

EUROPEAN ENVIRONMENTAL BUREAU RESPONSE TO

Consultation document: towards a reinforced culture of consultation and dialogue - proposal for general principles and minimum standards for consultation of interested parties by the commission

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1. INTRODUCTION

Last year, the Commission published its White Paper on European Governance, in which it committed itself to a reinforced culture of consultation and dialogue. One year later, it published a consultation document with more precise ideas on how consultation should be organised. The Commission invited responses to this document by 31st July. The following are proposals from the European Environmental Bureau.

2. EUROPEAN ENVIRONMENTAL BUREAU

The EEB is the largest federation of environmental citizens' organisations in Europe, with more than 130 member organisations, together having some 15 million individual members and supporters. Its mission is to promote environmental protection and sustainable policies on the European Union level. The EEB central office in Brussels acts on behalf of the membership in Brussels, with active support and involvement of many of its member groups. It has 28 years of experience with working with the European Commission in many different ways, including with structured dialogue. It has been involved in discussing decisionmaking procedures both on the general EU-Institutional level as well as concerning practical implementation. It has played a key role in the making of the Aarhus Convention on access to information, public participation and access to justice in environmental matters and its implementation at EU level.

For these comments on reinforced consultation and dialogue, the EEB is also basing itself on its experience on the Aarhus Convention (signed but not yet ratified by the European Community). It considers the issue of dialogue and participation as both a means to improve decisions by themselves as well as improving the democratic legitimacy of such decisions.

3. GENERAL COMMENTS AND PROPOSALS

- 3.1. The EEB welcomes the Communication as a step forward. It appreciates the effort to formulate minimum standards. It does however insist on them to be made binding, so that citizens organisations can rely on them.
- 3.2. The EEB would like to see the Commission explicitly accept that principles and standards on consultation and dialogue should not only be established as tools for the Commission. They

should also recognise the right of citizens to know how public authorities (acting on behalf of the public) are performing their tasks and the right to be heard at moments the citizens and their organisations see as appropriate. It is not just efficiency and effectiveness, but also democratisation of society and respect for the rights of individuals that should inspire this exercise. The Aarhus Convention emphasises this element in its first article, where it argues that the rights of access to information, public participation in decision-making, and access to justice in environmental matters have to be established in order *"to contribute to the protection of the right of every person of present and future generations to live in an environment adequate to his or her health and well-being."*

- 3.3. The EEB welcomes the effort of the Commission to make its consultation process more consistent. The EEB has vast experience with DG Environment, and some with in particular DG Enterprise, DG External Affairs and DG Agriculture. Especially in recent years, DG ENV has shown readiness to consult on a structured basis. But even with DG Environment it has experienced wide variations in preparedness to engage in meaningful dialogue. In particular when DG Environment is sharing the responsibility for preparing proposals with other DG's, it is difficult to participate. At times, consultation is limited to one meeting and not repeated at other key moments in the process. The EEB would like to see minimum standards that are set on an ambitious, forward looking level, building indeed on existing best practice.
- 3.4. The EEB welcomes that the Commission makes a clear distinction between the roles the Economic and Social Committee (ESC) and the Committee of the Regions (CoR), play, and direct contacts between the Commission and interest groups.
- 3.5. The EEB also agrees very much with the Commission that the challenge of ensuring an adequate and equitable treatment of all relevant parties in consultation processes should not be underestimated. The Commission 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[...]"*. We think this is very important, given the disproportionate power of commercial interests above environmental and social measures. We are concerned that commercial pressure groups have much influence when they are actually acting without a mandate from their customers and employees. To counter this imbalance the Commission needs to bolster its support (including financial) for the NGOs which play a role in the dialogue with European civil society and have less opportunity than business and industry to mobilise resources for this.
- 3.6. The EEB considers the definition of "civil society" as used by the Commission as too broad. This means that also the term 'civil society organisation', needs to be narrowed down. It seems that national and European authorities use this term nowadays to describe anyone else. On occasions this can include even local and regional authorities. Also business and industry is included in this term. In this way the term loses its meaning. Business and industry are defending their commercial interests.
- 3.7. The EEB opposes delegation or organisation of consultations to the ESC and CoR. It insists that the Commission organise such consultations itself, as it is the Commission that need to be in direct dialogue with organised civil society. We do not accept ESC as intermediary for civil

