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COMMUNICATION FROM THE COMMISSION

Towards a reinforced culture of consultation and dialogue - General principles and minimum standards for consultation of interested parties by the Commission

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I. Introduction

Interaction between the European Institutions and society takes various forms:

- primarily through the European Parliament as the elected representative of the citizens of Europe;
- through the institutionalised advisory bodies of the EU (Economic and Social Committee and the Committee of the Regions), based on their role according to the Treaties;
- and through less formalised direct contacts with interested parties.

In its White Paper on European Governance, the Commission undertook to help reinforce the culture of consultation and dialogue in the EU.

The Commission has prepared this paper on consultation of interested parties in order to meet those commitments. At the same time, the paper is a direct contribution to the ‘Action Plan for Better Regulation’ and the new approach to impact assessment.

Wide consultation is not a new phenomenon. In fact, the Commission has a long tradition of consulting interested parties from outside when formulating its policies. It incorporates external consultation into the development of almost all its policy areas.

Thus, the benefits of being open to outside input are already recognised. However, until now, there has not been a Commission-wide approach on how to undertake such consultation. Each of the departments has had its own mechanisms and methods for consulting its respective sectoral interest groups. While this has undoubtedly created many examples of good relationships between the Commission and interest groups, there is a general view, shared by many within the Commission and those whom it consults, that the process should be more consistent. The reactions of interested parties to the White Paper on Governance have confirmed this assessment¹.

Through the present document the Commission therefore lays down a number of general principles that should govern its relations with interested parties, and a set of minimum standards for the Commission’s consultation processes.²

The overall rationale of this document is to ensure that all relevant parties are properly consulted.

The principal aims of the approach can be summarised as follows:

- To encourage more involvement of interested parties through a more transparent consultation process, which will enhance the Commission’s accountability.

¹ These comments are displayed on the Commission’s ‘Governance’ website at http://europa.eu.int/comm/governance/index_en.htm

² For the scope of the general principles of minimum standards, see Part V under the heading “Nature and scope”

- To provide general principles and standards for consultation that help the Commission to rationalise its consultation procedures, and to carry them out in a meaningful and systematic way.
- To build a framework for consultation that is coherent, yet flexible enough to take account of the specific requirements of all the diverse interests, and of the need to design appropriate consultation strategies for each policy proposal.
- To promote mutual learning and exchange of good practices within the Commission.

The general principles and minimum standards contained in this document were published in the form of a draft in June 2002 for comments by interested parties. The outcome of this consultation process is described in Part IV.

II. Overall rationale of the Commission's consultation processes

Consultation – A win-win situation all round

Consultation mechanisms form part of the activities of all European Institutions throughout the whole legislative process, from policy-shaping prior to a Commission proposal to final adoption of a measure by the legislature and implementation. Depending on the issues at stake, consultation is intended to provide opportunities for input from representatives of regional and local authorities, civil society organisations, undertakings and associations of undertakings, the individual citizens concerned, academics and technical experts, and interested parties in third countries.

There are already institutionalised advisory bodies established especially to assist the Commission, the Parliament and the Council, namely the Economic and Social Committee (ESC) and the Committee of the Regions (CoR). The Commission attaches great importance to encouraging these bodies to take a more proactive role and has taken the necessary steps to achieve this (see Chapter III).

However, the essential role of these advisory bodies does not exclude direct contact between the Commission and interest groups. In fact, wide consultation is one of the Commission's duties according to the Treaties and helps to ensure that proposals put to the legislature are sound. This is fully in line with the European Union's legal framework, which states that *"the Commission should [...] consult widely before proposing legislation and, wherever appropriate, publish consultation documents"*.³

So there is no contradiction between wide consultation and the concept of representative democracy. However, it goes without saying that, first and foremost, the decision-making process in the EU is legitimised by the elected representatives of the European peoples. As the European Parliament stated in its Resolution on the White Paper on Governance:⁴ *"Consultation of interested parties [...] can only ever supplement and never replace the procedures and decisions of legislative bodies"*

³ Protocol (N° 7) on the application of the principles of subsidiarity and proportionality, annexed to the Amsterdam Treaty.

⁴ A5-0399/2001

which possess democratic legitimacy; only the Council and Parliament, as co-legislators, can take responsible decisions on the context of legislative procedures [...]”. The guiding principle for the Commission is therefore to give interested parties a voice, but not a vote.

On the other hand, the challenge of ensuring an adequate and equitable treatment of participants in consultation processes should not be underestimated. The Commission has underlined, in particular, its intention to “*reduce the risk of the policy-makers just listening to one side of the argument or of particular groups getting privileged access[...]*.”⁵ This means that the target groups of relevance for a particular consultation need to be identified on the basis of clear criteria.

