

## Opinion of the European Economic and Social Committee on The representativeness of European civil society organisations in civil dialogue

(2006/C 88/11)

On 25 September 2003, The European Economic and Social Committee, acting under Rule 29 of its Rules of Procedure, decided to draw up an opinion on *The representativeness of European civil society organisations in civil dialogue*

and, under Rule 19, paragraph 1, of its Rules of Procedure, the Committee decided to establish a subcommittee to prepare its work on the matter.

The subcommittee adopted its draft opinion on 12 January 2006. The rapporteur was Mr Jan Olsson.

At its 424th plenary session, held on 14 and 15 February 2006 (meeting of 14 February), the European Economic and Social Committee adopted the following opinion by 103 votes to one with six abstentions.

### 1. Preamble

1.1 Over the last ten to fifteen years, the interest of the European institutions in holding a dialogue with civil society, in particular organised civil society at European level, has continued to grow. They have recognised in fact that there cannot be any good policies unless there are at least three things: an effort to listen to the public, participation and the approval of the people concerned by EU decisions.

1.2 The experience and expertise of civil society players, the dialogue between them and with public authorities and institutions, at all levels, combined with negotiation and the quest for that convergence or even consensus, enable proposals to be made in the general interest. This enhances the quality and credibility of political decision-making, which becomes easier for the public to grasp and accept.

1.2.1 By giving citizens the chance to engage individually and collectively in managing public affairs via a specific contribution from organised civil society, participatory democracy enhances representative democracy, thus strengthening the democratic legitimacy of the European Union.

1.3 By virtue of its membership and the role and mandate entrusted to it by the Treaties, the European Economic and Social Committee (EESC) has been fully involved in European participatory democracy from the outset, and is its oldest component.

1.4 The 'right to participate', which has been claimed by civil society and organisations active at European level for a long time, but is now of particular relevance. The issues and challenges facing the European Union are such that they require the mobilisation of all those on the ground and their representatives.

1.5 This need was recognised by the European Council, among others, at its meeting in Lisbon on 23 and 24 March 2000 in connection with the implementation of the Lisbon Strategy <sup>(1)</sup> and was highlighted by it once again at its meeting on 22 and 23 March 2005, in connection with the re-launch of this Strategy <sup>(2)</sup>.

1.6 In its White Paper of July 2001 on European governance <sup>(3)</sup>, the Commission makes the participation of civil society in the development and implementation of EU policies one of the basic principles of good governance and one of the priority areas for action to renovate the Community method and make the institutions operate in a more democratic manner.

1.7 The principle of participatory democracy is also enshrined in Article I-47 of the Treaty establishing a Constitution for Europe <sup>(4)</sup>. In this respect and despite the peregrinations of the ratification process, the EU institutions must follow this reasoning and establish a genuine participative democracy. If the latter is to satisfy the demands of modern European governance, however, there remains a need to set up the instruments which will allow the citizens of Europe, and particularly the organisations in which they are active, to discuss, to be consulted and actually to influence the development of the Union and its policies within the framework of a genuine structured civil dialogue with organised civil society.

<sup>(1)</sup> In point 38 of its conclusions (doc. SN 100/00), the European Council declares that:

*'The Union, the Member States, the regional and local levels, as well as the social partners and civil society, will be actively involved, using variable forms of partnership.'*

<sup>(2)</sup> In point 6 of its conclusions (doc. 7619/05), the European Council stresses that:

*'Alongside the governments, all the other players concerned – parliaments, regional and local bodies, social partners and civil society – should be stakeholders in the Strategy and take an active part in attaining its objectives.'*

<sup>(3)</sup> COM(2001) 428 final of 25 July 2001 - OJ C 287 of 12 October 2001.

<sup>(4)</sup> Article I-47(2) of the Constitutional Treaty states that 'the institutions shall maintain an open, transparent and regular dialogue with representative associations and civil society', while paragraph 1 asks the institutions, by appropriate means, to give 'representative associations' in particular the opportunity to make known and publicly exchange their views on all areas of Union action.

1.8 For its part, the EESC is working actively to develop participatory democracy, in partnership with the other EU institutions and civil society organisations.

