

### Participation of civil society in new modes of governance: the case of the new EU member states. Part 3: Involvement at the EU level

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**Participation of Civil Society in New Modes of Governance.  
The Case of the New EU Member States  
Part 3: Involvement at the EU Level**

**Edited by  
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## Introduction

This working paper is the third and final part of a series presenting the first results of a research team examining the impact of the 2004 EU enlargement on governance structures involving the participation of civil society organisations. The research team is part of the NEWGOV Integrated Project, led by the European University Institute.<sup>1</sup>

*The aim of this Integrated Project is to examine the transformation of governance in and beyond Europe by mapping, evaluating and analysing the emergence, execution, and evolution of what we refer to as 'New Modes of Governance'. By new modes of governance we mean the range of innovation and transformation that has been and continues to occur in the instruments, methods, modes and systems of governance in contemporary polities and economies, and especially within the European Union (EU) and its member states (both current and prospective).<sup>2</sup>*

In this context, the research team examines the participation of civil society organisations from the new post-socialist EU member states in (old and new forms of) governance, whereby civil society is broadly defined to include all collective non-state actors participating in these various modes of governance in conjunction with state (including EU) actors. The focus is thus not only on NGOs in the narrow sense but on trade unions and business associations as well.

An analysis of these organisations and their involvement in different modes of political governance at the national level was presented in our first working paper.<sup>3</sup> In the second working paper, we went on to discuss questions of accountability, including cases where civil society holds state actors accountable and vice versa, again focusing on the national level.<sup>4</sup>

Starting from the thorough analysis of the situation at the national level, in this working paper we examine the engagement of civil society organisations from post-socialist member states in EU governance. The contributions cover the respective EU regulations as well as informal practices and focus on the capacity, impact and accountability of the civil society actors involved.

The first contribution, written by Brigitte Krech, gives an introductory overview of how civil society organisations from new post-socialist member countries have been integrated into different modes of governance at the EU level. She describes not only the problems with which civil society organisations have to contend but also elucidates the analytical difficulties presented by the limited data available at this early stage.

The second contribution by Daniela Obradovic and Jose M. Alonso Vizcaino, presents the regulatory framework developed by the EU to organise the different forms of governance involving

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<sup>1</sup> NEWGOV – New Modes of Governance, Project no. CIT1-CT-2004-506392, Integrated Project, Priority 7 – Citizens and Governance in the Knowledge-based Society, Funded by the European Union under the Sixth Framework Programme. The research team is part of project 24, which is directed by Daniela Obradovic, Amsterdam Center for International Law. The research team is headed by Heiko Pleines, Research Centre for East European Studies (Forschungsstelle Osteuropa, Bremen, Germany). Further NEWGOV partners in the research team are Michal Federowicz (Institute of Philosophy and Sociology, Polish Academy of Sciences, Warsaw), David Lane (University of Cambridge, UK) and Zdenka Mansfeldova (Institute of Sociology, Academy of Science of the Czech Republic, Prague).

<sup>2</sup> For more information on the analytical framework of the integrated project see [www.eu-newgov.org](http://www.eu-newgov.org)

<sup>3</sup> Heiko Pleines (ed.): Participation of Civil Society in New Modes of Governance. The Case of the New EU Member States. Part 1: The State of Civil Society, Working Papers of the Research Centre for East European Studies (Arbeitspapiere und Materialien der Forschungsstelle Osteuropa) No. 67 (May 2005).

<sup>4</sup> Heiko Pleines (ed.): Participation of Civil Society in New Modes of Governance. The Case of the New EU Member States. Part 2: Questions of accountability, Working Papers of the Research Centre for East European Studies (Arbeitspapiere und Materialien der Forschungsstelle Osteuropa) No. 74 (February 2006).

civil society actors. This includes new modes of governance, like the open form of coordination, as well as rather traditional forms of governance, such as the social dialogue.

The following five contributions then present case studies designed to obtain a better understanding of the capacities, impact and accountability of civil society organisations from new post-socialist member states. The case studies have been chosen to cover the civil society organisations most actively involved in EU governance, namely typical NGOs, trade unions, employers' organisations and business associations. In order to allow for comparison, all cases centre in Poland or the Czech Republic.

The case study by Kristýna Bušková and Heiko Pleines examines the experiences of Czech environmental NGOs with EU governance, while the contribution by Gesine Fuchs focuses on Polish women's NGOs. The following two case studies by Zdenka Mansfeldová and Joanna Einbock analyse the involvement of Czech and Polish trade unions and employers' associations in the EU social dialogue. The final case study by Heiko Pleines examines the role of the Polish agricultural lobby in EU governance.

In summary, the case studies demonstrate the limited capacities of civil society organisations from post-socialist member states for meaningful participation in EU governance. As they in most cases do not have a chance to influence political outcomes at the EU level, questions of their accountability, as addressed by the EU Commission, seem to be of limited relevance here.

Further research on this topic could help to assess a number of important developments. First, it would represent a vital opportunity to measure the real (as opposed to the formal) degree of integration of the new member states at the political as well as the societal level. Second, additional research could help to illuminate the possibilities and challenges related to the increasing complexity of EU integration, as its success depends not only on political will and co-operation, but also on societal support and participation. Third, it would offer a new perspective with respect to the aim of righting the EU's perceived democracy deficit in terms of access to decision-making processes, as some civil society organisations appear to be far more equal than others.

The first results, obtained during the first two years of the NEWGOV project, have been published in this working paper series. More elaborated results will be published in an edited volume in 2007.

## **The Integration of Civil Society Organisations from the Post-Socialist Member States into the EU Decision-Making Process**

### Introduction

The year 2004 changed the political landscape of Europe significantly. Ten new member states joined the European Union, mainly post-socialist countries with individual experiences of the transition into democracy, a market economy and a structured civil society. Civil society actors (such as Poland's Solidarnosc) played an important role in shaping the societal transformation process. In 2004, the European Parliament was elected for the 2004 – 2009 legislative term, including MEPs from the Visegrad Four, the Baltic States, and Slovenia. The new Cabinet of the European Commission (25 Commissioners and the President) started its mandate that same year. The discussion on the EU constitution continued – with the active participation of civil society.

Civil society actors are involved in the EU decision-making process to varying degrees. Some EU institutions interact more closely with civil society organisations; others have less contact. Some civil society representatives and organisations have effective lobbying and networking mechanisms in Brussels, ensuring that their concerns are voiced; others lack the financial and personal resources as well as personal contacts for communicating their aims. Lobbying indeed deserves further scrutiny.

The EU decision-making process is very complex, and there are a variety of civil society actors in different policy fields. This paper will examine the integration of civil society organisations from the post-socialist member states into this complicated process by:

- presenting the European Union institutions themselves and explaining the EU decision-making process;
- providing a catalogue of civil society lobbying activities in Brussels and their impact on EU institutions,
- deriving a conclusion and analysis based in part on the author's practical experience in Brussels,
- furnishing internet links to EU documents and EU institutions in the appendix.<sup>1</sup>

### The integration of civil society organisations from the post-socialist member states into the EU decision-making process

#### The EU decision-making process

The European Union is based on the treaties which created the European Communities. With the Maastricht Treaty signed in February 1992, a new structure was created based on three pillars. The Treaty of Amsterdam came into force in 1999 and amended the previous EU and EC treaties. In 2003 the Treaty of Nice went into effect, "streamlining" the EU's decision-making system with an eye to the upcoming accession of Central and East European countries.

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<sup>1</sup> No special reference will be made to the past experience of civil society organisations before 1989 in the new EU member states.



The three main EU decision-making institutions are:<sup>2</sup>

- the *European Commission*, which, as the EU's "motor", proposes new legislation;
- the *European Parliament*, which is directly elected by citizens of the EU;
- the *Council*, which represents the EU member states and convenes regular meetings with e.g. COREPER<sup>3</sup> (i.e. the permanent representatives from the EU-25) and the Council of Ministers.

The meetings of the Council of Ministers should not be mixed up with the European Council meetings (involving heads of states and governments). Every sixth months a different EU member state holds the EU Council presidency. Slovenia will be the first new EU member state to hold the Council presidency in 2007.

The three main legislative procedures – starting from a proposal submitted by the European Commission and finally coming into force as a new European law – are as follows:

- the *consultation procedure*, in which the Council consults the European Parliament as well as the two "advisory bodies" (the European Economic and Social Committee (EESC) and the Committee of the Regions (CoR) regarding the proposed legislation. During the consultation procedure, the European Parliament can suggest amendments (which the Council is not obligated to accept);
- the *assent procedure*, in which the Council seeks the approval of the European Parliament (the European Parliament cannot amend the proposal, however); and
- the *co-decision procedure*, which is now applicable to most policy fields; the EP and the Council share the legislative power, with first and second reading taking place in the EP. If necessary, a conciliation committee may be convened between the Parliament and the Council. Finally, the EESC and the CoR are asked to provide feedback opinion on the proposed legislation.

In conclusion, two committees provide input to the EU decision-making process: the Committee of the Regions and the European Economic and Social Committee, from the regional and civil society perspectives, respectively. The co-decision procedure in particular offers a basis for communication and exchange of information among the different actors, including civil society actors, in Brussels. Persons with official accreditation may attend the committee meetings of the European Parliament.

## The European Economic and Social Committee

In terms of its own understanding and self-definition, the European Economic and Social Committee<sup>4</sup> can be seen as "a bridge between Europe and organised civil society". The EESC is a European institution (more precisely, an advisory body), which comprises representatives of organised civil society.

The White Paper on European Governance by the Commission focussed on the role of the EESC in developing ties of responsibility between the EU institutions and civil society, as reflected in changes to Article 257 of the EC Treaty.<sup>5</sup> "The [Economic and Social] Committee shall consist of representatives of the various economic and social components of organised

<sup>2</sup> See European Commission, DG Press and Communication, How the European Union works, ISBN 92 – 894 – 9524 – 3, 2005.

<sup>3</sup> COREPER = "Comité des représentants permanents".

<sup>4</sup> See European Economic and Social Committee, The EESC in 10 points, ISBN 92 – 830 – 0467 – 1.

<sup>5</sup> N.B. Agreed at Nice.

civil society, and in particular representatives of producers, farmers, carriers, workers, dealers, craftsmen, professional occupations, consumers and the general interest”.<sup>6</sup>

The Committee is currently made up of 317 members and is divided into three groups:

- *Group I* is the “Employers’ Group” with members from e.g. the private and public sectors of industry, SMEs, transport and agriculture. Exchange of information between Group I and UNICE (Union of Industrial and Employers’ Confederations of Europe)<sup>7</sup> is taking place.
- *Group II* is the “Employees’ Group”, formed of members with backgrounds in national trade union organisations (confederations and sectoral federations). The members of this group represent 80 national trade union organisations, which are mostly affiliated with the ETUC (European Trade Union Confederation).<sup>8</sup>
- *Group III* comprises “Various Interest Groups” belonging to civil society, such as social, occupational, economic and cultural organisations. According to the EESC, “The unique feature which forges Group III’s identity is the wide range of categories represented within its ranks: its members are drawn from farmers’ organisations, small businesses, the crafts sector, the professions, cooperatives and non-profit associations, consumer organisations, environmental organisations, associations representing the family, voluntary associations, persons with disabilities, the scientific and academic community, and non-governmental organisations.”<sup>9</sup>

The EESC members are nominated by the governments of the member states, based on proposals by representatives of the civil society on the national level, and are then appointed by the Council of Ministers for a (renewable) four-year term. The EESC elects its President and Bureau for a two-year term. The Bureau has 37 members. The President chairs meetings of the Bureau; the Bureau organises the work of the EESC. In general, the members of the Committee continue their professional activities in their home countries; most travel to Brussels only for meetings.<sup>10</sup>

The EESC operates within *six sections*, dealing with the main areas covered by the EU Treaties:

- Economic and Monetary Union and Economic and Social Cohesion (ECO),
- The Single Market, Production and Consumption (INT),
- Transport, Energy, Infrastructure and the Information Society (TEN),
- Employment, Social Affairs and Citizenship (SOC),
- Agriculture, Rural Development and the Environment (NAT),
- External Relations (REX).

When the Treaty on the European Coal and Steel Community expired in July 2002, a Consultative Commission on Industrial Change was set up.

Together with the Committee of the Regions, the EESC is an advisory body to the three main EU institutions (the Commission, the Council, and the EP). The EESC issues opinions in response to requests from the European Commission, the Council or the European Parliament; it can also issue an opinion upon its own initiative. Upon request by the European Commission, the European Parliament or the EU Presidency, it issues exploratory opinions or suggestions on a particular subject, which might later result in a proposal by the European Commission.

<sup>6</sup> See footnote 12 of page 15, COM (2001) 428 final, European Governance, A White Paper.

<sup>7</sup> See internet site: [www.unice.org](http://www.unice.org).

<sup>8</sup> See internet site: [www.etuc.org](http://www.etuc.org).

<sup>9</sup> Quotation, see page 16, European Economic and Social Committee, The EESC: a bridge between Europe and organised civil society, ISBN 92 – 830 0427 – 2.

<sup>10</sup> N.B. The members are not paid for their EESC activities, however they receive travel allowances.

## Integration of civil society organisations from the new EU member states

### The EESC perspective

The EESC describes its role with regard to civil society organisations as follows: “The EESC enables representatives of economic, social, socio-occupational and civil organisations to be an integral part of the policy- and decision-making process at the EU level.”<sup>11</sup> Within the EU decision-making system, the Committee regards dialogue, cooperation and consultation as instruments for ensuring that the governing bodies of the EU share the experiences and proposals of representative civil society organisations. Furthermore, the EESC has established a Liaison Group with European civil society networks with the aim of engaging in structured dialogue with them. The Committee constitutes a forum for representing as well as informing civil society organisations. In sum, the EESC guarantees a pluralist model to reinforce the legitimacy of the EU decision-making process and to meet the requirements of modern European governance.

Miklós Barabás, Member of the EESC and Vice President of Group III, stressed the importance of the EESC as an instrument for listening to the concerns of European citizens and bringing the experience of civil societies to Brussels. “No division between civil society actors between the old and new EU member states can be found.”<sup>12</sup>

One example of the integration of Hungarian civil society organisations into the EU decision-making process was the White Paper on a European Communication Policy.<sup>13</sup> The text of the document was discussed by Hungarian communication experts in a round table discussion on 23 May 2006. The minutes were edited, published and circulated among NGOs in Hungary. At the end of June 2006, a conference was organised for Hungarian NGOs in order to offer a platform for making recommendations on the Communication proposal.

There are approximately 40,000 citizen organisations in Hungary. The general challenge for civil society actors is to bring together the variety of civil society organisations while preserving their individuality (in terms of structure, mission, different policy fields, etc.). On the other hand, the civil society organisations share common basic values (e.g. the promotion of human rights, democracy, social justice, and tolerance).

### The European Commission’s perspective

The European Union as an entity is based on legal documents. The legislative acts of the Union are published in the Official Journal of the European Union before they come into force. Other important documents include the European Commission’s Communications, White Papers or Green Papers. A Green Paper aims to launch a consultation on a particular subject on the European level. These consultations can lead to a White Paper containing proposals for Community projects in a specific field.

If we examine aspects of civil society and the EU decision-making process, there are several documents referring to the matter at hand.<sup>14</sup> The documents explain and focus on e.g. the role of voluntary organisations, standards for consultations, the partnership with NGOs, the civil society dialogue between the EU and candidate countries, the EU’s Communication Policy, or the European Transparency Initiative (with the focus on transparency and interest representation,

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<sup>11</sup> Quotation, see The EESC in 10 points, point 6, The European Economic and Social Committee, ISBN 92-830-0467-1.

<sup>12</sup> Interview with Miklós Barabás in Brussels on 6 May 2006.

<sup>13</sup> See: [http://ec.europa.eu/communication\\_white\\_paper/index\\_en.htm](http://ec.europa.eu/communication_white_paper/index_en.htm).

<sup>14</sup> A list of relevant EU documents is provided in the annex.

the Commission's minimum standards for consultation, and the publication of data on beneficiaries of EU Funds).

For example, the White Paper on European Governance examines the issue of how the European Union uses the powers vested in it by the citizens.<sup>15</sup> The Paper describes the concept of governance as "rules, processes and behaviour that affect the way in which powers are exercised at the European level, particularly as regards openness, participation, accountability, effectiveness and coherence."<sup>16</sup> The Commission proposes the establishment and publication of minimum standards for consultation on EU policy, which is of concern for many civil society actors.<sup>17</sup> During the public consultation on this White Paper in early 2002, more than 2,500 organisations and people took part in the debate, including organisations from the new EU member states. Furthermore, the Commission proposes that the EU institutions need to "communicate more actively with the general public on European issues."<sup>18</sup> The communication policy of the EU institutions will make use of networks, grassroots organisations and national, local and regional authorities. The European Commission emphasises that civil society should follow the principles of good governance, referring to accountability and openness.

"Civil society increasingly sees Europe as offering a good platform to change policy orientations and society. This offers a real potential to broaden the debate on Europe's role. It is a chance to get citizens more actively involved in achieving the Union's objectives and to offer them a structured channel for feedback, criticism and protest. This already happens in fields such as trade and development, and has recently been proposed for fisheries."<sup>19</sup>

## CONECCS

On the official internet site of the European Union, the European Commission provides the CONECCS (=Consultation, the European Commission and Civil Society) database.<sup>20</sup> This database offers information on civil society actors operating on the European level. There is no legal definition of the term "civil society organisation". In the database, a reference is given to the definition used by the Economic and Social Committee.

The type of organisations in the database includes:

- trade unions and employers federations (as recognised social partners)
- professional federations (associations representing the interests of individuals within a profession)
- NGOs (which are defined by the following criteria: They promote the common good concerning the well-being of people or the society. Commercial interests of the members are not pursued. They are voluntarily formed and independent of public authorities, political parties and commercial organisations. They can take the legal form of a foundation.)
- service and production federations (these federations include associations that represent businesses in the industrial, agricultural, media, energy, service or other economic sectors)
- associations of public authorities (public administration structures at the local or regional level)

<sup>15</sup> See COM (2001) 428 final, the European Governance, a White Paper.

<sup>16</sup> Quotation, see page 8; see previous footnote.

<sup>17</sup> In the document the European Commission gives an example of consultation on the Telecom Package, which included studies, workshops presenting and debating the studies, consultations on the working paper and reviews, public hearings, with the draft legislation published in working documents for consultation and adoption by the Commission; see page 16 of the White Paper on European Governance; see previous footnote.

<sup>18</sup> Quotation, see page 11; see previous footnote.

<sup>19</sup> Quotation, see page 15; see previous footnote.

<sup>20</sup> See internet site: [http://ec.europa.eu/civil\\_society/coneccs/index\\_en.htm](http://ec.europa.eu/civil_society/coneccs/index_en.htm).

- political interests (organisations which are not political parties, but comprise a specific political perspective on EU policy)
- religious interests (with a specific religious perspective on Community policy).

This database provides information on two levels:

- CONECCS contains a list of these above-mentioned non-profit pan-European civil society organisations.
- Furthermore, a list of the European Commission's formal/structured civil society consultation bodies, which represents the dialogue partners in the process of policy development ("consultative bodies" section of CONECCS).

It is important to note that appearing on this list does not provide any form of accreditation by the European Commission.