By fulfilling its duty to consult, the Commission ensures that its proposals are technically viable, practically workable and based on a bottom-up approach. In other words, good consultation serves a dual purpose by helping to improve the quality of the policy outcome and at the same time enhancing the involvement of interested parties and the public at large. A further advantage is that transparent and coherent consultation processes run by the Commission not only allow the general public to be more involved, they also give the legislature greater scope for scrutinising the Commission’s activities (e.g. by making available documents summarising the outcome of the consultation process).

The specific role of civil society organisations

Although the target groups of consultations vary according to the circumstances, all relevant interests in society should have an opportunity to express their views.

In this context, civil society organisations play an important role as facilitators of a broad policy dialogue. For this reason, the White Paper on European Governance stressed the importance of involving these organisations in its consultation processes. The Commission particularly encourages a coherent approach to representation of civil society organisations at European level.

This specific role of civil society organisations in modern democracies is closely linked to the fundamental right of citizens to form associations in order to pursue a common purpose, as highlighted in Article 12 of the European Charter of Fundamental Rights.⁶ Belonging to an association is another way for citizens to participate actively, in addition to involvement in political parties or through elections.

⁵ White Paper on European Governance

⁶ «Everyone has the right to freedom of peaceful assembly and to freedom of association at all levels, in particular in political, trade union and civic matters (...)».

White Paper on European Governance

“Civil society plays an important role in giving voice to the concerns of the citizens and delivering services that meet people's needs. [...] Civil society increasingly sees Europe as offering a good platform to change policy orientations and society. [...] It is a real chance to get citizens more actively involved in achieving the Union's objectives and to offer them a structured channel for feedback, criticism and protest.”

Problems can arise because there is no commonly accepted - let alone legal - definition of the term ‘civil society organisation’. It can nevertheless be used as shorthand to refer to a range of organisations which include: the labour-market players (i.e. trade unions and employers federations – the “social partners”⁷); organisations representing social and economic players, which are not social partners in the strict sense of the term (for instance, consumer organisations); NGOs (non-governmental organisations), which bring people together in a common cause, such as environmental organisations, human rights organisations, charitable organisations, educational and training organisations, etc.; CBOs (community-based organisations), i.e. organisations set up within society at grassroots level which pursue member-oriented objectives, e.g. youth organisations, family associations and all organisations through which citizens participate in local and municipal life; and religious communities.⁸

So ‘civil society organisations’ are the principal structures of society outside of government and public administration, including economic operators not generally considered to be “third sector” or NGOs. The term has the benefit of being inclusive and demonstrates that the concept of these organisations is deeply rooted in the democratic traditions of the Member States of the Union.

III. Improving Commission consultation procedures – An ongoing process

The Commission is not starting from scratch when it comes to the involvement of interested parties. In recent years, it has undertaken a series of measures to improve the consultation process still further. Here are some examples.

⁷ Because of their representativeness, trade unions and employers’ organisations have a particular role. For instance, the EC Treaty requires the Commission to consult management and labour in preparing proposals, in particular in the social policy field. Under certain conditions, they can reach binding agreements that are subsequently turned into Community law (within the social dialogue).

⁸ This description ties in with the analysis developed by the Economic and Social Committee in its opinion ‘The role and contribution of civil society organisations in the building of Europe’ (OJ C 329, 17 November 1999, p. 30)

Interactive Policy-Making Initiative (IPM)

On 3 April 2001 the European Commission adopted a Communication on Interactive Policy Making (C(2001) 1014), which aims to improve governance by using the Internet for collecting and analysing reactions in the marketplace for use in the European Union's policy-making process. IPM is one of the tools that will help the Commission, as a modern administration, respond more quickly and accurately to the demands of citizens, consumers and business.

The Interactive Policy-Making Initiative involves the development of two Internet-based mechanisms that will help the Commission assess the impact of EU policies (or absence of them) on the ground. These mechanisms are:

- a feedback mechanism, which helps 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, which is designed to receive and store rapidly and in a structured way reactions to new initiatives. This includes the setting up of standing panels to gauge views, such as the Business Test Panel.

CONECCS

Data on formal and structured consultative bodies have been collected in a database named CONECCS (*Consultation, the European Commission and Civil Society*).⁹ The objective is to provide information on the committees and other Commission frameworks through which the civil society organisations are consulted in a formal or structured way.

Information on non-profit-making civil society organisations at European level is also available to the public on the CONECCS website on the Europa server. This directory of organisations is established on a voluntary basis and is intended only as a source of information, not a means of accreditation.

CONECCS is a dynamic tool, and is continually developing.