1.8.1 In October 1999, the EESC held the first Convention on The role and contribution of civil society organisations in the building of Europe. Since then, it has issued a number of opinions with a view to further developing and structuring the dialogue between civil society organisations and the European institutions <sup>(5)</sup> <sup>(6)</sup>.

## 2. The players in the civil dialogue at European level <sup>(7)</sup>

2.1 The players in the civil dialogue at European level are organisations which represent the specific and/or general interests of citizens. European social partner organisations are therefore by their very nature a party to civil dialogue. Social dialogue is, in this context, an excellent example of the practical implementation of participatory democracy. However, a fundamental distinction must be made between social dialogue and civil dialogue. European social dialogue is clearly defined both in terms of its participants and its purpose and procedures, and the European social partners have quasi-legislative powers <sup>(8)</sup>. What characterises it are the special powers and responsibilities of its participants, who act independently.

2.2 At European level, these organisations have many different forms and appellations: associations, federations, foundations, forums and networks are some of the most common titles <sup>(9)</sup>. There are also foundations with a European scope. Often, these different types of organisation are grouped under the heading 'non-governmental organisations' (NGOs), which is in fact used to cover all types of autonomous non-profit-making structures. Many of these European organisations operate on an international scale.

2.3 These European organisations coordinate the activities of their members and associates in the various Member States and often beyond them. In addition, and more and more frequently, they are grouped together in European networks, as is the case in the fields of social and environmental affairs,

<sup>(5)</sup> See the documentation concerning the 'First Convention of civil society organised at European level' of 15 and 16 October 1999 (CES-2000-012-EN), and the relevant opinions: 'The role and contribution of civil society organisations in the building of Europe', 23 September 1999 (CES 851/1999 - OJ C 329 of 17 November 1999), 'The Commission and non-governmental organisations: building a stronger partnership', 13 July 2000 (CES 811/2000 - OJ C 268 of 19 September 2000), 'Organised civil society and European governance - the Committee's contribution to the drafting of the White Paper', 26 April 2001 (CES 535/2001 - OJ C 193 of 10 July 2001), 'European Governance - a White Paper', 21 March 2002 (CES 357/2002 - OJ C 125 of 27 May 2002).

<sup>(6)</sup> The EESC has organised two other conferences on the topic, the first on 'The role of organised civil society in European governance', on 8 and 9 November 2001, and the second on Participatory democracy: current situation and opportunities provided by the European Constitution, on 8 and 9 March 2004.

<sup>(7)</sup> For the European Economic and Social Committee, civil dialogue takes three forms: firstly, dialogue between European civil society organisations on the EU's development, future and policies; secondly, structured, regular dialogue between these organisation and the EU; thirdly, daily sectoral dialogue between civil society organisations and their contacts within the legislative and executive authorities.

<sup>(8)</sup> See Articles 137 and 138 of the Treaty.

<sup>(9)</sup> The directory of non-profit-making civil society organisations organised at European level, drawn up on a voluntary basis by the Commission (CONECCS database), lists more than 800 organisations, some of which can be placed in the socio-occupational category.

human rights, consumer affairs, development or the social economy.

2.4 In order to illustrate the breadth acquired by the European civil society organisations and the way in which they fit together, an appendix to this opinion gives an outline of the most significant organisations, federations and networks in the various sectors of civil society organised at European level, apart from socio-professional organisations. About twenty specific sectors are identified in this document.

2.4.1 This survey shows that European organised civil society is becoming increasingly structured and that there is diversity in the very structuring of the organisations concerned: they can be composed simply of national organisations (or even regional and local organisations, in some cases) representing a given sector: their members can be European organisations and national organisations, and legal and natural persons at all levels. Grouping into a network generally follows one of two patterns: either the network is made up of European organisations in a given sector or it associates national and European organisations.

2.5 Obviously, a number of European civil society organisations, not to mention certain national organisations or networks, generally have an experience and expertise that enables them to claim a right to take part in the consultative processes within the framework for formulating EU policies. However, it is equally clear that, in the absence of objective assessment criteria, the representativeness of European civil society organisations, other than the organisations of the social partners, is often called into question. The voluntary field is seen as being too fragmented, as it is often split into a multitude of organisations and often representing the individual interests of their members rather than the general interest, and lacking transparency; it is also seen by many as being incapable of exerting a real influence on the process of formulating policies and preparing decisions.

