RESOLUTION OF THE EEA CONSULTATIVE COMMITTEE
of 26 June 2002

on governance and corporate social responsibility in a globalised world

(2003/C 67/05)

1. Background

1.1. The Consultative Committee of the European Economic Area (EEA-CC) is composed of representatives of the key socio-economic interest groups in the 18 EEA Member States. The Committee acts as a voice for workers, employers and other actors of organised civil society in these countries and forms part of the EEA institutional set-up.

1.2. The following resolution on governance and corporate social responsibility in a globalised world was adopted at the 10th meeting of the EEA-CC in Egilsstadir, Iceland, on 26 June 2002. The rapporteurs were Ms Åse Erdal from the EFTA Consultative Committee (CSC), and Mr Uno Westerlund from the European Economic and Social Committee (EESC).

2. From European Government to 'European Governance'

2.1. The globalisation of markets over recent decades has led to changes in the way societies are governed. In brief, the parliament-based government of societies has partly been taken over by agreement-based governance. This evolution is evident at all levels: local, regional, national, European and global.

2.2. Government represents the classic form of state government based upon an institutional hierarchy and policy of rules and regulations. Governance is a form of government where groups or individuals from different institutions, organisations, organs, enterprises and levels work in networks and in public and private partnership. On the basis of dialogue, negotiations and bargaining procedures, they construct agreements and contracts that form the decisive framework for future decision-making (1).

2.3. Agreement-based Governance is particularly developed within the European Union where many aspects of sovereignty have been pooled at the European level.

2.4. Agreement-based Governance partly circumvents the traditional parliament-based democratic societies, as they have been known in Europe for the last century. Instead, societies are increasingly governed on the basis of juridical contracts, as represented in EU law and surveillance by the European Commission.

2.5. Academics argue that 1992 marked the end of the traditional concept of democracy, with a change from national government to negotiated agreement-based governance. The last decade has witnessed a change from a constitutional system in which national parliaments were dominant to a collaborative and associative system of international regulatory governance.

2.6. Scepticism about European governance may be rooted in people's mistrust of the agreement-based functioning of the European Union. People feel more confidence in the traditional functioning of the nation-state and its government structure, possibly because they believe those structures are more accountable.

2.7. The European Commission has addressed — in the words of Commission President Prodi — the issue of 'European democracy and how it works, why it doesn't work better and what its prospects are.' In doing so, the Commission focuses on the sense of malaise and alienation that many Europeans feel vis-à-vis the European Union. Despite its achievements, there is a strong sense of uncertainty about what the Union is and what it aspires to become, about its geographic boundaries, its political objectives and the way these powers are shared with Member States.

2.8. The EEA Consultative Committee (EEA-CC) appreciates the fact that the European Commission has started to examine these issues. The EEA-CC notes, however, that the Commission's White Paper on Governance omits to discuss the underlying problems of governance.

2.9. Five political principles underpin the Commission's work on governance: openness, participation, accountability, effectiveness and coherence. These principles should guide the Union in the way it uses the powers given by its citizens and in how it will push forward changes. The underlying assumption is that a great deal can be accomplished by carrying out reform under the present Treaty provisions. On the other hand, it is acknowledged that separating the reform of European governance from the broader debate on the future of Europe triggered in Nice would be somewhat artificial, as these processes are two sides of the same coin.

2.10. The EEA-CC supports these five principles, whilst pointing out that they incorporate the elements usually associated with the principles of democracy and transparency.

3. New governance in the EU and its implications for the EEA

3.1. General implications for the EEA

3.1.1. The EU’s determination to improve European governance may well trigger a wave of Governance reforms throughout Europe. The EEA/EFTA States and the EEA cannot be unaffected by such reforms. It is clear that any renewal of political processes and decision-making systems in the Union will have implications for the EEA. New EU legislation with relevance for the internal market must be incorporated into the EEA Agreement and, thus, the way in which decisions are reached in the EU, as well as the quality, effectiveness and simplicity of legislation, have a bearing on the EEA. Moreover, the drive for more openness and publicity in the EU should spread also to the EEA cooperation.