society. We wish to have dialogue with the institutions directly responsible for the policy proposals and decisions. The Commission needs to undertake the necessary capacity investments in order to be able to take up this task itself. This will also lead to a culture in which openness and consultation will become the norm for the people working within the Commission, an effect you will not achieve if this task is delegated to the ESC.

- 3.8. The EEB welcomes the emergence of web-sites where comments to Commission proposals are being listed. It does consider this as a very important tool to involve more people and organisations, also those that cannot easily come to Brussels for frequent meetings. However, this should not replace direct discussion.
- 3.9. The EEB would like to see full transparency about the Commission's ways of working. The detailed workplans of the DG's should be available from the moment they have been decided. They should give detailed information about the activities the Commission is planning to undertake, the timetable foreseen, the procedures to be followed, the units and persons in the Commission responsible and in charge, the consultation and dialogue activities foreseen. This is a necessary way to implement in particular art. 6, par. 2 of the Aarhus Convention¹. Updates and amendments of such workplans need also to be communicated.
- 3.10. For organisations that have a broad interest in EU policies and have a clear mandate of a large constituency to represent civil society positions towards the Commission, opportunities should be created to comment on the relevant DG's workplans before they are finalized.
- 3.11. As you will see below, the EEB wants to expand the scope of the principles and standards beyond "major policy initiatives". And it would like to use this opportunity to also plea for better dialogue and information exchange with members of the public or organisations that are filling complaints to the Commission about violations of EU law. The EEB is currently engaged in a discussion with DG Environment on this matter.

¹ (d) The envisaged procedure, including, as and when this information can be provided:

- (i) The commencement of the procedure;
- (ii) The opportunities for the public to participate;
- (iii) The time and venue of any envisaged public hearing;
- (iv) An indication of the public authority from which relevant information can be obtained and where the relevant information has been deposited for examination by the public;
- (v) An indication of the relevant public authority or any other official body to which comments or questions can be submitted and of the time schedule for transmittal of comments or questions; and
- (vi) An indication of what environmental information relevant to the proposed activity is available; and

(e) The fact that the activity is subject to a national or transboundary environmental impact assessment procedure.

4. EEB's RESPONSE TO THE GENERAL PRINCIPLES AND MINIMUM STANDARDS FOR CONSULTATIONS AS PROPOSED BY THE COMMISSION

4.1. Nature and scope

4.1.a. It is important indeed that the general principles do not interfere or discourage *"more advanced practices applied by the Commission departments or any more specific rules to be developed for certain policy areas."*

4.1.b. The minimum standards should be binding, not voluntary. The Commission explicitly rejects that they would be legally binding. In this way the efficiency and effectiveness of procedures, as the Commission views them, may be guaranteed, but it does not satisfy the element of accountability (an element the Commission underlines as one of the five pillars of good governance) and democratic rights as laid down in the Aarhus Convention. According to that Convention, the public "with sufficient interest", should have the right of review when it considers its rights to public participation to be withheld (art. 9, par. 2). So the EEB considers it essential that the public has rights to review, with a neutral entity within the Commission, the Ombudsman or the Court of Justice, when it feels that opportunities for consultation and dialogue have not (sufficiently) been offered.

4.1.c. The selection of policy initiatives is also a reason for concern. The Commission seems to want to limit it to "major policy initiatives" defined as: *"those that will require an extended impact assessment"*. The EEB would like to stress that:

- NGOs may have an opinion about the need for such an impact assessment, in other words, there should be possibilities to intervene during the scoping stage.
- What may be seen as lesser important initiatives by the Commission can still be seen as very important to specific parts of the public, and their right to be consulted should be respected.

