.

The Commission and the Committee endeavour to increase the synergy between their actions in the following areas: the Lisbon Strategy, sustainable development, structural changes, impact analyses and evaluation of legislation, and the European Union's external relations.

Finally, they take the view that it is in the EU's interest for them to strengthen interinstitutional cooperation in the field of communication, with the Committee having a key role to play in creating a real European public area of dialogue and discussion, making the most of its special ties with, in particular, the civil society organisations represented by its members and the ESCs and similar institutions in the Member States.

B. THE INFLUENCE OF THE "BETTER LAWMAKING" PROGRAMME

The desire for "better regulation" at Community level has its origins in the Edinburgh European Council in 1992, which made simplifying and improving legislation priority objectives for the European Community. In June 2002 this priority, which the Commission sees as an integral part of the Lisbon Strategy and which is one of the instruments of that strategy, was the subject of the "Better Lawmaking" action plan; this was followed, between 2002 and 2005, by a set of communications, proposals and assessments from the Commission.

This exercise is regulated at Community level by the Interinstitutional Agreement of December 2003 on better law-making (which marks the joint commitment of the three European institutions involved in this matter), by the Commission Communication of March 2005 on better regulation for growth and jobs in the European Union, and by the Communication of November 2006 on a strategic review of Better Regulation in the European Union, which was submitted to the Spring 2007 European Council.

In addition to improving the impact assessment, as already stated, this "better lawmaking" policy comprises three main complementary strands.

The strategy of simplifying Community legislation adopted in October 2005 for the period 2005-2008 is based in large part on consolidating legislation (consolidating a basic text and its subsequent amendments into a new document), on codifying the *acquis communautaire*, on recasting texts that contradict or repeat each other, and, where appropriate, on revising certain texts to make them more flexible.

The policy also involves revoking texts considered to be obsolete (including at national level in the case of directives that have already been transposed). The Commission therefore published, in October 2005, a list of 220 European legislative acts that needed to be simplified, revoked or rewritten in various areas; in November 2006, it added a further 43 texts to the list.

Thirdly, the policy involves lightening the legislative agenda. Following the assessment (screening) that the Commission undertook on the basis of the Communication of 16 March 2005 on *better regulation for growth and jobs*, 67 proposed texts (many of them directives) pending examination before the Council and the European Parliament were ultimately withdrawn. In its work programme for 2007, the Commission announced that a further 10 proposals would be withdrawn and, in its *2006 General Report on the activities of the European Union*, it stated its intention to "*continue its regular examination of the legislative proposals still pending before the legislature to assess their general relevance and their compatibility with the principles of better regulation*". There were objections to the withdrawal of some of these proposals, not least from the European Parliament.

In January 2007, the Commission also presented an *action programme for reducing administrative burdens in the EU*, which was approved by the March 2007 European Council. It aimed to reduce the "administrative burden" for businesses arising from legislation in force in the EU by 25% by 2012. A high-level expert group on reducing administrative burdens was established in November 2007 for three years, and the European Council of March 2009 invited the European Commission to present all proposals in each of the 13 priority areas identified in the action programme before the end of its term of office.

C. COMMITMENT TO TRANSPARENCY: A SERIES OF INITIATIVES OVER RECENT YEARS

1. **Initial initiatives implemented under the *White Paper on European governance***

Since the Treaty of Amsterdam in 1997, which required the Commission to undertake consultations before putting forward new draft legislation, the Commission has strengthened its approach aiming to "*ensure all relevant interested parties are properly heard*".

This commitment on the part of the European Commission has been translated into a whole raft of initiatives. In its *White Paper on European Governance*, the Commission undertook to help reinforce the culture of consultation and dialogue in the EU. The White Paper proposes opening up the policy-making process to get more people and organisations involved in shaping and delivering EU policy, and emphasises that "*the [European] Institutions should work in a more open manner ... in order to improve the confidence in complex institutions*" and that "*each of the EU Institutions must explain ... what it does in Europe*".

In April 2001, the Commission adopted a communication on interactive policy making, with the aim of improving governance, in which it proposes to "*use the Internet for collecting and analysing reactions in the marketplace for use in the EU's policy-making process*".

In this context, it provides for the creation of two mechanisms to assess the impact of Community policies on the ground, namely:

- a feedback mechanism to collect spontaneous reactions in the marketplace. It uses existing networks and contact points as intermediaries in order to obtain continuous access to the opinions and experiences of economic operators and EU citizens;
- a consultation mechanism designed, via the establishment of standing panels such as the Business Test Panel, to receive and store rapidly and in a structured way reactions to new initiatives.

A CONECCS (Consultation, the European Commission and Civil Society) database was also set up in parallel to provide information on the committees and other Commission frameworks through which the civil society organisations are consulted in a formal or structured way. It also provided free access, via the Europa server, to information provided on a voluntary basis relating to non-profit civil society organisations established at European level. It has been replaced by the "*Your Voice in Europe*" site and by the aforementioned lobbying register site.

In an opinion issued in March 2002 on the Commission's White Paper on European Governance, the European Economic and Social Committee (EESC) lists nine eligibility criteria that it considers necessary in order for a European organisation to take part in the civil dialogue. A European organisation must:

- exist permanently at Community level;
- provide direct access to its members' expertise and hence rapid and constructive consultation;

.../...

- represent general concerns that tally with the interests of European society;
- comprise bodies that are recognised at Member State level as representative of particular interests;
- have member organisations in most of the EU Member States;
- provide for accountability to its members;
- have authority to represent and act at European level;
- be independent and mandatory;
- be transparent especially financially and in its decision-making structures.

2. **Establishing general principles and minimum consultation standards**

In its communication "*Towards a reinforced culture of consultation and dialogue*", published in December 2002, the European Commission set out general principles intended to govern its relations with interested parties and minimum standards for the consultation process, in order to ensure that all relevant parties are properly consulted.

The Commission's aim is to encourage more involvement from interested parties through a more transparent consultation process, to provide general principles that help it to rationalise its consultation procedures, building a framework that is coherent, yet flexible enough to take account of the specific requirements of all the diverse interests and of the nature of the various policy proposals; and to promote exchange of good practices within the Commission.

An initial version of this document was opened to consultation in order to gather responses from interested parties, and the Commission presented the conclusions it had drawn from that consultation.

With regard to the consultation target groups, the Commission stresses that it continues to support open governance: every individual citizen, enterprise or association will continue to be able to provide the Commission with input.

In this connection, the Commission acknowledges the importance of input from representative European organisations, and the need for it to "*consider how representative views are when taking a political decision following a consultation process*". It notes the opinion issued by the European Economic and Social Committee in March 2002, which lists the nine criteria that the Committee considers a European organisation must meet in order to join the civil dialogue, but nonetheless points out that "*the issue of representativeness at European level should not be used as the only criterion when assessing the relevance or quality of comments. In many cases, national and regional viewpoints can be equally important in taking into account the diversity of situations in the Member States. Moreover, minority views can also form an essential dimension of open discourse on policies.*" It thereby reaffirms the importance of its principle of inclusive, non-hierarchical openness, as highlighted by Mr Gérard Legris when he spoke at the delegation's hearing.

With regard to the consultation periods, many contributors queried the minimum length of the consultation period, feeling that it was not long enough "*to prepare comments, consult their membership and produce consolidated contributions*". The Commission, for its part, notes that

consultation periods must strike a balance between the need for adequate input and the need for swift decision-making.

Nevertheless, the Commission can also deploy consultation as a delaying tactic, or speed up a consultation to take advantage of the surprise effect.

In its communication of December 2002, the Commission points out that the main mechanism for providing feedback to participants is based on an official Commission document that needs to be approved by the Commissioners, and that the idea of providing feedback to each participant is not compatible with an efficient decision-making process.

On the basis of the above, the Commission has established five key principles – participation, openness, accountability, effectiveness and coherence – and minimum standards that have been applicable since 2003. The standards are as follows:

- all communications relating to consultation should be clear and concise, and should include all necessary information to facilitate responses;
- when defining the target group(s) in a consultation process, the Commission should ensure that the relevant parties (those affected by the policy, involved in implementing it or with a direct interest in it) have an opportunity to express their opinions;
- the Commission should ensure adequate awareness-raising publicity and adapt its communication channels to meet the needs of all target audiences; open public consultations should be published on the Internet and announced at the "single access point" (the *Your voice in Europe* portal);
- the Commission should strive to allow at least 8 weeks for reception of responses to written public consultations and 20 working days' notice for inviting organisations to meetings;
- receipt of contributions should be acknowledged; results of open public consultation should be displayed on websites that are linked to on the single access point, and contributions to such consultations should be made public on that single access point; feedback should be included in the explanatory memoranda accompanying legislative proposals, in the communications following a consultation process and in the reports relating to the impact assessment.

3. Towards new transparency rules

In a Green Paper on a *European transparency initiative*, published in May 2006, the Commission invited interested parties to give their views on the new consultation rules and how they could be improved. This consultation focused more specifically on three components:

- the need for a more structured framework for the activities of interest representatives and lobbyists;
- more feedback on the Commission's minimum standards for consultation;
- mandatory disclosure of information about the beneficiaries of EU funds under shared management.

Proposals included, first, a voluntary registration system that gives lobbyists incentives to register, with those who agree to register being automatically alerted to consultations in their areas of interest, and, secondly, a common code of conduct for all lobbyists.

The annex to this green paper included provisions governing the integrity of Commissioners and the Staff Regulations.

In its communication on the follow-up to this green paper, the Commission notes that some of the contributors supported the establishment of a voluntary register, but that a larger number, in particular non-governmental organisations (NGOs), advocated compulsory registration as the only way, in their view, of enabling full transparency. Those taking part in the consultation also pointed to certain weak areas in the application of the consultation standards, not least with regard to providing feedback on the extent to which the Commission has taken comments into account, observing the minimum time limit of eight weeks for open public consultations (for example, when the period included a major holiday period), and balancing targeted consultations between the relevant sectors.

The Commission concluded this follow-up communication by announcing that it would:

- launch, in spring 2008, a new voluntary register for interest representatives, with an "alert" function;
- increase transparency, on the basis of a standard website and scrutiny of participants, linked to the register;
- draft a code of conduct to be discussed with stakeholders in 2007, which would be a requirement for entry in the register and would be monitored by the Commission;
- reinforce the application of the consultation standards, focusing on providing better feedback, on the need to ensure plurality of view and interest expressed in consultations and on a standard template for public consultations.

4. Launching a public register of interest representatives and lobbyists in Brussels

It appears that, around a year after launching its public register of interest representatives in Brussels, the Commission intends to maintain it on a voluntary basis. It claims that it wants to put the emphasis on a "qualitative" evaluation of the records, looking *inter alia* at whether the most important players are included, and also that it aims to review the section relating to the disclosure of financial information (interest, turnover, etc.), which should be tightened up in order to avoid registration errors. Negotiations have also been held with the Parliament and the Council in an attempt to develop a joint register⁴⁸.

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Célia Sampol, "Register of lobbyists – June revision to address financial disclosure", article published in *Europolitics*, No 3736, 20 April 2009.

The Commission has also taken initiatives aiming to improve the implementation of consultation standards, by means of: training schemes for the services; arranging regular meetings with contacts responsible for monitoring this process in the various DGs, in order to establish a group of practitioners promoting the spread of good practices; collating consultations on *Your Voice in Europe* in order to make them more visible, and developing a standard form for presenting consultations.

In a new communication published in May 2008, the Commission finally published supplementary information on the voluntary register for interest representatives, on the activities for which registration is expected and on the code of conduct for interest representatives, an appendix to which sets out the scope and the basic principles, including honesty, transparency and integrity.

This register, launched in June 2008, includes three main categories of lobbyists: specialist public affairs consultants and law firms, business sector lobby groups and trade unions, and NGOs and multinationals. The requirements for inclusion in the register differ between these three categories, not least with regard to financial information.

The European Parliament's Stubb report called for a joint working group to be set up by the Commission, Parliament and Council to develop a proposal for a compulsory register common to the three institutions⁴⁹.

D. AN IMPERFECT BALANCE BETWEEN ENCOURAGING GREATER PARTICIPATION AND ORGANISING THE STAKEHOLDERS?

1. **A desire to reconcile openness with organisation of the stakeholders consulted at European level**

The Commission's power of initiative and its responsibility to seek the general European interest mean that, when developing its initiatives, it needs to be intimately familiar with the circumstances within Europe, and the interests at stake, that its proposals are liable to encourage or discourage.

To this end, it holds formal consultations within the framework of consultative committees in the various directorates general or groups of national experts, or informal consultations following ad hoc procedures; the two types of consultation are often combined so as to maximise the information and expertise obtained.