3.1.2. The EEA-CC calls on the European Commission to give specific consideration to the likely impact which the changes in the EU’s political processes will have on the functioning of the EEA.

3.2. Better involvement and more openness

3.2.1. Publicity and debate

3.2.1.1. Democracy depends on people being able to take part in public debate. To do this, they must have access to reliable information and be able to scrutinise the policy process in its various stages. The EEA-CC therefore welcomes the Commission’s proposal that measures be taken to make the working methods of the European institutions more transparent and better communicated. The more open policymaking is at EU level, the easier it will be for the general public, social partners, civil society organisations and other political stakeholders in Europe to help shape and deliver EU objectives and measures and to understand them in their entirety and assess them fairly.

3.2.1.2. The working methods in the EEA cooperation are somewhat opaque and public access to most EEA documents is very limited. This does not help people to gain insights into the EEA Agreement and to understand how it works. The EEA-CC therefore calls for greater transparency in the EEA and a reform of the rules and guidelines for public access to EEA documents. Furthermore, steps should be taken to involve non-governmental actors, such as the social partners, more in the work of the EEA.

3.2.1.3. At the same time, the political aspects of the EEA Agreement and its implications at national, regional and local level are not sufficiently highlighted in the EEA/EFTA States. A legalistic and ‘non-political’ view of the EEA agreement has adverse effects on the understanding of and hence democratic debate on European issues at all political levels.

3.2.2. Local and regional actors

3.2.2.1. The White Paper on European Governance calls for a more effective involvement of local and regional actors in policy-shaping at EU level, as well as closer cooperation in the implementation of EU legislation. The White Paper emphasises in particular the European associations of regional and local government and the EU’s Committee of the Regions. The Associations of Local and Regional Authorities in the EEA/EFTA States would, through their membership in the Council of European Municipalities and Regions, get a greater say in EU policy shaping with the increased weight of their European umbrella organisation.

3.2.2.2. However, the Committee of the Regions did not yet exist at the time of the negotiation of the EEA Agreement, and thus there are no provisions in the Agreement regarding cooperation between local and regional actors at EEA level. The EEA-CC notes the lack of provisions in the EEA Agreement regarding cooperation between local and regional democratically elected representatives at EEA level. Such provisions would be helpful, given that local and regional governments are responsible for the implementation and enforcement of much EEA legislation.

3.2.2.3. The European Commission proposes, in the White Paper on Governance, the introduction of tripartite contracts between European, national, regional and local authorities, as a more flexible means of implementing European law. The introduction of such new modalities will make the absence of appropriate provisions for cooperation between local and regional actors at EEA level even more difficult.

3.2.3. Civil society

3.2.3.1. Grassroots involvement in all stages of policymaking is one of the main concerns of the Commission. Grassroots influence is to be exercised, according to the White Paper on Governance, via civil society organisations and social partners acting within the framework of ‘structured consultation procedures’. The EEA-CC strongly supports this plan, at the same time as it would like to stress the urgency of defining the civil dialogue, the qualitative and quantitative criteria for representativeness and to make a clear distinction between ‘civil dialogue’ and ‘social dialogue’.

3.2.3.2. The criteria of representativeness for the selection of organisations to take part in the civil dialogue should be defined in order to ensure transparency and a democratic selection procedure. The EEA-CC supports the criteria identified by the European Economic and Social Committee, which European organisations must fulfil in order to be eligible (1).

3.2.3.3. The EEA-CC supports the Commission’s proposal to set up an on-line database with details of civil society organisations in order to increase openness and structure their dialogue with the institutions. For civil society actors in the EEA/EFTA States, that are members of umbrella organisations in the EU, intensified consultations will give a greater opportunity to make their voice heard on EEA-relevant matters.

3.2.4. The role of the European Economic and Social Committee

3.2.4.1. The Governance White Paper points to the new role of the European Economic and Social Committee (EESC) as a bridge between the EU institutions and organised civil society, and calls on the EESC to play a more pro-active role in shaping policy (see changes to Article 257 of the EC Treaty agreed at Nice).