The Commission will continue this process of improving its consultation practices in the future. For instance, in a field that is of major importance to European citizens, the Commission is committed to implementing the UN/ECE "Aarhus" Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters.¹⁰

⁹ http://europa.eu.int/comm/civil_society/coneccs/index.htm

¹⁰ This might require additional implementing measures at Community level, and these are being considered

A more proactive role for the institutionalised advisory bodies

As indicated in the introduction, the Economic and Social Committee (ESC) and the Committee of the Regions (CoR) play a key part in the consultation process, in accordance with the Treaties. As institutionalised advisory bodies of the EU, they represent a deep-rooted tradition of consultation. The Commission is keen to draw upon their experience and encourage them to take a more proactive role.

Accordingly, in 2001, the Commission concluded Protocols on co-operation with the ESC and the CoR respectively. The rationale behind these Protocols is to reinforce their function as intermediaries between, on the one hand, the EU institutions, and, on the other, organised civil society (ESC) or the regional and local authorities (CoR) respectively. As far as the ESC is concerned, this new approach closely reflects the spirit of the Nice Treaty. The Treaty reinforced the ESC participation in the Community framework by stipulating that it “*shall consist of representatives of the various economic and social components of organised civil society*”. As regards the CoR, the Protocol on co-operation is essential because of the Committee’s dual role: It is the representative body of regional and local authorities in the EU and acts as an indispensable intermediary between these authorities and the EU institutions.

Within the Commission, the Protocols are implemented¹¹ on the basis of an internal vade-mecum for the Commission departments.

According to the Protocols, these bodies will be asked, in the near future, to organise consultations on behalf of the Commission. It will then be necessary to discuss with them how they can fit into the framework laid down in this document.

IV. Outcome of the consultation process

Following publication of the White Paper on European Governance, the Commission received many comments¹² welcoming its commitment to establish a coherent framework for the consultation of interested parties. However, many organisations expressed a desire to supply the Commission with more detailed comments on the basis of an actual draft consultation framework proposal.

The Commission, therefore, decided to publish such a draft in the form of a consultation document¹³ and encouraged all interested parties to submit their comments on the proposed general principles and minimum standards. This approach was greatly appreciated by all those consulted. One of the contributors said: “*The fact that the Commission is consulting on the proposed general principles and minimum standards is in itself a demonstration of good consultation practice*”.

¹¹ The implementation of these Protocols will entail, in particular: requests for exploratory opinions on cross-cutting issues in the framework of the strategic priorities of the Commission and systematic consultation on Green and White Papers; an increase in ad hoc co-operation (hearings, joint conferences, other events)

As far as the ESC is concerned, building upon its cross-cutting function to synthesise, other potential input aimed at enhancing its role as a facilitator of dialogue with civil society could also be considered.

¹² These comments are displayed at: http://europa.eu.int/comm/governance/contributions/index_en.htm

¹³ “Towards a reinforced culture of consultation and dialogue - Proposal for general principles and minimum standards for consultation of interested parties by the Commission” (COM (2002) 277 final)

The Commission received a total of 88 contributions, consisting of comments submitted by governments of the Member States (Germany, Sweden, United Kingdom) and of a non-member country (USA), and by international, European and national organisations (covering both the private sector and NGOs), regional and local authorities, religious interests and churches, individual citizens and individual companies. There is a list of all contributors in the Annex. The full texts of the contributions are accessible on the Internet, together with information about the general objectives and structure of those groups that submitted comments on behalf of their organisations.¹⁴

Both the quantity and the very high quality of the various contributions show the clear interest of outside parties in the Commission's consultation practice.

All the reactions and comments the Commission received have been carefully analysed to see whether, and to what extent, they could be incorporated into the final design of the general principles and minimum standards the Commission is adopting through this document.

1. Main features of the revised general principles and minimum standards

The revision of the initial draft has resulted in the following main changes:

- The scope of the general principles and minimum standards has been clarified.
- A clearer link between the Commission's impact assessment procedures and the use of consultation has been established.
- The operational implications of the general principles have been spelt out more clearly.
- The constraints on European and national organisations when preparing comments on Commission consultation documents on behalf of their members have been taken into account.
- The use of selection criteria for targeted consultations is explained in more detail.

In addition, the Commission will put in place a series of implementing measures in order to ensure proper application and monitoring across all departments (see Chapter IV.3).

¹⁴ http://europa.eu.int/comm/secretariat_general/sgc/consultation/index_en.htm

2. Feedback on the comments received

In line with the guidelines laid down in the consultation document, the Commission intends to provide feedback on the main issues raised by the participants in the consultation process on these draft general principles and minimum standards.

NATURE OF THE DOCUMENT

Some of those consulted questioned the Commission's decision to set consultation standards in the form of a Commission communication (i.e. in the form of a policy document) instead of adopting a legally-binding instrument. They argued that this would make the standards toothless and the Commission would be unable to ensure the consistency and coherence of its consultation processes.