The public consultations that the Commission also holds aim, *inter alia*, to widen the pool of stakeholders consulted in the interests of openness, the primary aim being to ensure that the interested parties have their voice heard in the process of drafting policies. In this context, the contributions of the organisations, think tanks and individuals taking part in public consultations perform a brain

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Report on the development of the framework for the activities of interest representatives (lobbyists) in the European institutions, presented by Alexander Stubb MEP, on behalf of the European Parliament's Committee on Constitutional Affairs, A6-0105/2008 (2 April 2008).

storming function, ensuring that good ideas that could be taken into account are not neglected. The Commission also encourages interest representatives and lobbyists to submit formal or informal written contributions in anticipation of the drafting of legislation.

It also hopes that there is enough, and sufficiently diverse, participation in these consultations for them to act, so to speak, as "test groups" for the proposals it intends to draft. After all, the effectiveness of decisions, their acceptability to stakeholders on the ground and, ultimately, their implementation under satisfactory conditions all depend on those decisions being properly geared to the circumstances in which they will be implemented once adopted.

Public consultations also help the Commission to boost the legitimacy of its proposals. Various factors have added to the Commission's concern with legitimacy: the steady increase in the number of Member States, which has rendered the EU more diverse, and the difficulty of taking into account the views of 500 million people; the falling turnout in the European elections, 63% in 1979, 45.7% in 2004; the rejection in several referendums, held since the beginning of the decade, of proposals relating to institutional issues (Ireland, June 2001, the first referendum on ratification of the Nice Treaty; France, May 2005 and the Netherlands, June 2005, referendums on the draft constitutional treaty; and Ireland, June 2008, referendum on ratification of the Lisbon Treaty).

Finally, the online publication of stakeholder's contributions allows stakeholders to find out about each others views, thus helping to develop a participatory, opinion-shaping forum on European policies.

2. A risk of a de facto selection of participants?

In spite of the Commission's efforts to be transparent, it seems that a de facto selection of participating organisations has been taking place. At her hearing with the delegation, Ms Viviane de Beaufort noted that a number of potential stakeholders were not familiar with the Commission's consultation tools and had not previously heard about the *Your voice in Europe* website. The dominant role played by English in the majority of consultations organised by many of the Directorates-General gives English-speaking participants a head start. Organisations which have offices in Brussels and maintain regular contacts with the Commission's services are also at an advantage in terms of access to information about consultations. This means that not all organisations are placed on an equal footing with regard to the Commission's consultations. There is a risk that the consultations ultimately reach out to only a very limited range of stakeholders.

As Ms Michel pointed out, in order to be able to take part in the consultations stakeholders need to master a wide variety of often highly technical subjects, and, if necessary, be able to set out the organisations' viewpoints in the appropriate legal, administrative or economic format, for which they need a minimum level of resources, especially staff.

This state of affairs, even if it is unintentional, tends to favour organisations which have the expertise to provide the Commission with ready-to-use information meeting its exact needs. Indeed, a number

of them receive funding from the Commission which risks further exacerbating the de facto selection of organisations. The intense nature of consultations, which is due to their increasing number, as well as the brevity of the consultation periods, has led these organisations to spend more time on trying to find a common position amongst their members. This is detrimental to their primary activities, which include mobilising the public, and counteracts the actual purpose of these consultations, which is to establish a more direct link between European policy-makers and stakeholders in the economic, social and environmental fields.

The administrative requirements which the evaluation of responses (processing and translation of responses, summaries and follow-up) occasion, place an additional burden on the Commission services' limited resources. This could explain why the Directorates-General feel the need to encourage, either through funding or administrative incentives, sector-based structuring of stakeholder representation at European level.

Responsibility for organising discussions between the various members of the organisations which are structured in this way, and for finding a consensus amongst them thus falls to the platforms, the Commission's usual partners. Small organisations which are not members of a network, or that defend causes that seemingly enjoy little support (for example, rare diseases) find it difficult to get their views heard. In a recent article, Ms Michel pointed out that even though the above platforms *"are answerable to the Commission which funds them, and are accountable for their expenditure on various initiatives (activities, study or coordinating programme etc.), they are, at the same time, given free rein to define the admission criteria for their member organisations, and to determine the representativeness of each one of them, including the weighting of votes."*⁵⁰

III. THE COMMISSION'S PUBLIC CONSULTATIONS: ORGANISATION, PARTICIPATION, OUTCOME

A. THE ORGANISATION OF CONSULTATIONS

In order to fully appreciate the volume of the public consultations carried out by the European Commission, and gain a better understanding of how they are organised, we sampled, for the purposes of this communication, the consultations that were available on the Commission's website, "Your Voice on Europe", as well as on the websites of the various Commission directorates-general, on 17 March 2009.

In order to widen our sample pool, we will also refer here to two samples taken in the course of two selected weeks (week of 21 to 25 April 2008, and 15 to 19 September 2008). These samples were originally taken for the purpose of updating the public consultations guide which the delegation to the European Union periodically produces for the Economic, Social and Environmental Council's Bureau.

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Hélène Michel, « L'administration européenne face au lobbying : 'ouverture', 'participation' et 'transparence' » in *Le phénomène bureaucratique européen*, Ed. Pascal Mbongo, éditions Bruylant, collection « Rencontres européennes », Brussels (2009).

However, given that the two samples were not specifically taken for the purpose of this study, unlike our sample of 17 March 2009, they do not provide information on some of the issues we will be examining below.

The advantage of taking into account all three samples is that they were taken at intervals of around six months, which means that the public consultations published on the Commission's website would have run a full cycle in the intervening time.

The three samples cover, in total, 55 public consultations which were held during the three periods in question. They allow us to draw a number of conclusions about the way in which the European Commission organises and presents its public consultations, as well as about access to them from a non-specialised user's point of view, such as a small association or a member of the public, who would be considered to be part of the potential target public⁵¹.

We also draw on a quantitative analysis of the responses to around thirty Green and White Papers, the majority of which were published in 2005, 2006 and 2007.

Finally, we have also decided to focus on a number of specific consultations which will complement the overall analysis in order to gain a more detailed understanding.

1. **How accessible are consultations?**

Of the 30 consultations that featured on the European Commission's websites in March 2009 and September 2008, eight, in other words 30% of the total, could be accessed directly through the "*Your Voice in Europe*" website, the purpose of which is to centralise consultations and facilitate access.

In order to access the other 22 consultations (70%), visitors to the website had to visit the 34 DG websites covering specialised subject areas which were listed on the left-hand side of the homepage of the "*Your Voice in Europe*" website.

It seems that considerable progress was made in the period between the two dates mentioned above. The share of consultations featuring directly on the central website reached almost 40% in March 2009 (six consultations out of 16) compared to only 14% (two consultations out of 14) in September 2008.

Nonetheless, the fact that the number of public consultations which feature directly on the home page of the "*Your Voice in Europe*" website remains relatively low means that a member of the public or generalist organisation wishing to take part in the public consultations would be unable to find information about all ongoing public consultations at a glance. Also, no explanation is provided as to why certain consultations have been published directly on the main site whilst others can only be

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Even though the 55 consultations do not represent a reliable sample in the statistical sense, the analysis of these consultations does nonetheless provide us with useful information.

viewed by clicking on one of the 34 websites listed on the left-hand side of the home page. No doubt this is because in certain cases the DG responsible for the consultations provided information to the DG in charge of managing the website, but not in others. Nor, would it seem, can this discrepancy be attributed to an attempt to distinguish between target audiences, in other words between the wider public and a public with specialist knowledge.

Some of the references listed on the left-hand side of the "*Your voice in Europe*" homepage also contain a number of anomalies.

For instance, under the heading "Enlargement", one is asked to select from a choice of languages. If, however, one clicks French, one is redirected to a new webpage ... in English.

In other cases, consultations which have already closed still feature in the list of ongoing consultations. This was the case, for example, for the consultation on *Modernising social protection for greater social justice and economic cohesion: taking forward the active inclusion of people furthest from the labour market*. On 17 March 2009 it was listed as an ongoing consultation on DG Employment's website when in fact the text relating to the consultation clearly indicated that contributions needed to be submitted to the DG by 28 February 2009 at the latest.

It is of course possible that the consultation still featured amongst the ongoing consultations because the deadline had been pushed back, as happens quite often. But there was no way for the visitor to the site to ascertain this.

The information provided on the "*Your voice in Europe*" webpage is thus far from user-friendly and is poorly structured.

A survey carried out at the beginning of 2009 gave contributors, including individual members of the public, the opportunity to voice their opinions on the functioning of the website, the ultimate aim being a revamp of the site. The results of this recent survey have not yet been published.

A present there is also no newsletter which interested parties can subscribe to in order to receive information on impending consultations. Potential contributors who wish to stay abreast of new consultations must therefore constantly watch out for new consultations on the Commission's web pages.

2. What degree of involvement for the different target groups?

Our examination of a limited number of consultations has allowed us to draw up a list of regular target groups. This list, which is by no means exhaustive, includes the following target groups:

- Member States;
- individual members of the public;
- stakeholders;

- the competent national authorities;
- the wider public;
- civil society organizations;
- civil society in developing countries;
- non-community stakeholders (Africa and China);
- economic players;
- businesses;
- public administrations;
- other interested parties.

For a number of other consultations, additional target groups may be added without any exact details being given. The Commission should provide a more consistent definition of the various target groups featuring on its website.

The distribution of the target groups for the 55 consultations which we picked out for analysis in March 2009, September 2008 and April 2008, was as follows:

- all members of the public (individual members of the public, interested parties): 25 consultations, representing 45% of the total;
- stakeholders and relevant authorities: 19 consultations, 30%;
- other institutions, civil society, businesses and social partners: 3 consultations, approximately 5%.

Since 2009, the Commission directly notifies the organisations that are listed on its voluntary register of lobbyists of any consultations in their field of activity. This method of notification has a twofold objective, which we consider to be quite legitimate. The first is to encourage organisations that wish to take part in consultations to join the register; the second is to boost participation in public consultations.

There are now three distinct methods of participation: two direct methods of participation (one for members of the public, the other for public authorities) and a third method, which targets organisations, and is coupled with the recommendation that they first join the register of interest or pressure groups. At the beginning of 2009, DG Environment announced that it would publish the contributions provided by various organisations distinguishing between those who had registered and those who had not.

The purpose of this step was to foster regular, long-term partners for the Commission DGs, which has led to the emergence of networks of partners at European level. Some DGs have aimed to establish a regular, "structured dialogue" with privileged partners. In some cases, though, these dialogues only amount to simple information sessions.

At a hearing with the European delegation, Mr Gérard Legris, representing the Secretariat-General of the European Commission, noted that this mechanism made it possible for the above networks to respond better to and become more involved in the large number of expert meetings that are held by

the Commission. At the same time, this also makes it more difficult, in the final analysis, for the Commission to fully take into account the diversity of the views held by the constituent organisations in a network, since they are forced to reach a compromise amongst themselves.

Nonetheless, as Mr Legris pointed out, public consultations allow the Commission to reach out to a large number of different players across the Member States and to obtain a direct, grass-roots response to its proposals.

In the majority of Member States, and especially in France, the organisational capacities of networks of associations are not yet sophisticated enough for them to be able to act as an information points on consultations. It appears that this situation is mirrored in most of the Member States. The Robert Schuman Foundation regularly provides information about consultations in its information letter, together with the relevant link.

Nonetheless, we feel it is appropriate to query whether more should not be done to boost the number and the diversity of the civil society organisations that take part in public consultations in order to avoid limiting the consultations to what is essentially a narrow range of European specialists who are often confined to Brussels. Civil society organisations should make greater efforts to raise awareness amongst potential target groups.

3. Linguistic accessibility: the predominance of English

In January 2009, only one of the eight consultations that were ongoing, the one on the *Green Paper on territorial cohesion*, was published in all the official languages. The other seven were in English only.

Of the 55 consultations that we sampled in March 2009, September 2008 and April 2008, 41, in other words three quarters, could only be accessed in English on the Commission's website. 14 (in other words, one quarter) could also be viewed in French.

In certain cases, appended documents, such as the Commission's press release on the consultation, were available in French even if the consultation itself was not. This was the case, for example, for the consultation on *The future of financial market supervision*. The press release (half a page) setting out the consultation's objectives and methods was available in English, French and German. Meanwhile, the communication destined for the Spring Summit, *Driving European Recovery*⁵², which consists of 19 regular pages and 17 appended pages, as well as the report of the Larosière Group (86 pages), for which the above consultation had been organised, was only available in English on the day the we took the sample.

In a certain number of cases, the non-availability of a French translation can be considered as temporary. For example, the Green Paper on *A policy review. Towards a better integrated trans-*

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COM(2009) 114 final.

European transport network at the service of the common transport policy, which was published on 4 February 2009 and was accessible to stakeholders as well as the general public, was only available in English for several weeks. A French translation appeared on 17 March 2009, roughly halfway through the consultation. Since the French ESC does not carry out daily updates of the consultations featuring on the DGs' and the *Your voice* sites, we were unable to determine on what day exactly the French translation appeared online.

It is of course possible that a French translation, or other language versions, were made available on other Commission sites. However, in spite of a genuine search, we did not come across any such versions. So it is very likely that a large proportion of the non-specialised target audience who might be interested in the consultation would not be able to find them either.