## 3. The requirement of representativeness

3.1 The EESC has already emphasised on several occasions that only clearly established representativeness can give civil society players the right to participate effectively in the process of shaping policies and preparing Community decisions.

3.1.1 In addition to being a fundamental democratic principle, the need for civil society organisations to be representative is consistent with the aim of giving them greater visibility and influence at European level.

3.1.2 With this in mind, the Committee has worked out representativeness criteria, which it set out most recently in its opinion of 20 March 2002 on the White Paper on European governance<sup>(10)</sup>. In order to be considered representative, a European organisation must meet nine criteria. It should:

- exist permanently at Community level;
- provide direct access to expertise;
- represent general concerns that tally with the interests of European society;
- comprise bodies that are recognised at Member State level as representative of particular interests;
- have member organisations in most of the EU Member States;
- provide for accountability of its members;
- have authority to represent and act at European level;
- be independent, not bound by instructions from outside bodies;
- be transparent, especially financially and in its decision-making structures.

3.1.3 In this opinion, the EESC proposed, however, 'to discuss these criteria with the institutions and civil society organisations as a basis for future cooperation'.

3.2 In order to avoid any misunderstandings over the scope of the representativeness criteria established in this opinion, there seems to be a need to draw a clear distinction between 'consultation', open in theory to all the organisations having expertise in a given field, and 'participation', which is an opportunity for an organisation to intervene formally and actively in the collective decision-making process, in the general interest of the Union and its citizens. This process, which is underpinned by democratic principles, enables civil society organisations to be part and parcel of policy framing and preparing decisions on the development and future of the Union and its policies<sup>(11)</sup>.

3.2.1 Even if this distinction may seem to be of a largely academic nature, it is relevant: representativeness is a precondition for participation as it confers legitimacy. In a process of

consultation, the aim is to hear points of view and collect the expertise of civil society players, without imposing prior conditions. Consultation nevertheless remains a very important component of civil dialogue.

3.3 In its White Paper on European governance, referred to above, the Commission proposed establishing partnership arrangements going beyond the minimum consultation standards applied to all its departments in some areas where consultations are already well established. The Commission made the conclusion of these agreements subject to the civil society organisations providing guarantees with regard to their openness and representativeness, but it did not deal with the criteria to be applied.

3.4 The Communication of 11 December 2002<sup>(12)</sup> establishing the general principles and minimum standards for consultation of interested parties by the Commission distinguishes between open consultations, within the framework of a global and non-exclusive approach, and focused consultations, where relevant interested parties (target groups) are defined on the basis of clear and transparent selection criteria. However, it does not identify these criteria either.

3.4.1 In this same communication, the Commission also highlights the importance it attaches to the contributions of European representative organisations but refers to the work already carried out by the EESC on the matter of the criteria for the selection of representative organisations to take part in the civil dialogue.

3.5 The Nice Treaty consolidated the EESC in its role of privileged intermediary between organised civil society and the EU's decision-makers and gave it increased responsibility for:

- organising discussions between representatives of civil society with different motivations and defending divergent interests; and
- facilitating a structured and continuous dialogue between the European organisations and networks of organised civil society and the EU institutions.

3.6 However, it should be stressed that the present opinion does not apply to:

- the daily dialogue at sector level between civil society organisations and between such bodies and their interlocutors within the EU's legislature and executive, particularly the Commission<sup>(13)</sup>; or

<sup>(12)</sup> COM(2002) 704 final.

<sup>(13)</sup> The issue of representativeness remains, in this context, crucial to giving civil society organisations a genuine right, not just to be consulted but to participate in framing EU sectoral policies and preparing related decisions, in addition to their implementation and follow-up. It does however raise some issues which in many ways are of a different nature and scope to those addressed in this opinion. They therefore warrant a specific discussion, when the time comes.

<sup>(10)</sup> See footnote on page 5. Point 4.2.5 in the opinion (CES 357/2002).

<sup>(11)</sup> See in particular the EESC opinion of 26 April 2001 on Organised civil society and European governance: the Committee's contribution to the drafting of the White Paper (CES 535/2001 - OJ C 193 of 10 July 2001 - point 3.4.).