### Interaction in specific policy fields

Some civil society organisations active on the European level brought actors from the new and future EU member states on board. One example is the association ECAS: the European Citizen Action Service.<sup>21</sup> ECAS is an international non-profit organisation and was created in 1990. ECAS aims to provide advice for NGOs on how to lobby and raise funds as well as to support citizens' rights. The Board of Directors of this association consists of persons of the future EU member states in order to bring certain experience into the association as well as to spread European experience into the new member states.<sup>22</sup> ECAS activities include partnership projects and scholarships to promote civil society in the new and future EU member states.

Since environmental problems do not stop at a political border, environmental groups have a tradition of cooperation with other groups. Environmental issues played a certain role before the political transition process in Central and Eastern Europe (e.g. the Danube dam between Czechoslovakia and Hungary before 1989 or the Chernobyl nuclear power plant accident in 1986). Environmental groups often have members who have access to networks, are active in other grassroots groups, and are active European citizens. Environmental NGOs are well established in Brussels. A number of environmental groups formed the so-called informal "G(reen) 10" in order to coordinate specific policy actions and raise awareness about specific issues.

The G 10 environmental organisations are:

- Bird Life International,
- Climate Action Network Europe,
- The European Environmental Bureau,
- European Public Health Alliance Environment Network,
- International Friends of Nature,
- Friends of the Earth,
- Greenpeace,
- The European Federation for Transport & Environment,
- CEE Bankwatch Network, and
- WWF European Policy Office.

G(reen) 10 aims to work with EU law-making institutions on environmental issues. They also work with their member organisations in the EU member states in order to facilitate their input into the EU decision-making process. As Bird Life International puts it, "We come together to work on strategic issues of Europe-wide importance where a unified and strong environmental

<sup>21</sup> See: [www.ecas.org](http://www.ecas.org).

<sup>22</sup> The Board of Directors includes members from several European countries, including Estonia, Hungary, Croatia, and Romania.

voice is necessary.”<sup>23</sup> Examples of projects comprise lobbying on the Convention with respect to commitments to sustainable development, the strategy on sustainable development of the Union, and “greening the EU budget” regarding the annual EU budget procedures.

The environmental NGO CEE Bankwatch Network<sup>24</sup> was set up in 1995 with 11 member organisations in the new and future member states as well as Eastern Europe. As the youngest member of the G(reen) 10, it aims to “monitor the activities of the international financial institutions which operate in the region, and to propose constructive alternatives to their policies and projects in the region.”<sup>25</sup> The main policy fields of interest include energy, transport and EU enlargement; further activities are the promotion of public participation and the access to information on activities of international financial institutions.

The DG Environment of the European Commission has organised the “Green Week” for the last couple of years.<sup>26</sup> During the Green Week 2006, environmental topics were discussed in workshops, debates, and “green talks”; European Environment Awards were held. Participants included ordinary citizens as well as representatives of NGOs and other organisations. Furthermore, several exhibitors (LIFE projects<sup>27</sup>, business representatives, and companies) had booths on the premises of the Charlemagne Building. Several organisations from the new member states provided information, including the G(reen) 10, the Polish Society for the Protection of Birds (OTOP – Bird Life Poland), the Latvian Country Tourism Association, and the Regional Environment Center, which is based in Szentendre/Hungary. A number of topics discussed during the Green Week focused on the new member states, such as the creation of a European nature network, ecotourism, and biodiversity in the general public understanding.

Social networking is a very important issue in Brussels. Networks are indispensable for effective lobbying and for gaining adequate information. A few years ago, the “Green Drink” was established, a monthly informal meeting of people working in the environmental field (mainly in non-governmental organisations). The Green Drink enabled visitors from the new member states to establish informal contacts in Brussels.

In conclusion, the environmental civil society organisations from the new EU member states seem to have established efficient contacts and have created networks on the European level. The environmental sector appears to be well-established in the political field in Brussels.

### The European Parliament’s perspective

The European Parliament (EP) has many contacts to the civil society organisations represented on the European level. Accredited lobbyists are closely following the different Committee meetings in the European Parliament. A list of accredited organisations/people is published on the official home page of the EP. Organisations from the new member states are well established. Hearings are organised on a regular basis in the EP. Conferences with civil society representatives are also organised.

Nevertheless, a lack of activity is sometimes critically perceived by MEPs from the new member states. One deputy from a new member state<sup>28</sup> informally expressed his disappointment at

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<sup>23</sup> Quotation, see internet: <http://www.birdlife.org/eu/green10.html>.

<sup>24</sup> See internet site: <http://www.bankwatch.org/about/>.

<sup>25</sup> Quotation, see previous footnote.

<sup>26</sup> For further information, see internet: <http://ec.europa.eu/environment/greenweek/home.html>.

<sup>27</sup> LIFE is the EU’s Financial Instrument for the Environment. Projects in three areas are co-financed: LIFE Nature, LIFE Environment, and LIFE Third Countries. For further information, see internet: <http://ec.europa.eu/environment/life/home.htm>.

<sup>28</sup> Estonia.

only having received one letter on the services directive from a civil society organisation in his home country.

Furthermore, Members of the European Parliament have established a dialogue between the EU institutions and citizens on European topics. The participation of youth in politics (dubbed “active citizenship”) is high on the agenda. To give an example, the exhibition of the project “Europazug 2006 – Europe meets Europeans” was opened in the European Parliament on 11 July 2006.<sup>29</sup> The train had stopped in Germany, the Czech Republic, Austria, Slovenia, Hungary, Slovakia, and Poland. The young participants discussed European topics such as mobility, education and the future of Europe.

## Conclusion

During the next couple of years, analysis on the involvement of civil society from the new post-socialist member states will increase as more relevant data on the political involvement becomes available. The European University Institute, based in Florence, was created in 1972 by the EC to conduct research on issues pertaining to Europe.<sup>30</sup> Would it be useful to found a similar research institution based in Brussels? The scholars could easily and constantly follow the ongoing processes in the EU institutions and evaluate the “success” of civil society influence on the EU decision-making process. It would also allow a deep academic monitoring of European integration. A better understanding of “Starship Brussels” would enhance the understanding of Europe by a wider range of citizens – leading away from a (sometimes) elitist perception.

Some civil society organisations were actively involved in the debate on the EU constitution. Public awareness on transparency in the EU decision-making process has increased.<sup>31</sup>

On the basis of the CONECCS database, it can be estimated that a variety of actors are active in the political landscape of Brussels. Since this database is voluntary, it might be interesting to consider a mandatory database (in parallel with the mandatory publication of accredited lobbyists in the European Parliament). However, the European Commission does not consider entry in the database as any form of accreditation. “The Commission believes that consultation should be undertaken as widely as possible and does not wish, as a general principle at this time, to accord certain organisations special status.”<sup>32</sup>

During the last few years, European institutions have employed many civil servants from the new member states. Some of the new permanent and also non-permanent personnel have previous work experience in civil society organisations in the new EU states. It would be very interesting to examine, e.g. by conducting qualitative interviews or in-depth studies, to what extent the previous experience is shaping public perception towards Europe.

What can civil society organisations from the new member states do in order to become more closely involved in EU activities – despite a lack of adequate resources or contacts? Is it possible to establish some benchmarks? The European institutions have provided more possibilities for participation in relevant questions on European integration. Public consultation procedures are being made available on the internet, offering civil society organisations the opportunity to

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<sup>29</sup> By Michael Cramer MEP.

<sup>30</sup> See Internet: <http://www.iue.it/>.

<sup>31</sup> On 11 July, the European Economic and Social Committee organised a hearing on the European Transparency Initiative, offering representatives of civil society the opportunity to take part in this debate. Several topics, such as the registration of civil society organisations, as well as a code of conduct, were discussed. See internet: [http://eesc.europa.eu/sco/events/11\\_07\\_06\\_transparency/index\\_en.asp](http://eesc.europa.eu/sco/events/11_07_06_transparency/index_en.asp). Furthermore, the European Commission has launched a website concerning the consultation on the European Transparency Initiative (Green Paper), see [http://ec.europa.eu/comm/eti/index\\_en.htm](http://ec.europa.eu/comm/eti/index_en.htm).

<sup>32</sup> Quotation, see [http://ec.europa.eu/comm/civil\\_society/coneecs/question.cfm?CL=en](http://ec.europa.eu/comm/civil_society/coneecs/question.cfm?CL=en).

participate at a distance. Papers discussed during public hearings and conferences in the EU institutions are also published on the internet. The European Commission is funding projects involving civil society actors across Europe and with neighbouring countries. Many NGOs have formed (umbrella) associations in Brussels in order to use their resources more efficiently. Furthermore, during the discussions on the Convention on the Future of the EU, the debates could be followed online, which allowed a broader audience the opportunity to monitor these discussions.

The European Economic and Social Committee is the EU institution which represents organised civil society in the most direct way. However, the EESC does not exert strong influence on the political decision-making process. The documents provided by the EESC have a consultative function. In the daily political routine, these papers play a less important role. How can civil society's involvement in the EU decision-making process be fortified? The role of the EESC has to be strengthened if civil society is to play a more important role in the political decision-making process in Brussels

The Commission has launched several papers on citizen involvement in the past couple of years. In terms of activities in the new member states, public and political awareness about civil society has increased e.g. in Estonia. A national strategy ("The Estonian Civil Society Development Concept") was adopted in the Estonian Parliament in 2002.<sup>33</sup> The Concept aimed to increase the cooperation between civil society and public authorities. Similar concepts in other new member states might enhance awareness about civil society actors as well as the importance of EU-related civil society activities.

Some organisations are critically examining the Commission's initiative on transparency, including the ALTER-EU (The Alliance for Lobbying Transparency and Ethics Regulation).<sup>34</sup> This organisation is encouraging civil society groups from Europe to participate in the consultation on the Green Paper on the European Transparency Initiative. Several signatories included organisations from the new EU member states. In March 2006, 9% of overall signatories came from the new member states, mainly Hungary, Slovakia and the Czech Republic.

It might be useful to establish an index of civil society involvement in political entities. This index could be taken as a standard for comparison between the old and new EU member states. The South-African based organisation "Civicus"<sup>35</sup> has established a civil society index; country reports for some new EU member states are available.

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<sup>33</sup> See page 119, Raik, Kristi, EU accession and the Europeanizing civil society of Estonia, in: Pettai, Vello & Ehin, Piret (eds.), *Deciding on Europe: The EU Referendum in Estonia*, 2005.

<sup>34</sup> See <http://www.alter-eu.org>.

<sup>35</sup> For further information, see <http://www.civicus.org>.



## Annex

### Bibliography

The following documents and internet sites give a broad overview on the discussion on the role of civil society and European integration.<sup>36</sup>

#### Websites of the European Union:

- [www.europa.eu.int](http://www.europa.eu.int)  
The home page of the European Union with links to all EU Institutions and databases in the official EU languages.
- [www.europarl.eu.int](http://www.europarl.eu.int)  
The home page of the European Parliament.
- <http://www.europarl.europa.eu/parliament/expert/staticDisplay.do?language=EN&id=65>  
This is a list of accredited lobbyists at the European Parliament. As stated by the European Parliament, “**Lobbyists** can be private, public or non-governmental bodies. They can provide Parliament with knowledge and specific expertise in numerous economic, social, environmental and scientific areas.” Lobbyists are following the different Committees of the European Parliament as well as taking part in public hearings or conferences.
- [http://ec.europa.eu/civil\\_society/coneccc/index\\_en.htm](http://ec.europa.eu/civil_society/coneccc/index_en.htm)  
CONECCS is the database for Consultation, the European Commission and Civil Society and provides a directory of non-profit civil society organisations organised at the European level.
- [http://eesc.europa.eu/index\\_en.asp](http://eesc.europa.eu/index_en.asp)  
The official website of the European Economic and Social Committee as the “bridge between Europe and the organised civil society”.
- [http://eesc.europa.eu/sco/events/11\\_07\\_06\\_transparency/index\\_en.asp](http://eesc.europa.eu/sco/events/11_07_06_transparency/index_en.asp)  
Information on a hearing organised by the European Economic and Social Committee on the European Transparency Initiative on 11 July 2006 in Brussels.
- <http://ec.europa.eu/environment/greenweek/home.html>  
The Directorate General Environment of the European Commission is organising the annual event “Green Week”, which brings together citizens interested in environmental issues, organised civil society organisations as well as decision-makers on the European level.
- [http://ec.europa.eu/comm/civil\\_society/index\\_en.htm](http://ec.europa.eu/comm/civil_society/index_en.htm)  
This website provides information on the European Commission and civil society, especially on the dialogue and consultations of the Commission with civil society.
- [http://ec.europa.eu/communication\\_white\\_paper/index\\_en.htm](http://ec.europa.eu/communication_white_paper/index_en.htm)  
The White Paper examines how to close the gap between the EU and its citizens. Communication in Europe is a matter of democracy.
- [http://europa.eu/scadplus/glossary/index\\_en.htm](http://europa.eu/scadplus/glossary/index_en.htm)  
The glossary explains terms related to European integration and the activities of the EU.

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<sup>36</sup> The internet sites were downloaded in June 2006.

- <http://ec.europa.eu/environment/life/home.htm>  
This website provides information on LIFE, the Financial Instrument for the Environment. Projects in the EU, the candidate countries, and neighbouring countries are co-financed through this programme.

Further websites:

- <http://www.iue.it/>  
Website of the European University Institute based in Florence
- <http://www.unice.org>  
Website of the Union of Industrial & Employers' Confederations of Europe (UNICE)
- <http://www.ecas.org/>  
Internet site of the association "European Citizen Action Service"
- <http://www.birdlife.org/eu/green10.html>  
Internet site of Bird Life, explanation on G10, informal group of environmental NGOs.
- <http://www.civicus.org>  
Internet site of Civicus, a non-profit organisation, which has developed a civil society index. Country reports are available for several new EU member states (Czech Republic, Poland, Slovenia).
- <http://www.alter-eu.org>  
The Alliance for Lobbying Transparency and Ethics Regulation. The organisation is encouraging civil society groups and individuals from Europe to participate in the consultation on the Green Paper on the European Transparency Initiative.

References to relevant EU documents:

The documents can be searched in PreLex (EU database on Monitoring of the decision-making process between institutions), see: [http://ec.europa.eu/prelex/rech\\_simple.cfm?CL=en](http://ec.europa.eu/prelex/rech_simple.cfm?CL=en).

- COM (97) 241 final:  
Communication from the Commission on Promoting the Role of Voluntary Organisations and Foundations in Europe.
- COM (2002) 704 final:  
Communication from the Commission: Towards a reinforced culture of consultation and dialogue – General principles and minimum standards for consultation of interested parties by the Commission.
- COM (2001) 428 final:  
European Governance: A White Paper.
- COM (2002) 277 final:  
Communication from the Commission: 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.
- COM (2000) 11 final:  
Commission Discussion Paper: The Commission and non-governmental organisations: building a stronger partnership.

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- COM (2000) 200:  
White Paper: Reforming the Commission – Part I and II (Action Plan).
- COM (2006) 35 final:  
White Paper on a European Communication Policy.
- COM (2006) 194 final:  
The Green Paper on the European Transparency Initiative consists of three main aspects: transparency and interest representation; the Commission's minimum standards for consultation; publication of data on beneficiaries of EU Funds.

#### Books, journals:

CAN, Climate Action Network, International NGO Directory 2000.

European Economic and Social Committee, The EESC: a bridge between Europe and organised civil society, ISBN 92 – 830 0427 – 2.

European Economic and Social Committee, The EESC in 10 points, ISBN 92 – 830 – 0467 – 1.

European Commission, DG Press and Communication, How the European Union works, ISBN 92 – 894 – 9524 – 3, 2005.

Krech, Brigitte, Brussels and the Danube Region – the Notion of Lobbying, in: Tarrósy, István & Roskogler, Gerald (eds.), Social, economic and political cohesion in the Danube region in light of EU enlargement, 2006.

Raik, Kristi, EU accession and the Europeanizing civil society of Estonia, in: Pettai, Vello & Ehin, Piret (eds.), Deciding on Europe: The EU Referendum in Estonia, 2005.

The EU Committee of the American Chamber of Commerce in Belgium, Guide to the Enlargement of the EU, 1998.

## Good Governance Requirements for the Participation of Interest Groups in EU Consultations

### Introduction

Although civil interest groups have been involved in the governance of the EU since its creation, their structured incorporation into the European policy formation process is of relatively recent origin. The Commission formalised the dialogue with civic groups by virtue of the adoption of general principles and minimum standards for consulting interested parties (hereafter referred to as “minimum standards”).<sup>1</sup> These stipulate that interest groups must fulfil particular criteria in order to participate in EU stakeholder consultations and the in-depth impact assessments carried out by the Commission prior to the drafting of legislative proposals or open method of co-ordination (OMC) guidelines. The criteria are: representativeness, accountability and transparency, i.e. the principles cited by the Commission required for good governance.<sup>2</sup>

The article examines the application of those criteria and their impact upon the further development of civil dialogue in the EU. In particular, it assesses whether their implementation is feasible, given their vagueness and imprecision. It also addresses the consequences of the introduction of EU consultation requirements for the incorporation of civic interest groups.

### Role of EU consultations with civil groups in European governance

The formalisation of civil groups’ involvement in the EU policy conception and implementation can be regarded as a part of the new forms of governance introduced by the European Union intended to improve its efficiency and legitimacy.<sup>3</sup>

This new mode of governance, outlined in the Commission’s White Paper on Governance, denotes a situation where the public/private border has disappeared and the act of governing is described as a ‘socio-cybernetic system, composed of “self-organising networks.”’<sup>4</sup> The decision-making process is no longer seen as one in which private activity occurs around government decision-making, or seeks to influence it. Rather, the very distinction between governmental and non-governmental has been blurred, since the real decision-making process now continually involves, and combines, public and private actors.<sup>5</sup> This new mode of EU governance stands for an arrangement where there is “no longer a single sovereign authority” and regulatory mechanisms do not need to be endowed with formal authority to function effectively. The consequence is a “centreless society” or “polycentric state” characterised by multiple centres, in which the amorphous task of government is described in the unaccustomed fashion as being “to enable socio-political interactions; to encourage many and various arrangements for coping with

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<sup>1</sup> Commission of the European Communities (2002) ‘Communication from the Commission: “Towards a reinforced culture of consultation and dialogue—General principles and minimum standards for consultation of interested parties by the Commission”’, COM(2002) 704, 11.12.2002.

<sup>2</sup> Commission of European Communities (2001) ‘European governance: White paper’, COM(2001) 428, 25.7.2001, p. 8.

<sup>3</sup> Commission of European Communities (2001) ‘European governance: White paper’, COM(2001) 428, 25.7.2001, p. 11. In this way, the Commission should assume the role of facilitator, or regulator of a public/private network, with a duty to create, foster, and maintain relationships in this network (Harlow, Carol (2005) ‘Deconstructing government’, *Yearbook of European Law*, 23 (2004): 57–89, pp. 59–60 and 63–65)

<sup>4</sup> Harlow, Carol (2005) ‘Deconstructing government’, *Yearbook of European Law*, 23 (2004): 57–89, p. 59.