The predominance of English in the European Commission's public consultations strikes us as being detrimental to the actual purpose of the consultations, which is to gain a broader range of perspectives from a variety of stakeholders to complement those already provided by the Commission's regular networks.

According to the Eurobarometer poll 63.4, published by the Commission in 2005 in conjunction with its communication *A new framework strategy for multilingualism*, less than half of Europeans speak English (47%, of which only 13% speak English as a mother tongue, and 34% as a foreign language), compared to 30% for German (18% as a mother tongue and 12% as a foreign language) and 23% for French (12% as a mother tongue and 11% as a foreign language).

The dominant role that English plays has created the risk of a de facto selection of interested stakeholders, which runs counter to the Commission's stated aim of openness. This approach tends to favour English mother tongue speakers from the two Member States where English is the official language (out of a total of 27), as well as stakeholders who have a very good command of this language and/or a high standard of education. Such stakeholders, however, are not necessarily amongst the Commission's main target groups given that the consultations deal with a very wide range of subjects and are supposedly aimed at all interested parties and members of the public.

This predominance of English is surprising because it is at odds with the European Union's own principles, objectives and policies on languages.

2001 was declared the European year of languages by the Council of Europe and the European Union, and in 2005 the EU adopted a new strategic framework for multilingualism, in which the term multilingualism is defined as "a person's ability to use several languages and the co-existence of different language communities in one geographical area".

The European Union has asserted in this context that linguistic diversity "makes the European Union what it is: not a 'melting pot' in which differences are rendered down, but a common home in which diversity is celebrated, and where our many mother tongues are a source of wealth", and has also underlined that "respect for linguistic diversity is a core value of the European Union" and that one of

the three objectives of the Commission's multilingualism policy was "to give citizens access to European Union legislation, procedures and information in their own languages"⁵³.

In 2005, multilingualism for the first time officially featured in a Commissioner's portfolio, when Mr Jan Fígel was placed in charge of Education, Training, Culture and Multilingualism.

The European Union successive enlargements have further added to the urgent need for the Commission to face up to local and national realities and to take into account the EU's enhanced diversity, thus making the language issue ever more crucial for public access to the EU institutions' documents.

4. Breakdown of the consultations studied in our samples according to DG

The 55 consultations which we studied in our three samples were initiated by 15 different Commission Directorates-General, nine of which had at least three consultations ongoing.

The list of DGs with ongoing consultations during these three periods, in descending order, is as follows:

- DG Enterprise and Industry: 9
- DG Internal Market and Services: 7
- DG Development: 6
- DG Health and Consumer Protection: 5
- DG Maritime Affairs and Fisheries: 4
- DG Environment: 4
- DG Information Society and Media: 4
- DG Energy: 3
- DG Employment and Social Affairs: 3
- DG Transport: 2
- DG Taxation and Customs Union: 2
- DG Research: 1
- DG Justice, Freedom and Security: 1
- DG Regional Policy: 1
- DG Agriculture and Rural Development: 1

In our regular visits to the site, we have been able to discern a strong prevalence of economic issues, especially relating to the single market, in these consultations. Some of these consultations merely concern the updating of, or additions to, existing European regulation. This has created a kind of

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Commission Communication "A New Framework Strategy for Multilingualism", COM(2005) 596 final, November 2005, pages 3 and 4. See also the Resolution of the European Parliament and the Council concerning the European Year of Languages (1934/2000) of 17 July 2000.

continuity in the discussions that makes it difficult for non-specialists to get involved. At the same time, no distinction has been drawn between these specialised consultations and those of a more general or exploratory nature.

5. Diversity of the consultations' purposes

Of the 55 consultations which we studied in our samples of March 2009, September 2008 and April 2008, which related to both legislative and non-legislative proposals (framework communications, programmes, action plans, common principles, etc.), only four were Green Papers and one a White Paper:

- Green Paper "Towards a secure, sustainable and competitive European energy network"
- Green Paper "A policy review: towards a better integrated transeuropean transport network"
- Green Paper "European workforce for health"
- Green Paper "Effective enforcement of judgments in the European Union: the transparency of debtors' assets"
- White Paper "Damages actions for breach of the EC antitrust rules"

The fact that the above consultations were held specifically for the purposes of a Green Paper or White Paper was not visibly reflected in the choice of stakeholders targeted, the length of the consultation, or the availability of the communication in various languages. Nor did there seem to be any consistency in the way these factors were managed, as the following comparison illustrates:

- Green Paper "Towards a secure, sustainable and competitive European energy network", consultation open to the general public, for 20 weeks, documents in English only;
- Green Paper "A policy review towards a better integrated transeuropean transport network", consultation open to the general public, for 12 weeks, documents in French available;
- Green Paper "European workforce for health"; consultation open to all interested organisations, for 15 weeks, documents in French available;
- Green Paper "Effective enforcement of judgments in the European Union: the transparency of debtors' assets", consultation open to stakeholders, documents in English only;
- White Paper "Damages actions for breach of the EC antitrust rules", consultation open to the general public, documents in English only.

6. Implementation of the principle of an eight-week minimum length

The average length of the 13 consultations which were ongoing in March 2009, and for which opening and closing dates had been communicated, was 11 weeks.

This figure can be broken down as follows:

- three to five weeks: two consultations;
- eight to nine weeks: five consultations;

.../...

- ten to thirteen weeks: three consultations;
- fourteen or more weeks: three consultations;
- in three cases the opening and closing dates were not communicated.

A large majority (85%) of the consultations studied in our samples lasted longer than or exactly matched the eight week minimum called for by the Commission in its communication on transparency. Two of the consultations in our sample (15%) lasted for significantly less than eight weeks. Three consultations (25%) lasted for at least three months and were thus significantly longer than the required minimum⁵⁴.

Indeed, the Commission encourages the directorates-general, where possible, to extend consultations beyond the required minimum duration. The *Green Paper on the Reform of the Common Fisheries Policy*, which was published on 21 April 2009 and was therefore not part of the analysed sample, is open to all stakeholders and accessible in all languages until 31 December 2009, i.e. for a period of eight months.

Another sample list of consultation durations covering some thirty Green and White Papers, mainly launched during the years 2005, 2006 and 2007, also showed that the minimum consultation period of eight weeks is generally respected and often extended considerably. The consultation on the *Green Paper – Towards a future maritime policy for the Union: A European vision for the oceans and seas* lasted one year, while the consultation on the *Green Paper – The presumption of innocence* was closed after just two months.

Further specific observations at different times of the year show, however, the limitations of this eight-week deadline provision where a consultation is opened just before the Christmas holidays or in the middle of summer. For example, the consultation on the code of conduct for interest and lobby groups was opened on 10 December 2008 and was scheduled to close on 15 February 2009.

Furthermore, the publication of consultations announced in the Commissions annual work programme can be delayed by internal negotiations at the Commission. These policy programming difficulties complicate the internal workings of organisations trying to coordinate their own work programme in order to respond to the consultations within the deadlines set.

7. **Format of questionnaires**

Among the sample of 16 consultations that were open on 17 March, the type of questions asked can be classified as follows:

- semi-closed questions: yes/no/no options/possible comments: 4 questionnaires;
- open questions: 8 questionnaires; and

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These three consultations which lasted much longer than eight weeks have been included in the 11 consultations, representing 85% of the sample, which respected the minimum length.

- no questions per se: 4 consultations.

As regards Green Papers, the European Commission often uses open questions, after describing the type of measures that it could consider moving towards.

This is the case with the Green Papers on *Trans-European transport networks* (February 2009), *Agricultural product quality: product standards, farming requirements and quality schemes* (October 2009) and on *Future relations between the EU and the Overseas Countries and Territories*, to mention but a few recent examples.

Yet, this is not systematic: the *Green Paper on the European workforce for health*, for example, is very vague in the options it sketches out and, strictly speaking, does not contain any questions.

Indeed, the way in which the questions are framed is quite significant, as it can skew the answers to a certain extent.

These soundings have shown – echoing frequent feedback from many grassroots players – that the *Your Voice in Europe* site is still beset by serious operational difficulties.

B. VARYING, THOUGH RELATIVELY LIMITED LEVELS OF PARTICIPATION

Participation in public consultations is deemed to vary greatly depending on the consultation.

At her hearing before the EU delegation, Ms H  l  ne Michel noted that while DG Enterprise and Industry⁵⁵ had received more than 2 000 contributions on the issue of the Reach Regulation, participation levels were much lower in other cases. The recent consultation on the *Small Business Act*, for example, had resulted in over 500 contributions.

To try to get an idea of the scale of this participation and of the proportions made up by the various types of organisation participating in the consultations broken down per country, a quantitative analysis was carried out on some thirty Green and White Papers published by the Commission essentially during the years 2005, 2006 and 2007⁵⁶.

This was not an exhaustive study: on the one hand, the Commission issued some 37 Green Papers and seven White Papers during those years, and not all of them were taken into account, because of time limitations. On the other hand, for reasons of confidentiality, responses to certain Green and White

⁵⁵ Hearing of Ms H  l  ne Michel before the EU delegation. See also her aforementioned article *L'administration europ  enne face au lobbying : ouverture, participation et transparence* and Thomas Persson, Karl-Oskar Lindgren, *The Structure of Conflict over EU Chemicals Policy*, *European Union Politics*, Vol. 9, No 1, 2008, pp. 32-58.

⁵⁶ The transparency policy championed by the Commission has led it to publish the contributions it receives on dedicated websites. This research on the Commission websites and the analysis of the relevant figures was carried out by Ms S  verine Garcia, a trainee at the EU delegation in the second quarter of 2008.

Papers⁵⁷ are not published online by the Commission; contributions may also be withheld from publication online where a contributor so requests.

This work was carried out prior to undertaking this communication, and was done on an exploratory basis, in order to gauge the relevance of an own-initiative opinion on this issue.

The aforementioned results obtained do not, therefore, claim to constitute exact averages, in the statistical sense of the term. They are useful, however, in giving a sense of scale for the different parameters studied.

1. Uneven participation from consultation to consultation

For the 31 consultations that were studied, 5 553 contributions were received, representing an average of 179 per consultation, with significant variations (one public consultation received 530 responses and another, only 25).

The number of responses varies hugely from one consultation to the next.

Analysis of the sample of 31 consultations, which were undertaken by the Commission from 2005 to 2007, showed that the following received the greatest number of contributions:

1.	Green Paper on <i>Europe's trade defence instruments in a changing global economy:</i>	530 responses
2.	Green Paper on <i>Modernising labour law to meet the challenges of the 21st century:</i>	over 490 responses
3.	Green Paper: <i>Towards a future Maritime Policy for the Union: a European vision for the oceans and seas:</i>	over 480 responses
4.	Green Paper on the <i>European Research Area:</i>	over 340 responses
5.	Green Paper: <i>Towards a Europe free from tobacco smoke:</i>	over 320 responses

Conversely, the analysis showed that the following received the lowest number of contributions:

1.	Green Paper on <i>the presumption of innocence:</i>	25 responses
2.	Green Paper on <i>the future of the European migration network :</i>	32 responses
3.	Green Paper on <i>the conflict of laws in matters concerning matrimonial property regimes, including the question of jurisdiction and mutual recognition:</i>	34 responses
4.	Green Paper on <i>Better ship dismantling:</i>	42 responses
5.	Green Paper on <i>Diplomatic and consular protection of Union citizens in third countries:</i>	45 responses

None of these consultations received a response from the public. Companies participated only in the consultation on better ship dismantling. This low number of contributors may be because these subjects are deemed too technical or legalistic.

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For example, not available online in this three-year period were the Green Papers on *Detection technology in the work of law enforcement, customs and other security services; Market-based instruments for the environment and related policy purposes; Bio-preparedness; Satellite navigation applications; a European strategy for sustainable, competitive and secure energy; and on the European Programme for critical infrastructure protection.*

In the classification of responses and summary, the participation of European federative structures or platforms is not sufficiently highlighted.

The rate of participation thus appears strongly linked to the nature of the subject, especially for the categories of companies and members of the public. The more complex and technical the subject matter, the fewer the contributions received from the public.

Across the 31 consultations, it appears that the directorates-general often compile and present the responses in very different ways. In particular, the presentation of public institutions varies substantially from one DG to another:

- for certain consultations, the contributions are listed alphabetically, without drawing a distinction between the contributors;
- some DGs make a distinction between public institutions contributions and other contributions; in certain cases, public contributions come under the heading of "Institutions and Member States", or "National, regional and local authorities";
- other DGs draw finer distinctions between public contributors, subdividing them as follows:
 - Member States: national governments;
 - Member States: national parliaments and other authorities; and
 - local and regional authorities.

Some DGs add the following subdivision: "EU institutions and bodies".