4.1.d. The EEB is opposed to using the existence of institutionalised advisory bodies, foreseen in the Treaties, as reason to not apply the principles and standards. Such advisory bodies should not become filters for civil society dialogue as they often function as not more than platforms with privileged participation.

4.1.e. The EEB also opposes the exclusion of the 'comitology' procedure. It is absolutely necessary to extend consultation to comitology.

4.2. General principles

4.2.1. participation

The EEB can agree with most of what the Commission is proposing, however, it does not like the implicit limitation to "legislative proposals". It wants to see this widened to other proposals, like programmes and policies, following the conclusions of the Gothenburg Summit, as well as decisions made by comitology.

4.2.2. openness and accountability

The EEB supports the principles outlined here, including for "interested parties". It is indeed important that it is transparent for everyone which interests they represent, how inclusive that representation is and how accurately they reflect those interests.

4.2.3. effectiveness

The EEB agrees with what the Commission states here: consultation should start as early as possible. Interested parties should indeed *"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."*

The EEB can also accept the principle of "proportionality", but it insists that the concrete consequences of this need to be discussed with those parties having a clear interest in the matter.

4.2.4. coherence

"consistency and transparency" is very important indeed. "mechanisms for feedback, evaluation and review" as well.

We do not entirely understand the implications of the following: *"However, it is not enough for the Commission alone to review its own performance within the consultation process. Interest groups must also have 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. The results of such monitoring can then be considered together with those of the Commission's own internal review processes to produce a better picture of how the arrangements are working, and how they can be refined or extended."* If this leads to certain requirements and certain control from the Commission over the internal procedures of NGOs, we need to look very carefully at the specifics. The EEB can accept that NGOs (as well as associations representing business and industry) are transparent on who they represent. But putting certain requirements on NGO's with regards to their "mechanisms for monitoring", can become unrealistic and lead to an unwelcome interference in NGOs matters.

4.3. Minimum standards

4.3.a. clear content of the consultation

The EEB agrees with the Commission's proposed minimum standard.

4.3.b. publication

While using the Web as powerful new means of information, other sources remain important as well. The Web will be checked only by citizens and the public who have a clear assumption something is coming up they want to get involved in. So the other channels of the Commission should be used as well (including the publications of the national information offices) and the Commission should keep an inclusive database of organisations it knows it has a mandate to represent citizens towards the European Institutions for direct mailing.

4.3.c. time limits for participation

The EEB agrees with the Commission's proposed minimum standard. However, here it repeats its demand that detailed workplans as well as updates and amendments are available as soon as agreed.

The effectiveness of consultation can be greatly enhanced if NGOs can plan their priorities and adapt their capacities as early as possible.

4.3.d. acknowledgement and feedback

The EEB agrees with the proposed minimum standard and the explanation. However, it does not agree that the reporting on the consultation to the other EU-Institutions involved in the decisionmaking needs to be limited to legislative proposals.

4.3.e. specific elements for focused consultations

The EEB agrees with the proposed minimum standard and most of the explanation. However, it disagrees with the proposal to use the ESC definition of "European organisation" for the determination of who can take part in civil dialogue. The definition by itself is alright, but the restriction to European organisations is wrong. There are many issues where national, regional, local organisations have valid interests that need to be respected.

5. ADDITIONAL SPECIFIC COMMENTS BY THE EEB

- 5.1. **Meetings are important!** Consultation and in particular dialogue can in many cases not sufficiently work via correspondence only. A real debate is necessary. Meetings are particularly important if they are informal and with ample time for discussion. A minimum of two meetings per issue is necessary, as the first meeting could lead to need for further consultation, investigation etc. internally by the interested parties taking part.
- 5.2. **High level involvement is important!** We want to see the persons who have the mandate to really amend, review Commissions proposals. We do not want to have an indirect debate, with desk-officers who may have very little impact on the final result, nor through the ESC, as we said before.
- 5.3. More focus on consultation and dialogue should by no means be seen as legitimation for shifting from legislation and financial instruments towards voluntary agreements with business and industry. This is a completely different matter on which the EEB has strong reservations.