<sup>5</sup> Schapiro, Matin (2001) ‘Administrative law unbounded’, *Indian Journal of Global Legal Studies*, 8: 369.

problems and to distribute service among the several actors.” Government is not to govern but to mediate. In other words, negotiation and mediation are to play the same central role in modern systems of governance as the prerogatives of authority and sovereignty did in the classical system.<sup>6</sup>

Under this approach, the Commission’s task is not to present policies to a European electorate, but rather to act as a policy entrepreneur, collecting views and recommending policies for action, and then acting as a watchdog of EU interests to see those policies implemented at the national level.<sup>7</sup> In this way, the Commission should assume the role of facilitator (or regulator) of a public/private network with a duty to create, foster, and maintain relationships in this network.<sup>8</sup>

Consequently, in this mode of governance, the interaction between civil interest groups and public institutions operating at different levels is highly important for the functioning of the system. This was recognised in the White Paper on Governance, which promises ‘wide participation through the policy chain – from conception to implementation.’<sup>9</sup> It also pledges to ‘reach out to citizens and involve civil society, construct and consult better networks, and establish procedures and timetables for consultation.’<sup>10</sup>

The Commission is of the opinion that wider participation of civil society in EU governance through early consultations will not only make the European integration process more inclusive and ensure that EU issues are debated by a wide range of interested parties, but will also contribute to a more effective shaping of policy in the Union.<sup>11</sup> The fact that the Commission advocates the involvement of civil society in the debate on the future of Europe<sup>12</sup> illustrates how important this issue has become. The promotion of citizens’ participation in EU governance is also one of the main objectives of the Action Plan to improve communication in the Union.<sup>13</sup>

The commitment to wider opportunities for active stakeholder participation in EU policy-shaping is one of the ‘Strategic Objectives 2005–2009’ with which the European Commission launched its ‘Partnership for European Renewal.’ In a communiqué, the Commission emphasised that “consultation and participation” is inherent in the idea of partnership.<sup>14</sup>

## Civil dialogue in the European Union

The greater involvement of civil society in EU governance is to be achieved through civil dialogue,<sup>15</sup> which refers to a range of consultation forums. These include the Dialogue with Busi-

<sup>6</sup> Harlow, Carol (2005) ‘Deconstructing government’, *Yearbook of European Law*, 23(2004): 57–89, pp. 59–60.

<sup>7</sup> Ibid, p. 63.

<sup>8</sup> Ibid, p. 65.

<sup>9</sup> Commission of European Communities (2001) ‘European governance: White paper’, COM(2001) 428, 25.7.2001, p. 10.

<sup>10</sup> Ibid, p. 14.

<sup>11</sup> Ibid, p. 15.

<sup>12</sup> Commission of the European Communities (2005) ‘Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions: “The Commission’s contribution to the period of the reflection and beyond: Plan-D for democracy, dialogue and debate”’, COM(2005) 494, 13.10.2005, p. 6.

<sup>13</sup> Commission of the European Communities (2005) ‘Communication to the Commission: “Action plan to improve communicating Europe by the Commission”’, SEC (2005) 985, 20.7.2005, p. 3.

<sup>14</sup> Commission of the European Communities (2005) ‘Strategic Objectives 2005 – 2009 – Europe 2010: A Partnership for European Renewal Prosperity, Solidarity and Security – Communication from the President in agreement with Vice-President Wallström’, (COM/(2005)/12, Brussels, 26.1.2005, p. 5.

<sup>15</sup> The EU Constitution denotes it as the concept of Participatory Democracy in Article I-47:

ness,<sup>16</sup> Dialogue with Citizens,<sup>17</sup> European Round Table on Democracy,<sup>18</sup> Green and White Papers, and Internet consultations via the web portal Your Voice in Europe.<sup>19</sup> These are conducted between the Commission and interest groups in the pre-drafting phase of the European legislation or the open method of co-ordination (OMC)<sup>20</sup> guidelines preparation process.<sup>21</sup> The Commission views Your Voice in Europe to be its single access point offering citizens, consumers and business an opportunity to play an active role in the process of shaping Commission policy.<sup>22</sup> This Internet site is to be replaced in the near future by a more encompassing contact centre, Europe Direct, which will promote ‘one-stop-shopping’ access for citizens.<sup>23</sup>

The Commission has contact with around 1500 interest groups, representing 2600 special interest groups whose activities generate an estimated annual turnover of 60 to 90 million euros.<sup>24</sup> Two-thirds and one-fifth of these groups represent business and citizen interests, respectively, with the remainder representing the professions, trade unions, and public sector organisations at the national and regional levels. In addition to these interest groups, an estimated 350 large firms, 200 regions, and about 300 organisations supplying commercial public affairs services are actively engaged in EU politics.<sup>25</sup>

Both specialised interest groups advocating particular social causes and the so-called diffuse interest groups promoting widely accepted causes (such as non-governmental environmental

1. The institutions shall, by appropriate means, give citizens and representative associations the opportunity to make known and publicly exchange their views in all areas of the Union’s action.

2. The institutions shall maintain an open, transparent and regular dialogue with representative associations and civil society.

3. The Commission shall carry out broad consultations with parties concerned in order to ensure that the Union’s actions are coherent and transparent [...]

<sup>16</sup> <http://europa.eu.int/business/en/index.html>

<sup>17</sup> <http://europa.eu.int/citizens/en/index.html>

<sup>18</sup> Commission of the European Communities (2005) ‘Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions: “The Commission’s contribution to the period of the reflection and beyond: Plan-D for democracy, dialogue and debate”’, COM(2005) 494, 13.10.2005, p. 8.

<sup>19</sup> <http://europa.eu.int/yourvoice/>

<sup>20</sup> The OMC is not designed to produce law at the European level. It aims to co-ordinate the actions of the member states in a given policy domain and to create conditions for mutual learning that are intended to introduce some degree of voluntary policy convergence. It also helps member states to develop their own policies through the discussion and dissemination of best practices, with the aim of reaching commonly agreed goals. The OMC is concretised through the production of guidelines drafted by the Commission and issued by the Council of Ministers, to be translated into national policy through national action plans (NAPs), combined with periodic monitoring by the Commission, evaluation and peer review organised as mutual learning processes and accompanied by indicators and benchmarking as means of comparing best practices. The OMC is applied as an instrument for the development of budgetary, economic, employment, and social inclusion policy, and also as a strategy in pension reform, information society, research and innovation, education and training and youth policy (see Obradovic, Daniela (2006) ‘Civil and social dialogue in European governance’, *Yearbook of European Law 2005*, pp. 261–327).

<sup>21</sup> Consultations of interested parties by the Commission take place on an ad hoc basis and by means of different instruments, such as Green and White papers, communications, advisory committees, informal working groups, business test panels, ad hoc and on-line consultations, etc.

<sup>22</sup> Commission of the European Communities (2004) ‘Report on European governance (2003–2004)’, SEC(2004) 1153, p.12.

<sup>23</sup> Commission of the European Communities (2005) ‘Communication to the Commission: “Action plan to improve communicating Europe by the Commission”’, SEC (2005) 985, 20.7.2005, p. 30.

<sup>24</sup> Communication to the Commission from the President, Ms Wallstrom, Mr Kallas, Ms Fischer Boel proposing the launch of a European Transparency Initiative, SEC(2005) 1300, Brussels, 9.11.2005, p. 4 (for the latest version of this document, see [http://ec.europa.eu/comm/eti/form6\\_en.htm](http://ec.europa.eu/comm/eti/form6_en.htm)).

<sup>25</sup> Greenwood, Justine (2003) ‘The world of NGOs and interest representation’, in ‘NGOs, Democratisation and the Regulatory State’, A Collection of Papers Presented at the Conferences in London and Brussels, (London: European Policy Forum), pp. 51–64, p. 52.

protection organisations) participate in those consultations. Furthermore, regional and national interest groups<sup>26</sup> (such as those taking part in the European Citizens' Panels established in some member states to discuss specific policy areas) are consulted as well as European-level entities. In the future, these are to be organised on the inter-regional level.<sup>27</sup> In principle, all types of civil society groups will participate in the civil dialogue.<sup>28</sup>

When formulating its policies, the Commission consults interest groups, seeking their opinions whenever it embarks upon drawing up legislative initiatives or the open method of co-ordination (OMC) guidelines. Those consultations embody the process through which the Commission wishes to solicit the input of interested parties on the formulation of EU legislative proposals or OMC co-ordinative documents. The consultations enable the Commission to gather the opinions of interested parties and take different views into account while drafting law initiatives or OMC guidelines. The Commission can also thereby assess the impact of any legislation or policy co-ordination objective.<sup>29</sup> The consultations are supposed to facilitate arbitration between competing claims and priorities and assist in developing a longer-term policy perspective.

The Commission carries out those consultations in order to obtain the information, data, statistics, knowledge and expertise necessary for discharging its responsibility to initiate law in the European Union. Since its in-house expertise is limited, information provided by private actors helps the Commission to offset the informational advantage of national officials.<sup>30</sup>

The Commission regards the consultation of interested parties to be beneficial for the process of legislation drafting not only because it helps to ensure that its legislative proposals are sound, but considers itself legally bound to do so.<sup>31</sup> The Commission traces its duty to consult widely from Protocol No. 7's directives on the application of the principles of subsidiarity and proportionality, annexed to the Amsterdam Treaty, which stipulates that 'the Commission should [...] consult widely before proposing legislation and, wherever appropriate, publish consultation documents.'

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<sup>26</sup> Commission of the European Communities (2005) 'Communication to the Commission "Action plan to improve communicating Europe by the Commission"', SEC (2005) 985, 20.7.2005, p. 25.

<sup>27</sup> Commission of the European Communities (2005) 'Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions: "The Commission's contribution to the period of the reflection and beyond: Plan-D for democracy, dialogue and debate"', COM(2005) 494, 13.10.2005, pp. 9 and 18.

<sup>28</sup> According to the Commission's approach, civil society includes the following groups: trade unions and employers' organisations (social partners); organisations representing social and economic players that are not social partners in the strict sense of the term (for instance, consumer organisations); non-governmental organisations, which bring people together in a common cause, such as environmental organisations, human rights organisations, charities; professional associations; grass roots organisations and organisations that involve citizens in local and municipal life with a particular contribution from churches and religious communities (Commission of European Communities (2001) 'European governance: White paper', COM(2001) 428, 25.7.2001, p. 14). The Commission has adopted the Economic and Social Committee's definition of civil society (see Economic and Social Committee (1999) 'Opinion on the role and contribution of civil society organisations in the building the Europe', OJ C 329/30, 17.11.99).

<sup>29</sup> On the Commission's implementation of impact assessment for all major initiatives as of 2003, see Commission of the European Communities (2002) 'Communication from the Commission on impact assessment', COM(2002) 276, Brussels, 5.6.2002.

<sup>30</sup> Christiansen, Thomas et al. (2003) 'Informal governance in the European Union: an introduction', in Thomas Christiansen and Simona Piattoni, (eds.), 'Informal Governance in the European Union', (Cheltenham: Edward Elgar), pp. 1–22, p. 9.

<sup>31</sup> Commission of the European Communities (2002) 'Communication from the Commission: "Towards a reinforced culture of consultation and dialogue—General principles and minimum standards for consultation of interested parties by the Commission"', COM(2002) 704, 11.12.2002, p.3.

## Eligibility requirements for the participation of interest groups in EU consultations

Until recently, civil dialogue was not formalised,<sup>32</sup> although informal consultation with interest groups has been a constant and distinctive feature of the Commission's pre-drafting phase of the legislative preparation process from the very beginning of European integration.<sup>33</sup> The Commission endorsed a policy of unrestricted access of interest groups to its officials and declined to introduce any system of licensing,<sup>34</sup> preferring not to impose any particular requirements upon the interest groups with which it engaged in dialogue.

This approach was changed following the publication of the Commission's White paper on governance in 2001, in which it called for the establishment of a stable framework to facilitate a more co-ordinated and structured dialogue with civic associations.<sup>35</sup> The open access policy formerly deployed by the Commission in its relations with interest groups was modified on the grounds that 'with better involvement comes greater responsibility.'<sup>36</sup>

The Commission formalised the civil dialogue process through the adoption of minimum standards and general principles for consulting interested parties (hereafter the minimum standards).<sup>37</sup> They have been applicable since January 2003.

The Commission set out the following five minimum standards for the consultation process:

A) *Clear content of the consultation process*: All communications relating to consultations should be clear and concise, and should include any information necessary to facilitate responses;

B) *Consultation target groups*: When defining the target group(s) in a consultation process, the Commission should ensure that the relevant parties have an opportunity to express their opinions;

C) *Publications*: The Commission should ensure adequate awareness-raising publicity and adapt its communication channels to meet the needs of all target audiences. Without excluding other communication tools, open public consultations should be published on the Internet and announced at the 'single access point';<sup>38</sup>

D) *Time limits for participation*: The Commission should provide sufficient time for planning and responses to invitations and written contributions. The Commission should strive to allow at least 8 weeks for the reception of responses to written public consultations and 20 working days' notice for meetings;

<sup>32</sup> For an extensive account of the civil dialogue prior to its codification, see Obradovic, Daniela (2006) 'Civil and social dialogue in European governance', *Yearbook of European Law 2005*, pp. 261–327.

<sup>33</sup> Sargenet, Jane A. (1985) 'Corporatism and the European Community' in Wyn Grant, (ed.), 'The Political Economy of Corporatism', (London: Macmillan), pp. 229–253, p. 236.

<sup>34</sup> Commission of the European Communities (1992) 'Communication from the Commission: "An open and structured dialogue between the Commission and special interest groups"', SEC(92) 2272, 2.12.1992.

<sup>35</sup> Commission of the European Communities (2001) 'European governance: White paper', COM(2001) 428, 25.7.2001, p. 17; European Commission (2002) 'European Governance: Preparatory Work for the White Paper', Luxembourg: Office for Official Publications of the European Communities, p. 74.

<sup>36</sup> Commission of European Communities (2001) 'European governance: White paper', COM(2001) 428, 25.7.2001, pp. 15, 17 and 18.

<sup>37</sup> Commission of the European Communities (2002) 'Communication from the Commission: "Towards a reinforced culture of consultation and dialogue – General principles and minimum standards for consultation of interested parties by the Commission"', COM(2002) 704, 11.12.2002.

<sup>38</sup> See [http://europa.eu.int/yourvoice/consultations/index\\_en.htm](http://europa.eu.int/yourvoice/consultations/index_en.htm).



E) *Acknowledgement and feedback*: Receipt of contributions should be acknowledged. Results of open public consultation should be displayed on websites linked to the single access point on the Internet.<sup>39</sup>

These standards should be applied along with the following general principles: participation, openness, accountability, effectiveness and coherence.<sup>40</sup> This means that the involvement of any interest group in EU governance is contingent upon its compliance with the principles of good governance<sup>41</sup>: representativeness, accountability and transparency.

The Commission claims that those standards and principles should ensure the greater as well as more equal involvement of all parties affected by the proposal in the process of consultation preceding the formulation of EU legislation; the involvement should also become more transparent and all Commission departments should adopt a consistent approach to the consultation process.<sup>42</sup>

Those standards and principles should provide the parties concerned with an opportunity to express their opinions. According to the Commission, the purpose of adopting five minimum standards is to enable the legislator to be sure of the quality, and particularly the equity, of consultations leading up to major political proposals. The move is motivated by three goals: First, to systematise and rationalise the wide range of consultation practices and procedures, and to guarantee the feasibility and effectiveness of the operation. Second, to ensure the transparency of the consultation from the point of view of both the bodies or persons consulted and the legislator. Third, to demonstrate accountability vis-à-vis the bodies or players consulted by making public, as far as possible, the results of the consultations.<sup>43</sup> The Commission wants to assure that all parties involved in the consultation are properly addressed and that an adequate balance is struck between them with regard to their social or economic character, size, specific target groups and country of origin.<sup>44</sup>

The minimum standards are systematically applied to all major policy initiatives.<sup>45</sup> They should be considered a tool created by the Commission for the purpose of the operationalisation of its new commitment to introduce an impact assessment analysis for its initiatives in all EU policy areas taking into account the economic, social and environmental impact of the proposals con-

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<sup>39</sup> Commission of the European Communities (2002) ‘Communication from the Commission: “Towards a reinforced culture of consultation and dialogue—General principles and minimum standards for consultation of interested parties by the Commission”’, COM(2002) 704, 11.12.2002, pp. 19–22.

<sup>40</sup> Ibid, pp. 16–18.

<sup>41</sup> The concept of good governance entails understanding that public decision-making and its implementation should be conducted in accordance with particular standards comprising an efficient, open, accountable and audited public service (Harlow, Carol (2005) ‘Deconstructing government’, *Yearbook of European Law*, 23(2004): 57–89, p. 59). See also the Commission’s definition of the concept of good governance in Commission of European Communities (2001) ‘European governance: White paper’, COM(2001) 428, 25.7.200, p. 8.

<sup>42</sup> Commission of the European Communities (2004) ‘Report on European governance (2003–2004)’, SEC(2004) 1153, p. 15 and Commission of the European Communities (2002) ‘Communication from the Commission: “Action plan simplifying and improving the regulatory environment”’, COM(2002) 278, 5.6.2002, p. 6.

<sup>43</sup> Commission of the European Communities (2002) ‘Communication from the Commission: “European Governance: better lawmaking”’, COM(2002) 275, 5.6.2002, p. 3.

<sup>44</sup> Commission of the European Communities (2002) ‘Communication from the Commission: “Towards a reinforced culture of consultation and dialogue—General principles and minimum standards for consultation of interested parties by the Commission”’, COM(2002) 704, 11.12.2002, pp. 19–20

<sup>45</sup> The largest number of consultations related up to now have included agriculture and fisheries; employment and social policy; external relations; industry; justice and home affairs; transport and energy; environment; economic policy; information society and health; and consumer protection (Commission of the European Communities (2004) ‘Report on European governance (2003–2004)’, SEC(2004) 1153, p.3.

cerned.<sup>46</sup> The Commission has had considerable experience in single sector type impact assessments, encompassing the areas of businesses, trade, the environment, health and employment. These assessments have, however, often been partial, considering only certain sets of effects. This incomplete approach has made it difficult for policymakers to assess trade-offs or compare different scenarios when deciding on a specific course of action. The newly adopted Extensive Impact Assessment (ExIA) is therefore intended to integrate, reinforce, streamline and gradually replace all the previously adopted separate impact assessment mechanisms for the Commission's proposals. This strategy provides for all its policy proposals to be assessed in terms of their impact upon the widest possible group of potential stakeholders. Such appraisals are intended to ensure that the consideration of impact is not simply restricted to an elite consisting of those who are politically involved in the process. The impact assessment strategy is therefore increasing the opportunities for associations to learn about new initiatives and influence the outcome of new EU policies and proposals early on in the process.

The first stage of the impact assessment process consists of applying the minimum standards to consultations preceding all the Commission's legislative or OMC initiatives. The application of minimum standards should identify trade-offs in achieving competing objectives, but they are not a substitute for the political judgement of the EU decision-makers.

The Commission claims that it wishes to maintain an inclusive approach and not create hurdles restricting access to the consultation process. The standards it introduces should not prevent lobbying, either.<sup>47</sup> In other words, it does not intend to create new bureaucratic obstacles for the purpose of limiting the number of participants in the consultation process. Indeed, it provides assurances that 'every individual citizen, enterprise or association will continue to be able to provide the Commission with input.'<sup>48</sup> Its intention is to achieve a balance between open and focused, targeted consultations with interested parties.

In the Commission's view, these standards should improve the representativity of civil society organisations and structure their debate with the institutions. They are intended to reduce the risk of policy-makers listening to only one side of an argument and to prevent any particular group from obtaining privileged access.<sup>49</sup> However, it does not apply the accreditation requirements requested by some NGOs;<sup>50</sup> the Commission has always rejected an official consultative status for NGOs along the lines of the existing accreditation systems in the United Nations or the Council of Europe.

For those reasons, the proposals are placed on the Internet for comments.<sup>51</sup> Although this approach has widened the scope of groups consulted, it has eroded traditional bi-lateral discussions between the Commission and certain interest groups.