For the consultation on *Modernising labour law to meet the challenges of the 21st century*, closed in 2008, the subdivision of contributors into ten categories creates a distinction between those from the social partners and social dialogue committees – numbering 27 responses, which seems relatively few – and those from the EU institutions, such as the European Parliament and the European Economic and Social Committee. This provides a fairly complete overview of positions on this issue.

Five categories have been isolated for the purposes of this analysis:

- public institutions;
- civil society organisations;
- universities, research centres and think tanks;
- the public; and
- business.

The table below summarises the level of participation by each major category in the 31 consultations analysed:

Total number of responses	Public institutions	Civil society organisations	Universities, think tanks and research centres	Members of the public	Business
5 553	1 030	2 580	405	787	751
	18.5%	46.5%	7.3%	14.2%	13.5%

This shows the very substantial proportion of contributors in the "civil society organisations" category (46%) compared to that for "public institutions" (18%) and "business" (14%)

2. Analysis per country, irrespective of category

Taking all categories together, the countries from which the greatest number of the analysed contributions originated were, not surprisingly, the most populous ones: Germany, the United Kingdom, France, Italy and Spain. They were followed by Member States with a much lower population.

Of the sample of 5 553 contributions, the table below lists the number of contributions per country, all categories taken together, in descending order:

1.	Germany:	over 700 contributions
2.	United Kingdom:	over 600 contributions
3.	France:	approximately 450 contributions
4.	Italy:	approximately 300 contributions
5.	Spain:	approximately 280 contributions
6.	Austria:	approximately 160 contributions
7.	Belgium:	approximately 150 contributions
8.	Netherlands:	approximately 130 contributions
9.	Finland:	approximately 100 contributions
10.	Ireland:	approximately 100 contributions

The fact that many associations and institutions are located in Brussels, because of their European identity, helps to explain the fact that Belgium is in seventh position. Some DGs record the responses from these bodies as a Belgian contribution.

3. Contributions from government bodies and other national authorities

There were some EU Member State national governments that participated in the majority of these 31 consultations.

Those who participated most actively were as follows:

The French Government responded to 25 consultations, the Finnish Government 24, the German Government 23, the Polish and Swedish Governments 22 and the British and Estonian Governments 21.

A separate analysis has been carried out of the participation of government and public bodies in France, Germany and the United Kingdom. The participation of these three countries, the most populous of the EU, was particularly high with regard to all 31 consultations studied.

3.1 France

The names of French government bodies are not always given in the DG classifications.

Those that are given include: the Permanent Representation of France to the European Union (three times), the General Secretariat for European Affairs (SGAE) (twice), the Ministry of Labour, Social Relations and Solidarity (once) and the Ministry of Economy and Finance (once).

Other public authorities include:

the Senate (seven times), the National Assembly (five times), the Economic and Social Council⁵⁸ (twice), the *Autorités des Marchés Financiers* (French Securities and Exchange Commission – AMF) (twice), the Court of Cassation (French Supreme Court) (twice), the *Centre d'Analyse Stratégique* (Centre for Strategic Analysis – CAS) (once) and the *Commission de Surveillance du Secteur Financier* (Financial Sector Supervisory Committee – CSSF) (once).

3.2 Germany

Government authorities specified are:

the Federal Ministry of Economics and Technology, the Federal Ministry of Justice, the Federal Ministry of Finance, the Federal Ministry for the Environment and Nature Conservation, the Federal Ministry of Family Affairs, Senior Citizens, Women and Youth, and the Ministry of Education and Research.

Other national authorities include:

the Bundesrat (upper house), parliament (not specified) and the Bundestag (lower house).

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Now the "Economic, Social and Environmental Council" (since the constitutional reform of 23 July 2008).

3.3 United Kingdom

Listed as contributors at government level are:

the Department of Trade and Industry, the Home Office, HM Treasury, the Department of Health and the Department for Work and Pensions.

Other national authorities include:

The High Court, the National Health Service, the Equality and Human Rights Commission, the House of Lords, the Scottish Parliament, the Department of Health's school fruit and vegetable team and the Financial Services Authority.

3.4 Italy

The widest disparity between government participation and that for all categories taken together is that of Italy. Taking all categories together, Italy is placed fourth, while the Italian Government, in only 22nd place, appears to be among those who contribute the least. In contrast, civil society organisations, universities, research centres, companies and Italian citizens are among those individuals, groups and bodies who are most inclined to respond to the public consultations carried out by the European Commission.

3.5 Aspects of the analysis

The French Government occupies first place for contributions to the consultations, while France slips to third place when all categories are taken together. This is partly due to the very active role of France's permanent representation and inter-ministerial committee on Europe – through its general secretariat for European affairs (SGAE), which relays information to the relevant ministries. This gap may also reflect the primacy in France of a model of democracy that places the emphasis on representative public authorities and the administration, whilst Germany, the United Kingdom and the Scandinavian countries traditionally give greater prominence to citizens initiatives.

As regards the involvement of the academic world, Ms Viviane de Beaufort pointed out at her hearing that – perhaps for cultural reasons – the practice of responding to consultations was not yet as developed among French universities as it was in other countries⁵⁹.

4. **Non-State actors (companies, members of the public, universities): contributors whose participation varies considerably depending on the consultation**

There were large variations in the number of responses depending on the consultation. This is particularly true for the business and public groups; although quite a large number of responses were

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Hearing of Ms Viviane de Beaufort before the European Union delegation on 9 December 2008.

given (751 and 787 respectively for all 31 consultations), the various consultations show considerable variations in the number of responses depending on the nature of the issues involved.

4.1 A particularly strong response from companies to the following consultations

The participation of business varies greatly depending on the consultation. For example, 224 contributions were made by companies to the Green Paper consultation on *Europe's trade defence instruments in a changing global economy*, compared with only one response to the White Paper consultation on a *European Communication Policy*:

1. Green Paper on <i>Europe's trade defence instruments in a changing global economy</i> :	224 responses
2. Green Paper on <i>Modernising labour law to meet the challenges of the 21st century</i> :	95 responses
3. Green Paper: <i>Towards a Europe free from tobacco smoke</i> :	54 responses
4. Green Paper on <i>the enhancement of the EU framework for investment funds</i> :	47 responses
5. Green Paper on <i>Financial Services Policy</i> :	46 responses

However, no contributions were made by business to nine of the consultations.

4.2 A particularly strong response from the public to the following consultations

Similarly, the number of members of the public contributing varies greatly. For example, 222 contributions were made to the consultation on the White Paper on a *European Communication Policy*, but only three responses were given to the Green Paper consultation on the *European Transparency Initiative*.

1. White Paper on a <i>European Communication Policy</i> :	222 responses
2. Green Paper – <i>Towards a Europe free from tobacco smoke</i> :	135 responses
3. Green Paper on <i>Europe's trade defence instruments in a changing global economy</i> :	103 responses
4. Green Paper on <i>Modernising labour law to meet the challenges of the 21st century</i> :	74 responses
5. Green Paper – <i>Confronting demographic change: a new solidarity between the generations</i> :	53 responses

However, no members of the public responded at all to 18 of the 31 consultations.

4.3 A strong response from universities, research centres and think-tanks to the following consultations

While contributors in this category responded to 22 of the 31 consultations studied, or approximately two thirds, the number of responses given for each consultation remains relatively low (between one and thirty responses), with the exception of the *Green Paper on the European Research Area* and the *Green Paper – Towards a future Maritime Policy for the Union: A European vision for the oceans and seas*, which received 113 and 76 responses respectively.

1. Green Paper on the <i>European Research Area</i> :	113 responses
2. Green Paper: <i>Towards a future Maritime Policy for the Union: a European vision for the oceans and seas</i> :	76 responses
3. Green Paper on the <i>Review of the Consumer Acquis</i> :	30 responses
4. Green Paper on <i>Promoting healthy diets and physical activity: a European dimension for the prevention</i> :	27 responses

of overweight, obesity and chronic diseases:

- | | | |
|----|---|--------------|
| 5. | Green Paper on <i>Modernising labour law to meet the challenges of the 21st century</i> : | 23 responses |
|----|---|--------------|

4.4 Specific analysis was devoted to civil society organisations, the leading category per number of contributors (46%)

Civil society organisations participated in the 31 consultations and the number of contributions per consultation was generally relatively high.

The level of response from civil society organisations was particularly high for the following consultations:

- | | | |
|----|---|---------------|
| 1. | Green Paper on <i>Modernising labour law to meet the challenges of the 21st century</i> : | 265 responses |
| 2. | Green Paper on the <i>Review of the Consumer Acquis</i> : | 226 responses |
| 3. | Green Paper: <i>Towards a future Maritime Policy for the Union: a European vision for the oceans and seas</i> : | 172 responses |
| 4. | Green Paper on the <i>European Research Area</i> : | 164 responses |
| 5. | Green Paper on <i>Europe's trade defence instruments in a changing global economy</i> : | 158 responses |

In this category of non-State actors, the efforts made by the French Economic, Social and Environmental Council to both participate in and raise awareness of the consultation procedures should be highlighted. The French ESEC has sought to develop the participation of French civil society organisations in EU public consultations. In addition to this paper, it has drawn attention – in two of its recent papers⁶⁰ – to the importance of public consultations within the EU decision-making process and the value of participating in these consultations.

In recent years, the French ESC itself has responded to one or two public consultations per year: from its *Contribution to the Green Paper on "Confronting demographic change: a new solidarity between the generations"*, drawn up by Ms Évelyne Pichenot and its contribution to the *European Youth Pact*, drawn up by Ms Élisabeth Morin, in 2005; in 2006, its contribution to the *White Paper on European communication policy* (rapporteur: Mr Jean-Marc Roirant); and in 2008, its *Contribution to the public consultation "Reforming the budget, changing Europe"*, for which Mr Georges de La Loyère was rapporteur.

Our EU delegation cross-sectional working group, which monitors EU issues, regularly circulates guides to the bureau, its thematic working groups and the constituent groups of the French ESEC, which list the public consultations featuring during a given period on the *Your voice in Europe* web portal and on the sites of the DGs, as well as summaries of open public consultations.

This notification and awareness-raising work is aimed at enabling the sections and groups who so wish, to respond. Thus in 2008, the finance section contributed to the public consultation on the *Small*

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Contribution du Conseil économique et social au livre blanc sur une politique de communication européenne, by Mr Jean-Marc Roirant (July 2006), *De l'élaboration de la législation communautaire à sa mise en œuvre en droit national : contribution du Conseil économique et social à la réflexion sur « Mieux légiférer »*, by Ms Catherine Dumont (July 2007), and *Pour un statut de l'association européenne*, by Mr Jean-Marc Roirant (June 2008).

Business Act, and the overseas group of the French ESEC contributed to the *Green paper on the future relations between the EU and the overseas countries and territories (OCTs)*. Many other important consultations could, however, have been responded to.

Certain groups within the French Economic, Social and Environmental Council pass on this information, in turn, to the organisations they represent, which has a multiplier effect on the awareness efforts.

The regional economic and social councils also participate in certain consultations, which helps bolster the participation of French organised civil society in EU public consultations, and may in turn encourage local or regional organisations represented by a regional ESC to also participate.

In a 2007 opinion, the Île-de-France regional ESC thus emphasised the importance for the regional institution "*of expressing its views, as often as necessary, when consultations are launched by the European Commission*"⁶¹. To this end, it has contributed to the public consultations on *Reforming the budget, changing Europe* (April 2008), on the Green Paper *Towards a new culture for urban mobility* (March 2008) and on the *White Paper on a European communication policy* (July 2006)⁶².

The regional ESCs of Brittany, the Pays de la Loire, Poitou-Charentes and Aquitaine, working through interregional networks (ARESE, RTA), have for their own part delivered opinions requested by the Atlantic Arc Commission on the Green Paper on transport and the Green Paper on cohesion.

The regional ESC of Réunion drew up a contribution to the consultation on the strategy for outermost regions (ORs). The regional ESCs of Aquitaine and of the Autonomous Community of the Basque Country (Spanish), on the latter's initiative, are working on a joint contribution to the Green Paper on Future TEN-T Networks; the regional ESC of Brittany is drafting an opinion on the White Paper on the sea.

⁶¹ Opinion No 2007-07 of 19 June 2007 on the "*Rapport-cadre sur la politique européenne de la Région Île-de-France*", presented on behalf of the commission for European and international action of that region's ESC by Ms Danielle Desguées.

⁶² Opinions of the Île-de-France regional ESC on the Green Paper *Towards a new culture for urban mobility*, rapporteur: Mr Denys Dartigues (March 2008); on the public consultation *Reforming the budget, changing Europe*, rapporteur: Mr Bernard Dutoit (April 2007); and on the *White Paper on a European communication policy*, rapporteur Mr Rémi Bonnevalle (July 2006).