However, the Commission remains convinced that a legally-binding approach to consultation is to be avoided, for two reasons: First, a clear dividing line must be drawn between consultations launched on the Commission's own initiative prior to the adoption of a proposal, and the subsequent formalised and compulsory decision-making process according to the Treaties. Second, a situation must be avoided in which a Commission proposal could be challenged in the Court on the grounds of alleged lack of consultation of interested parties. Such an over-legalistic approach would be incompatible with the need for timely delivery of policy, and with the expectations of the citizens that the European Institutions should deliver on substance rather than concentrating on procedures.

Moreover, the fear expressed by some participants in the consultation process that the principles and guidelines could remain a dead letter because of their non-legally binding nature is due to a misunderstanding. It goes without saying that, when the Commission decides to apply the principles and guidelines, its departments have to act accordingly.

Finally, the Commission is of the opinion that improvement of its consultation practice should not be based on a 'command and control' approach but rather on providing the appropriate guidance and assistance to Commission officials in charge of running the consultation processes. The general principles and minimum standards should serve as a reference point for a permanent in-house learning process.

There is also an action plan providing for an annual report on 'better law-making' which will cover the application of the general principles and minimum standards.

SCOPE

Many of those consulted wanted a clearer explanation of the kinds of initiatives to which the new consultation framework will apply. In response, the Commission clarified the scope of the consultation standards.

However, the Commission has not taken up the idea proposed by some participants that the scope of the standards should be generally widened (to cover all consultation), or that they should be separated from the Commission's approach to extended impact assessments. This decision meets the overriding principle of proportionality, which

must govern the Commission's administrative practice (see the general principles under the heading of 'effectiveness'). It is also linked to the fact that the Commission has to assess its consultation needs on a case-by-case basis in line with its right of initiative.

By the same token, the Commission must emphasise that consultation can never be an open-ended or permanent process. In other words, there is a time to consult and there is a time to proceed with the internal decision-making and the final decision adopted by the Commission.

ACCESS TO CONSULTATION PROCESSES

The Commission's consultation document made a distinction between open and focused consultation processes, which led many to ask whether access to consultations should be limited and how the quality of submissions by interested parties would be assessed.

There was a full range of positions: some argued that only representative European organisations should be consulted, while others felt that no interested or affected party should be excluded.

Accordingly, the Commission wishes to stress that it will maintain an inclusive approach in line with the principle of open governance: Every individual citizen, enterprise or association will continue to be able to provide the Commission with input. In other words, the Commission does not intend to create new bureaucratic hurdles in order to restrict the number of those that can participate in consultation processes.

However, two additional considerations must be taken into account in this context. First, best practice requires that the target group should be clearly defined prior to the launch of a consultation process. In other words, the Commission should actively seek input from relevant interested parties, so these will have to be targeted on the basis of sound criteria. Second, clear selection criteria are also necessary where access to consultation is limited for practical reasons. This is especially the case for the participation of interested parties in advisory bodies or at hearings. The elements listed under Standard B should be seen against this background.

The Commission would like to underline the importance it attaches to input from representative European organisations. In this context, it should be noted that the Economic and Social Committee has produced a set of eligibility criteria for the so-called "civil dialogue".¹⁵ However, the issue of representativeness at European level should not be used as the only criterion when assessing the relevance or quality of

¹⁵ «In order to be eligible, 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 interest of European society; comprise bodies that are recognised at Member State level as representatives 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, not bound by instructions from outside bodies; be transparent, especially financially and in its decision-making structures.» (Opinion on 'European Governance – a White Paper' of 20 March 2002; CES 357/2002)

comments. The Commission will avoid consultation processes which could give the impression that “Brussels is only talking to Brussels”, as one person put it. 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. On the other hand, it is important for the Commission to consider how representative views are when taking a political decision following a consultation process.

Therefore, the crucial issue for the Commission, when deciding on target groups for consultation, is to ensure that relevant parties are given the opportunity to express their views. The minimum standards have been redrafted and regrouped accordingly.

TRANSPARENCY AND INDEPENDENCE OF INTERESTED PARTIES

Several organisations expressed their concern that under the pretext of transparency the Commission could try to interfere in the internal structure of their organisations. The Commission wishes to emphasise that it fully respects the independence of outside organisations. On the other hand, for the consultation process to be meaningful and credible it is essential to spell out who participated in these processes. The general principles have been slightly adapted to make this clear.

TIME LIMITS FOR CONSULTATION

Many contributors to the consultation process urged the Commission to reconsider the minimum consultation period put forward in Standard D, arguing that six weeks was not long enough to prepare comments. In particular, European and national associations said they needed more time to consult their membership in order to produce consolidated contributions.