The idea of drawing up more extensive partnership agreements with a number of organised civil society sectors which would meet more stringent eligibility criteria than those required by the

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<sup>46</sup> Commission of the European Communities (2002) 'Communication from the Commission on impact assessment', COM(2002) 276, 5.6.2002; Commission of the European Communities (2002) 'Communication from the Commission: "Action plan "Simplifying and improving the regulatory environment"', COM(2002) 278, 5.6.2002.

<sup>47</sup> Commission of the European Communities (2002) 'Communication from the Commission: "Towards a reinforced culture of consultation and dialogue—General principles and minimum standards for consultation of interested parties by the Commission"', COM(2002) 704, Brussels, 11.12.2002, p. 13. For information on associations involved in lobbying EU institutions, see 'Lobbying in the European Union', (2005), 4th ed., London: Routledge and The Directory of Trade and Professional Associations in the European Union (2004), 6th ed., London: Routledge.

<sup>48</sup> *Ibid.*, p. 11.

<sup>49</sup> Commission of European Communities (2001) 'European governance: White paper', COM(2001) 428, 25.7.2002.

<sup>50</sup> See the document elaborated by the Platform of European Social NGOs: 'Political recommendations on civil dialogue with NGOs at European Level', 14 October 1999.

<sup>51</sup> Open web consultations can be viewed at <http://europa.eu.int/yourvoice/consultations/index/en.htm>

minimum standards was considered but ultimately rejected by the Commission.<sup>52</sup> The aim of introducing the agreements would have been to encourage civil society organisations to rationalise their internal structure, give guarantees of openness and representativeness, and to confirm their ability to relay information or to conduct debates within the member states.<sup>53</sup> On the Commission's part, partnership arrangements would have entailed a commitment to additional consultations. They have not been adopted due to the opposition of the European Parliament and the concern that there would be a *de facto* establishment of a regime of privileged associations. However, there is an exception to the Commission's policy of refraining from entering into special partnership agreements with interest groups: The relations between the Humanitarian Aid Office of the Commission (ECHO) and the approximately 200 non-governmental organisations with which it co-operates are governed by the Framework Partnership Agreements (FPAs). The purpose of the FPAs is to define the roles, responsibilities, and legally binding rights and obligations of the ECHO and the NGOs with which it collaborates in the implementation of humanitarian operations financed by the European Union.<sup>54</sup>

The codification of standards for conducting the civil dialogue was accompanied by the establishment of the CONECCS database (Consultation, European Commission and Civil Society), which offers the general public information on the civil society organisations established at the European level as well as the committees and other consultative bodies the Commission uses when consulting organised civil society in an either informal or structured manner.<sup>55</sup> At present, it lists more than 800 organisations. The Commission constructed this database as a follow-up to the directory on European non-profit associations published in 1996.<sup>56</sup> However, in addition to NGOs, private interest organisations, such as the World Federation of Advertisers, the European Demolition Associations, and the Banking Federation of the European Union are also included now. CONECCS became fully operational in June 2002. The index, which is compiled on a voluntary basis, is intended to serve only as an information source and not as an instrument for securing exclusive access to the Commission's consultative process. Although it forms a part of the organised consultative process based on the minimum standards, it does not represent a system for accrediting certain organisations vis-à-vis the Commission. It provides an overview of the advisory committees set up by the Commission and a non-exhaustive list of organisations active at the European level. The lack of an enforcement mechanism means that the information available is frequently out of date, however.

## Legal status of the interest groups' entitlements in EU consultation

The introduction of minimum standards does not entail any participatory rights that can be enforced in court for civil dialogue protagonists. The objective of the civil dialogue is not to establish procedural rights whose observation would be subject to judicial control and review.<sup>57</sup> The Commission insists that 'a legally-binding approach to consultation is to be avoided, for two reasons: first, a clear dividing line must be drawn between consultations launched on the Commission's own initiative prior to the adoption of a proposal, and the subsequent formalised and

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<sup>52</sup> Commission of the European Communities (2002) 'Report from the Commission on European Governance', COM (2002) 705, 11.12.2002, p. 11; Commission of the European Communities (2004) 'Report on European Governance' (2003–2004), SEC(2004) 1153, 22.9.2004, p. 5.

<sup>53</sup> Commission of European Communities (2001) 'European governance: White paper', COM(2001) 428, 25.7.2002, p. 17.

<sup>54</sup> [http://europa.eu.int/comm/echo/partners/fpa\\_ngos\\_en.htm](http://europa.eu.int/comm/echo/partners/fpa_ngos_en.htm).

<sup>55</sup> [http://europa.eu.int/comm/civil\\_society/coneccs](http://europa.eu.int/comm/civil_society/coneccs).

<sup>56</sup> European Commission (1996) Directory of Interest Groups, Luxembourg: Office of Official Publications of the European Communities.

<sup>57</sup> European Commission (2002) 'European Governance: Preparatory Work for the White Paper', Luxembourg: Office for Official Publications of the European Communities, p. 73.

compulsory decision-making process according to the Treaties. Second, a situation must be avoided in which a Commission proposal could be challenged in the courts on the grounds of alleged lack of consultation of interested parties. Such an over-legalistic approach would be incompatible with the need for timely delivery of policy, and with the expectations of the citizens that the European institutions should deliver on substance rather than concentrate on procedures.<sup>58</sup>

Consequently, an association that feels that the feedback offered by the Commission regarding its contribution to an EU consultation is not satisfactory is not entitled to apply for a judicial review regarding the quality of the response. In the view of some scholars, unless paired with the option of seeking judicial redress for unsatisfactory feedback, consultations run the risk of remaining a purely formal way of legitimising decisions that depend on other parameters.<sup>59</sup>

Although interested parties are not entitled to challenge the Commission's non-compliance with the minimum standards in the courts, they can complain to the European Ombudsman. This official is empowered by Article 195 EC to investigate complaints from EU citizens concerning instances of maladministration in EU institutions, but not to pass legally binding judgements. The Ombudsman regards any failure of the Commission to comply with the minimum standards for consultations as an instance of maladministration,<sup>60</sup> noting that the standards are intended to ensure the equal treatment of participants in EU consultations and require the Commission to give all of them their due weight in the decision it takes. The European Code of Good Administrative Behaviour, infringement of which constitutes the practice of maladministration, upholds those principles.<sup>61</sup>

Consultation of civil society groups does not go beyond the provision of an opportunity for interested parties to make themselves heard. The Commission views those consultations as 'the listening process.'<sup>62</sup> The minimum standards do not require the Commission to provide all interested civil society organisations with individually issued invitations to participate in EU consultations; feedback on how their contributions and opinions affected the eventual policy decision is also optional.<sup>63</sup> This view is confirmed by the Ombudsman, who deems the posting of the consultation outcomes on the web portal 'Your Voice in Europe' sufficient for the fulfilment of the minimum standard C on publications.<sup>64</sup>

A real dialogue implies the right of an organisation to receive a thoughtful response to the suggestions it puts forward; however, this is logistically manageable only if a selection is made

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<sup>58</sup> Commission of the European Communities (2002) 'Communication from the Commission: "Towards a reinforced culture of consultation and dialogue—General principles and minimum standards for consultation of interested parties by the Commission"', COM(2002) 704, 11.12.2002, p. 10.

<sup>59</sup> Schutter, Olivier de (2002) 'Europe in search of its civil society', *European Law Journal*, 8(2) 198–217, p. 214.

<sup>60</sup> The European Ombudsman, Decision 948/2004/OV of 4 May 2005, paragraph 3.8, <http://www.euro-ombudsman.eu.int/decision/en/040948.htm>

<sup>61</sup> Articles 5 (Absence of discrimination) and 9 (Objectivity) of the European Code of Good Administrative Behaviour (2005), Luxembourg: Office for Official Publications of the European Communities. See also Cases T-70/99, *Alpharma Inc. v Council*, 2002 ECR II-03495, paragraph 140.

<sup>62</sup> Commission of the European Communities (2005) 'Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions: "The Commission's contribution to the period of reflection and beyond: Plan D for democracy, dialogue and debate"', COM(2005) 494, 13.10.2005, p. 9; Commission of the European Communities (2005) 'Communication to the Commission: "Action plan to improve communicating Europe by the Commission"', SEC (2005) 985, 20.7.2005, p. 4.

<sup>63</sup> Prior to the publication of the minimum standards, the Commission gave some indication that such feedback should be guaranteed (Communication of the European Commission (2000) Commission's discussion paper 'The Commission and non-governmental organisations: building a stronger partnership', COM(2000) 11, 18.1.2000, p. 10.

<sup>64</sup> The European Ombudsman, Decision 948/2004/OV of 4 May 2005, paragraphs 3.12 and 3.13 respectively, <http://www.euro-ombudsman.eu.int/decision/en/040948.htm>

among the organisations.<sup>65</sup> The participants in the civil dialogue do not in fact enjoy the right to receive feedback. The minimum standards do not include an effective follow-up procedure; they do not stipulate any right on behalf of the participants to be individually informed as to what extent their views have been embraced by relevant EU policy documents. The Commission finds the provision of feedback on an individual basis (feedback statements) to be incompatible with the requirement of effectiveness in the decision-making process,<sup>66</sup> although it recognises in its more recent documents the necessity ‘to draw more systematically on feedback from citizens.’<sup>67</sup> Regarding the provision of feedback, the minimum standards merely obligate the Commission to include an explanatory memorandum with its legislative proposals and communications stating the results of the consultations, including any stakeholder contributions taken into consideration.

In practice, the Commission has unlimited discretion in choosing which organisations to consult. As a consequence, it has formulated conditions for the participation of groups in civil dialogue consultations. It is important to emphasise that the assessment of the eligibility of groups to take part in consultations rests firmly with the Commission. But as it does not wish to reduce the number of potential participants in the civil dialogue, it does not subject the groups to a prior eligibility check. Instead, it examines whether they meet its requirements at present, i.e. when it assesses the relevance or quality of comments expressed during the consultation.

## The scope of application of the EU consultation standards

The scope of application of the criteria for taking part in the civil dialogue is not particularly well delimited. The minimum standards requirements are applicable exclusively to consultations conducted by the Commission;<sup>68</sup> some civil groups are calling for the extension of civil dialogue standards to consultations carried out by other EU institutions.<sup>69</sup>

The minimum standards are applicable to the Internet-based consultations undertaken during the first stage of the Commission’s impact assessment strategy, deployed whenever it intends to launch a policy initiative or legislative proposal.

The second area of application regarding the minimum standards concerns the work of the Commission’s informal advisory committees for organising an exchange of views with civic associations. While the Commission clearly states that consultations taking place in the commit-

<sup>65</sup> Schutter, Olivier de (2002) ‘Europe in search of its civil society’, *European Law Journal*, 8 (2): 198–217, p. 211.

<sup>66</sup> Commission of the European Communities (2002) ‘Communication from the Commission: “Towards a reinforced culture of consultation and dialogue—General principles and minimum standards for consultation of interested parties by the Commission”’, COM(2002) 704, 11.12.2002, p. 12.

<sup>67</sup> Commission of the European Communities (2005) ‘Communication to the Commission: “Action plan to improve communicating Europe by the Commission”’, SEC (2005) 985, 20.7.2005, p. 8.

<sup>68</sup> The European Parliament (EP) has a system of accreditation for those needing frequent access to the institution – defined as five days or more per year. (European Parliament (2005) ‘Rules of procedure of the European Parliament’, 16th edition, Article 3 of Annex IX, <http://www.europarl.eu.int/omk/sipade3?prog=rules-ep&l=en&ref-toc>). This system allows physical access to the Parliament. Special passes are issued by the Quaestors and are valid for one year. These passes state the person’s name, the name of the firm they work for and the organisation they represent. A lobbyist register is published on the EP website. It is simply an alphabetical list and only provides the name of the badge holder and the organisation he or she represents. It does not give any indication of the interests for which the lobbyist is acting. The European Economic and Social Committee (EESC) has recently established a Liaison Group which aims to bring representatives of EU-wide NGOs into the EESC’s structure. This group is composed of twenty EESC members and fourteen representatives of civil society organised at the European level, which meet the conditions stipulated in European Economic and Social Committee (2004) ‘Final report of the ad hoc group on structured co-operation with European civil organisations and networks’, CESE 1498/2003, 10.2.2004 ([http://www.esc.eu.int/sco/group/documents/index\\_en.asp](http://www.esc.eu.int/sco/group/documents/index_en.asp)).

<sup>69</sup> Venables, Tony (2004) ‘The EU’s relationship with NGOs and the issue of “participatory democracy”’, *Transnational Associations: The Review of the Union of International Associations*, 2: 156–158, p. 158.

tees established by the Treaty or EU legislation fall outside the scope of the minimum standards, it endorses their application to the work of its ad hoc committees.<sup>70</sup> At present, the Commission runs nearly 700 ad hoc consultation bodies covering a wide range of policies.<sup>71</sup> Although set up by the Commission, grounds for their establishment cannot be found in the Treaty or in the EU legislation. Their composition, activities and impact remain rather opaque. By their very nature, these forums provide privileged access to the Commission policy-shaping process for a limited number of stakeholder organisations.

However, the scope of the eligibility criteria's application as stipulated in the minimum standards is very vague. The reasons for the lack of clarity surrounding their use are the following: (a) the multiple types of consultations conducted by the Commission with interest groups prior to the formulation or the adoption of law proposals that run parallel to each other; (b) the engagement of the same groups in different types of consultations in the pre-drafting stage of the EC legislative process.

The Commission establishes that the minimum standards criteria are not to be deployed in the specific consultation frameworks provided in the Treaty (e.g. consultations within the Economic and Social Committee, the Committee of Regions, the Article 138 EC social dialogue consultation, the Article 79 EC transport committee, or the Article 113 EC committee). Other consultative bodies based upon EU legislation,<sup>72</sup> consultation required under international conventions,<sup>73</sup> the comitology process,<sup>74</sup> consultation of experts,<sup>75</sup> the dialogue with European and national associations of regional and local governments in the EU,<sup>76</sup> and the consultation required to be

<sup>70</sup> Commission of European Communities (2001) 'European governance: White paper', COM(2001) 428, 25.7.2002, p. 17.

<sup>71</sup> European Commission (2002) 'European Governance: Preparatory Work for the White Paper', Luxembourg: Office for Official Publications of the European Communities, p. 75.

<sup>72</sup> For example, the Social Protection Committee established by the Council decision of 29 June 2000, setting up a Social Protection Committee, 2000/436/EC, OJ L 172/26, 12.7.2000, or Article 147 EC Advisory Committee for the European Social Fund operating in accordance with Article 49 of the Council Regulation (EC) No 1260/1999 of 21 June 1999, laying down general provisions on the Structural Funds, OJ L 161/1, 26.6.1999, or scientific committees in the field of consumer health and food safety set up by the Commission Decision 97/579/EC of 23 July 1997, OJ 1997 L 237, p. 18.

<sup>73</sup> For example, the conditions for participation of interested parties, including NGOs, required under Article 8 of the Aarhus convention (Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, <http://europa.eu.int/comm/environment/aarhus/index.htm>) to which the EU is party, are stipulated in Article 8 of the Commission of the European Communities' (2003) 'Proposal for a Regulation of the European Parliament and of the Council on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to EC institutions and bodies', COM(2003) 622, Brussels, 24.10.2003).

<sup>74</sup> The notion of comitology concerns the system of committees of member states' representatives assisting the Commission in the execution of its implementing powers under Article 202 EC. See Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission, OJ 1999, L184/23.

<sup>75</sup> This consultation is to be conducted in accordance with the standards laid down in the Commission of the European Communities (2002) 'Communication from the Commission on the collection and use of expertise by the Commission: principles and guidelines: improving the knowledge base for better policies', COM(2002) 713, 11.12.2002. The register of experts groups to which those guidelines are applicable can be found at [http://europa.eu.int/comm/secretariat\\_general/regexp/index.cfm?lang=en%20](http://europa.eu.int/comm/secretariat_general/regexp/index.cfm?lang=en%20) In addition, since 2005; a web application called the SINAPSE e-Network (Scientific INformAtion for Policy Support in Europe) (<http://europa.eu.int/sinapse>) offers Commission services the following communication and information tools for ad hoc collection of expertise: (1) a library of scientific advice and opinion; (2) a consultation module which allows services to conduct informal scientific consultations, complementing formal advisory processes; (3) an early warning system that the scientific community and other stakeholders can use as a channel for raising awareness on scientific issues which require or could benefit from the attention of public authorities; and (4) a 'Yellow Pages' section to quickly identify and contact scientists or scientific organisations with a specific expertise.

<sup>76</sup> Commission of the European Communities (2003) Communication from the Commission 'Dialogue with associations of regional and local authorities on the formulation of European Union policy', COM(2003) 811, 19.12.2003.

carried out by the member states by virtue of European secondary legislation for the purpose of the implementation of the European cohesion policy are also immune to the criteria.<sup>77</sup> The implications of the limitations imposed by the Commission upon the scope of application of the minimum standards are quite significant for the further development of civil dialogue in the Union.

The most important consequence concerns the fragmentation and proliferation of the rules governing the consultation of civic groups by Union institutions. The segmentation of those rules as well as the absence of a holistic and coherent approach in the Commission's selection process of collaborators among interested organisations obscure the already Byzantine matrix of the civil dialogue. The codification of the participation of civic groups in EU governance is simply not regulated in an encompassing way.

This proliferation and segmentation of standards guiding the civil dialogue reflects the complexity of the concept itself. Namely, the notion of civil dialogue in the European Union encompasses a wide range of actors (a variety of non-profit interest groups and social partners); relates to various forms of consultative processes (pre-drafting of legislative proposals, such as the consultation held in different policy forums; consultation in committees on extant Commission proposals, such as the consultation in the European Economic and Social Committee);<sup>78</sup> and fans out through different modes of EU governance (e.g. lawmaking and policy co-ordination based upon the OMC). The extensive and diversified deployment of the civil dialogue concept accounts for the compartmentalisation of the EU norms enacted for the purpose of its regulation. The lack of an operational definition for a European civil dialogue and frequent usage of the term in dissimilar contexts contribute towards the mushrooming of participation regulations. There is no coherent set of eligibility criteria for the participation of organisations in the civil dialogue as a whole; each and every segment of this process is subject to a distinctive regime. Not only different types of actors taking part in different forms of consultation (for example, social partners consulted under Article 138 EC and non-profit groups participating in the Social Policy Forum) but also the same types of actors delivering opinions in the same phase of the same mode of governance are subject to different eligibility criteria. There is no comprehensive approach to the requirements to be fulfilled by interest groups taking part in the different sectors or processes of EU decision-making.

Indeed, the participation of civil society groups in the variety of consultations preceding the adoption of law proposals is governed by rules different from those stipulated by the minimum standards. For example, Commission consultations with environmental interest groups taking part in the Environmental Policy Forum should be governed by the minimum standards. However, the Commission gathers the exploratory opinions of the same groups in accordance with the international Aarhus convention on lawmaking requirements in environmental matters (and thus with entirely different criteria than those laid down in the EU documents implementing this convention).<sup>79</sup>

The situation is even more complicated as a result of the recent entry of the European Economic and Social Committee (EESC) into the pre-drafting stage of the EU legislative process. The EC Treaty provides for the EESC to give its opinion after, rather than before, proposals have been

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<sup>77</sup> Commission of the European Communities (2004) 'Proposal for a Council Regulation laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund', COM(2004) 492, Brussels, 14.7.2004, Article 10. The Regulation should enter into force on 1 January 2007.