3.2.4.2. The EESC is the forum where civil dialogue is put on an official footing. The EESC has continuously increased its role as a forum for dialogue and consultation, as this is an efficient way of involving in its work those parts of organised civil society that are not currently represented by its members. The Committee already does so by organising public events and hearings.

3.2.4.3. Through the Osmosis Procedure, the members of the EFTA Consultative Committee can take part in all stages of the EESC's work as observers, thus giving them access to EU policy-shaping. This is an example of very fruitful and pragmatic EEA cooperation, which the EEA-CC strongly supports.

3.2.5. Social partners

3.2.5.1. The EEA-CC attaches great importance to the fact that the special role of the social partners within the framework of organised civil society is made crystal-clear. It therefore welcomes the White Paper’s explicit reference to this special role and the special influence of the social partners. The task of the social partners within the framework of the Social dialogue is an example of the effective implementation of the governance principle at European level. The European Social Dialogue is a mechanism with quasi-legislative powers according to Articles 137 and 138 of the Treaty. It is clearly defined in terms of participants, powers and procedures and has quasi-constitutional status (1). It derives its distinctiveness from the special powers and responsibilities of its participants playing their role in an autonomous way. For this reason, their role and responsibilities cannot be transferred to other policy areas or actors. Hence the EESC's repeated reminder is that it is vital to make a clear distinction between 'social dialogue' and 'civil dialogue'.

3.2.5.2. Social partner organisations in the EEA/EFTA States are members of the European employers’ organisations, UNICE and CEEP, as well as of the European Trade Union Confederation (ETUC). As such, they participate directly in the cross-sectoral social dialogue negotiations, which provide them with a unique potential for influencing EU/EEA social legislation. This is of particular importance for countries that are not EU members but must follow EU legislation.

3.2.6. More effective and transparent consultations

3.2.6.1. Calling for a 'reinforced culture of consultation and dialogue' the White Paper insists on the need for all EU insti-

3.2.6.2. A new culture of consultation in the European Commission would give citizens, social partners, local and regional authorities, civil society organisations and other actors in the EEA/EFTA countries additional opportunities to be heard in the phase of EU decision-shaping. The EEA-CC urges the national authorities in the EEA/EFTA States to support corresponding active participation by different EEA/EFTA players in the decision-shaping phase in order to ensure that their views are known and taken into account in the Commission's consultation processes.

3.3. Better policies, regulation and delivery

3.3.1. Simplification of legislation

3.3.1.1. The Commission has undertaken to limit its proposals for legislation to essential elements, while providing greater scope for implementing measures to complete the technical details of those proposals. Moreover, a programme will be launched to simplify further existing Community legislation and encourage Member States to simplify the national rules, which give effect to EU provisions. The EEA-CC supports the proposals of the White Paper to simplify and speed up the European legislative process, as Community rules are increasingly complex and sometimes tend to add to existing national regulations rather than actually simplifying and harmonising them. The EEA-CC calls on the EEA/EFTA States to follow closely the work of the European Commission and simplify the national rules, which give effect to EU provisions.

3.3.2. Combining different policy instruments

3.3.2.1. In recent years, soft law and soft integration have supplemented the traditional EU method of legal harmonisation. A clear shift has occurred from traditional regulations, directives and decisions which, given their EEA relevance, would be integrated into EEA legislation, to new policy instruments such as guidelines, recommendations, co-regulatory mechanisms and the open method of coordination. These cannot easily be incorporated into a legally binding agreement such as the EEA Agreement. With the Commission's determination to promote greater use of different policy tools, as a complement to legislation, consideration must be given to how the dynamism of the EEA Agreement can be maintained. The EEA-CC calls on the EEA/EFTA States to take into account non-legislative developments in the EU which have an impact on the Internal Market or flanking policies, to ensure parallel development and equal conditions of competition throughout the EEA.

(1) Articles 137 and 138 (EC).
3.3.3. Regulatory agencies

3.3.3.1. With the aim of improving the way in which rules are applied and enforced across the Union, the Commission wishes to boost the creation of sectoral regulatory agencies with specific defined tasks, along the lines already established in the European Agency for the Evaluation of Medicines (1) and the European Food Safety Authority. The EEA-CC highlights the significance for the EEA/EFTA States of securing membership in new EEA-relevant regulatory agencies, and participating in the setting of criteria for their establishment.