The Commission wishes to underline once more that consultation periods must strike a reasonable balance between the need for adequate input and the need for swift decision-making. Standard D has nevertheless been amended to cater, as far as possible, for the needs of interest group organisations.

PROVISIONS ON FEEDBACK

The Commission reiterates that the main mechanism for providing feedback to participants in consultations will be through an official Commission document to be approved by the College of Commissioners, i.e., in particular, the explanatory memoranda accompanying legislative proposals.

The idea of providing feedback on an individual basis (feedback statements), as requested by some contributions, is not compatible with the requirement of effectiveness of the decision-making process. Moreover, interested parties should keep in mind that the Commission’s decision-making is based on the principle of collegiality, that is to say only the College of Commissioners is entitled to weigh up the pros and cons put forward in a consultation process and to adopt a final position in the Community interest. However, this does not prevent individual Commissioners or

Commission officials at the appropriate level from engaging in an open debate with interested parties on the policy fields within their remit.

SPECIAL FRAMEWORKS FOR SPECIFIC TARGET GROUPS

Several organisations emphasised the need to create specific consultation arrangements for their respective sectors.

Whilst stressing their role as democratically legitimised bodies, the regional and local authorities enquired about the state of play regarding the preparation of a framework for a more systematic dialogue with regional and local government associations in the EU, which the Commission announced in its White Paper on Governance. The Commission is preparing a working document aimed at identifying the framework, scope and modalities of such a dialogue. This document will be published and disseminated for consultation.

Churches also urged the Commission to put the dialogue with the communities of faith and conviction on a more stable footing and tabled a series of operational proposals to the Commission.

One NGO voiced the idea of concluding a ‘Compact’ between the European Institutions and voluntary sector organisations, following the example of existing arrangements in some of the Member States.

Both churches and NGOs advocated including in the Treaties an article designed to encourage more dialogue with religious interests and civil society.

It is apparent that these proposals go beyond the general principles and minimum standards for the consultation of interested parties. Currently, the Commission wishes to concentrate on proper implementation of the measures on better law-making, including the consultation standards.

3. Implementing measures

The abovementioned modifications are designed to make for smooth implementation of the general principles and minimum standards. However, to enable Commission staff to apply them correctly as well as to ensure the necessary ownership by staff, further measures are needed. Therefore, the general principles and minimum standards will be accompanied by the following measures:

- A Commission Intranet website will provide Commission staff with practical guidance, including examples of best practice.
- This will be accompanied by a help-desk facility using a mail-box, to which staff can send questions on the application of the general principles and minimum standards.
- Appropriate awareness-raising measures will be taken and, where appropriate, specific training seminars will be organised.

- The annual report on ‘better law-making’ will cover implementation of the Commission’s consultation framework.
- Co-ordination of the above measures will take place in the context of the overall Commission network on ‘better law-making’.

4. Conclusions

The Commission considers that the amended general principles and minimum standards, together with the set of implementing measures, constitute a further important step in the process of improving its consultation mechanisms.

Clearly these measures do not incorporate all the requests which interested parties put forward during consultations on the initial approach proposed by the Commission in June 2002. However, the Commission believes that the decisions taken in the present document strike the right balance between the expectations of interested parties and the need for a framework that, under the existing circumstances, is realistic and feasible in administrative terms.

The final set of general principles and minimum standards, contained in Part V, will apply from 1 January 2003.

V. General principles and minimum standards for consultations by the Commission

Nature and scope

The consultation relationship between the Commission and interested parties should be underpinned by certain fundamental principles. These principles define the environment within which they will both operate. They also constitute the basis for any future developments in the area of consultation policy. The principles draw primarily on the general principles guiding the conduct of the Commission's business. These key principles were highlighted in the Commission's White Paper on European Governance: Participation, openness, accountability, effectiveness and coherence.

For the consultation relationship to succeed, the commitment to these principles cannot be unilateral: both sides involved in the consultation process have a role in applying them effectively.

When consulting on major policy initiatives the Commission will be guided by the general principles and minimum standards set out in this document, without prejudice to more advanced practices applied by Commission departments or any more specific rules to be developed for certain policy areas. Neither the general principles nor the minimum standards are legally binding.

As a first step, the Commission will focus on applying the general principles and minimum standards to those initiatives that will be subject to an extended impact assessment. Nevertheless, the Directorates-General of the Commission are encouraged to apply the general principles and minimum standards to any other consultation exercises they intend to launch.