<sup>78</sup> The European Economic and Social Committee considers that it should play a crucial role in defining and structuring the civil dialogue and become a 'meeting place for organized civil society', an 'essential link' between the European Union and the organised civil society, and a forum for civil dialogue (European Economic and Social Committee (2004) 'Final report of the ad hoc group on structured co-operation with civil society organisations and networks' Rapporteur: Mr Bloch-Laine, CESE 1498/2003, 17 February 2004, p. 8.

<sup>79</sup> See above.

transmitted to the legislature.<sup>80</sup> It does not officially participate in the pre-drafting stage of the EU legislative process, but delivers its opinion on Commission proposals that have already been adopted. Having found that its formal legal position minimises its impact upon EU decision-making<sup>81</sup> and holding the conviction that the Committee should become ‘an indispensable intermediary between the EU institutions and organised civil society,’ the Commission signed the protocol with the EESC. The document contains provisions to the effect that the Commission should invite the EESC to issue exploratory opinions and could rely on the EESC to deepen its relations with organised civil society.<sup>82</sup> The rationale behind this protocol is to reinforce the Commission’s function as an intermediary between the EU institutions and organised civil society. This protocol provides for the Commission to consult the Committee on certain issues on an exploratory basis prior to drawing up its own proposal, thus allowing the Committee to play a useful consultative role at an earlier stage in the decision-making process. This means that civil associations organised at the national level participating in EESC work are consulted prior to the drafting of EU law, first in their capacity as EESC members, and second as participants in Internet consultations. Their representativeness should be judged against EU rules governing the EESC’s activities in the first context, while the minimum standards are applicable to the second.

Additional confusion regarding the application of the minimum standards is introduced when particular groups take part in the civil and the social dialogues in different capacities. For instance, when the Commission consults social partners on social policy issues during Article 138 EC consultations, it applies its social dialogue requirements, and when it seeks their opinion on identical issues within the framework of the European Social Forum, it applies the minimum standards. However, when the social partners are addressed by the Commission in their capacity as members of a variety of committees operating in parallel to the minimum standards and social dialogue consultations, they are subject to a set of eligibility criteria which again differs both from the minimum standards and the social dialogue requirements.<sup>83</sup>

We can conclude that the application of the minimum standards is strictly confined to the pre-drafting stage of legislative proposal formulation and that they are not intended for use in governing the participation of interest groups in the civil dialogue as a whole. More precisely, those standards are deployed by the Commission in three situations that arise during the pre-legislative consultative process: (1) in the first stage of the Commission’s impact assessment analyses of its draft legislative proposals or any initiative it intends to launch;<sup>84</sup> (2) when the Commission evaluates the contributions of interest groups that are delivered in response to an Internet-based consultation; and (3) when the Commission seeks advice from its numerous, informally set up committees.

The criteria shall apply only to those consultations taking place outside the forums institutionalised by the Treaty or EU legislation. The organisations to which they should apply are mainly those listed in the CONECCS database, although the criteria which are to be met by organisa-

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<sup>80</sup> Article 257 EC.

<sup>81</sup> Commission of European Communities (2001) ‘European governance: White paper’, COM(2001) 428, 25.7.2002, p. 15.

<sup>82</sup> Protocol governing arrangements for co-operation between the European Commission and the Economic and Social Committee, 24 September 2001, CES 1253/2001.

<sup>83</sup> In principle, the participants of those committees are co-opted from national government committees and national organisations of employers and employees. Three representatives are sent from each Member state. Representatives of trade unions and management serving on the Advisory Committee on Equal Opportunities for Women and Men are not chosen from the national level social partners’ organisations, however, but originate from the respective European confederations. For more details, see Smismans, Stijn (2004) *Law, Legitimacy, and European Governance: Functional Participation in Social Regulation*, Oxford: Oxford University Press, pp. 189–192.

<sup>84</sup> Commission of the European Communities (2002) ‘Communication from the Commission ‘Towards a reinforced culture of consultation and dialogue—General principles and minimum standards for consultation of interested parties by the Commission’’, COM(2002) 704, 11.12.2002, p. 15.



tions wishing to be included in this database differ substantially from those stipulated in the minimum standards. The CONECCS eligibility criteria are as follows: an organisation must: (1) be a non-profit representative body organised at the European level, i.e. with members in three or more EU countries; (2) be active and have expertise in one or more of the policy areas of the Commission's activity; (3) have some degree of formal or institutional existence and a document that sets out its objectives and the way it is to be managed; (4) have authority to speak for its members; (5) operate in an open and accountable manner; and (6) be prepared to provide any reasonable information about itself required by the Commission, either for insertion into the database or in support of its request for inclusion.<sup>85</sup> The main difference between the minimum standards and CONECCS is that while only European umbrella organisations can be registered in the database, both national and EU level associations are entitled to participate in consultations governed by the minimum standards. Similarly, as in the case of the minimum standards, the Commission has reinforced the requirements regarding the accountability and openness of organisations and their capacity to provide input to the Commission.

One still cannot fully explain the correlation between the minimum standards and the 1992 voluntary code of conduct guiding the Commission's relations with special interest groups.<sup>86</sup> This code covers the same type of consultations between the Commission and civil society organisations as the minimum standards. However, until now, the Commission has remained silent as to how these two sets of requirements relate to each other.

It also remains unclear whether the minimum standards apply to lobbying activities. The Commission does not currently manage a system of accreditation nor does it run a compulsory register of those organisations with which it has dealings. Lobbying should be conducted exclusively in accordance with the above-mentioned 1992 voluntary and self-regulatory code of conduct, which sets only minimum standards. Lobbyists are invited by the Commission to adopt their own codes on the basis of those minimum requirements. Until now, only two umbrella organisations of European lobbyists have adhered to those minimum requirements and adopted voluntary codes of conduct: the Society of European Affairs Professionals (SEAP)<sup>87</sup> and the European Public Affairs Consultancies Association (EPACA).<sup>88</sup> Moreover, the organisations targeted by

<sup>85</sup> [http://europa.eu.int/comm/civil\\_society/coneccs/inscription.cfm?CL\\_en](http://europa.eu.int/comm/civil_society/coneccs/inscription.cfm?CL_en).

<sup>86</sup> Commission of the European Communities (1992) 'Communication from the Commission: "An open and structured dialogue between the Commission and special interest groups"', SEC(92) 2272, 2.12.1992. Annex II: 'Minimum requirements for a code of conduct between the commission and special interest groups'. The Commission's officials in their relations with interest groups are also under obligation to observe (1) Article 213 (2) EC stipulations; (2) the penal codes of Belgium (the country in which it has its seat), (3) The Code of Conduct for Commissioners, SEC(2004) 1487/2 ([http://europa.eu.int/comm/commission\\_barroso/code\\_of\\_conduct/code\\_conduct\\_en.pdf](http://europa.eu.int/comm/commission_barroso/code_of_conduct/code_conduct_en.pdf)); (4) Regulation (Euratom, ECSC, EEC) No 259/68 of the Council of 29 February 1968, laying down the staff regulations for officials and the conditions of employment of other servants of the European Communities and instituting special measures temporarily applicable to officials of the Commission, OJ L 56/7, 4.3.1968, in particular Articles 11, 12b and 16; (4) European Commission (2000) 'Commission decision of 17 October 2000 amending its Rules of Procedures 2000/633/EC, ECSC, Euratom: Annex : Code of good administrative behaviour for staff of the European Commission in their relations with the public, OJ L 267/63, 20.10.2000; (5) the guidelines provided for by the Commission's ad hoc ethical Committee (Commission of the European Communities (2003) 'Decision establishing the ad hoc ethical committee foreseen by the Code of conduct for Commissioners', C(2003) 3750, 21.10.2003 ([http://europa.eu.int/comm/secretariat\\_general/regdoc/liste.cfm?cl=en](http://europa.eu.int/comm/secretariat_general/regdoc/liste.cfm?cl=en)); and (6) the recommendations of the proposed Commission's Advisory group on standards in public life (Commission of the European Communities (2000) 'Proposal for an agreement between the European Parliament, the Council, the Commission, the Court of Justice, the Court of Auditors, the Economic and Social Committee and the Committee of the Regions establishing an Advisory group on standards in public life', COM(2000) 2077, 29.11.2000). For example, the Commission's Code of Conduct for Commissioners stipulates that Commissioners may not engage in any other professional activity, whether paid or unpaid. Commissioners also have to declare any financial interest or asset which may create a conflict of interests in the performance of their duties. The code of conduct also contains rules on the acceptance of gifts and occupations during the year after they have ceased to hold office.

<sup>87</sup> <http://www.seap.eu.org>

<sup>88</sup> <http://www.epaca.org>

this code do not cover the majority of active lobbyists at the EU level, and the code has thus far failed to address the issue of facilitating greater transparency *vis-à-vis* the general public.

Currently, the Commission does not take a decisive stand on this issue. It is presently considering whether to introduce a mandatory common code of conduct for all lobbyists approaching EU institutions (including interest groups taking part in the Commission's consultations<sup>89</sup>) or to opt for the self-regulatory approach by encouraging all organisations and individuals listed in a voluntary or compulsory register to adhere to a common code of conduct.<sup>90</sup>

## The requirement of representativeness

The Commission introduces the criterion of representativeness for organisations intending to participate in the civil and social dialogues in a similar way.<sup>91</sup> However, it does not actually define what representativeness means in the context of the civil dialogue.<sup>92</sup> The Commission claims that the requirements regarding representativeness vary in accordance with the nature of the responsibilities conferred on the players. They are limited in the event of a simple consultation, but more binding in instances where the social partners lay down rules that can become law.<sup>93</sup> Consequently, the criteria of representativeness as applied in the context of the social dialogue may be inappropriate in the civil dialogue arena.

Representativeness in the social dialogue is predominantly determined in terms of membership.<sup>94</sup> This is hardly applicable in the assessment of the civil dialogue participants' representativeness; NGOs are almost never representative in terms of membership. There are high numbers of NGOs whose membership is confined to particular states. Furthermore, valuable input can be solicited on many issues from single-issue NGOs that do not necessarily have a Europe-

<sup>89</sup> Those measures for regulating lobbying in the EU should encompass: better reporting by the Commission about lobbying, compulsory registration of interest groups represented in consultative bodies and/or compulsory registration for all lobbyists. One option that is currently under consideration by the Commission is the transformation of the existing CONECCS database into a compulsory registration system for all interest groups and lobbyists, including public affairs practitioners, trade unions, etc.

<sup>90</sup> Communication to the Commission from the President, Ms Wallstrom, Mr Kallas, Ms Fischer Boel proposing the launch of a European Transparency Initiative, SEC(2005) 1300, 9.11.2005, pp. 6–7 (for the latest version of this document see [http://ec.europa.eu/comm/eti/form6\\_en.htm](http://ec.europa.eu/comm/eti/form6_en.htm)).

<sup>91</sup> Commission of the European Communities (2002) 'Communication from the Commission 'Towards a reinforced culture of consultation and dialogue – General principles and minimum standards for consultation of interested parties by the Commission'', COM(2002) 704, 11.12.2002, p. 11.

<sup>92</sup> Also see the recommendations for defining the criterion of representativeness put forward by the Economic and Social Committee. It states that "In order to be eligible, a European organisation must: exist permanently at Community level; provide direct access to its members' expertise and hence rapid and constructive consultation; represent general concerns that tally with the interest of European society; comprise bodies that are recognised at Member State level as representatives of particular interests; have member organisations in most of the EU Member States; provide for accountability to its members; have authority to represent and act at European level; be independent and mandatory, not bound by instructions from outside bodies; and be transparent, especially financially and in its decision-making structures" (EESC's Opinion on 'European Governance – a White Paper' of 20 March 2002; CES 357/2002, as cited in the Commission of the European Communities (2002) 'Communication from the Commission: "Towards a reinforced culture of consultation and dialogue – General principles and minimum standards for consultation of interested parties by the Commission"', COM(2002) 704, 11.12.2002, p. 11 and European Economic and Social Committee (2005) 'Revised preliminary draft opinion of the subcommittee on the representativeness of European civil society organisations in civil dialogue', Rapporteur Mr Olsson, SC/023, 9.6.2005, pp. 3–4).

<sup>93</sup> Commission of the European Communities (2002) 'Communication from the Commission: 'Towards a reinforced culture of consultation and dialogue – General principles and minimum standards for consultation of interested parties by the Commission'', COM(2002) 704, 11.12.2002, p. 9.

<sup>94</sup> Commission of the European Communities (1993) 'Communication on the application of the Agreement on social policy', COM(93) 600, 14.12.1993; Case T-135/96, Union Europeenne de l'Artisanat et des Petites et Moyennes Entreprises (UEAPME) vs. Council, [1998] ECR II-2334, consideration 85. The representativeness of the social partners measures membership density, both of the candidate organisations themselves and of each of their members.

wide presence or from advocacy groups and think tanks that lack members or representative structures.

The representativeness of NGOs cannot be established exclusively in terms of the members they represent. Any assessment must also take account of the ability of these bodies to put forward constructive proposals and bring specialist knowledge to the process of democratic opinion-forming and decision-making, since the objective of the civil dialogue consultation is to provide a range of views on a particular issue as well as information. Therefore, in the case of civil dialogue, representativeness should be understood with respect to the range of interests an actor champions rather than in terms of membership.

Since the social partners are expected to play an important role in the implementation of EU decisions preceded by the social dialogue consultation, their capacity to contribute towards their effective execution is of considerable significance in determining their representativeness. The social partners' capacity to implement agreements or legislation is dependent upon their membership. By contrast, the civil dialogue protagonists are not significantly involved in the implementation of EU rules resulting from the decision-making processes encompassing consultations with civic groups. Thus, from this perspective, membership cannot be regarded as a decisive attribute of the representativeness of the civil dialogue actors.

On the other hand, it is very difficult to determine exactly which of these represents a constituency of civil interest groups; their constituencies are not readily identifiable. In fact, it is impossible to do so in most cases due to the great variety of organisations in one field with different approaches to a given issue.

The organisational structures of many associations are highly unstable, fluid and changeable.<sup>95</sup> Furthermore, nearly one fifth of Euro groups include other European-level organisations in their membership, suggesting a considerable degree of overlapping networks.<sup>96</sup> Recent years have witnessed the growth of collective structures in Europe which are not formal groups, but rather platforms, coalitions and alliances (such as the Civil Society Contact Group<sup>97</sup>) linking different and diverse types of interests.<sup>98</sup> Those alliances are normally run with a minimum of structure. Sometimes they are reduced to a number of ad hoc meetings or phone contacts.

Since there are no established rules concerning NGOs' operations, their claim to represent civil society cannot be easily validated. Each sets up its own *modus operandi*. How independent are NGOs from their donors or funding sources? Via which mechanisms do NGOs receive instructions from the constituencies they are supposed to represent? None of these questions can be answered with a high degree of certainty. While the social partners strive to further their members' economic interests to ensure some kind of financial benefit, civil groups galvanise public concerns and champion specific causes. An NGO's legitimacy is defined not so much by its ability to assemble great numbers of people but rather by virtue of the fact that it has picked up an issue deemed important by citizens yet not sufficiently addressed by public institutions. NGOs are groups for, not of, a particular cause, and cannot demonstrate their representativeness

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<sup>95</sup> Greenwood, Justin (2002) 'EU interest groups and their members: When is membership a "collective action problem?"' in Richard Balme et al., (eds.), 'Collective Action in Europe', Paris: Presses de Sciences Po, pp. 227–253, p. 235.

<sup>96</sup> *Ibid.*, p. 243.

<sup>97</sup> The Civil Society Contact Group embraces seven large platforms from the main European civil sectors: The European Social Platform, the Human Rights and Democracy Network (HRDN), the European Women Lobby (EWL), the Green 10, the European NGO Confederation for Relief and Development (CONCORD), the European Public Health Alliance (EPHA) and the European Forum for the Arts and Heritage (EFAH), plus the European Trade Union Confederation (ETUC), which acts as observer (<http://www.act4europe.org>)

<sup>98</sup> Greenwood, Justin (2002) 'EU interest groups and their members: When is membership a "collective action problem?"' in Richard Balme et al., (eds.), 'Collective Action in Europe', Paris: Presses de Sciences Po, pp. 227–253, p. 249.

in the same way that a business association can claim to represent a proportion of the total potential membership constituency.<sup>99</sup>

A good example is the group SOS VIOL, which supports rape victims. For obvious reasons, rape victims do not tend to register together in associations.<sup>100</sup> Indeed, some interest groups do not purport to represent a constituency from which members are recruited, but rather show solidarity with the interests of a 'third party' constituency or 'client' group, such as the political prisoners championed by Amnesty International or Roma supported by the European Roma Rights Centre. Claims to speak for such constituencies are therefore legitimised not by accountability of leaders to their affiliates, but by epistemic claims – to knowledge, experience or expertise.<sup>101</sup>

Furthermore, NGOs and Social Movement Organisations (SMOs) point out that civil society increasingly expresses fluidity in the type of formations that represent its values and opinions. New organisations often emerge quickly with strong popular support and dissolve or change into different organisations within a short period of time. Therefore, insistence on calculating membership would exclude an important part of civil society.<sup>102</sup>

A question which is not even addressed by the minimum standards is whether only the opinions of the stakeholders (i.e., those affected by a specific Commission initiative) should be considered by the Commission or if the contribution of a wide range of citizens ought to be examined. This is particularly important if we bear in mind examples of massive input on draft legislation, e.g. the chemicals package, Registration, Evaluation and Authorisation of Chemicals (REACH) and Genetically Modified Organisms (GMO) proposals.<sup>103</sup> However, in other cases, stakeholders have been consulted to the exclusion of civil society. For example, The European Citizen Action Service (ECAS) has taken up with the Commission the fact that the consultation on the future of the EU structural funds after 2006 has led to extensive debates with regional authorities, but hardly at all with NGOs and civil society more generally.<sup>104</sup>

It seems that the Commission generally prefers to consider the opinions of stakeholders rather than those of civic interest groups. In the minimum standards, the Commission stresses the need to define target groups (i.e. all relevant parties that must be included in the process), but also emphasises the need to be selective in cases "where access to consultation is limited for practical reasons."<sup>105</sup> Regarding the first premise, Standard B stipulates that the consultation process must include those affected by the policy, the parties that will be involved in its implementation

<sup>99</sup> Halpin, D. (2001) 'Integrating conceptions of interest groups: Towards a conceptual framework of sectional interest group imperatives', paper prepared for ECPR (European Consortium for Political Research) General Conference, University of Kent, 6–8 September 2001, quoted in Greenwood, Justin (2002) 'Advocacy, Influence and Persuasion: Has it All Been Overdone?' in Alex Warleigh and Jenny Fairbrass, (eds.), 'Influence and Interests in the European Union: The New Politics of Persuasion and Advocacy', London: Europa publications, pp. 19–34, p. 28.

<sup>100</sup> Grote, Jacqueline de (2003) 'NGOs and Standards of Governance in NGOs, Democratisation and the Regulatory State', A collection of Papers Presented at the Conferences in London and Brussels, 2003, (London: European Policy Forum), pp. 91–94, p. 92.

<sup>101</sup> Greenwood, Justin and Halpin, Darren (2005) 'The public governance of interest groups in the European Union: does regulating groups for "representativeness" strengthen input legitimacy?', Paper presented at the 3rd ECPR conference, Budapest, 8–10 September 2005, p. 25.

<sup>102</sup> Ruzza, Carlo (2004) 'Europe and Civil Society: Movement Coalitions and European Governance', Manchester: Manchester University Press, p. 46.

<sup>103</sup> Venables, Tony (2004) 'The EU's relationship with NGOs and the issue of "participatory democracy"', *Transnational Associations: The Review of the Union of International Associations*, 2: 156–158, p. 157.