3.3.3.2. The EEA-CC would, however, like to strike a cautionary note as regards the proliferation of autonomous European regulatory agencies. Before setting up a new agency, there should be clear evidence that it will bring significant added value and would not increase red tape and unjustified costs.

3.3.4. Expert Committees

3.3.4.1. The complexity of the Union’s system of expert committees and the lack of information about how they work has led to a lack of public trust. With the purpose of building public confidence in the way policy-makers use expert advice, the Commission will develop guidelines to open up the system for the use of experts to greater public scrutiny and debate.

3.3.4.2. Article 99 of the EEA Agreement regulates the preparatory and decision-shaping phase of the EEA decision-making procedure. It provides that as soon as new legislation starts being drawn up by the Commission in a field governed by the EEA Agreement, the Commission is informally to seek advice from experts of the EEA/EFTA States that in the same way as it seeks the advice of Community experts. The EEA-CC urges, on the one hand, the Commission to make full use of Article 99 of the EEA Agreement, and on the other hand, national authorities in the EEA/EFTA States to keep in close contact with the Commission concerning the use of Article 99.

3.3.4.3. The EEA-CC warmly welcomes a more open system for the use of expert advice in EU policy-shaping, which will give the public in the EEA improved possibilities for scrutinising the work of expert committees. The EEA-CC also strongly supports the intention of the Commission to make the expert advice taken available to the public. At the same time, the EEA-CC urges the EEA/EFTA States to ensure competent and active participation in all Commission committees open to EEA/EFTA participation.

3.3.5. Better implementation and application of Community law at national level

3.3.5.1. Ultimately the impact of Internal Market rules depends on the willingness and capacity of the EEA Member State authorities to ensure that they are transposed and enforced effectively, fully and on time. With efforts by the

Commission to step up investigations into possible breaches of Community law in the EU Member States, the EEA/EFTA States might also come under increased scrutiny by the EFTA Surveillance Authority.

3.3.5.2. In order to improve the quality of transposition and implementation of legislation, the EEA/EFTA States could contribute to improving the knowledge of Community/EEA law among citizens, national courts and lawyers. The EEA-CC calls on the EEA/EFTA States to participate in the EU’s proposed sharing of best practices regarding implementing measures, in order to improve the quality and speed of transposition and implementation of legislation.

3.3.5.3. Not only enterprises, but also national, regional and local authorities are, to an increasing degree, affected by internal market legislation, particularly the provisions on competition and public aid. Information about and understanding of this development is however not broad enough, leading to, in a number of instances, insufficient application of these legal provisions by authorities. The Committee therefore urges the national authorities to take measures to improve this situation.

3.4. Refocused policies and institutions

3.4.1. Community method

3.4.1.1. To deliver better policies, the Union must revitalise the Community method, according to the Commission. At the same time, the introduction of measures for better consultation and involvement, a more open use of expert advice, and improved impact assessment, should lead to a more targeted and selective use by the Commission of its right of political initiative.

3.4.1.2. A revitalisation of the Community method would clearly be advantageous for the EEA/EFTA States, considering that the EEA Agreement is based on the assumption that the Community method is the main policy procedure in the Community.

3.4.2. Comitology committees

3.4.2.1. The main responsibility for executing policy and legislation by adopting implementing regulations or decisions is normally conferred on the Commission. The conditions under which the Commission adopts those executive measures should be reviewed, according to the White Paper. Where decisions are taken jointly by the Council and the European Parliament, those two institutions should enjoy equal roles in monitoring execution, at the same time as the Commission must assume full executive responsibility. A simple legal mechanism should allow the legislature to scrutinise the actions of the Commission against the principles and political guidelines adopted in the legislation. Thus, the existing committee structure, notably regulatory and management committees, would become obsolete.