The need for an extended impact assessment is decided by the Commission in the Annual Policy Strategy or at the latest in its Work Programme on the basis of the preliminary assessment statements. In deciding whether an extended impact assessment is required the Commission will, *inter alia*, take the following criteria into account:

- Whether the proposal will result in substantial economic, environmental and/or social impact on a specific sector, and whether the proposal will have a significant impact on major interested parties.
- Whether the proposal represents a major policy reform in one or several sectors.

The Commission Communication on impact assessment excluded various measures from the need for impact assessments, e.g. Green Papers because policy formulation is still in progress without producing any direct impact. In terms of consultation, Green Papers are by their very nature initiatives to which the general principles and minimum standards apply.

For the purpose of this document '**consultations**' means those processes through which the Commission wishes to trigger input from outside interested parties for the

shaping of policy prior to a decision by the Commission. Consequently, the following fields are excluded from the scope of the general principles and minimum standards:

- Specific consultation frameworks provided for in the Treaties (e.g. the roles of the institutionalised advisory bodies; the social dialogue according to Articles 137 to 139 TEC) or in other Community legislation
- Consultation requirements under international agreements
- Decisions taken in a formal process of consulting Member States ('comitology' procedure).¹⁶

As flagged in the White Paper on European Governance, the general principles and minimum standards for consultation will be complemented, but not replaced, in the future by two other instruments that the Commission is developing at the moment:

- A set of guidelines on the use of expertise which will aim to encapsulate and spread good practice. In particular, they should provide for the accountability, plurality and integrity of the expertise used. They will apply notably whenever the Commission is faced with a policy issue that hinges to some extent on scientific assessment¹⁷.
- A framework for more systematic dialogue with European and national associations of regional and local government in the EU.

These instruments will correspond to the specific needs of the policy areas concerned.

General principles

PARTICIPATION

*"[The] quality of [...] EU policy depends on ensuring wide participation throughout the policy chain – from conception to implementation."*¹⁸

The Commission is committed to an inclusive approach when developing and implementing EU policies, which means consulting as widely as possible on major policy initiatives. This applies, in particular, in the context of legislative proposals.

¹⁶ According to Council decision 1999/468/EC

¹⁷ The guidelines will be implemented in co-ordination with the minimum standards, particularly since there is often a need in the policy process for an interaction between experts and interested parties.

¹⁸ White Paper on European Governance

OPENNESS AND ACCOUNTABILITY

“The[European] institutions should work in a more open manner [...] in order to improve the confidence in complex institutions.”¹⁹

“Each of the EU institutions must explain and take responsibility for what it does in Europe”.²⁰

The Commission believes that the processes of administration and policy-making must be visible to the outside world if they are to be understood and have credibility. This is particularly true of the consultation process, which acts as the primary interface with interests in society.

Thus consultation processes run by the Commission must also be transparent, both to those who are directly involved and to the general public. It must be clear:

- what issues are being developed
- what mechanisms are being used to consult
- who is being consulted and why
- what has influenced decisions in the formulation of policy.

It follows that interested parties must themselves operate in an environment that is transparent, so that the public is aware of the parties involved in the consultation processes and how they conduct themselves.

Openness and accountability are thus important principles for the conduct of organisations when they are seeking to contribute to EU policy development. It must be apparent:

- which interests they represent
- how inclusive that representation is.

Interested parties that wish to submit comments on a policy proposal by the Commission must therefore be ready to provide the Commission and the public at large with the information described above. This information should be made available either through the CONECCS database (where organisations are eligible²¹ for this database and wish to be included on a voluntary basis) or through other measures, e.g. special information sheets. If this information is not provided, submissions will be considered as individual contributions.

¹⁹ idem

²⁰ idem

²¹ In order to be eligible, an organisation must be a non-profit representative body organised at European level, i.e. with members in two or more European Union of Candidate countries; be active and have expertise in one or more of the policy areas of the Commission, have some degree of formal or institutional existence; and be prepared to provide any reasonable information about itself required by the Commission, either for insertion on the database or in support of its request for inclusion

EFFECTIVENESS

“Policies must be effective and timely, delivering what is needed.”²²

To be effective, consultation must start as early as possible. Interested parties should therefore be involved in the development of a policy at a stage where they can still have an impact on the formulation of the main aims, methods of delivery, performance indicators and, where appropriate, the initial outlines of that policy. Consultation at more than one stage may be required.

In addition, both the Commission and outside interested parties will benefit from understanding the perspective of the other. The Commission operates within a policy and political framework that is influenced by many factors. For example, it must take account of its obligations to the other European institutions under the Treaties, and of its international obligations to third countries and international organisations.

A prerequisite for effectiveness is respect of the principle of proportionality. The method and extent of the consultation performed must therefore always be proportionate to the impact of the proposal subject to consultation and must take into account the specific constraints linked to the proposal.