- the European social dialogue and European social partner organisations, whose representativeness is established clearly on the basis of criteria specific to these organisations. The same is true of the socio-professional organisations involved in social dialogue at sector level. However, these organisations are qualified to be fully-fledged players in the civil dialogue.

3.7 The drawing-up of this opinion thus takes place, first and foremost, in the context of clarification and rationalisation of the EESC's own relations with European organisations and networks. This opinion thus aims to give the dialogue with organised civil society greater credibility by enhancing the legitimacy of these organisations and networks.

3.7.1 This itself is part of the drive to implement reinforced, structured dialogue with European organised civil society:

- on a general level, i.e. for all topics of common interest linked particularly to the development and future of the European Union;
- within the context of the EESC's consultative role as regards the definition and implementation of EU policies.

3.8 This opinion could also:

- form a point of reference and material for consideration by the other institutions, especially with a view to consolidating democratic participation at European level and the establishment of a genuine European civil dialogue;
- open up a field of inter-institutional cooperation, including the exchange of good practice, particularly with the Commission and the European Parliament, without there being any question of interfering with their way of organising the dialogue with European organised civil society.

3.9 For its part, the EESC stresses, here, that there are pros and cons to the establishment of a system for accrediting civil society organisations to the European institutions. However, the EESC does not consider this opinion to be an appropriate platform for discussing the merits of such a system. Nonetheless, it believes that this issue is closely linked to representativeness and that the two should therefore be discussed together as

part of a wide-ranging debate involving all stakeholders, the European institutions and civil society organisations.

#### 4. The EESC and European civil society organisations: a pragmatic and open approach

4.1 The EESC is aware that it only partially reflects the diversity and developments covered by the term 'organised civil society', and so it has taken initiatives and implemented reforms to ensure as broad a representation as possible of organised civil society.

4.2 European organisations and networks of civil society which are not yet represented on the EESC — or not directly — are thus associated with the EESC's structures and its work in various ways, but that association is not based on representativeness criteria.

4.2.1 Thus each of the EESC's three **Groups** <sup>(14)</sup> recognises European organisations by giving them the status of approved organisation. In principle, EESC members have direct or indirect links with these organisations, but that is not essential.

4.2.2 At **section** <sup>(15)</sup> level, the European organisations which have an effective contribution to make when an opinion is drawn up are often involved in the work. They are informed of the work in progress, send their comments, can be represented by experts and can participate in hearings or conferences which are organised.

4.2.3 The **EESC** organises events (conferences, seminars, hearings, etc.) on cross-sectoral subjects, such as the Lisbon Strategy, sustainable development and the financial outlook for 2007-2013; also worthy of mention are the meetings to follow up the work of the European Convention <sup>(16)</sup>.

4.2.3.1 The participants from organised civil society are chosen in a pragmatic way on the basis of proposals from the groups, EESC members, sections or the secretariat. These events are generally open to representatives of organised civil society who have freely expressed an interest in taking part.

<sup>(14)</sup> The EESC is divided into three Groups, representing employers (Group I), employees (Group II), and the other economic and social sectors of organised civil society (Group III).

<sup>(15)</sup> The EESC comprises six sections that deal with all the areas of EU activity in which it plays an advisory role.

<sup>(16)</sup> In accordance with the declaration of the Laeken European Council of 15 December 2001, the European Convention had a mandate to engage in dialogue with civil society. This task was undertaken by Jean-Luc Dehaene, vice-president of the Convention, with whom the EESC organised eight information and dialogue meetings with European civil society organisations and networks; among those taking part in these meetings were members of the Convention and, more particularly, its Presidium. The success of these meetings was confirmed by the fruitful cooperation between the European Parliament and the EESC during the preparation and running of the hearings of these organisations and networks that preceded the adoption by the EP's constitutional affairs committee of its parliamentary report on the Constitutional Treaty in November 2004. Initially, the EESC had organised a hearing of all the organisations concerned, in the presence of the first vice-chairman of the constitutional affairs committee and the two EP rapporteurs. Later, the spokesmen for the representative networks were invited to address the parliamentary committee directly.

4.3 A **Liaison Group** between the EESC and the representatives of the main sectors of European organised civil society has also been recently set up by the Committee. At present, in addition to the ten EESC representatives (the EESC president, the three Group presidents and six section presidents), it has 14 members from the main organisations and networks active in the sectors represented within the Liaison Group. The organisations concerned may or may not already have the status of an approved organisation.