4.5 Contributors from various Member States to at least three of the Green Papers and White Papers studied

A break down by category and contributor for all Member States will show that some responded to at least three of the thirty-one Green Papers and White Papers studied:

Civil society organisations

Friends of the Earth:	8 times	}	International
Trading Standards Institute:	5 times		
Brethren Christian Fellowship:	4 times		
Amnesty International:	3 times		

<i>VDMA Verband Deutscher Maschinen und Anlagenbau</i> (Association of German industrial equipment and machine manufacturers)	4 times	}	Germany
<i>Gesamtverband Textil+Mode</i> (textile and fashion industry association)	3 times		
<i>Zentralverband Gewerblicher Verbundgruppen</i> (German Federation of buying and marketing groups)	3 times		
<i>Deutscher Anwaltverein</i> (German group of lawyers' associations)	3 times		
<i>Bundesarbeitskammer</i> (Chamber of commerce)	3 times		

<i>MEDEF</i> (Movement of French enterprises)	5 times	}	France
<i>Association française des entreprises privées</i> (French Association of private companies)	4 times		
<i>Fédération bancaire française</i> (French banking federation)	4 times		
<i>Chambre de commerce et d'industrie de Paris</i> (Paris chamber of industry and commerce)	3 times		

Confederation of Finnish Industry	3 times	Finland
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European Group for Private International Law	3 times	}	Europe
European Banking Federation	4 times		
American Chamber of Commerce to the EU	4 times		
Council of Bars and Law Societies of Europe:	3 times		

Universities

University of Milan	4 times	}	Italy
University of Rome	4 times		

Businesses

Law Society of England and Wales	5 times	}	United Kingdom and France
Michelin	3 times		
<i>Armateurs de France</i> (professional association of French shipowners)	3 times		

5. Contributions from local and regional authorities

The participation of French local and regional authorities focused particularly on the Green paper on territorial cohesion⁶³, concluded in February 2009. The 378 responses registered by the Commission included 97 from European local and regional authorities, 13 of which were French: the Rhône-Alpes region, Alsace, Corsica, the Champagne-Ardenne region, the Nord-Pas-de-Calais region, the Île-de-France region, the Pays de la Loire and Poitou-Charentes, the General Council of Var, the department of Seine-Saint-Denis, Agence régionale de développement des territoires d'Auvergne (Auvergne Regional Development Agency), the Midi-Pyrenees region, the Auvergne region, the Brittany region. Ten responses were from cities, four of which were French (Nantes, Rennes, Lille and Nancy)⁶⁴.

C. PROBLEMS ASSOCIATED WITH A QUALITATIVE APPROACH TO CONSULTATIONS AND THE USE THAT THE COMMISSION AND OTHER EU INSTITUTIONS MAKE OF THEM

1. A very difficult qualitative analysis

Although it is possible to put an approximate figure to the number of contributions to consultations, a qualitative assessment of the content of responses is far more difficult for various reasons.

First of all, considerable familiarity with the issues being addressed is needed to assess the "quality" of the responses. This explains why responses to consultations are used by the specialised Commission DGs having launched the consultation but the relevance of these contributions is difficult to assess by non-specialists.

⁶³ Green paper on territorial cohesion: turning territorial diversity into strength (COM(2008) 616, October 2008).

⁶⁴ The Green Paper, which is dated 2008 and was completed in 2009, is not among the 31 Green Papers and White Papers dated 2005, 2006 and 2007, which were used to estimate the average number of responses to consultations. This particular example was used in order to approximate how many local and regional authorities responded to a consultation on an issue that was likely to concern them.

There is also the problem of the range of languages in which contributions are written.

A quick analysis of the White Paper on a European communication policy, to which the Economic, Social and Environmental Council of France (ESEC) contributed, and which drew many responses, gives some idea of the difficulties that the Commission's services face when analysing responses. The 313 contributions were drafted in 16 different languages. English was the most widely used (about 40% of responses), followed by French (17%), German (14%), and Spanish (about 7%), and then Italian, Swedish, Dutch, Finnish, Greek, Portuguese, Slovenian, Czech, Hungarian and Latvian.

The range of languages shows that this consultation reached a fairly wide public even if 313 responses, two-thirds of which were from citizens, are not many considering the nature of the subject and the emphasis on the need to relaunch debate and participation in Europe following the French and Dutch referendums on the Constitutional Treaty. It also seems very valuable: if the Commission wants to reach a diversified public through its consultations, then all national or local entities (businesses, trade unions, employers' associations) or citizens wishing to do so must have the opportunity to use their own language. But this also makes it difficult for a national organisation such as the Economic Social and Environmental Council of France to understand these contributions in all their variety.

The languages used to draft responses to the Green Paper on a European Transparency Initiative, which mainly concerned a more targeted public, confirms and refines the point. According to the breakdown of figures provided on the DG webpage concerning its follow-up, a clear majority of the 160 responses to this Green Paper were in English, but about thirty were in German and about a dozen in French. Other languages were also used, including Estonian. A complete and thorough analysis of these responses requires considerable resources in terms of translation time, beyond the means of any national body.

The high percentage of responses to this consultation drafted in English, in contrast to responses to "Communicating Europe", nevertheless leads us to ask whether a large part of responses do not come from highly structured organisations, possibly with a Brussels presence, and accustomed to working with the Commission.

The "focuses" for this particular Communication follow the same lines. The consultation on "Reforming the budget, changing Europe", which was preceded by a conference on 12 November 2008, drew more than 300 responses, twelve of which from France; some were submitted in more than one language (the contributor's and English). The consultation on "Financial Services" (closed in July 2008) concerning the review of decisions setting up oversight authorities, drew 69 responses, eleven of which were from France. The only response drafted in French came from the French ministry of finance. The consultation on the "Strategy to reduce CO₂ emissions from passenger cars" (opened in February 2007) drew 41 responses, only one of which was from France, submitted by the organisation *Agir pour l'environnement*. By contrast, there were responses from Japanese and Korean car producers. The final summary was drawn up in English.

If this is true of many other consultations, to what extent is the Commission achieving its objective, i.e. to use public consultations to significantly widen its circle of interlocutors beyond its usual consultation networks in Brussels? Establishing this would involve in-depth analysis, which only the Commission itself could undertake or research bodies with access to lists of experts and lobbyists already consulted by the DGs through other channels.

An assessment of the number of respondents to some thirty Green Papers, mostly published in 2005, 2006 and 2007, nevertheless shows that whereas the average number of respondents to a consultation was relatively low, not many stakeholders responded to several consultations.

In her article on *Les groupes d'intérêt et la consultation sur le Livre Blanc : objectivisation et institutionnalisation de la société civile*, Hélène Michel points out that although a number of organisations more or less directly funded by the Commission "are strongly motivated to participate" [in consultations], "organisations that are sufficiently resourced to pay internal staff and/or resort to public affairs consultancies () do not necessarily see the need to invest in public consultation with little or no apparent gain." In fact, they often prefer to use more ordinary means to defend their interests, such as face-to-face meetings with officials, disseminating expert reports, attending public meetings or drawing up legal opinions⁶⁵.

Furthermore, as pointed out above, the preponderance of responses in English may well be due, at least in part, to the number of consultations that are only accessible in English.

This also brings us to the question of which parties, besides the Commission, actually benefit from this means of identifying the positions of other participants. Most of them are likely to be professional lobbies with sufficient resources to study consultation responses in their areas of interest. This does not obviate the need for such a mechanism. A relatively transparent system for exerting influence, where we can know who is participating and how, is better than an opaque one. However, this leads to the question of the real degree of openness and inclusiveness achieved by many of these consultations under current conditions.

Furthermore, many responses to the "Green Paper - European transparency initiative" seem relatively "standardised" in form. Contributions are usually short, about five to six pages at the most, and more often than not about two to four pages, with, if necessary, boxes summarising the key recommendations. Judging by the formal and relatively standardised presentation of many responses, a significant number of respondents are probably professionals, which tends to reinforce the point made at the end of the previous paragraph.

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Under the direction of Marine Delassalle and Didier Georgakiris, "*Les groupes d'intérêt et la consultation sur le Livre blanc: objectivation et 'institutionnalisation' de la société civile*" [Interest groups and White Paper consultations: the objectivisation and "institutionalisation" of civil society] in *La nouvelle gouvernance. Les usages politiques du Livre blanc*, Strasbourg, PUS, 2007.

The increase in the number of Member States has brought with it the risk that positions taken in traditional lobbying will be reduced to the lowest common denominator, or that the representatives of the "big countries" on the one hand, or lobbies, on the other, will agree in advance on compromises between their positions in order to serve their interests.

Finally, the effort involved in a comprehensive reading of contributions has to be measured against the objective. From the Commission's perspective, this constitutes a heavy workload, especially since most responses tend to arrive towards the end of the consultation. Nevertheless, it is necessary to enable the DGs to present their superiors, who ultimately have decision-making powers, with a proposal that takes account of the interests and positions expressed, and their relative weight.

2. Reminder of the Commission's reasons for holding consultations

From the Commission's point of view, public consultations, along with other sources of expertise at its disposal, are a source of information and awareness-raising about Member States, and in the various countries, about the participants in economic, social and environmental policy, and ongoing European projects.

Consultations enable the Commission to explore relatively new areas in the framework of its powers of initiative, and to gather ideas or reactions from civil society organisations in Member States, which it might otherwise have missed, and which complement what it has learnt from the public hearings it has also held.

As Mr Legris pointed out during his hearing, the Commission perceives them as contributing to the principles of good governance to ensure a better acceptance of decisions since citizens are more inclined to accept measures, even if they are not what they would have chosen, when they feel that the policies they relate to have been adopted on the basis of a democratic decision-making process and transparent consultation.

Public consultations also tend to form a substantive component of impact studies, where they contribute to setting out the issue. It would however be detrimental to gradually reduce them to mere preambles to impact studies, which the Commission often tenders out to external service providers.

3. The Commission's criteria for taking responses on board

Bodies or persons who participate in public consultations via the internet also receive internet acknowledgements from the Commission.

Moreover, summaries of the conclusions the Commission draws from these contributions are often disseminated in subsequent communications, as was the case, for example, with the "Follow-up to the Green Paper - European Transparency Initiative"⁶⁶.

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Follow-up to the Green Paper "European Transparency Initiative" (COM(2007) 127 final).

With regard to the criteria for taking account of the ideas, proposals and positions of respondents, discussions during the preparation of this Communication emphasised a number of points.

Although there are rules for consultations, the Commission's DGs have considerable room for manoeuvre in how they organise them. Strictly speaking, there are no common rules for all DGs or official criteria for using consultation responses, since the formal procedure for confirming receipt and the requirement for a response do not apply in this case.

Furthermore, during the consultation phases of Green Papers and White Papers, the Commission's services obviously already have some idea of the direction they intend their future proposal to take, which is natural⁶⁷. However, at this stage, there is still room for manoeuvre. However, once a proposal is issued by the Commission's services, even if it is subsequently examined by the European Economic and Social Committee and the European Parliament, the latter sharing decision-making powers with the Council of the European Union, room for development, except in exceptional cases, is far more limited and uncertain.

In addition, during their statements to the delegation, Ms Viviane de Beaufort and Mr Jean-Claude Karpélès both stressed the need to participate "to make one's voice heard", and the relative accessibility of the Commission's administrators and heads of unit, contrary to preconceptions about the "remoteness" of Europe.

In the Commission's view, the number of contributions is significant. Respondents to the Commission's public consultations usually contribute in order to make critical observations on the orientations outlined in the consultation and in order to influence future choices. If there are few responses, the Commission will tend to assume that there is no opposition. If many responses express the same views, the Commission will be more inclined to give them weight.

If a contribution comes from bodies in several Member States and/or a respondent is a European actor, this will tend, all other things being equal, to lend weight to the contribution.

Finally whereas in France, we emphasise the representativeness of the actors, the concept of legitimacy varies considerably in the EU. Any actors who are in good faith and willing to support their arguments by specifying the particular interests they defend are, in the name of the principle of openness, considered by the Commission as admissible to consultations. The weight given to their contributions will most probably be less dependent on their representativeness than the French view would prefer.

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Green Papers and White Papers are not the absolute beginning of the drafting process culminating in a proposal. They are preceded by long deliberations, public hearings, informal discussions, etc., and are part of a body of earlier EU documents, decisions of the European Court of Justice, etc., on the same issue.

Green Papers, White Papers and other questionnaires that the Commission might use are ultimately consultative procedures. The Commission is not obliged to follow the recommendations it receives or to draw up proposals in the relevant area. Thus DG Internal Market held some thirty consultations between 2004 and 2009 to improve the functioning of financial markets. This shows that although the Commission was aware of a problem, it was not until the major financial crisis of 2008 that the search for solutions was properly speeded up.

Similarly, during the consultation on the Small Business Act, it appears that 70% of contributors were in favour of SME quotas for public procurement, but the Commission, as is its right, did not take up this idea.

4. Their uses for other institutions and stakeholders

The fact that contributions sent to the Commission are posted on the DG website, unless otherwise stipulated by the contributors or due to the particular sensitivity of the subject of the consultation (e.g. the confidentiality of commercial or security issues) makes them very easy to access by anyone interested, subject to the abovementioned language problems.

