

SPEECH AT ECOSPHERE 27/10/06

On Accountability and Transparency of EU environmental policy-making, an NGO perspective.

John Hontelez, Sec-Gen EEB

Promoting environmental policy-making that takes the views of environmental organisations into account is the very reason for existence of the European Environmental Bureau. Its first members, in 1974 decided they needed a representative in Brussels to collect information about what the Commission and Council were cooking and a platform to discuss amongst themselves on how one, on the one hand, could influence decisionmaking processes, and, on the other hand, see to it that decisions that were considered positive were actually applied. The agent, soon becoming a small bureau indeed, spent its time in collecting information and distributing it to the members, therewith providing transparency in practice. Much of this information was official, but not easily accessible both for financial reasons (subscription to the Official Journal was quite expensive) and for reasons of complexity of the legislation and policies.

But from the start, the EEB provided enhanced transparency with its special relationship with what later became DG Environment, meaning that we were informed at earlier stages, our opinion was sought, and we could also arrange direct contacts between the Commission and our members. And as our means have increased, we are now also able to organise capacity building activities and systematic involvement of our members in our work.

Since the end of the eighties, we can see some major improvements regarding accountability and transparency. First of all the Single Market Treaty made a big difference. It clarified the mandate of the EU on environmental policies and it gave the European Parliament more power. And in particular this last development has meant a lot for accountability and transparency, in particular regards law-making. This power was further improved with the Maastricht Treaty. This meant that the Commission had to pay much more attention to the Parliament, defend its proposals better,

answer to questions etc. This brought the decisionmaking more in the public arena. And we as EEB have increasingly been successful in “assisting” the EP in its work.

Another important development was the adoption of the 5th Environmental Action Programme, in 1993. In the slipstream of the preparations for the Rio Summit, there was a wave of environmentalism in Europe and increased recognition that decisionmakers should not do their work in isolation, but in close cooperation with stakeholder. Business and Industry as well as local authorities were the stakeholders most officials were thinking of, but the environmental movement was not forgotten, in particular to help the Commission prevent that it could be accused of one-sided decisionmaking. Although, we were forgotten indeed, at some times. For example the later-on much hailed Auto-Oil stakeholder process was closed for environmental NGOs. Only the car producers and the oil industry had the privilege to discuss with the Commission how and how fast, cars and fuels had to become cleaner. Another process whereby it took us quite some time and effort to establish systematic involvement was in the EU standardisation process. Since the end of the eighties, setting EU standards to support the implementation of EU legislation was delegated to a private body, composed of national standardisation bodies. While in policy statements of all three EU institutions the importance of involvement of NGOs in this, relatively technical and particularly labour intensive, process was emphasized, it took us more than 10 years to convince DG Environment that it should finance NGO involvement in this. This work is now coordinated through a special organisation called ECOS.

The privatisation of standardisation is part of a larger process to remove part of decisionmaking again out of the public political arena. Framework legislation is less precise than traditional directives. This approach reduces the real influence of the European Parliament, and brings follow up decisionmaking back behind closed doors, in comitology, as well as in bodies where we do have sometimes access, such as the working groups discussions on Best Available Technologies for industry sectors falling under

the IPPC Directive, and working groups to draft guidance on the implementation of the Water Framework Directive. But if we are there, we are privileged. The environmental movement as a whole, or the general public, will find it much more difficult to follow or influence this.

Other DGs have followed on, be it incidentally and for different reasons. In 1997 Commissioner Fishler decided, against the will of many in DG Agriculture, to open up the advisory committees on different aspects of the EU agricultural policy, for environmental NGOs and animal protectors. So we got in, realising then that the real influential discussions with the Commission were no longer there, but in informal exchanges where we are not part. DG Trade set up a platform for consultation of NGOs after the defeat of the OECD coordinated initiative for a Multilateral Investments protection Agreement (MIA) and the strong lobbies of NGOs in trade negotiations. Here the objective clearly was to come to better terms with NGOs and to be better prepared for their criticism.

A big improvement for accountability and transparency obviously is the use of the internet by the EU Institutions, as well as by ourselves ofcourse. The possibility for any citizen in the world to have direct access to approved legislation and policies and even to official papers that support the decisionmaking process between the 3 institutions, is simply phantastic. However, making papers available does not guarantee that people understand the context, the potential impact, the choices that were made, the other options. Therefore, organisations such as the EEB still have an essential role to play. And, direct dialogue between environmental organisations and the EU Institutions remains essential.