(1) The European Agency for the Evaluation of Medicines (London) makes a technical assessment of applications for the approval of new medicines prior to a Commission decision.
3.4.2.2. The prospect of reducing — or even phasing out — the formal comitology committee structure would have great implications for the EEA/EFTA States. Pursuant to the provisions of Article 100, the EEA Agreement has been the gateway to EFTA participation in many of these committees. For the EEA/EFTA States, participation in EC comitology is a very important channel for the exchange of views and information with experts in the EU Member States and in the Commission. The EEA-CC expresses its support for EEA/EFTA participation in EC comitology committees and calls on the EU side to ensure that the views of the EEA/EFTA States are taken into account in a possible process of reforming the comitology system.

4. Corporate governance and social responsibility

4.1. Changing attitudes towards the role of business in society, along with concerns about the impacts of globalisation, have made corporate social responsibility (CSR) an increasingly prominent issue. Trade unions, NGOs, media and the general public as well as business itself have developed a growing awareness of and interest in companies' behaviour on a range of social and environmental issues. There is an increasing demand that companies be held accountable for any impact their operations may have on environment and society, at national as well as at international level. This focus on the various sides of corporate social responsibility has led to a call for binding rules or recommendations on many aspects of company behaviour.

4.2. Any society is dependent on profitable and competitive enterprises generating employment, creating wealth and contributing to sustaining the societies in which they operate. This role is crucial and is at the core of business responsibilities. Following the internationalisation and globalisation of business, however, new elements have been brought in to broaden the scope. Emphasis is increasingly put not on the financial results only, but on how these results were achieved, focusing on company behaviour as well as on company profitability. This awareness is reflected in the activities of a number of international enterprises that contribute actively to the societies and communities in which they operate by implementing corporate CSR policies and programmes. Moreover the important economic and social contribution of the non-profit and cooperative sectors must also be recognised.

4.3. CSR in the international context has been an important issue for international organisations for many years. The International Labour Organisation (ILO) introduced important principles with its core labour standards; the OECD followed suit with its guidelines for multinational enterprises; and the United Nations has addressed the issue in the context of globalisation with Kofi Annan's Global Compact Initiative. Last, but not least, the European Commission has, in a Green Paper on corporate social responsibility, raised the question whether European rules are also needed to promote CSR.

4.4. The EEA-CC welcomes the Commission's Green Paper, which has stimulated a critical debate on new ways of promoting CSR and raised awareness about this issue. The Commission's initiative should be seen in relationship with the strategic goal which the EU set itself at the Lisbon Summit of becoming 'the most competitive and dynamic knowledge-based economy in the world, capable of sustainable economic growth with more and better jobs and greater social cohesion'. The EEA-CC reiterates the proposal of the EFTA Consultative Committee, that the same strategic goal should also be adopted by the EFTA side of the EEA cooperation, thus including all the 18 countries of the EEA.

4.5. CSR must be seen as a long-term undertaking and a strategic investment, which will, together with economic success, contribute to the company's sustainability. In the words of Kofi Annan, UN Secretary-General: 'Companies are learning that as markets have gone global, so too must the concept and practice of corporate social responsibility. And they are discovering that doing the right thing, at the end of the day, is actually good for business'.

4.6. In its Green Paper the European Commission raises the question of a new European framework for CSR. Companies are a part of society and operate in a social environment that is shaped by laws and collective agreements, which regulate the labour market, reconcile interests on both sides and protect workers. This is accepted by all concerned and forms the basis for CSR in Europe, without the legal framework (social and environmental policy) suffering as a result.

4.7. In the context of existing social regulations, the main issue in Europe is to create an ethos in which CSR has a secure place. The European level is suitable as a framework for comparing notes about successful CSR initiatives and for incorporating CSR into business strategies through awareness-raising.

4.8. Voluntary — including negotiated — action is one of the fundamental principles of CSR. Establishing detailed, binding pan-European rules would be inappropriate. Uniform, detailed CSR standards create a risk of companies, especially SMEs and companies in the social economy, being forced into a straitjacket. Companies should have the option of developing tailored, sector-specific and particularly efficient approaches that are appropriate to their specific situation. General European principles agreed by the social partners could help to promote more widely the CSR practices that many companies are already applying. The EEA-CC therefore explicitly welcomes action by the social partners to flesh out certain aspects of CSR, e.g. in the spheres of health and industrial safety or promotion of equal opportunities. The specific EU context of CSR could be developed on the basis of joint initiatives and voluntary agreements between the social partners. The Commission could enhance transparency, coherence and good practice in this sphere by promoting partnership between the key CSR players.