4.3.1 The job of this Liaison Group is to ensure that the EESC adopts a coordinated approach towards European civil society networks and organisations and that initiatives decided on together are followed through.

4.4 The above survey shows the pragmatic approach adopted so far by the EESC, which in general means an open, non-exclusive approach, while gradually structuring its relations with European organised civil society. However, as regards the granting of approved organisation status or the sectoral consultations carried out by the sections, the approach is more targeted.

4.5 In this respect, the final report of the ad hoc group on structured cooperation with European civil society organisations and networks, dated 10 February 2004, stresses that *'the question of representativeness obviously requires serious consideration'* but that *'this issue must not, however, prevent any headway at all being made'* and recommends an approach that *'obviously includes a degree of prudence, but also requires openness and pragmatism'*.

## 5. A three dimensional procedure to assess representativeness

5.1 The criteria defined by the EESC in its opinion on the White paper on European governance are, clearly, worded to different degrees of precision. Therefore, the meaning and scope of these criteria should be more precisely defined and thereby made measurable and applicable.

5.2 Against this background, the EESC considers that it is more important to establish a clear, uniform and simple procedure to assess the representativeness of European civil society organisations, and thereby avoid complex, controversial issues.

5.3 The procedure must provide for a criteria review that is tailored to the European organisations' existing structure and operating methods. It must also be based on the principle that the organisations are part of the assessment process. The EESC has no designs on their autonomy.

5.4 The procedure should therefore be based on the following principles:

- openness;
- objectivity;
- non-discrimination;
- verifiability;
- participation (by European organisations).

5.5 The Committee suggests the procedure should cover three assessment criteria, viz.:

- the provisions in the organisation's statute and their implementation;
- the organisation's support base in the Member States;
- qualitative criteria.

5.5.1 The two first assessment criteria are clear and relate to each organisation's individual structure. They thus provide a good basis for a relatively objective assessment of the organisation's representativeness, whilst preserving the dynamics of civil society. The third dimension is more complex.

5.6 The EESC considers that the suggested procedure does not involve any particular burden or constraint on the organisations concerned, but that it does require openness in terms of the organisations' structure and procedures. Openness is a basic democratic principle of general interest, that can enable different public interests and individual citizens, as well as public authorities, to gain an insight into the organisations' structure and activities in order to make their own assessment.

5.7 Based on the principles and assessment criteria, the EESC should be able to develop a procedure enabling it to gauge the representativeness of European civil society organisations. This procedure could be implemented by setting up a special evaluation instrument, initially with the Liaison Group for European Civil Society Organisations and Networks.

## 6. The statute and its implementation

6.1 The EESC believes that there is a clear, direct link between the criteria already proposed and the statutes of European civil society organisations.

6.2 In principle, all organisations — whether de jure or de facto — active at European level should have statutory regulations <sup>(17)</sup>.

6.3 Given the criteria already defined by the EESC <sup>(18)</sup>, and with a view to making these fully operational, the Statute for a European Organisation should contain the following provisions:

- on the association's areas of activity and purpose;
- on membership criteria;
- on the operating procedures, which must be democratic, transparent, and include the accountability of the Board vis-à-vis its member organisations;
- the financial obligations of the member organisations;
- that an economic audit and an activity report must be submitted annually and be available to the public.

6.4 In the absence of European legislation, each organisation independently adopts its statute under the relevant national legislation <sup>(19)</sup>.

6.4.1 In this context, it should be remembered that in 1991 <sup>(20)</sup> the European Commission had already proposed legislation to enable the creation of 'European Associations'. The aim was to create a form of association for associations with members in several Member States, along the lines of the existing one for limited companies and cooperatives. The material provisions of the proposal are consistent with the above proposals on the content of the statute.

6.4.2 The proposal, for which the EESC expressed its support <sup>(21)</sup>, was blocked because of opposition from a number of Member States and has now even been withdrawn by the Commission. The EESC still firmly believes that such a statute is an essential instrument in order to consolidate the right of association as a fundamental freedom, enshrined in the EU's Charter of Fundamental Rights, and an expression of European citizenship. The principles contained in Article I-47 of the Constitutional Treaty should, in the Committee's view, provide an incentive to re-examine the issue.