A better understanding of such factors and of how the Commission works will help outside interested parties to have realistic expectations about what can be achieved.

COHERENCE

“Policies and action must be coherent [...]”²³

The Commission will ensure that there is consistency and transparency in the way its departments operate their consultation processes.

The Commission will include in its consultation processes mechanisms for feedback, evaluation and review.

This will be ensured through appropriate co-ordination and reporting in the context of the Commission’s “better law-making” activities.

The Commission encourages interest groups to establish their own mechanisms for monitoring the process, so that they can see what they can learn from it and check that they are making an effective contribution to a transparent, open and accountable system.

²² idem
²³ idem

Minimum standards

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.

The information in publicity and consultation documents should include:

- A summary of the context, scope and objectives of consultation, including a description of the specific issues open for discussion or questions with particular importance for the Commission
- Details of any hearings, meetings or conferences, where relevant
- Contact details and deadlines
- Explanation of the Commission's processes for dealing with contributions, what feed-back to expect, and details of the next stages involved in the development of the policy
- If not enclosed, reference to related documentation (including, where applicable, Commission supporting documents).

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.

For consultation to be equitable, the Commission should ensure adequate coverage of the following parties in a consultation process:

- those affected by the policy
- those who will be involved in implementation of the policy, or
- bodies that have stated objectives giving them a direct interest in the policy.

In determining the relevant parties for consultation, the Commission should take into account the following elements as well:

- the wider impact of the policy on other policy areas, e.g. environmental interests²⁴ or consumer policy
- the need for specific experience, expertise or technical knowledge, where applicable

²⁴ Article 6 of the Treaty establishing the European Community

- the need to involve non-organised interests, where appropriate
- the track record of participants in previous consultations
- the need for a proper balance, where relevant, between the representatives of:
 - social and economic bodies
 - large and small organisations or companies
 - wider constituencies (e.g. churches and religious communities) and specific target groups (e.g. women, the elderly, the unemployed, or ethnic minorities)
 - organisations in the European Union and those in non-member countries (e.g. in the candidate or developing countries or in countries that are major trading partners of the European Union).

Where appropriate, the Commission encourages contributions from interested parties organised at European level.

Where a formal or structured consultation body exists, the Commission should take steps to ensure that its composition properly reflects the sector it represents. If this is not the case, the Commission should consider how to ensure that all interests are being taken into account (e.g. through other forms of consultation).

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”.

For addressing the broader public, a single access point for consultation will be established where interested parties should find information and relevant documentation. For this purpose, the Commission will use the ‘Your-Voice-in-Europe’ webportal.²⁵

However, at the same time it might be useful to maintain more traditional alternatives to the Internet (e.g. press releases, mailings). Where appropriate and feasible, the Commission should provide consultation documents in alternative formats so as to make them more accessible to the disabled.

²⁵ <http://europa.eu.int/yourvoice>

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.

The main rule is to give those participating in Commission consultations sufficient time for preparation and planning.

Consultation periods should strike a reasonable balance between the need for adequate input and the need for swift decision-making. In urgent cases, or where interested parties have already had sufficient opportunities to express themselves, the period may be shortened.

On the other hand, a consultation period longer than eight weeks might be required in order to take account of:

- the need for European or national organisations to consult their members in order to produce a consolidated viewpoint
- certain existing binding instruments (this applies, in particular, to notification requirements under the WTO agreement)
- the specificity of a given proposal (e.g. because of the diversity of the interested parties or the complexity of the issue at stake)
- main holiday periods.

When the deadline for transmission of comments has expired, the Commission will close the consultation and take the next steps in the administrative process (e.g. prepare for the decision by the Commission).

E. ACKNOWLEDGEMENT AND FEEDBACK

Receipt of contributions should be acknowledged. Results of open public consultation should be displayed on websites linked to the single access point on the Internet.

Depending on the number of comments received and the resources available, acknowledgement can take the form of:

- an individual response (by e-mail or acknowledgement slip), or
- a collective response (by e-mail or on the Commission's single access point for consultation on the Internet; if comments are posted on the single access point within 15 working days, this will be considered as acknowledgement of receipt).

Contributions will be analysed carefully to see whether, and to what extent, the views expressed can be accommodated in the policy proposals. Contributions to open public

consultations will be made public on the single access point. Results of other forms of consultation should, as far as possible, also be subject to public scrutiny on the single access point on the Internet.

The Commission will provide adequate feedback to responding parties and to the public at large. To this end, explanatory memoranda accompanying legislative proposals by the Commission or Commission communications following a consultation process will include the results of these consultations and an explanation as to how these were conducted and how the results were taken into account in the proposal. In addition, the results of consultations carried out in the Impact Assessment process will be summarised in the related reports.