This enables contributors to know each other's positions provided the interested parties are willing, and have the time and the means.

Various resolutions of the European Parliament have stressed the importance of preliminary consultations in the legislative process. MEPs use them during their work, since they find that some online contributions provide a vital source of information that can be used in future amendments. For example, if necessary, some French MEPs use them when an issue under discussion has been the subject of public consultation.

This seems to be less common at the European Economic and Social Committee, except possibly to identify bodies or people that might be worth inviting to hearings on an issue. The Committee is consulted on Green Papers and White Papers at the same time as other parties. The 344 members of the EESC are a very representative cross-section of organised civil society in Member States, even if the major European platforms themselves are not represented within it. The Committee has addressed this issue by setting up a liaison group with civil society, which includes most of these platforms.

The summary of contributions and impact assessments should be an essential part of the dossiers of all rapporteurs responsible for the preparation of an opinion of the European Economic and Social Committee.

IV. BETTER CONSULTATION FOR BETTER LAWMAKING

The consultations the Commission holds to prepare its proposals for decisions are an important source of information and preliminary discussions in the preparation of its initiatives. Their use should be

developed by increasing the participation of national consultative bodies in these consultations and by extending it to the relevant bodies and associations in Member States.

On the basis of this first approach to participation in these consultations, the Economic, Social and Environmental Council of France is preparing proposals and recommendations aimed at facilitating the speedy implementation of improvements to be introduced at the beginning of the new terms of the Commission and the European Parliament. Complementary work carried out at the national and European levels could be used to refine and complete these first proposals.

A. IMPROVING PUBLIC CONSULTATION AT THE EUROPEAN LEVEL

1. **Raising greater awareness that consultations are open**

The relatively low response to many public consultations argues for new Commission initiatives to increase participation in such a way as to shed more light on situations and positions in the 27 Member States, beyond the circles habitually consulted by the Commission.

First of all, a specific icon is needed on the homepage of the Europa portal to improve access to consultations by allowing direct and rapid access.

A number of potential participants are unaware of consultation mechanisms, and thus of the many consultations that could concern them. Clearly, it is not the Commission's job to contact all potentially interested stakeholders on each issue but it should provide the means to ensure equal participation opportunities.

The Commission needs to launch a debate on the means to improve awareness of the European institutions' work programme among the public and the intermediary bodies in various Member States. Indeed this awareness is decisive in improving participation. Each presidency of the Council of the European Union could be an opportunity to republicise planned public consultations in the following six months.

In any case, a first and vital improvement would be for consultations to appear as soon as they are launched in a list of all open consultations, posted on the main page of "Your voice in Europe", with a direct link to the relevant DG website. This would mean that internet users who know about the site will be able to check at a glance whether any current consultations warrant a response from their organisation.

The French ESEC also recommends drawing up a guide to consultation procedures including the principles, deadlines, the register, etc. available on the homepage of the "Your voice in Europe" website.

When the subject of the consultation lends itself to this approach, public consultations are often publicised by the European media (namely, Euractiv, the Europe Daily Bulletin or Europolitics). At

the national level, they could also be publicised regularly in national newspapers that cover European issues.

A subscription system operating on the basis of key words could be made available to all interested citizens, as will be the case for all organisations on the register.

The French ESEC recommends a better classification of target publics and their standardised use by all DGs.

In order to clarify the different types of consultations for internet users, the French ESEC advises the Commission to create four or five major consultation categories such as consultations on the institutional future of the Union, consultations on EMU, exploratory consultations on new challenges, etc.

Finally, any presentation of a consultation should make it clear to the contributor at what point in the decision-making process the consultation is being introduced and should explain what action the Commission intends to take on the consultation in its work programme.

2. Solving the major hurdles presented by language issues

The European Union is founded on "unity in diversity" and this diversity finds its main expression in linguistic diversity. Article 22 of the Charter of Fundamental Rights of the European Union states that the Union will respect linguistic diversity and Article 21 prohibits any discrimination based on language. The Union therefore has a responsibility to gradually eliminate any obstacles presented by accessibility in all languages.

Although English (followed by French and German) is the first foreign language learnt in the Union and the most widespread mother tongue after German and before French, it is currently spoken by only one out of two Europeans. It is therefore a great hindrance that the majority of public consultations are only available in English, whereas their purpose is to provide the Commission with information from outside its usual sphere of consultation in Brussels on the diverse situations and positions of interested parties, and even to reach citizens in Member States.

Consultations should, during an initial phase and as soon as possible (e.g. within a year) after the new Commission takes up office, be made available simultaneously in at least three languages (German, English and French). These are actually the official languages of Member States whose combined population represents 45% of the EU population and they are spoken as foreign languages by a substantial proportion of citizens from other Member States.

During a second phase (within two to three years of the new Commission taking up office would seem reasonable) this simultaneous online access should be extended to Italian, Spanish, and Polish, which would bring "coverage" to over 70% of Europeans in the official language of their Member State of origin, to which would be added all those with a command of one of these six languages as a foreign

language. Moreover, this corresponds to the language arrangements in force for the working documents of the European Parliament.

The French Senate and the German Bundestag have recently asked their respective governments to take the necessary steps to ensure that the Community institutions fully respect linguistic diversity in the workings of the EU institutions. In its opinion entitled "*Reconciling the national and European dimensions of communicating Europe*", the European Economic and Social Committee also noted the importance of making efforts to "*promote multilingualism as a prerequisite for communication among Europeans*"⁶⁸.

Eventually, all consultations should be available at the same time in all European languages. This principle should also be applied to documents on impact assessment rules.

In the view of France's Economic, Social and Environmental Council, access to consultations is one of the priorities that the Commission should consider when allocating resources for translation, as set out in the Treaties.

3. Encouraging early planning and further improving compliance with deadlines

All European information offices should prepare the parties involved in this form of participation by giving advance notice of all aspects of the Commission's work plan that require knowledge of the timetable for consultations.

The minimum deadline of eight weeks adopted by the European Commission in its follow-up to the *Green Paper on Transparency* is a threshold that must be strictly adhered to. Although this is generally the case, according to the consultations taken into account for the study in question, exceptions still occur. In the view of France's Economic and Social Council, it is all the more important that breaches of this principle should be the exception because the European legislative process, which requires consensus between the different interests of a large number of States and players, is inevitably slow. With the process being shortened on the grounds of "urgency", the two or three weeks "taken" from the consultation risk being lost again, and more besides, due to insufficient time having been allowed for different opinions to be expressed at an earlier stage. Violations of this rule should, therefore, remain exceptional and the reasons for them should be properly justified in the consultation itself.

There is also the issue of holiday periods, during which consultations are in danger of being overlooked: to get around this problem, the Christmas and New Year holidays and the summer break should be avoided or the deadline extended beyond eight weeks.

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Opinion of the European Economic and Social Committee entitled *Reconciling the national and European dimensions of communicating Europe*; the rapporteur was Ms Béatrice Ouin.

Extending this deadline to twelve weeks (the deadline used for consultations carried out by the British government), would be a step in the right direction. This would probably help to encourage somewhat greater participation, without making the Commission wait for an unreasonable length of time.

The call to go beyond the minimum deadline for consultation wherever possible, set out in the Communication entitled *Follow-up to the Green Paper "European transparency initiative"*, is thus a positive initiative from the Commission. This call is often followed up by the DGs, according to the (limited number of) cases examined for the purpose of this study.

When a consultation deadline is extended, this should be announced very clearly on the homepage of the *Your Voice in Europe* website and on the website of the relevant DG, to ensure that organisations consulting the site know with certainty that their contribution will still be valid. By way of example, on 29 April 2009, one of the consultations listed on the website of DG Employment, Social Affairs and Equal Opportunities had a closing date of 20 February, but it was not clear whether this was correct because the deadline had been extended or whether this was simply an oversight.

Furthermore, the Commission website *Your Voice in Europe* should be completely reworked and be accompanied by an information campaign for organised civil society, run by each Member State.

4. Improving the follow-up to consultations and feedback to contributors

In their *Manifesto for a genuine European civil dialogue*, European forums deem current procedures and structures to be inapt and regret that there is little visible sign of the impact made by the contributions of civil society organisations and networks to framing EU policy. This *Manifesto*, drawn up in April 2009, expresses the desire that the European Parliament work to ensure that the European institutions report on the contributions stemming from dialogue with organised civil society and on whether or not those contributions have been taken into account.

In the view of France's ESC, the European institutions should also report on the outcome of the decisions they have taken after consulting organised civil society.

In a desire to ensure transparency, the French ESC proposes that a summary of contributions be systematically produced and appended to the follow-up communication or e-mailed to contributors together with the follow-up communication, a deadline for producing this summary having been announced beforehand. This information is moreover required for the impact assessment reports, part of which should include a summary of the consultation.

The summary should provide, where possible, the name and nature of the bodies that have supported the different options. The involvement of European federal bodies and forums should be highlighted. Providing information on the issues raised by contributors would also be extremely useful when consultation does not take the form of a closed questionnaire. Any impact that contributors' opinion might have had on the project should also be made clearer in this context. Lastly, dissatisfied contributors should be given the right to reply to this summary.

Efforts to coordinate the activities of the different DGs working in this area should seek to clarify the standard content of this summary. This could be submitted to the European Economic and Social Committee for consultation on contributors' expectations.

The summaries, to be drawn up in a deliberately neutral and objective manner, should in particular demonstrate the originality of the contributions from organised civil society, especially those from national ESCs. Adopting these summaries following a vote is the result of a collective drafting procedure, which already represents a compromise between the positions of diverse organisations from different social, economic and professional spheres, shows areas of convergence and highlights any remaining points of disagreement.

5. Making the most of contributions

In order to improve the follow-up to consultations, each DG should set up a unit for following up relations with civil society and adequate human resources should be employed to make the most of the contributions that are received. It would also be useful to make translations of these contributions available to all in the three pivot languages and to produce summaries that are as comprehensive as possible.

France's ESC recommends that Members of the European Parliament and of the European Economic and Social Committee refer explicitly in their opinions and reports to the proposals and suggestions arising from consultation of civil society supporting their arguments.

The different high-level groups or groups of experts should also enhance the contribution of civil society by holding hearings of organisations that have contributed to consultations and by taking account of their contributions.

Officials or experts responsible for impact assessments should similarly open up their hearings to civil society organisations that have provided contributions, to allow for cross-examination. The secretary-general of the Commission should implement these improvements at the start of the new term of office. The secretariat-general's role should be better publicised, in particular as regards managing impact assessments. For this reform to succeed, the SG must have the necessary human and financial resources to ensure that things are properly centralised, the site is revamped and information provided in all languages. The SG must also coordinate the activities of the different DGs in organising the final process of summarising and providing feedback to contributors.

B. INCREASING THE PARTICIPATION OF CIVIL SOCIETY ORGANISATIONS IN PUBLIC CONSULTATION AT THE NATIONAL LEVEL

1. The role of the Commission's national information offices

On their website, the Commission's national offices should place a daily updated list of consultations taking place. These offices could also act as a stimulus, by informing potentially interested parties via the Internet of the consultation's launch, its aim and the deadlines set. This information should at the very least be sent systematically to bodies that have taken part in a previous consultation, when subsequent consultations cover the same field. The automatic notification planned by the European Commission for contributors or bodies on the lobbying register is in this regard a positive step.

An annual meeting to discuss consultation mechanisms should be held by the Commission's national information offices to train contributors in the principles and uses of consultation, with a view to pooling good practices. This meeting should be open both to organisations that have already contributed and to those expressing a wish to do so, giving priority to those already on the register of interest groups.

Wherever the Commission deems it useful, it should encourage Member States to consult civil society on European policies, especially in the form of public consultations. This support measure has played a major role in involving national civil society in the Lisbon Strategy. This is a good example to follow.

2. An encouraging role for government bodies, which should be further developed

The French government responds to the vast majority of European public consultations, in particular Green Papers and White Papers, through inter-ministerial bodies such as permanent representations, the secretariat-general for European Affairs, or through ministries in their own areas of responsibility.

In the French ESC's view, use should be made of the comprehensive knowledge of the institutions' work programmes and timetables for consultation held by France's permanent representation to Brussels, in conjunction with the SGAE and/or the technical ministries, to encourage local and regional authorities and French civil society organisations to take part in these consultations. Civil society in France could thus be more closely involved by ministerial departments before the French public authorities issue a response.

Similarly, these consultations could be accompanied by referrals from the government to the Economic, Social and Environmental Council on certain Green Papers or White Papers, where this is justified by their importance or subject matter. Associations of local authorities and independent administrative authorities and/or other specialist bodies such as the National Consultative Commission on Human Rights (CNCDH) or the French data protection authority (CNIL), should also be systematically referred to when consultations concern their spheres of responsibility or activity.

This development should be taken into account in the study launched on the tasks of the secretariat-general for European Affairs and France's permanent representation in Brussels, which aims primarily to better anticipate developments and more closely involve France's national parliament in addressing European affairs, also involving local authorities, in subject matters that concern them.