To that extent something about the second pillar of the Aarhus Convention, and the way it is laid down in the new Regulation. The text there remains very general and is inspired by the "*general principles and minimum standards for consultation of interested parties by the Commission*", published on the 11th of December, 2002. The Commission makes commitments, but they are not laid down as rights of citizens, so Commission officials have a lot room for

manoeuvring when it comes to the specific application. It also excludes "comitology" from its scope.

A main concern we have with the implementation is the reliance on internet consultation. We should not confuse this with public participation. While we believe internet consultation is very useful, it cannot replace a **discussion directly between interest groups and senior officials of the Commission**, in which views are exchanged, opinions are tested, creative solutions found. And sometimes one has the impression that officials consider the internet consultation as an easy alternative, whereby the results do not really matter. So they ask silly questions to the general public, such as, "***Do you think the sustainable development strategy and the Lisbon strategy complement each other in a satisfactory manner?***" How many citizens in Europe have a clue about what the Lisbon strategy is at all?

Moving to the first pillar, on access to information, I must say that most of the essential information that we need, we are getting. Either in the official way, often though in other ways. But ofcourse one cannot replace official procedures with relying on leaks, on officials that find it useful that we are informed at essential moments. First of all this is not reliable and secondly it provides information only to a privileged organisation that has invested for years in its networks within the decisionmaking institutions. So the Access to Documents Regulation and the Aarhus Regulation are important. As EEB we do use the Documents Regulation, several times a year. The implementation is cumbersome, and has not added very much to our tools yet. An example: In July it became clear to us that the Commission was soon going to decide whether the construction of a new harbour on Teneriffe could be allowed in light of the EU biodiversity legislation. Our Spanish groups were concerned that such a decision would be taken on the basis of one-sided and incorrect information. So on the 18th July I asked the Commission, by fax, to send me the information which they were using. The first response was just to say that my request was registered on the 28th July, so 8 working days later. On the 1st September, so again 26 working days later we received a substantive answer. Part of the documents were refused, and for another part the Commission was waiting for the Spanish authorities to respond. The

refusal was on the basis of article 4.3.(1) of the 2001 Access to Documents Regulation. Then I caused some delay myself, sending a “confirmatory request” on the 15th September only. In it I asked to reconsider the refusal. Article 4.3 (1) says that refusal is precluded if “*disclosure of the document would seriously undermine the institution’s decision-making process, unless there is an overriding public interest in disclosure*”. But DG Environment had only said that there was no overriding public interest for disclosure. I protested against that fact that the Commission did not explain why disclosure “*would seriously undermine the institution’s decision-making process*”. Furthermore, I stated that “organisations that have a serious concern about the harbour project, in an open democracy, should be able to judge whether the Commission is working on the basis of correct and complete information before it takes decisions. That is the overriding public interest.” I said. This fax, sent on the 15th, was registered on the 19th, 2 working days later. On the 10th October, exactly 15 working days later, I received a letter that the Commission needed more time to consider my request. The next deadline therefore is the 3rd November, according to the Commission, which means 17 working days instead of 15 in my counting. In the meantime I did not get any of the information that was dependent on the Spanish government approval either. So, more than 3 months after my request, I still have not seen anything. It is clear that the Commission tries to do everything in its power to keep us out.

This is not the only bad example. And it shows that a lot still has to change in the mentality of Commission officials. Many see transparency as an unwelcome obligation, or, at best, a tool you can use when it suits you.

The Aarhus Convention has started to make a difference already, also on the EU level. The new PRTR Regulation is a good example, based on the PRTR-Protocol. More in general, environmental officials now refer to the Aarhus Convention in many cases when it is organising consultations, so it gradually makes its way also regarding the second pillar. But the refusal of the Council and, in second reading the European Parliament, to guarantee access to the European courts is a major setback.

When one speaks about accountability and transparency in relation to the EU, one should not forget the Council. This is still the most secretive body, where most of the work goes on behind closed doors, by officials that are only accountable to their own government. It is progress that the experiment of video-broadcasting some last-phase discussions on legislation in the environment council has now become a standard. This reduces the possibility from ministers and government to blame Brussels as an amorphous entity for everything that goes wrong, and to hide their own role in it. But this is only a fragment of the decisionmaking process. While the European Parliament and national parliaments were in public in all stages of its legislative work, Coreper and its working groups work behind closed doors. And also the conciliation between EP and Council is not taking place in public. Making these processes public would make the decisionmaking not only more transparent, but also more political, less driven by civil servants who are more likely to look for compromise. As EEB we manage to intervene more and more, also because of our increasingly effective networking with national members, who approach the environment ministries in the capitals, but this is not a sufficient proxy for real transparent and accountable lawmaking in the EU.