ANNEX

List of contributors (COM(2002)277)

Governments

Member States

Germany

Sweden

United Kingdom

Non-member countries

United States of America

Private Sector

European organisations

Employers federations:

UEAPME European Association of Craft, Small and Medium-sized Enterprises

UNICE Union of Industrial and Employers' Confederations of Europe

Chambers of Commerce:

EU Committee of the American Chamber of Commerce

EuroChambres

Professional federations:

ACE Architects' Council of Europe

EuroCommerce

ESBG European Savings Banks Group

EWLA European Women Lawyers' Association

FEE Fédération des Experts Comptables Européens

PGEU Pharmaceutical Group of the European Union

Service and production federations:

AIG	Advertising Information Group
AIM	European Brands Association
AMDEA	Association of Manufacturers of Domestic Appliances
BIPAR	European Federation of Insurance Intermediaries
CEA	Comité Européen des Assurances
CEPF	Confédération Européenne des Propriétaires Forestiers
CEPS	European Confederation of Spirits Producers
Coalition on Fair Trade	
EFCO&HPA	European Federation of Camping Organisations and Holiday Park Associations
FEDIAF	Fédération européenne de l'industrie des aliments pour animaux familiers
HOTREC	Hôtels, Restaurants et Cafés en Europe
WFA	World Federation of Advertisers

National organisations

Employers federations:

CBI	Confederation of British Industry (UK)
EEF	Engineering Employers Federation (UK)
REC	Recruitment and Employment Confederation (UK)

Chambers of Commerce:

BCI	Birmingham Chamber of Commerce & Industry (UK)
WKÖ	Austrian Federal Economic Chamber (A)
DIHK	Deutscher Industrie- und Handelskammertag (D)

Professional federations:

BFB	Bundesverband der Freien Berufe (D)
BStBK	Bundessteuerberaterkammer (D)

Service and production federations:

AA	Advertising Association (UK)
BAB	Bureau de l'Agriculture Britannique (UK)
BBA	British Bankers' Association (UK)
BRC	British Retail Consortium (UK)
CDV	Gesamtverband der Deutschen Versicherungswirtschaft (German Insurance Association) (D)
LIBA	London Investment Banking Association (UK)
NAM U.S.	National Associations of Manufacturers (US)
NEMA	National Electrical Manufacturers Association (US)
NNR	Board of Swedish Industry and Commerce for Better Regulation (S)
Smallbusiness Europe	(UK)

Others:

BAK	Bundeskammer für Arbeiter und Angestellte/Bundesarbeitskammer (A)
Small Business Council UK	(UK)

Companies

Barclays
The Boots Company
Telefónica
RPA Risk & Policy Analysts

NGOs

European organisations

Consumer protection:

BEUC European Consumers' Organisation

Environment:

EEB	European Environmental Bureau
EPRO	Environment Platform for Regional Offices
IFN	Friends of Nature International

Social sector:

Caritas Europe and Eurodiaconia	
CEDAG	European Council for Voluntary Organisations
ESAN	Le réseau européen d'action sociale
Social Platform	

Family and youth:

COFACE	Confederation of Family Organisations in the European Community
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Citizens rights:

ECAS -	Euro Citizen Action Service
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National organisations

Polish NGO Office (PL)	
CA	Consumers' Association (UK)
NCC	National Consumer Council (UK)
NCVO	National Council of Voluntary Organisations (UK)
FMR	Forum Menschenrechte, European working group (D)

Regional and local interests

European organisations

CEMR	Council of European Municipalities and Regions
CPMR	Peripheral Maritime Regions of Europe

Eurocities

Group of European Regions

National organisations

ALFRA Association of Finnish Local and Regional Authorities (FIN)

DStGB Deutscher Städte- und Gemeindebund (German Association of Towns and Municipalities) (D)

EERA East of England Regional Assembly (UK)

LGIB Local Government International Bureau (UK)

Provincia di Pordenone (I)

Region de Murcia (E)

Region Skåne (S)

Scottish Executive and COSLA (Convention of Scottish Local Authorities) (UK)

WOSEC West of Scotland European Consortium (UK)

Religious interests/Churches

European organisations

CEC Church and Society Commission of the Conference of European Churches

COMECE Commission of the Bishops Conferences of the European Community

National organisations

Diakonisches Werk der Evangelischen Kirche in Deutschland (D)

EKD Evangelische Kirche in Deutschland (D)

Think tanks and research institutes

EPF European Policy Forum

Risk Forum of the European Policy Centre

Individual contributions

Mr Mark Boleat

Mr Ulrich Paetzold

Others

Euro Info Centre network

Hungarian-Swedish Advanced Quality Management Associates International