<sup>104</sup> *Ibid*, p. 158.

<sup>105</sup> Commission of the European Communities (2002) 'Communication from the Commission: 'Towards a reinforced culture of consultation and dialogue – General principles and minimum standards for consultation of interested parties by the Commission'', COM(2002) 704, 11.12.2002, p. 11

and those bodies whose objectives make them interested parties,<sup>106</sup> but not civic groups in general. However, although the Commission intends to consult mainly stakeholders on a particular matter, it nevertheless adopts a fairly wide definition of the term, encompassing groups both directly and indirectly affected by the issue. It also acknowledges the convenience of including parties that own expertise or technical knowledge or have experience in previous consultations, and where appropriate, non-organised interests.<sup>107</sup>

The difficulties of applying the criterion of representativeness to the civil dialogue organisations have been acknowledged by the Commission. It emphasises that the issue of representativeness at the European level should not be used as the only criterion to assess the relevance or the quality of comments. Other factors, such as a group's track record and ability to contribute substantial policy input to the discussion, are equally important. It pledges that opinions not only from European-level organisations will be taken into consideration, but also those from entities operating at the national, regional and local levels.<sup>108</sup> In its view, minority opinions can also form an essential dimension of the open discourse on policies. On the other hand, the Commission emphasises the importance of considering how representative views are when taking a political decision following the consultation process.<sup>109</sup> The Commission has yet to clarify what constitutes evidence of representativeness and whether the opinions of representative organisations are the only ones that should be incorporated into consultations.

## The requirements of openness and accountability

The Commission supplements representativeness with two additional requirements: accountability and transparency. They are understood as meaning that associations are able to participate effectively and constructively in the opinion-forming and decision-making processes through the provision of appropriate organisational structures and expertise. The introduction of these two criteria reflects the Commission's position that greater involvement brings greater responsibility. Interest groups' contributions solicited in the process of consultation should, in the Commission's view, be accessible to the general public. To this end, it plans to further develop the rule on how to publish policy submissions received from external stakeholders, which is already included in the minimum standards.<sup>110</sup> It also intends to reinforce the monitoring of interest groups' compliance with the minimum standards requirement of providing information about their structure and functioning whenever they wish to participate in the Commission's consultations.<sup>111</sup> Consequently, civil society itself must follow the principles of good governance (including accountability and openness) governing the conduct of Union institutions.<sup>112</sup> However, it is not at all obvious why all civil society organisations should have to abide by the same accountability standards as political organisations, since they do not perform any policy-forming task within the EU (as we have shown above).<sup>113</sup>

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<sup>106</sup> Ibid, p. 19

<sup>107</sup> Ibid, pp. 19–20

<sup>108</sup> Ibid, pp. 11–12.

<sup>109</sup> Ibid.

<sup>110</sup> Communication to the Commission from the President, Ms Wallstrom, Mr Kallas, Ms Fischer Boel proposing the launch of a European Transparency Initiative, SEC(2005) 1300, 9.11.2005, p. 6 (for the latest version of this document, see [http://ec.europa.eu/comm/eti/form6\\_en.htm](http://ec.europa.eu/comm/eti/form6_en.htm)).

<sup>111</sup> Ibid.

<sup>112</sup> Commission of European Communities (2001) 'European governance: White paper', COM(2001) 428, 25.7.2002, p. 15 and 17.

<sup>113</sup> On this topic, see Follesdal, Andreas (2003) 'The political theory of the white paper on governance: Hidden and fascinating', *European Public Law*, 9(1): 73–86, p. 78.

The Commission emphasises that openness and accountability are important principles of conduct for organisations seeking to contribute to EU policy development. In its view, (1) which interests the groups represent and (2) how inclusive that representation is must be apparent. Interested parties wishing to submit comments on policy proposals by the Commission must therefore be ready to provide the Commission and the public at large with the requisite information (which should be made available either through the CONECCS database or through other measures, e.g. special information sheets). Submissions failing to provide this information will be considered as individual contributions.<sup>114</sup>

The application of these criteria is intended to address the credibility concern regarding the internal governance procedures of interest groups, which are commonly regarded to be insufficiently democratic. The main problem seems to be that the decision-making of interest organisations is left in the hands of key officers, with very little – if any – supporters' input.<sup>115</sup> None of those associations functions as a supporter-run organisation. Decision-making about lobbying or campaigning is heavily centralised and shaped entirely by the relevant officers rather than supporters. Their internal governance is too elitist to allow the grass roots to have a role in shaping policies, campaigns and strategies.<sup>116</sup> They do not function as supporter-run associations. Supporters play no formal role in the decision-making process in many NGOs, and their input regarding the governance of those organisations is usually minimal.<sup>117</sup> This contributes to the development of clientelism in the NGOs. They often undertake activities their supporters know or understand very little about, and with which they may disagree. Indeed, recently conducted fieldwork studies show that most NGO supporters do not seek to play an active role in the governance of the organisation.<sup>118</sup> Many major groups and platforms which regularly submit contributions to the Commission's consultation process have not undertaken any measures to promote the participation of their members or supporters in the preparation of those submissions.<sup>119</sup>

The internal governance of European-level interest organisations is even more detached from supporters. Almost all European associations are organised as confederations, i.e. associations of national associations that do not admit individuals as members.<sup>120</sup> This denotes a structural remoteness from the grass roots interests they represent. This is the reason why the accountability of participants in the civil dialogue cannot be defined in terms of a categorical or functional value owned within the defined competence of an office or institution. Instead of clear accountability in the narrow sense, one would thus have to think in terms of a culture of responsibility. This approach to accountability requires a willingness to regard others as sharing in a wider

<sup>114</sup> Commission of the European Communities (2002) 'Communication from the Commission: 'Towards a reinforced culture of consultation and dialogue – General principles and minimum standards for consultation of interested parties by the Commission'', COM(2002) 704, 11.12.2002, p. 17.

<sup>115</sup> Sudbery, Imogen (2003) 'Bringing the legitimacy gap in the EU: Can civil society help to bring the Union closer to its citizens?' *Collegium*, 26: 75–95, p. 94; Warleigh, Alex (2001) "'Europeanizing" civil society: NGOs as agents of political socialisation', *Journal of Common Market Studies*, 39(4): 619–639, p. 623.

<sup>116</sup> Peters, Guy (2004) 'Interest groups and European governance: A normative perspective' in Andreas Warntjen and Arndt Wonka, (eds.), 'Governance in Europe: The Role of Interest Groups', Baden-Baden: Nomos, pp. 57–65, p. 61.

<sup>117</sup> Warleigh, Alex (2001) "'Europeanizing" civil society: NGOs as agents of political socialisation', *Journal of Common Market Studies*, 39(4): 619–639, p. 631.

<sup>118</sup> *Ibid*, p. 634.

<sup>119</sup> Alonso Vizcaino, Jose M. (2005) 'European civil society organisations and the principles of participatory democracy: "Hit-and-miss-policy"', Master thesis defended at the International School for Humanities and Social Sciences of the University of Amsterdam, 19 September 2005, p. 64. The study assesses the practices of the following European-level NGOs: the Platform of European Social NGOs (Social Platform), the European Environmental Bureau (EEB), the European Youth Forum (EYF), the European Women's Lobby (EWL) and the European Public Health Alliance (EPA).

<sup>120</sup> Greenwood, Justin (2003) 'Interest Representation in the European Union', Houndmills, p.77.

group responsibility, as opposed to the traditional definition of accountability, which simply asks to whom one must answer.<sup>121</sup>

The Commission's quality assessment of contributions is predicated upon the interest groups' compliance with the principles of good governance in their internal structures; however, many scholars consider this approach as encroaching upon the associations' autonomy.<sup>122</sup> Namely, the danger is that civil society groups will become subjected to the colonising forces of the EU political and economic systems, both in terms of their organisational forms and their rationalities, which would undermine the structures and values associated with civil society. The European civil sector would become governmentalised in the sense of altering its organisational forms and its rationalities in order to facilitate attempts to influence EU governance.<sup>123</sup> This issue is most acute if we bear in mind that all participants in the social dialogue have undergone internal organisational reforms (ETUC, 1991; UNICE, 1992; CEEP, 1994),<sup>124</sup> including the introduction of the mandate for negotiation<sup>125</sup> and the removal of requirements for unanimity, in order to adjust their structures to the social dialogue requirements and improve their abilities to conclude Europe-wide agreements. Similarly, the eligibility and suitability criteria deployed for the selection of NGOs intending to enter into the Framework Partnership Agreements with the Commission's Humanitarian Aid Office (ECHO) and applicable to the humanitarian operations sponsored by the EU also impose very strict rules with respect to internal organisation.<sup>126</sup>

The Commission, by frequently emphasising accountability (but also the need to respect the diversity and heterogeneity of the interest organisations) and the need to take account of the groups' autonomy and independence, assumes that the two concepts can be combined.<sup>127</sup> But the two categories differ in many ways and are not easily reconcilable. This prompts some scholars to conclude that this approach entails not only the risk that the Commission will 'select' a limited number of Brussels-based associations with sufficient capacity according to certain criteria, etc., but also represents the loss of a golden opportunity to harness the energy of a wide range of interest organisations which are not necessarily looking for strict participation rights as such, but merely want to engage in the public debate in a vigorous and dynamic fashion.<sup>128</sup>

<sup>121</sup> See Considine, Mark (2002) 'The end of the line? Accountable Governance in the age of networks, partnerships and joined-up services', *Governance*, 15(1): 21–40.

<sup>122</sup> Warleight, A. (2001) 'Europeanizing Civil Society: NGOs as agents of political socialization', *Journal of Common Market Studies*, 39(4): 619–39; Schutter, Olivier de (2002) 'Europe in search of its civil society', *European Law Journal*, 8(2) 198–217, p. 216; Geyer, Robert (2001) 'Can European Union (EU) social NGOs co-operate to promote EU social policy?', *Journal of Social Policy*, 30(3): 477–493, p. 479.

<sup>123</sup> Armstrong, Kenneth A. (2002) 'Rediscovering civil society: the European Union and the White Paper on Governance', *European Law Journal*, 8(1): 102–132, p. 109.

<sup>124</sup> Obradovic, Daniela (1995) 'Prospects for corporatist decision-making in the European Union; The social policy agreement' *Journal of European Public Policy*, 2(2): 159–183, p. 269.

<sup>125</sup> Nevertheless, none of those organisations enjoys a general bargaining mandate; rather, all must seek the agreement of their members afresh each time in order to enter negotiations, i.e. on an issue-by-issue basis. In addition, any agreement concluded through the social dialogue procedure has to be rubber stamped by all national affiliates.

<sup>126</sup> The selection criteria that ECHO applies in order to determine the eligibility of the organisations intending to enter into this partnership are guided by three EC regulations on humanitarian aid

([http://europa.eu.int/comm/echo/partners/selection\\_en.htm](http://europa.eu.int/comm/echo/partners/selection_en.htm)).

<sup>127</sup> Communication of the European Commission (2000) Commission discussion paper 'The Commission and non-governmental organisations: Building a stronger partnership', COM(2000) 11, 18.1.2000, p. 5.

<sup>128</sup> Curtin, Deirdre and Dekker, Ige (2005) 'Good governance: The concept and its application by the European Union', in Deirdre M. Curtin and Ramses A. Wessel, (eds.), 'Good Governance and European Union: Reflections on Concepts, Institutions and Substance', Antwerp: Intersentia, pp. 3–21, p. 17.

## Suggestions for the operationalisation of the EU consultation standards: Statute for European Association (EA)

The main problem concerning the application of the criteria discussed above lies in the fact that they remain very abstractly defined, vague and unintelligible; consequently, it cannot be determined with certainty which organisations actually fulfil them. Thus far, the Commission has not produced any instructions as to how those criteria should be operationalised for the purpose of their application. However, some indications can be found in its proposal for the Statute for a European Association, which, although withdrawn, nevertheless provides inspiration for the interpretation of the EU consultation standards developed by the Commission.

The Statute for a European Association (EA) represents a part of the general initiative to regulate the establishment of interest associations at the European level. The initiative was launched in 1993 along with the proposals for the creation of the European Company Statute and the Statute for a European Co-operative Society.<sup>129</sup> It was discussed in Council working groups up to July 1996, when a decision was made to put it on hold. The Regulation on the European Company (SE) and European Co-operative Society Regulation were adopted in 2001 and 2003, respectively.<sup>130</sup> Recognising the need for instruments paralleling the above-mentioned statutes, the Commission tried to promote the discussion on the draft proposal for an EA within the Council working groups on Company Law, albeit unsuccessfully. The arguments advanced to explain the lack of interest in the adoption of such an instrument for associations seem to be that contrary to shareholder companies and co-operatives, non-profit entities have relatively few cross-border activities and their economic role is rather limited. The Commission eventually decided to withdraw the proposal for the Statute for a European Association in 2005.<sup>131</sup>

## The concept of representativeness in the EA statute

The concept of representativeness in the EA statute<sup>132</sup> relates to the requirement that an EA be formed by natural and legal persons operating in two or more member states (Article 3) for non-profit purposes. Furthermore, an EA must pursue activities either in the general interest or to promote the trade, professional or other interests of its members in the most diverse areas, provided that they are compatible with EU objectives and the public interest (Article 1). The non-profit principle means that surpluses and assets must be devoted exclusively to the pursuit of its objectives and may not be divided among the members. An almost identical interpretation of this criteria is reproduced in the proposal for the Statute for a European Foundation drawn up by the European Foundation Center on the recommendation of the High Level Group of Company Law Experts set up by the Commission in 2003 to adapt the rule for the establishment of an EA to the particular and specific circumstances, features and characteristics of foundations.<sup>133</sup> The

<sup>129</sup> Commission (1993) 'Amended proposal for a Council Regulation (EEC) on the statute for a European Association' OJ C 236/01, 31.8.93.

<sup>130</sup> The Council Regulation (EC) 2157/2001, establishing the legal form of the European Company (SE) according to the legal principles of the public limited liability company, OJ L 294/1, 10.11.2001 and The Council Regulation (EC) 14357/2003 establishing the legal form of the European Cooperative, OJ L 207/1, 18.8.2003.

<sup>131</sup> Commission of the European Communities (2005) 'Communication from the Commission to the Council and the European Parliament: "Outcome of the screening of legislative proposals pending before the Legislator"', COM(2005) 462, 27.9.2005. The proposal for the EA statute has been withdrawn in spite of the fact that the Commission foresaw its adoption in its 2003 Action plan for company law and corporate governance (European Commission (2003) 'Communication to the Council and the European Parliament "Modernising company law and enforcing corporate governance in the European Union – A plan to move forward"', COM(2003) 284, 21 May 2003, p. 22).

<sup>132</sup> Council of the European Union (2003) 'Amended proposal for a Council Regulation (EEC) on the statute for a European Association', 6873/03, 17 March 2003.

<sup>133</sup> European Foundation Centre (2005) 'Proposal for a Regulation on a European statute for foundations', Brussels, January 2005, Version 16, [http://www.efc.be/ftp/public/EU/LegalITF/european\\_statute.pdf](http://www.efc.be/ftp/public/EU/LegalITF/european_statute.pdf). This proposal has been



conditions concerning their compatibility with the EU/public interest objectives can also be found in other EU documents prescribing the standards to be met by other social groups taking part in European governance (such as transnational parties).<sup>134</sup>

## Accountability and transparency in the EA statute

Good governance standards concerning internal organisation and the capacity to enter into commitments with third parties emanated from the principles of accountability and transparency and occupy prominent roles in the EA statute. It prescribes in detail the internal organisation principles (internal accountability) of the EA, such as statute format (Article 4), structure of organs, and rules guiding, conveying and conducting the meetings, voting procedures, etc. (Articles 28–38). Those rules were tailored in accordance with the principles of democratic structure and control, and the allocation of any surpluses and assets to the associations' objectives; no particular legal form for the association is specified, however. The internal organisational standards include the principle of the primacy of the individual, which is reflected in the specific rules on membership, resignation and expulsion. In terms of voting, the 'one man, one vote' rule is stipulated and the right to vote is vested in the individual (legal or natural). Therefore, members cannot exercise any rights over the assets of the association. In addition, the involvement of employees in the work of the EA bodies and organs is stipulated.<sup>135</sup> Similarly strict rules with respect to internal organisations are deployed for the selection of NGOs intending to enter into Framework Partnership Agreements with the Commission's Humanitarian Aid Office (ECHO), which are applicable to the humanitarian operations sponsored by the EU.<sup>136</sup>

The external accountability principles concerning the relations with third parties are also envisaged in Articles 9–12 and Chapter IV. Those segments regulate the financial rules of conduct, including the auditing of accounts,<sup>137</sup> the production of annual financial statements and reports, and the disclosure of information and documents. They partially resemble the financial requirements for obtaining EU funding,<sup>138</sup> as well as the accountability and transparency provisions in the Statute for a European Foundation<sup>139</sup> and the Commission's recommendations to member states regarding a code of conduct for non-profit organisations.<sup>140</sup>

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prepared because the Commission has admitted that the EA statute cannot be applied to foundations without members, since it has clearly been designed for associations as membership associations.

<sup>134</sup> Regulation 2004/2003 of the European Parliament and the Council on the regulations governing political parties at European level and the rules regarding their funding, OJ L 297/1, 15.11.2003, Article 3(c).

<sup>135</sup> Commission (1993) 'Amended proposal for a Council Directive supplementing the statute for a European association with regard to the involvement of employees', OJ C 236/2, 31.08.93.

<sup>136</sup> See above.

<sup>137</sup> This is to be done in conformity with the Directive 2003/51 EC of the European Parliament and of the Council of 18 June 2003 amending Directives 78/660/EEC, 83/349/EEC, 86/635/EEC and 91/674/EEC on the annual and consolidated accounts of certain types of companies, banks and other financial institutions and insurance undertakings, OJ L 178/16, 17.7.2003, where appropriate.

<sup>138</sup> Commission Regulation (EC, Euratom) No 2342/2002 of 23 December 2002, laying down detailed rules for the implementation of the Council Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities (Part 1, Title V), OJ L 357/1, 31.12.2002.

<sup>139</sup> European Foundation Centre (2005) 'Proposal for a Regulation on a European statute for foundations', Brussels, January 2005, Version 16, [http://www.efc.be/ftp/public/EU/LegalITF/european\\_statute.pdf](http://www.efc.be/ftp/public/EU/LegalITF/european_statute.pdf), Articles 13 and 14.

<sup>140</sup> Commission of the European Communities (2005) 'Commission Communication to the Council, the European Parliament and the European Economic and Social Committee: The Prevention of a fight against terrorist financing through enhanced national level coordination and greater transparency of the non-profit sector: Recommendations for member states and a framework for a code of conduct for NPOs to enhance transparency and accountability in the non-profit sector to prevent terrorist financing and other types of criminal abuse', COM(2005) 620, 29.11.2005, pp. 15–16.

## The relevance of the EA statute for the interpretation of the EU consultation requirements

The relevance of the elaboration of the requirements of representativeness, accountability and transparency of European associations presented in the Commission proposal for the EA statute concerning the interpretation and clarification of the criteria for the participation of interest groups in EU consultations revolving around those principles might be considered of limited significance due to the following reasons:

- the proposal for the EA statute has been withdrawn;
- even if it had been adopted, it would only have been an optional and additional legal form that interest groups active in more than one EU member state may have wanted to use instead of incorporating under the national laws of a particular member state;
- the EA statute's revelations on those principles remain unclear and imprecise.