4.9. The EEA-CC points to the special obligation of enterprises producing services of general interest concerning social, environmental responsibilities as well as responsibilities for providing services in specific geographic areas, i.e. drinking water.
4.10. The EEA-CC underlines the importance of coherence between the approach taken concerning CSR and the approach taken concerning enterprise behaviour in related EU legal instruments or policies. The current review of the European public procurement directives and the formulation of Commission communications on the social and environmental aspects of public procurement are of particular relevance, together with the proposals for environmental liability. The EEA-CC also suggests reviewing the public aid provisions with the development of social or environmental responsibilities.

5. Summary of conclusions and recommendations

5.1. The EEA-CC welcomes the European Commission's work on European Governance and supports the five principles of good governance proposed by the Commission, as they incorporate the elements associated with the principles of democracy and transparency. The EEA-CC notes, however, that the White Paper omits to discuss the underlying problems of governance, inter alia the change from government-based to governance-based ruling of societies. The EEA-CC underlines that any renewal of political processes and decision-making systems in the Community will have implications for the European Economic Area, as EEA-relevant legal EC acts must be incorporated into the EEA Agreement.

5.2. Better involvement and more openness is one of the cornerstones of good governance. The EEA Consultative Committee therefore welcomes the proposal for more transparent working methods in the European institutions, and calls for greater transparency and more involvement of non-governmental actors also in the EEA cooperation.

5.3. The EEA-CC underlines the important role and responsibilities of the social partners. The task of the social partners within the framework of the social dialogue is an excellent exemplification of the governance principle at European level. Therefore the social dialogue should be recognised as an important part in shaping the future of Europe.

5.4. The EEA-CC strongly supports the Commission's plan to consult civil society organisations in all stages of policy-making, and welcomes the proposal to adopt a code of conduct for consultation. However, there is an urgent need to make a clear distinction between 'civil dialogue' and 'social dialogue' and to establish criteria of representativeness for the selection of civil society organisations to take part in civil dialogue consultations.

5.5. Considering the increased weight of regional and local actors in the EU, the EEA Consultative Committee notes the lack of provisions in the EEA Agreement regarding cooperation between the local and regional levels in the EEA.

5.6. As to better regulation, the EEA Consultative Committee supports the Commission's proposal to simplify European legislation and calls on the EEA/EFTA States to follow the European Commission's example and simplify the national rules, which give effect to EU provisions. The EEA/EFTA States should also take part in the EU's proposed sharing of best practices regarding implementing measures. In addition to simplification, the EEA-CC calls for an impact analysis mechanism and objective assessment of alternative modes of legislation. It urges the EEA/EFTA States to take into account non-legislative developments in the EU, which have an impact on the Internal Market, to ensure parallel development and equal conditions of competition throughout the EEA.

5.7. The EEA Consultative Committee highlights the significance for the EEA/EFTA States of ensuring membership in new EEA-relevant regulatory agencies and ensuring competent and active participation in all Commission committees open to EEA/EFTA participation. The EEA-CC also calls on the EU side to ensure that the views of the EEA/EFTA States are taken into account in a possible process of reforming the comitology system.

5.8. In the context of global and European governance, the EEA Consultative Committee welcomes the European Commission's Green Paper on corporate social responsibility (CSR), which has stimulated a critical debate on new ways of promoting CSR and raised awareness about this issue. It is an important contribution to the successful implementation of the Lisbon Strategy, which should, in the EEA-CC's view also be fully adopted by the EFTA side of the EEA cooperation. CSR must be seen as a long-term voluntary — including negotiated — undertaking and a strategic investment, which will, together with economic success, contribute to the company's sustainability. The Commission could enhance transparency, coherence and good practice in this sphere by promoting partnership between the key CSR players.