6.4.3 Consequently, the EESC reiterates its call to set up a European statute of transnational associations, by analogy with the statute of European political parties that came into force in November 2003 <sup>(22)</sup>. This is consistent with the proposals made in this opinion.

6.5 Nonetheless, member organisations should be responsible for ensuring, through appropriate mechanisms and proce-

<sup>(17)</sup> It appears that some of the larger networks mentioned earlier have statutes (e.g. the Social Platform and Concord) while others are informal associations comprising a number of European organisations without a statute. This applies at least to Green 9, a group of environmental NGOs, and the Human Rights Network that incorporates NGOs active in the human rights field.

<sup>(18)</sup> See point 3.1.2. above.

<sup>(19)</sup> For example, Belgian law allows for the statute of non-profit-making international association (AISBL).

<sup>(20)</sup> COM(91) 273/1 and 2.

<sup>(21)</sup> Opinion CES 642/92 of 26 May 1992 – OJ C 223, 31 August 1992.

<sup>(22)</sup> OJ L 297, 15 November 2003.

dures, that the statute is monitored and implemented as part of the organisation's internal democratic decision-making process

6.6 In order to ensure proper openness in the way European civil society organisations operate, the statute, the annual economic and activity reports, and information about member organisations' financial obligations and funding sources should be made public, possibly by also publishing them on the websites of the organisations in question.

## 7. The organisations' support base in the Member States

7.1 The criteria proposed by the EESC suggest that a European organisation must have member organisations in the vast majority of Member States and that they should be recognised as being representative of the interests they represent.

7.2 In order to apply this criterion the EESC considers that, if a European organisation is to be considered representative, it must be represented in more than half of EU Member States. This requirement should stand even though the recent EU enlargement has made the situation more complex.

7.3 In order to allow for the appraisal of this support base, every European organisation should systematically make public its list of member organisations, whether they are organisations (legal persons) that are independent of outside interests representing civil society in the Member States and/or European associations of such organisations.

7.4 Assessing the degree to which a European organisation or its national member organisations can be seen as established and representative is always difficult. Such an assessment should take into account the following points.

7.5 The guiding principle should be that, whether it be national or transnational, an organisation's membership of a European organisation should not only meet the membership criteria provided for in that European organisation's statute, but should also meet the criteria stipulated in the member organisation's statute.

7.6 Consequently, a national member organisation should adopt the same practice as the European organisation to which it belongs, making public its statute and activity report, which mirrors the organisation's structure and operating methods. It would also be desirable, as required by the Council of Europe, to know the number of individual members who are directly and indirectly connected with the organisation.

## 8. Qualitative criteria

8.1 By their very nature, the above criteria can be assessed fairly simply and objectively. However, qualitative criteria are trickier to apply and assess, although the statute of an organisation, particularly its purpose and means of action, along with its geographical coverage, do provide some basis for assessment. Although they may prove insufficient when it comes to assessing the representativeness of an organisation, qualitative criteria do provide a means of appraising the organisations' ability to contribute.

8.2 In this context, it should be reiterated, that this opinion is not referring to organisations that have the expertise needed to take part in open consultation procedures (see above), but rather those which are required to participate effectively and formally in the policy framing procedure. This therefore justifies a more in-depth analysis.

8.3 Qualitative criteria thus refer to an organisation's experience and ability to represent citizens' interests in its dealings

with the European institutions, and the confidence and reputation it enjoys with these institutions on the one hand, and with other sections of European organised civil society on the other.

8.4 Consequently, a European organisation's ability to contribute must be assessed, based on its qualitative representativeness, in light of the extent to which the organisation can demonstrate, through its activity, its level of involvement in consultative processes implemented by the European institutions.

8.5 It is essential, here, that the European organisations concerned should openly present their activity reports and other relevant information. 'Benchmarks' could also be used, as is the case in the academic and research fields; these would need to be defined in cooperation with European civil society organisations.

8.6 In all events, the EESC intends to act on this matter in a transparent, objective, pragmatic way, as part of an open, dynamic process.

Brussels, 14 February 2006.

The President  
of the European Economic and Social Committee  
Anne-Marie SIGMUND

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