Although those arguments do carry some weight, they cannot be unreservedly accepted. Even though the EU institutions failed to pass the EA statute, the principles stipulated by the document concerning good governance have not lost their importance for regulating interest representation in Europe, because they have to a large extent been reproduced in the Commission's recommendations (hereafter "the recommendations") to member states regarding a code of conduct for non-profit organisations intended to establish 'common general minimum transparency standards for non-profit organisations (NPOs) in the European Union.'<sup>141</sup> Although those recommendations have been adopted within the framework of the EU's fight against the misuse of NPOs for terrorist financing and other criminal purposes, they in fact introduce a comprehensive system for the regulation of non-profit sector activities in general.

Since all European- or national-level interest associations eligible to participate in EU consultations and susceptible to the application of the criteria for evaluating their contributions to that process have been established in accordance with the national rules for the incorporation of non-profit associations,<sup>142</sup> they are bound by the code of conduct that the Commission recommends be deployed by the member states. Taking into consideration the fact that the Commission was actually responding to requests from the EU member state governments and international bodies when it produced the aforementioned code of conduct,<sup>143</sup> we can safely assume its immanent application in all member states. In its recommendations, the Commission explicitly obligates the member states to not only effectively ensure the compliance of non-profit organisations with this code, but to also actively and effectively co-operate with each other for the purpose of pro-

<sup>141</sup> Ibid, p. 15.

<sup>142</sup> Currently, European business associations are established under national laws of member states for the incorporation of non-profit associations, most commonly under the Belgian law of 2 May 2002 (see Lonting, Dirk (2003) 'Establishing an EU Business Association under Belgian Law' in Justin Greenwood, (ed.), 'The Challenge of Change in EU Business Associations', Houndmills: Palgrave, pp. 171–191.

<sup>143</sup> Declaration on combating terrorism of 25 March 2004 of the European Council, p. 14 ([http://ue.eu.int/uedocs/cms\\_data/docs/pressdata/en/ec/79637.pdf](http://ue.eu.int/uedocs/cms_data/docs/pressdata/en/ec/79637.pdf)); The Council declaration on the EU response to the London bombing of 13 July 2005 as cited in Commission of the European Communities (2005) 'Commission Communication to the Council, the European Parliament and the European Economic and Social Committee: The Prevention of a fight against terrorist financing through enhanced national level coordination and greater transparency of the non-profit sector: Recommendations for member states and a framework for a code of conduct for NPOs to enhance transparency and accountability in the non-profit sector to prevent terrorist financing and other types of criminal abuse', COM(2005) 620, 29.11.2005, p 9; The EU Financial Action Task Force in its Special Recommendation VIII; G8 Finance Ministers, Finance Ministers' Statement of Deauville, 17 May 2003; G8 Justice and Home Affairs Ministers, 'Recommendations for enhancing the legal framework to prevent terrorist attacks', Washington, 11 May 2004 as cited in European Commission (2005) 'Draft recommendations to member states regarding a code of conduct for non-profit organisations to promote transparency and accountability best practices, 22 July 2005, JLS/DB/NSK D(2005) 8208, p. 1.

moting the acceptance of those standards by non-profit organisations across Europe.<sup>144</sup> In addition, while the EA statute would have applied to a limited number of non-profit associations involved in cross-border activities along the EU, the recommendations concern a much wider range of non-profit organisations. In the recommendations, ‘NPOs are deemed to be organisations, legal persons, or legal arrangements whose principal purpose is to engage in the raising and/or disbursing of funds for charitable, religious, cultural, educational, social or fraternal purposes, or for the carrying out of other types of good works.’<sup>145</sup>

The Commission’s recommendations concerning the introduction of the code of conduct for non-profit organisations nearly replicate the EA requirements for organisations to declare their mission purpose, objectives, policies and priorities and for its resources to be used for those purposes only.<sup>146</sup> They also take over the EA requirement for registration of non-profit associations on the national or regional level. The registration system should impose an obligation upon NGOs to declare their name, acronym, address of the registered office, telephone/fax number, website address and record of previous addresses and changes thereof. A specialised public body (or possibly a self-regulatory organisation) is to assume the oversight of non-profit sector organisations in the member states similar to the body envisaged in the EA statute.<sup>147</sup>

As in the EA proposal, the recommendations make the identical demand that non-profit organisations operating in the member states include a description of their organisational and decision-making structure in their registration documents, reflecting the size of the organisation and indicating the internal financial control system. In line with the EA, the recommendations also prescribe particular rules for financial operations, audit and disclosure in financial matters.<sup>148</sup> The disclosure rule in financial reporting also features very prominently in the Commission’s recent European Transparency Initiative.<sup>149</sup>

Moreover, the recommendations also support the introduction of ‘labels’ or ‘seals of approval’ to be granted by public or private monitoring bodies or non-profit umbrella organisations to associations adopting the enhanced transparency and accountability measures.<sup>150</sup> This has the effect of actually extending the EA statute requirements to all non-profit organisations operating in the member states of the European Union.

In addition, the conditions for the incorporation and registration of associations stipulated in the EA statute are nearly replicated in the Commission’s proposal for criteria for the recognition of entities entitled to challenge European environmental law on the Union or national level for the

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<sup>144</sup> Commission of the European communities (2005) ‘Commission Communication to the Council, the European Parliament and the European Economic and Social Committee: The Prevention of a fight against terrorist financing through enhanced national level coordination and greater transparency of the non-profit sector: Recommendations for member states and a framework for a code of conduct for NPOs to enhance transparency and accountability in the non-profit sector to prevent terrorist financing and other types of criminal abuse’, COM(2005) 620, 29.11.2005, pp. 12–13.

<sup>145</sup> *Ibid.*, p. 12.

<sup>146</sup> *Ibid.*, p. 15.

<sup>147</sup> *Ibid.*, p. 12.

<sup>148</sup> *Ibid.*

<sup>149</sup> Communication to the Commission from the President, Ms Wallstrom, Mr Kallas, Ms Fischer Boel proposing the launch of a European Transparency Initiative, SEC(2005) 1300, 9.11.2005, p. 6 (for the latest version of this document, see [http://ec.europa.eu/comm/eti/form6\\_en.htm](http://ec.europa.eu/comm/eti/form6_en.htm)).

<sup>150</sup> Commission of the European communities (2005) ‘Commission Communication to the Council, the European Parliament and the European Economic and Social Committee: The Prevention of a fight against terrorist financing through enhanced national level coordination and greater transparency of the non-profit sector: Recommendations for member states and a framework for a code of conduct for NPOs to enhance transparency and accountability in the non-profit sector to prevent terrorist financing and other types of criminal abuse’, COM(2005) 620, 29.11.2005, p. 13.

purpose of protecting their consultation rights<sup>151</sup> as well as in the list of eligibility requirements for submitting a request for funding under the Community programme promoting environmental NGOs.<sup>152</sup>

## Conclusions

The era of the open access policy for interest associations intending to take part in the EU consultations launched by the Commission seems to be coming to an end. In recent years, the Commission has adopted various standards and requirements that organisations wishing to participate in EU consultations should meet, namely, the principles of good governance: representativeness, accountability and transparency.<sup>153</sup>

However, in its documents on EU consultation standards, the Commission does not provide sufficient operational instructions for their application. The proposed but not adopted Statute for a European Association prescribes the rules for the establishment of European-level associations which more or less replicates (in an elaborated manner) the good governance standards for participation in EU consultations. Consequently, the EA statute proposal could provide an additional and valuable guideline for the operationalisation of the EU consultation requirements. Although the EA standards were not adopted, they have been included almost in their entirety in the Commission's recommendations to member states regarding the introduction of a code of conduct for non-profit associations to promote transparency and accountability. They have also been partially incorporated into the Commission's European Transparency Initiative, which calls for stricter control of NPOs' financial operations.

While none of those documents can be classified as legally binding, they nevertheless obligate member states to apply their rules. In both documents, the Commission announces its intention to strongly encourage and facilitate the compliance of non-profit associations with those principles by, for example, introducing the award of a special label to those associations meeting the good governance requirements. An NPO carrying such a label would probably be regarded by the Commission as fulfilling the EU consultation requirements, and their contributions to those consultations would consequently bear more weight than submissions by organisations not qualified to receive the label. This is even more probable if we take into consideration the logistical impracticality and unfeasibility of carrying out eligibility tests for each and every association contributing to each and every consultation launched by the Commission.

These developments undoubtedly shift the relationship between the Commission and NPOs towards greater formalisation and regulation.<sup>154</sup> Although in all related documents the Commis-

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<sup>151</sup> Article 12 of Commission of the European Communities (2003) 'Proposal for a Regulation of the European Parliament and of the Council on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to EC institutions and bodies', COM(2003) 622, Brussels, 24.10.2003 and Articles 7 and 10 of the Directive 2003/35/EC of the European parliament and of the Council of 26 May 2003, providing for public participation with regard to the drawing up of certain plans and programmes relating to the environment, and amending with regard to public participation and access to justice, Council Directive 85/337/EEC and 96/61/EC, OJ 2003 L 156/17, 25.6.2003.

<sup>152</sup> Decision No 466/2002/EC of the European Parliament and the Council of 1 March 2002 laying down a Community action programme promoting non-governmental organisations primarily active in the field of environmental protection, OJ 2002 L 75/1, 16.3.2002, Article 6.

<sup>153</sup> Vice President of the European Commission, Siim Kallas, states that 'organisations, groups or persons in the ambit of European institutions which offer advice, represent clients, provide data or defend public causes should also be accountable. People [should be] allowed to know who they are, what they do and what they stand for' (Speech of Vice President of the European Commission, Siim Kallas, 'The need for a European transparency initiative' at the European Foundation for Management, Nottingham Business School, Nottingham, 3 March 2005 (<http://europa.eu.int/rapid/pressreleasesaction.do?reference=speech/05/130&format=>)

<sup>154</sup> Communication to the Commission from the President, Ms Wallstrom, Mr Kallas, Ms Fischer Boel proposing the launch of a European Transparency Initiative, SEC(2005) 1300, 9.11.2005, pp. 4 (for the latest version of this docu-

sion tries to strike an appropriate balance between statutory and self-regulation for the non-profit sector as well as strives to respect the principle of freedom of association and not hinder access to the EU policy process,<sup>155</sup> our analysis clearly shows that in the future, NPOs will be expected to adjust their internal structure to the EU good governance requirements if their views are to be taken into account during the drafting of European legislation or other co-ordinative acts.

The consequences of the adoption of such a corporatist approach for the further development of the consultation process between the EU organs and interest associations have yet to be examined. At present, we can conclude that while the subjection of organisations intending to participate in EU consultations to the good governance principles can undoubtedly contribute to the credibility of their submissions to those consultations, it can simultaneously create additional burdens for associations or even discourage them from engaging with the EU organs in a public debate on European legislation and policy co-ordination.

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ment see [http://ec.europa.eu/comm/eti/form6\\_en.htm](http://ec.europa.eu/comm/eti/form6_en.htm)) and Commission of the European communities (2005) 'Commission Communication to the Council, the European Parliament and the European Economic and Social Committee: The Prevention of a fight against terrorist financing through enhanced national level coordination and greater transparency of the non-profit sector: Recommendations for member states and a framework for a code of conduct for NPOs to enhance transparency and accountability in the non-profit sector to prevent terrorist financing and other types of criminal abuse', COM(2005) 620, 29.11.2005, p. 10.

<sup>155</sup> Commission of the European Communities (2002) 'Communication from the Commission "Towards a reinforced culture of consultation and dialogue—General principles and minimum standards for consultation of interested parties by the Commission"', COM(2002) 704, 11.12.2002, p. 13; Communication to the Commission from the President, Ms Wallstrom, Mr Kallas, Ms Fischer Boel proposing the launch of a European Transparency Initiative, SEC(2005) 1300, 9.11.2005, pp. 6-7 (for the latest version of this document, see [http://ec.europa.eu/comm/eti/form6\\_en.htm](http://ec.europa.eu/comm/eti/form6_en.htm)) and Commission of the European communities (2005) 'Commission Communication to the Council, the European Parliament and the European Economic and Social Committee: The Prevention of a fight against terrorist financing through enhanced national level coordination and greater transparency of the non-profit sector: Recommendations for member states and a framework for a code of conduct for NPOs to enhance transparency and accountability in the non-profit sector to prevent terrorist financing and other types of criminal abuse', COM(2005) 620, 29.11.2005, p. 10 and 13.

## Case Study: Czech Environmental NGOs and the EU

### Introduction

Environmental NGOs are among the strongest civil society organisations in the Czech Republic.<sup>1</sup> In public opinion polls conducted in 2004, three thirds of the Czech population declared their trust in environmental NGOs, which is the second highest ranking among Czech civil society organisations. In the same poll environment NGOs were also described as successful.<sup>2</sup> At the same time, the European Union exerts a strong influence upon the environmental policy of the member states. Accordingly, among Czech civil society organisations environmental NGOs should theoretically have the best chances for engagement at the EU level.

In this case study we will examine how Czech environmental NGOs interact with EU bodies. In order to provide background information, we will start the following section with a brief history of the Czech environmental movement. After that we will describe the pre-accession efforts made by the EU to bolster Czech environmental NGOs and groom them for participation in decision-making processes at the EU level. From there, we will examine the representation and activities of these organisations at the EU level. This will enable us to assess the impact the Czech environmental NGOs' engagement has had on the EU as well as on the NGOs themselves. Based on this evaluation, we will be able to assess issues of accountability.

### Post-socialist challenges to Czech environmental NGOs

In socialist Czechoslovakia environmental organisations represented a haven for dissidents. Accordingly, the environmentalists played an important role in bringing down the regime in 1989 and influenced the new political leadership significantly. Their main success was the adoption of the law on the environment and environmental information in 1990.

However, in the independent Czech Republic Prime Minister Vaclav Klaus soon insulated his government from the influence of environmental NGOs, as well as from most other independent politically active organisations. Since then environmental NGOs have redirected their activities on their position relative to state representatives. They have insisted on exercising their right to access environment-related information and participate in environment-related political decision-making processes, including the right to prepare reports on state-financed projects having an environmental impact. Environmental NGOs have organised protest actions to support their

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<sup>1</sup> Academic analyses of their role are provided by: Adam Fagan: Taking stock of civil-society development in post-communist Europe. Evidence from the Czech Republic, in: *Democratization* 4/2005 (vol. 12), pp. 528–547; Petr Jehlička, Philip Sarre, Juraj Podoba: The Czech environmental movement's knowledge interests in the 1990s. Compatibility of Western influences with pre-1989 perspectives, in: *Environmental Politics* 1/2005 (vol. 14), pp. 64–82; Adam Fagan: *Environment and democracy in the Czech Republic*, Cheltenham (Edward Elgar Publishing) 2004; Joann Carmin: Non-governmental organisations and public participation in local environmental decision-making in the Czech Republic, in: *Local Environment*, 5/2003 (vol. 8), pp. 541–552; Joann Carmin: Resources, opportunities and local environmental action in the democratic transition and early consolidation periods in the Czech Republic, in: *Environmental Politics*, 3/2003 (vol. 12), pp. 42–64; Adam Fagan, Petr Jehlička: Contours of the Czech environmental movement: a comparative analysis of Hnutí Duha (Rainbow Movement) and Jihoceske matky (South Bohemian Mothers), in: *Environmental Politics* 2/2003 (vol. 12), pp. 49–70; Andrew Tickle / Josef Vavroušek: Environmental politics in the former Czechoslovakia, in: Andrew Tickle / Ian Welsh (eds): *Environment and society in Eastern Europe*, Harlow (Longman) 1998, pp. 114–145.

<sup>2</sup> Tereza Vajdová: *An Assessment of Czech Civil Society in 2004: After Fifteen Years of Development*, Brno (Academic Press CERM) 2005, pp. 41–62, here: pp. 58–60.

positions and mobilised judicial actions to thwart specific projects or to protect their rights in the political decision-making process.

The adoption of the environmental part of the EU *acquis communautaire* in 2001 and the signing of the Aarhus Convention in 2004 at the EU's request fortified the legal rights of Czech environmental NGOs considerably.

As a result of these developments, the environmental NGOs have generally been able to make their way back into political circles since the late 1990s. This view is supported by NGO activists as well as by public opinion.<sup>3</sup> The national Ministry of the Environment now cooperates with environmental NGOs on a routine basis. Approximately 10% of the NGOs are represented in regional administrations and their committees.<sup>4</sup> The political significance of environmental NGOs was strengthened by the media as well. The Czech public broadcasting TV company devotes a lot of attention to these organisations in regional news. There is also a new trend of inviting NGO activists to appear on programmes as experts.<sup>5</sup>

Accordingly, environmental NGOs have enjoyed a number of political successes in recent years. In 2003 they were allowed to take part in the state-funded regional development programme Agenda 21. In 2004 their lobbying on the State Environmental Policy and Waste Management Programme as well as on the protection of Natura 2000 ecological sites had a visible impact on political decisions.

It is often maintained that these NGOs' political successes are solely dependent on their relations with specific political actors. As Adam Fagan argues:

*From the perspective of the Czech environmental movement, although over a decade of foreign assistance and know-how transfer has resulted in a tier of professional NGOs that have obtained political influence at the elite level, these organizations have made little progress in rooting themselves in society at large.<sup>6</sup>*

This view is backed by empirical data. According to the European Social Survey 2004, only 1.8% of the Czech population claims membership in environmental NGOs and a mere 1.4% active support<sup>7</sup>. About 2.5% of the Czech population has made donations to environmental NGOs.<sup>8</sup> Thus Czechs contributed 9% to the NGOs' coffers, while the share of EU support alone stood at 7%. Czech environmental NGOs are therefore dependent on institutional donors and commercial activities, with the latter contributing about 20% of their budget.<sup>9</sup>

Accordingly, it can be argued that the environmental movement is one of the strongest elements of Czech civil society in terms of political influence. Nevertheless, their organisational capacity is limited, and in financial terms they are heavily dependent upon institutional and foreign support. Prior to EU accession they were also lacking in international experience. In the second half of the 1990s only 1.8% of Czech NGOs were working on the international level.<sup>10</sup>

<sup>3</sup> Spiralis Foundation: Zpráva o neziskovém sektoru v České republice, Prague 2005, pp.1–12, [www.spiralis-os.cz](http://www.spiralis-os.cz).

<sup>4</sup> Nadace Partnerství: The Czech Non – Profit Sector Before Entering the European Union: Development, Capacity, Needs and Future of Czech Environmental NGOs, Prague 2004, p.14, [www.nadacepartnerstvi.cz](http://www.nadacepartnerstvi.cz)

<sup>5</sup> Spiralis Foundation: Zpráva o neziskovém sektoru v České republice, Prague 2005, pp.1–12, [www.spiralis-os.cz](http://www.spiralis-os.cz).

<sup>6</sup> Adam Fagan: Taking stock of civil-society development in post-communist Europe. Evidence from the Czech Republic, in: Democratization 4/2005 (vol. 12), pp. 528–547, here: p.528.

<sup>7</sup> In the original wording: unpaid voluntary work.