The logic underlying this approach is twofold: to foster greater awareness among the elected and consultative bodies that underpin French society of the importance of the European dimension in our country's domestic affairs; to develop an influence-building strategy, since the number of contributions received by the Commission is one of the factors it takes into account when drawing up proposals.

This factor should also form part of the study called for by the Inspectorate-General for Social Affairs [IGAS] in its 2006 report, which stated that the French system for addressing and steering Community issues was basically designed for work on formal negotiations between government players, geared towards producing legislation, but was *"less suited to more diffuse working methods, involving a number of different levels and players and in which the ability to influence was as important as defending formal positions"*. The report emphasised that the main issue was to transform this mechanism into a form of governance suited to the current and future framework of Community policy-making.

3. A role providing information on consultations, which should be expanded at the national level

A useful information role could also be played in this area by the French National Assembly and the Senate, which monitor the drawing up of draft European legislation by verifying compliance with the subsidiarity principle (Article 88 of the Constitution) and which play a very active role in providing information on European affairs and French policy on European issues through the different types of information they place on their website and by following up the main European texts.

Information points for public consultations could also be planned for the websites of institutions or associations that provide information on the European Union and are active in European current affairs discussions. The French website *Touteleurope.fr* has also provided Internet users with a space for expressing their views and getting involved. This service enables the website to gauge the European public's views and expectations of Europe and leads the debate through practical activities such as polls and surveys, etc.) This site opts for interactive discussion but its section entitled "European public consultation" should provide a reference to the Commission's public consultations.

Another improvement might be for individual conferences to be held systematically in the different Member States in the first few days after a consultation is launched by bodies such as the European House, for example, or other European associations or think tanks such as the European Movement in France, Europe and Society, Europa nova, Confrontations Europe or the Robert Schuman Foundation, etc. Officials from the relevant DG could attend these conferences and in some cases, even European Commissioners, as suggested in the White Paper on a European Communication Policy. In its opinion

entitled: *'Reconciling the national and European dimensions of communicating Europe*, the European Economic and Social Committee observed that "At national level, civil society players and local elected politicians should act as the driving force in European participatory democracy: together, they should sound out citizens on European projects".⁶⁹

4. A proactive role for France's Economic, Social and Environmental Council (ESEC) working together with civil society organisations

In monitoring the different stages of the Lisbon cycle, France's ESEC, responding to the request made by the European Council, has since 2005 made use of an effective mechanism for taking part in drawing up and following up NRPs, in close cooperation with the SGAE. This mechanism has shown the value of consulting the ESEC on European policies and its ability to provide responses within the deadlines that are set. The French ESEC has also helped, in a number of opinions in its term of office, to add insight to European discussions, thus confirming its role as a participant in public debate. Its recent opinion entitled *Quel cadre juridique européen pour les services sociaux d'intérêt général? [A European legal framework for social services of general interest]* was also included in a report produced by the French National Assembly in April 2009.

France's ESEC also has two procedures for responding to a European consultation:

- on a referral from the government; it may entrust the referral to one of its specialist sections or to an ad hoc committee to draw up a response, urgently, if necessary;
- in anticipation; for an own-initiative opinion, the ESEC can include in its work plan, the drafting of an opinion that will form the basis of a consultation planned one or two years in advance.

France's ESEC can also prepare a response to the consultation by referring to its earlier work and the opinions already adopted on the issue at hand. This helps to achieve a consistent response that also meets the consultations' deadlines.

The ESEC will monitor and improve the information on the Commission consultations that it processes from time to time for its working parties and constituent groups. It could publish this information on its website, to boost the role of monitoring public consultations that it advocates and thus make it easier for French civil society organisations to participate.

The ESEC's different groups could act as a useful information point for the organisations they represent. France's ESEC could also publish on its website the consultation responses of groups which wish to see this happen and could make it easier to access government responses to these consultations.

⁶⁹ Opinion of the European Economic and Social Committee entitled: *Reconciling the national and European dimensions of communicating Europe*; the rapporteur was Ms Béatrice Ouin.

The French ESEC recommends that civil society organisations take account of the Commission's five-year and annual work programmes by anticipating by several months or even a year any major consultation that concerns them. To highlight the French ESEC's delegation to the European Union's monitoring role and to improve synergies with European networks, for the forthcoming term of office, it might be worth establishing regular contacts with European associative movements, with a view to holding periodic discussions on these work programmes relating to consultations.

To ensure that consultations are regularly monitored, groupings of associations and large organisations would find it useful, if allowed to do so by their statutes and governing bodies, to sign the register and appoint someone responsible for monitoring consultations. Close links with their counterparts in the network and the forum of which they are members could also make it easier to present information, hold discussions and organise events. Armed with these contributions, European networks could play a role in enhancing their positions.

C. STRENGTHENING THE CULTURE OF DIALOGUE WITH THE PARTIES CONCERNED

1. Expanding the practice of holding consultations

Public consultations represent a unique form and a practical example of civil dialogue. Carrying them out under the conditions proposed in this communication could be one way of helping to formalise the principle of participatory democracy set out in Article 11 of the Treaty of Lisbon.

The adoption of a statute for a European association, and with it the establishment of certification, in line with the proposals recently drawn up in the communication entitled *Towards a Statute for a European Association*, and statutes for foundations and mutual societies, could also encourage this trend.

France's ESEC would like discussions to continue on the potential impact of people's right to petition, as provided for in the Treaty of Lisbon, on introducing exploratory consultations.

The French ESEC also encourages consultations to be launched for the forthcoming Commission term of office, on major discussions such as the future of the European budget, the Lisbon strategy after 2010 or some of the issues addressed by the Committee of Wise Men chaired by Felipe Gonzalez.

2. Improving consultations for impact studies and extending these to assessments

Moving beyond the explanatory stage that precedes any decision, consultation mechanisms should be extended to initial impact assessments in line with the code of conduct in this field. Contributions can also be used to draw up the specifications of an impact assessment. They should also make possible involvement in subsequent assessments of Community policies that have been implemented.

A study group should hold a discussion on adapting these mechanisms to the monitoring and implementation of decisions. The increasing power of non-legislative acts (COMs, common

principles, guidelines, indicator-monitoring, etc.) suggests that the practice of carrying out assessments with a consultation stage as close as possible to the players or operators concerned should become more widespread. Given that this practice exists for panels of experts for SMEs, the local level absolutely has to be taken into account when carrying out these assessments. In France, the ESEC and the regional ESCs could be given the task of assisting with these assessments or impact studies where justified by the importance of the subject at hand. France's ESEC already carries out a follow-up to the Lisbon strategy indicators every two years.

3. Improving the register of interest groups and the interest groups' code of conduct

A fifth category should be created in the register of interest representatives, in order to encourage Member States' national ESCs, regional ESCs and independent administrative authorities and other national consultative bodies in the public sphere to register, even if they are not governmental or parliamentary in nature.

France's ESEC furthermore recommends continuing discussions on a common register of interinstitutional interest groups, covering the Commission, the Council and the European Parliament.

Lastly, to ensure that the interest groups' code of conduct is reliable and credible, sanctions should be provided for in the event of breaches of this code. They could range from a simple call to order to a request to justify action and even, in the most serious cases, to public removal from the register.

CONCLUSION

Strengthening civil society's participation in European public consultations is a measure that will increase the public's involvement in the European debate.

Given the hope that the Treaty of Lisbon will soon be ratified, improving participation represents a practical demonstration of Article 11(3) of the future treaty, which stipulates that civil society consultations must be held. This is a major component of participatory democracy.

In this communication, France's ESEC puts forward firstly a set of recommendations to be implemented at the start of the Commission's new term of office and secondly, suggestions to strengthen and expand these consultations, which will warrant supplementary studies and work. The ESEC considers that the European Economic and Social Committee could play a pivotal role in these discussions, in conjunction with the national economic and social councils and similar institutions.

Several of our recommendations are aimed at the Commission and are intended to kick-start a thorough reorganisation to make it easier to access. They aim in particular to more effectively inform the public that European consultations are open, because most civil society organisations and Member State citizens are not sufficiently aware of the existence of this European, consultative and participatory mechanism. This requires solving the language problem, which is handicapping broader access to the text of consultations. These recommendations aim to encourage advance planning, compliance with deadlines, monitoring of consultations and feedback to contributors and to make the best use of contributions.

The Commission has a duty to ensure equal opportunities - a fundamental principle of European integration - in the participation of the parties concerned.

Some of these recommendations are aimed at the national bodies responsible for leading the public debate on Europe in the Member States. France's ESEC considers that it has a key role to play in boosting the participation of French organisations in European consultations. This is based on our country's influence upstream of the drafting of legislative and non-legislative proposals that have a major impact on the development of national policies. Together with other specialist advisory bodies, France's ESEC should be asked by the government to prepare France's positions in response to Green Papers and White Papers.

Improving participation at the national level calls for initiatives and even a new role for the European Commission's national representations and government bodies but also, in order to increase their number, the contribution of different players, including socio-occupational organisations and the associative movements. The lack of public participation in this area also needs to be addressed. More impact assessments need to be carried out to establish how different policies affect one another and to ensure their consistency.

The culture of dialogue with the parties concerned must also be strengthened, by extending the practice of consultations, improving participation in impact assessments and extending this to assessments under the open method of coordination (OMC).

Lastly, the ESEC advocates improving the code of conduct for interest and pressure groups, encouraging them to sign the register and to more effectively highlight the contributions of national ESCs to the different consultations.

For the next term of office, following the elections to the European Parliament, in a difficult situation resulting from the crisis and given the issues relating to global warming, the need for synergies between the Community level and the national level is even greater, if we are to be prepared for the future.

Rather than believing in the mirage of a direct public debate between the Commission and Europe's 500 million citizens, France's ESEC calls for greater responsibility to be given to national and local public authorities, national consultative bodies, socio-occupational organisations and associations working to develop participatory democracy, at the different levels, in order to find lasting solutions that enjoy a broad consensus in the Member States and to prepare decisions that can thus be better understood and implemented.

APPENDICES

Appendix 1: Voting of the European Union delegation, 19 May 2009

There were 10 votes in favour:

Artisans Group	Mr Gabriel Paillasson
Associations Group	Mr Jean-Marc Roirant
CFDT (<i>Confédération Française Démocratique du Travail</i>) Group	Mr François Heyman
CFTC (<i>Confédération Française des Travailleurs Chrétiens</i>) Group	Mr Michel Coquillion
Private enterprises Group	Mr Daniel Tardy
State-owned companies Group	Ms Anne Duthilleul
Mutual benefit societies Group	Ms Nora Trehel
Qualified individuals Group	Mr Georges de La Loyère
UNAF (<i>Union Nationale des Associations Familiales</i>) Group	Ms Chantal Lebatard
UNSA (<i>Union Nationale des Syndicats Autonomes</i>) Group	Mr Jacques Duron

Appendix 2: Code of Conduct for Interest Representatives

Interest representation is a legitimate part of a democratic system. The European Commission, in its effort to enhance public confidence, has established a voluntary Register and adopted this Code of Conduct to bring more transparency to interest representation, its actors and their activities.

The present Code contains seven basic rules, specifying how interest representatives should behave when representing their interests. Registrants agree to abide by this Code or declare that they already abide by a professional code that has comparable rules.

"Interest representation" activities for which registration is expected are defined as "activities carried out with the objective of influencing the policy formulation and decision-making processes of the European institutions".

This definition does not include:

- activities concerning legal and other professional advice, in so far as they relate to the exercise of the fundamental right to a fair trial of a client, including the right of defence in administrative proceedings, such as carried out by lawyers or by any other professionals involved therein;
- activities of the social partners as actors in the social dialogue (trade unions, employers associations, etc.). However, when such actors engage in activities falling outside the role conferred on them by the Treaties, they are expected to register in order to guarantee a level playing field between all the interests represented;
- activities in response to the Commission's direct request, such as ad hoc or regular requests for factual information, data or expertise, invitations to public hearings, or participation in consultative committees or in any similar fora.

The Commission recognises that the mission of most organisations engaged in interest representation is wider than the activities for which registration is expected. They engage in activities such as the production of studies, statistics and other information and documentation as well as the provision of training and capacity building for members or clients which fall outside the scope of this definition, if not related to activities of interest representation.

PRINCIPLES

Interest representatives are expected to apply the principles of openness, transparency, honesty and integrity, as legitimately expected of them by citizens and other stakeholders.

Similarly, Members of the Commission and staff are bound by strict rules ensuring their impartiality. The relevant provisions are public and contained in the Treaty establishing the European Community, the Staff Regulations, the Code of Conduct for Commissioners and the Code of good administrative behaviour.

RULES

Interest representatives shall always:

- (1) identify themselves by name and by the entity(ies) they work for or represent;
- (2) not misrepresent themselves as to the effect of registration to mislead third parties and/or EU staff;
- (3) declare the interests, and where applicable the clients or the members, which they represent;
- (4) ensure that, to the best of their knowledge, information which they provide is unbiased, complete, up-to-date and not misleading;
- (5) not obtain or try to obtain information, or any decision, dishonestly;
- (6) not induce EU staff to contravene rules and standards of behaviour applicable to them;
- (7) if employing former EU staff, respect their obligation to abide by the rules and confidentiality requirements which apply to them.

OTHER PROVISIONS

- Breaches of the Code. Registered entities are informed and agree that breaches of the above rules by their representatives may lead to suspension or exclusion from the Register following a Commission administrative process paying due respect to proportionality and the right of defence.
- Complaints. Registered entities are informed that anyone can lodge a complaint with the Commission, substantiated by material facts, about a suspected breach of the above rules.
- Publication of contributions and other documents. Registered entities are informed that their contributions to public consultations will be published on the internet together with the identity of the contributor, unless the contributor objects to publication of the personal data on grounds that such publication would harm his or her legitimate interests. The Commission may, upon request and subject to the provisions of Regulation (EC) No 1049/2001 on access to documents, have to disclose correspondence and other documents concerning the interest representatives' activities.

Appendix 3: Integrity: the EC Treaty and the Staff Regulations

Article 213(2) of the EC Treaty

"Members of the Commission are required to be completely independent in the performance of their duties, in the general interest of the Community.

In the performance of these duties, they shall neither seek nor take instructions from any government or from any other body. They shall refrain from any action incompatible with their duties [...].

The Members of the Commission may not, during their term of office, engage in any other occupation, whether gainful or not. When entering upon their duties they shall give a solemn undertaking that, both during and after their term of office, they will respect the obligations arising there from and in particular their duty to behave with integrity and discretion as regards the acceptance, after they have ceased to hold office, of certain appointments or benefits".

Staff Regulations

Article 11: "An official shall carry out his duties and conduct himself solely with the interests of the Communities in mind; he shall neither seek nor take instructions from any [...] organisation or person outside his institution. He shall carry out the duties assigned to him objectively, impartially [...]."

Article 16: "An official shall, after leaving the service, continue to be bound by the duty to behave with integrity and discretion as regards the acceptance of certain appointments or benefits.

Officials intending to engage in an occupational activity, whether gainful or not, within two years of leaving the service shall inform their institution thereof. If that activity is related to the work carried out by the official during the last three years of service and could lead to a conflict with the legitimate interests of the institution, the Appointing Authority may [...] either forbid him from undertaking it or give its approval subject to any conditions it thinks fit."

Appendix 4: Detailed summary of the general principles and minimum standards⁷⁰

The general principles underpinning consultations are participation, openness, responsibility, effectiveness and coherence. In practice, this means ensuring that the Commission holds broad consultations and that the consultation process is conducted in a transparent, effective and coherent way.

The five minimum standards relate to different aspects of the consultation process:

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"⁷¹».

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».

⁷⁰ These principles and standards are set out in detail in Chapter V of document COM(2002)704. http://ec.europa.eu/civil_society/consultation_standards/index_en.htm.

⁷¹ The "Your Voice in Europe" portal (http://ec.europa.eu/yourvoice/consultations/index_en.htm) has since been set up as the Commission's single access point for consultations. It has two parts, a main page and separate pages relating to specific policy areas, which are managed by the departments concerned., but accessed via the portal. Commission departments can use the main page to highlight specific consultations they wish to draw attention to, but details of most consultations are only to be found on the specific policy area pages.

E. Acknowledgement and feedback
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«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 large⁷²».

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This information has to appear in the explanatory memorandum accompanying legislative proposals, in communications subject to the consultation process and reports on impact assessments. These documents, for the period 2003-2005 and beyond, can be viewed on the impact assessment site: http://ec.europa.eu/governance/impact/index_en.htm.

Appendix 5: The principles of good governance⁷³

Five principles underpin good governance and the changes proposed in this White Paper: openness, participation, accountability, effectiveness and coherence. Each principle is important for establishing more democratic governance. They underpin democracy and the rule of law in the Member States, but they apply to all levels of government – global, European, national, regional and local. They are particularly important for the Union in order to respond to the challenges highlighted [...].

- **Openness.** The Institutions should work in a more open manner. Together with the Member States, they should actively communicate about what the EU does and the decisions it takes. They should use language that is accessible and understandable for the general public. This is of particular importance in order to improve the confidence in complex institutions.
- **Participation.** The quality, relevance and effectiveness of EU policies depend on ensuring wide participation throughout the policy chain – from conception to implementation. Improved participation is likely create more confidence in the end result and in the Institutions which deliver policies. Participation crucially depends on central governments following an inclusive approach when developing and implementing EU policies.
- **Accountability.** Roles in the legislative and executive processes need to be clearer. Each of the EU Institutions must explain and take responsibility for what it does in Europe. But there is also a need for greater clarity and responsibility from Member States and all those involved in developing and implementing EU policy at whatever level.
- **Effectiveness.** Policies must be effective and timely, delivering what is needed on the basis of clear objectives, an evaluation of future impact and, where available, of past experience. Effectiveness also depends on implementing EU policies in a proportionate manner and on taking decisions at the most appropriate level.
- **Coherence.** Policies and action must be coherent and easily understood. The need for coherence in the Union is increasing: the range of tasks has grown; enlargement will increase diversity; challenges such as climate and demographic change cross the boundaries of the sectoral policies on which the Union has been built; regional and local authorities are increasingly involved in EU policies. Coherence requires political leadership and a strong responsibility on the part of the Institutions to ensure a consistent approach within a complex system.

Each principle is important by itself. But they cannot be achieved through separate actions. Policies can no longer be effective unless they are prepared, implemented and enforced in a more inclusive way.

The application of these five principles reinforces those of :

- **proportionality and subsidiarity.** From the conception of policy to its implementation, the choice of the level at which action is taken (from EU to local) and the selection of the instruments

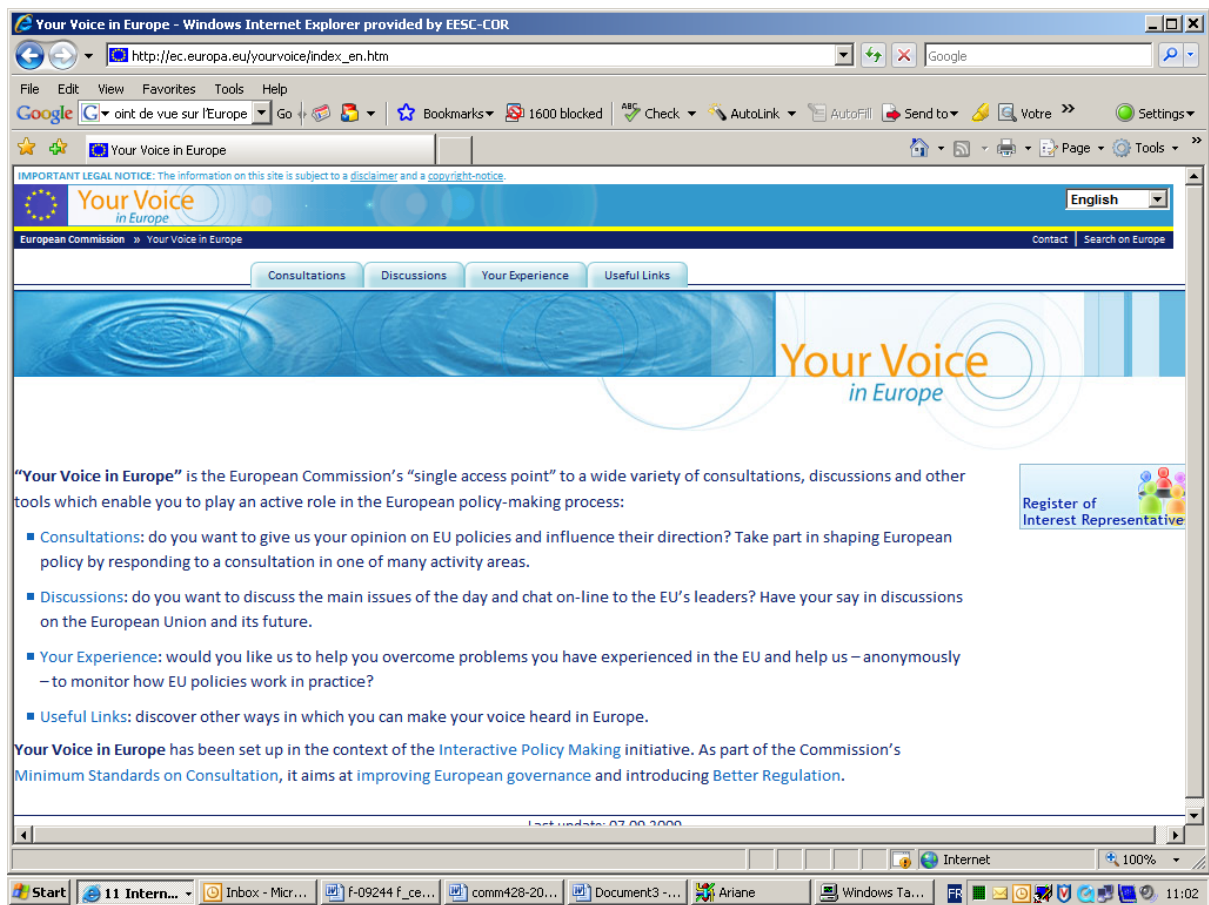
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Communication from the European Commission *European Governance: A White Paper*, COM(2001) 428 final, of 25 July 2001, pp. 10 and 11.

used must be in proportion to the objectives pursued. This means that before launching an initiative, it is essential to check systematically (a) if public action is really necessary, (b) if the European level is the most appropriate one, and (c) if the measures chosen are proportionate to those objectives.

The Union is changing as well. Its agenda extends to foreign policy and defence, migration and the fight against crime. It is expanding to include new members. It will no longer be judged solely by its ability to remove barriers to trade or to complete an internal market; its legitimacy today depends on involvement and participation. This means that the linear model of dispensing policies from above must be replaced by a virtuous circle, based on feedback, networks and involvement from policy creation to implementation at all levels.

Appendix 6: Home Page of the "Your Voice in Europe" Website



Appendix 7: "Consultations" Tab on the "Your Voice in Europe" Website



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ACRONYMS

AEDH	European Association for the Defense of Human Rights
AGE	The European Older People's Platform
BEUC	The European Consumers' Organisation
CDPF	French Permanent Delegates Circle
CDSEI	Committee for Social Dialogue on European and International Issues
CEC	EUROCADRES (Council of European Professional and Managerial Staff) /CEC (European Managers' Confederation) Liaison Committee
CEEP	European Centre of Enterprises with Public Participation and Enterprises of General Economic Interest
CEP-CMAF	European Conference of Cooperatives, Mutual Societies, Associations and Foundations
CESE/ESEC	French Economic, Social and Environmental Council
CNCDH	Commission nationale consultative de droits de l'homme (French National Consultative Commission on Human Rights)
CNIL	Commission nationale de l'informatique et des libertés (French National Commission on Information Technology and Liberties)
COFACE	Confederation of Family Organisations in the European Union
CONCORD	European NGO Confederation For Relief and Development
CoR	Committee of the Regions
DG	Directorates-General
EASPD	European Association of Service Providers for Persons with Disabilities
ECJ	Court of Justice of the European Union
EDF	European Disability Forum
EESC	European Economic and Social Committee
EFC	European Foundation Centre
EM	European Movement
EMI	European Movement International
EPHA	European Public Health Alliance
ETUC	European Trade Union Confederation
EUCIS-LLL	European Civil Society Platform on Lifelong Learning
EURAG	European Federation of Older People
EURONET	European Children's Network
EWL	European Women's Lobby
EYF	European Youth Forum
FCE	European Civic Forum
HRDN	Human Rights and Democracy Network
IGAS	Inspection générale des affaires sociales (French Inspectorate-general for social affairs)
NGO	Non-Governmental Organisation
OCT	Overseas countries and territories of the European Union

OMC	Open Method of Coordination
OR	Outermost Regions
RED	International Association "Rurality-Environment-Development"
SEE	<i>Social Economy Europe</i>
SGAE	Secrétariat général des affaires européennes (French Secretariat-General of European Affairs)
SSGI	Social services of general interest
TEN-T	Transeuropean Transport Network Réseau transeuropéen de transport
UEAPME	European Association of Craft, Small and Medium-Sized Enterprises

ECONOMIC, SOCIAL AND ENVIRONMENTAL COUNCIL

In order to prepare proposals for decisions, the European Commission frequently consults civil society by means of green or white papers.

In this document, the French Economic, Social and Environmental Council analyses current arrangements for public consultations, the interest of such consultations and their limitations. It makes recommendations aimed at improving current procedures, with a view to promoting more active civil society participation in these consultations within the Member States. It calls on the French public authorities to give the French Economic, Social and Environmental Council a greater role in this system.