<sup>8</sup> European Social Survey 2004, <http://ess.nsd.uib.no/nesstarlight/index.jsp>

<sup>9</sup> Nadace Partnerství: The Czech Non – Profit Sector Before Entering the European Union: Development, Capacity, Needs and Future of Czech Environmental NGOs, Prague 2004, p.12, [www.nadacepartnerstvi.cz](http://www.nadacepartnerstvi.cz)

<sup>10</sup> The Regional Environmental Center for Central and Eastern Europe: Problems, Progress and Possibilities: A Needs Assessment of Environmental NGOs in Central and Eastern Europe, Budapest 1997, pp. 43–44, [www.rec.org/REC/Publications/NGONeeds](http://www.rec.org/REC/Publications/NGONeeds)

## Pre-accession support from the EU

In the years preceding accession, the EU strove to buttress NGOs in the candidate countries through a number of measures. For Czech environmental NGOs three aspects of EU support were of special relevance. First, the EU promoted their integration into an EU-wide NGO network. Second, the EU offered vital training to the NGOs' leading representatives. Third, the EU provided considerable financial support for the purpose of honing their organisational and managerial skills.

### (1) Integration of Czech environmental NGOs into an EU-wide NGO network

From 1999 to 2004 the Directorate General for the Environment (DG Environment) of the EU Commission organised an EU-NGO dialogue, in which 40 environmental NGOs from the Balkan and candidate countries (among them four from the Czech Republic) took part.<sup>11</sup> In addition nine major international environmental NGOs active at the EU level participated as observers.<sup>12</sup> The dialogue meetings were held roughly twice a year either in Brussels or in one of the candidate or Balkan countries with selected NGOs representing their respective national civil societies. The final meeting took place on 18–19 April 2004.

Until 2002 the dialogue meetings were coordinated by the Regional Environmental Center for Central and Eastern Europe (REC). Headquartered in Hungary, the REC set up country and field offices in 15 Central and Eastern European countries, including the Czech Republic. The German Institute for Biodiversity (IBN) arranged the final meeting in 2004.<sup>13</sup>

According to the DG Environment,

*The purpose of these meetings was to:*

- *Improve the transparency and relations between the NGOs and DG Environment,*
- *Inform the NGOs about ongoing issues on enlargement and environmental policy developments,*
- *Consult the civil society on new environmental policy developments in the EU, and their implications for the Candidate Countries,*
- *Explore, with the NGOs, ways in which they can play an active and constructive role in the enlargement process ('environmental watchdog'),*
- *Create a platform for NGOs to address their concerns to EU policy makers and to enhance cooperation among the NGOs themselves.*<sup>14</sup>

The participating environmental NGOs from the Czech Republic saw the dialogue as an important source of information, especially on regulatory issues and funding opportunities, and as a critical opportunity to forge international contacts. Through their Czech network, the Green Circle, an NGO participating in the dialogue disseminated information from the meetings in Brussels to the other Czech environmental NGOs. As most Czech environmental NGOs lacked the necessary funding to join a Brussels-based organisation, the EU-NGO dialogue was the only

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<sup>11</sup> These were the Center for Community Organizing, the Rainbow Movement, the Society for Sustainable Living and ZO CSOP Veronica.

<sup>12</sup> These were Birdlife International, the Climate Action Network, the European Environmental Bureau, the European Federation for Transport and Environment, Friends of the Earth, Greenpeace, Friends of Nature and the World Wide Fund for Nature.

<sup>13</sup> For information on the dialogue see the websites of the DG Environment ([http://europa.eu.int/comm/environment/enlarg/ngodialogue\\_en.htm](http://europa.eu.int/comm/environment/enlarg/ngodialogue_en.htm)), the REC ([http://www.rec.org/REC/Publications/EC-NGO\\_Dialogue/Introduction.html](http://www.rec.org/REC/Publications/EC-NGO_Dialogue/Introduction.html)). Now that the dialogue is over, the IBN website ([www.biodiv.de](http://www.biodiv.de)) no longer contains related information.

<sup>14</sup> DG Environment, [http://europa.eu.int/comm/environment/enlarg/ngodialogue\\_en.htm](http://europa.eu.int/comm/environment/enlarg/ngodialogue_en.htm)



chance for Czech environmental NGOs to establish regular direct contact with EU institutions prior to their country's accession.<sup>15</sup>

Then, in 2003, an educational mission to Brussels was organised for representatives of Czech NGOs. The Czech delegation, headed by Czech diplomat Pavel Telicka, was able to discuss the potential consequences of the country's accession face to face with representatives of the EU.

## (2) Training to leading representatives of Czech environmental NGOs

The training of Czech environmental NGO representatives was supported by the EU, which tied many grants to the organisations' level of professionalism and further enabled many NGOs to meet professionals from the field during the EU-NGO dialogue. In addition, the EU funded training courses for Czech civil society organisations through its PHARE programme,<sup>16</sup> in which a staggering 200 NGOs took part.<sup>17</sup>

According to the training organisers the aims were to:

- Inform NGOs about directives and regulations that governed the allocation of resources from pre-accession programmes like PHARE and from the Structural Funds of the EU,
- Improve the knowledge of the IT technology and programs specifically designed for development and project management,
- Make sure that other agents in the society gain knowledge and access to the EU programmes and learn how to manage projects,
- Support and motivate NGOs to make contacts with the local and regional administrations,
- Positively influence the relationship of the Czech citizens to the EU.<sup>18</sup>

In addition, Czech environmental NGOs obtained EU funding for issue-specific training courses and seminars.

## (3) Financial support

Prior to the EU accession of their country, Czech environmental NGOs could obtain EU funding from PHARE, ISPA, and SAPARD.<sup>19</sup> Thus the EU provided about 7% of their income through direct payments.<sup>20</sup>

Since its 2004 accession to the EU, the Czech Republic's environmental NGOs are now eligible to apply for EU funding for member states. The most important funding opportunities are the EU Environmental Programme, Structural Funds and the Rural Development Policy within the Common Agricultural Policy. In addition, from 2007 on LIFE+ will offer funding exclusively for environmental projects.<sup>21</sup>

However, for Czech environmental NGOs this means that they no longer receive funding for capacity building, but have to engage exclusively in projects. Competition tends to be stiffer in this arena and Czech environmental NGOs now have to compete with environmental-related organisations from all member states (in the case of environment-related funds) or with fellow

<sup>15</sup> Green Circle, [www.zelenykruh.cz](http://www.zelenykruh.cz).

<sup>16</sup> Civil Society Development Programme 2001.

<sup>17</sup> There is no information available on the share of environmental NGOs in this figure.

<sup>18</sup> NROS: Školení pro organizace občanské společnosti, Evropská Brána 2003 ([www.ngo-eu.cz/Prospectus](http://www.ngo-eu.cz/Prospectus))

<sup>19</sup> A comprehensive overview is given by: REC: Directory of Funding Sources for Environmental NGOs in Central and Eastern Europe, Budapest 2001 (<http://www.rec.org/REC/Databases/Funders/Default.html>)

<sup>20</sup> Nadace Partnerství: The Czech Non – Profit Sector Before Entering the European Union: Development, Capacity, Needs and Future of Environmental NGOs, Prague 2004, p.14, [www.nadacepartnerstvi.cz](http://www.nadacepartnerstvi.cz)

<sup>21</sup> Comprehensive overviews are given by European Commission: Handbook for Environmental Project Funding, Brussels 2005 and WWF: EU Funding for Environment. A handbook for the 2007–2013 programming period, 2005 (<http://assets.panda.org/downloads/eufundingforenvironmentweb.pdf>).

organisations from the Czech Republic (in the case of structural funds). In addition, the EU requires that funding be matched by contributions from the organisations themselves, which can range anywhere from 20% up to 80% of the project value. Accordingly, the weak financial position of Czech environmental NGOs may paradoxically restrict their eligibility to apply for EU funding to a substantial degree.

## Engagement at the EU level

As the EU has acquired an important role in shaping environmental regulation, environmental NGOs as well as representatives of industries having an environmental impact are active at the EU level. Environmental NGOs participate in EU expert panels and in preparatory and implementation committees, contributing valuable input to EU policies, programmes and initiatives. In addition, NGOs regularly form part of the EU delegation to international environment-related negotiations, such as the United Nations Conference on Environment and Development (UNCED) in Rio and most sessions of the UN Commission on Sustainable Development.<sup>22</sup>

In order to coordinate their engagement at the EU level and to increase their impact, environmental NGOs have signed on with a number of European associations with representative offices in Brussels.<sup>23</sup> The biggest environmental NGOs and NGO associations active in Brussels have formed the Green 10, which consist of BirdLife International (European Community Office), Climate Action Network Europe (CAN Europe), CEE Bankwatch Network, European Environmental Bureau (EEB), European Federation of Transport and Environment (T&E), EPHA Environment Network (EEN), Friends of the Earth Europe (FoEE), Greenpeace Europe, International Friends of Nature (IFN), and the WWF European Policy Office.

According to its mission statement, the Green 10 “work with the EU law-making institutions – the European Commission, the European Parliament and the Council of Ministers – to ensure that the environment is placed at the heart of policymaking. This includes working with our member organisations in the Member States to facilitate their input into the EU decision-making process.

While campaigning at EU level, Green 10 NGOs encourage the full implementation of EU environmental laws and policies in the Member States; lobby for new environmental proposals, as appropriate; work with the EU institutions to ensure that policies under consideration are as environmentally effective as possible; promote EU environmental leadership in the global political arena.

In terms of public awareness raising, Green 10 NGOs inform their members and the wider public of environmental developments at EU level, and encourage them to make their voice heard; give voice to thousands of locally-based associations, which would otherwise have no access to EU decision-makers; contribute to the strengthening of civil society across Europe through training in advocacy skills, policy analysis and the EU decision-making process.”<sup>24</sup>

In summary, the role of environmental associations at the EU level is twofold. On the one hand they lobby EU bodies on environmental issues in order to influence related EU regulations. On the other they cooperate with EU bodies (and especially with the DG Environment of the European Commission) in order to compel their national governments to implement EU guidelines.

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<sup>22</sup> [http://europa-eu-un.org/articles/sv/article\\_1004\\_sv.htm](http://europa-eu-un.org/articles/sv/article_1004_sv.htm)

<sup>23</sup> For portraits of the leading international associations of environmental NGOs see the Green Year Book 2004, <http://www.greenyearbook.org/ngo/ngo-ind.htm>

<sup>24</sup> <http://www.foeeurope.org/links/green10.htm>

Whereas the first task requires strong representation in Brussels, realisation of the second task demands political influence at the national, regional and local levels.<sup>25</sup>

Whereas Czech environmental NGOs can boast considerable experience in national politics (having joined the fray by the late 1980s), lobbying in Brussels is a whole new ball park (with official contact first starting in 1999). As of November 2005, 13 environmental NGOs from the Czech Republic are full members of at least one Green 10 partner; of these, four are national branches of international NGOs. As Table 1 demonstrates, the highest number of Czech environmental NGOs can be found in the European Environmental Bureau (EEB).

Table 1: Membership of Czech environmental NGOs in associations at the EU level

<b>Czech NGO</b>	<b>website</b>	<b>Member of</b>
Centrum pro dopravu a energetiku (Centre for Transport and Energy)	<a href="http://cde.ecn.cz">http://cde.ecn.cz</a>	CAN Europe CEE Bankwatch Network T&E
Česká společnost ornitologická (Czech Society for Ornithology)	<a href="http://www.birdlife.cz">www.birdlife.cz</a>	BirdLife International
Český a Slovenský Dopravní Klub (Czech and Slovak Traffic Club)	<a href="http://dopravniklub.ecn.cz/">http://dopravniklub.ecn.cz/</a>	T&E
Ekologické Centrum Toulcův Dvůr	<a href="http://www.ecn.cz/yee">http://www.ecn.cz/yee</a>	EEB
Ekologický právní servis (Environmental Law Service)	<a href="http://www.eps.org">www.eps.org</a>	EEB
EkoWatt	<a href="http://www.ekowatt.cz">www.ekowatt.cz</a>	CAN Europe
Greenpeace Czech Republic	<a href="http://www.greenpeace.cz">www.greenpeace.cz</a>	Greenpeace International
Hnutí DUHA (Rainbow Movement)	<a href="http://www.hnutiduha.cz">www.hnutiduha.cz</a>	CEE Bankwatch Network Friends of the Earth Europe
Sdružení Duha (Friends of Nature)	<a href="http://www.duha.cz">www.duha.cz</a>	International Friends of Nature
Společnost pro trvale udržitelný život (Society for Sustainable Living)	<a href="http://www.czp.cuni.cz/stuz">http://www.czp.cuni.cz/stuz</a>	EEB
Středisko pro Efektivní Využívání Energie – “SEVEN” (Energy Efficiency Center)	<a href="http://www.svn.cz">www.svn.cz</a>	CAN Europe
Ústav Pro Ecopolitiku (Institute for Environmental Policy)	<a href="http://www.uep.ecn.cz">www.uep.ecn.cz</a>	EEB
Zelený Kruh (Green Circle)	<a href="http://www.ecn.cz">www.ecn.cz</a>	EEB

Source: Green 10 (<http://www.foeeurope.org/links/green10.htm>) as of November 2005.

Czech environmental NGOs can certainly be said to profit from their engagement at the EU level. First, they become integrated into an international network. This helps them to professionalise and to obtain advice. Second, they receive information and advice about funding opportunities at the EU level. Third, they acquire first-hand information about EU environmental policies, which gives them an edge in negotiations with Czech state agencies. Fourth, they have

<sup>25</sup> Wörner, Tilmann: Einflussmöglichkeiten von NGOs auf die Umweltpolitik der Europäischen Union, Marburg (Tectum) 2004; Greenwood, Justin: Interest representation in the European Union, New York (Palgrave Macmillan) 2003, pp.186–196.

the power to monitor the activities of Czech representatives at the EU level. However, as they participate only indirectly in EU decision-making processes through their partnerships with Green 10 members, they do not have any visible impact on EU policy.<sup>26</sup>

Measured by the accumulated number of members in the Green 10, Czech environmental NGOs fall in the middle range, as Table 2 indicates. Of the post-socialist member states, only Hungary (with 19 NGOs) is better represented than the Czech Republic. However, as Table 3 demonstrates, the NGOs from the five most active countries account for 45% of Green 10 members, whereas NGOs from the Czech Republic have a share of only 4%. As newcomers, NGO representatives from the Czech Republic have not yet gained representation among the leadership of the Green 10.

Table 2: Representation of countries within the Green 10

No. of NGOs	Countries
Up to 10	Cyprus, Estonia, Ireland, Latvia, Lithuania, Luxemburg, Malta, Poland, Portugal, Slovakia, Slovenia
11 to 20	Austria, Czech Republic, Denmark, Finland, Greece, Hungary, Italy, Spain, Sweden
More than 20	Belgium, France, Germany, Netherlands, United Kingdom

Source: own account based on Green 10 (<http://www.foeeurope.org/links/green10.htm>) as of November 2005.

In addition, it has to be noted that there is no shortage of tension among the Green 10 partners as they focus on different topics, exhibit varying degrees of willingness to compromise and pursue distinct lobbying strategies. WWF and Birdlife, for example, concentrate on nature preservation and are willing to join forces with businesses and politicians to reach compromises, thereby pursuing a cooperative strategy of lobbying based on voluntary support and negotiations. Greenpeace, on the other hand, zeroes in on industry-related issues such as emissions and nuclear policy and is much more confrontational. Accordingly, its lobbying strategy is often predicated on public pressure and showdowns with business and politics.

These tensions make it even harder for smaller environmental NGOs such as those from the Czech Republic to work in Brussels. One result of the divisions within the Green 10 is that much of the environmental NGOs' work at the EU level is still being done individually by the partners. Furthermore, the internal tensions limit the ability of the Green 10 to provide adequate support to smaller member NGOs. Last but not least, involvement in the infighting makes it harder for Czech NGOs with different Green 10 affiliations to cooperate and sometimes actually ends up alienating NGO members active in Brussels from their national organisations.<sup>27</sup>

<sup>26</sup> This assessment is shared by the European Environmental Bureau as well as by the major association of Czech environmental NGOs, the Green Circle. See esp. European Environmental Bureau: How the EEB works, [www.eeb.org](http://www.eeb.org) and Zelený Kruh (Green Circle): EU a životní prostředí, [www.zelenykruh.cz](http://www.zelenykruh.cz).

<sup>27</sup> Wörner, Tilmann: Einflussmöglichkeiten von NGOs auf die Umweltpolitik der Europäischen Union, Marburg (Tectum) 2004, pp.86–109; Greenwood, Justin: Interest representation in the European Union, New York (Palgrave Macmillan) 2003, pp.186–196.

Table 3: Share of countries within the Green 10

Country	Share of NGOs in Green 10 members
Czech Republic	4%
Estonia	2%
Hungary	5%
Latvia	1%
Lithuania	1%
Poland	2%
Slovakia	2%
Slovenia	2%
<i>Post-socialist member states</i>	<i>19%</i>
Belgium	10%
France	7%
Germany	8%
Netherlands	7%
United Kingdom	13%
<i>Top 5</i>	<i>45%</i>
Austria	3%
Cyprus	1%
Denmark	4%
Finland	3%
Greece	3%
Ireland	2%
Italy	4%
Luxemburg	3%
Malta	1%
Portugal	2%
Spain	4%
Sweden	4%
<i>Others</i>	<i>34%</i>
<b>Total</b>	<b>100%</b>

Note: The individual numbers do not add up to 100% due to rounding.

Source: own calculation based on Green 10 (<http://www.foeeurope.org/links/green10.htm>) as of November 2005.

## Conclusion

In conclusion, the EU has a much bigger impact on Czech environmental organisations than the latter has on EU decision-making processes. The EU was a tireless promoter of the internationalisation of Czech environmental NGOs and has contributed mightily to their professionalisation. In addition, EU regulation has strengthened the position of environmental NGOs within the Czech Republic.

As a result, Czech environmental NGOs regularly support EU environmental policy at the national level. They promote and monitor the implementation of EU regulations. In this respect they cooperate with the European Commission, namely with the DG Environment. However, Czech environmental NGOs have thus far failed to gain momentum as a lobbying force capable

of influencing EU decisions. They are too small to shape or otherwise make a difference in the major international environmental associations they have joined at the EU level.

Accordingly the impact of the engagement of Czech environmental NGOs at the EU level is felt primarily at the national and regional levels within the Czech Republic itself. In fact, pre-accession EU support has not so much helped to integrate Czech environmental NGOs into EU decision-making structures, but has considerably improved their capacity to influence domestic politics at home. In so doing the EU Commission has strengthened a powerful ally for the implementation of EU environmental regulation in the Czech Republic.

This situation also has important implications for an assessment of questions of accountability. First, the environmental NGOs from the Czech Republic are not vested with the power to hold organs of the EU accountable. Second, as they use their engagement at the EU level mainly to obtain information, issues of accountability cannot be said to come into play. At the EU level, questions concerning the accountability of civil society organisations in environmental policy refer to the Green 10 partners. Though Czech NGOs are members, their impact is too small to render them directly accountable. This means that even though Czech environmental NGOs are active at the EU level, questions of accountability arise at the national and sub-national level.

## **Case study: Polish Non-Governmental Women's Organisations and the EU**

### **Introduction**

The European Union (EU) currently suffers from a democracy deficit, which in turn creates a legitimacy problem. The European Commission wants to diminish this deficit and enhance efficiency by integrating civil society actors into European governance. Since the late 1990s, a greater role has been assigned to "organised civil society" within political decision-making processes (see Finke/Knodt 2005). This integration presents

*... a real chance to involve citizens in the implementations of the aims of the Union more actively and to offer them structured channels for feedback, criticism and protest. (European Commission 2001: 28).*

Since 2003, minimum standards specifying which parties should be consulted on which issues (and when) have applied to the Commission (European Commission 2002). On the one hand, the purpose is to absorb expertise; on the other, consulting NGOs are supposed to popularise European policies in the member countries. Another expectation of the structured dialogue is that a kind of European umbrella organisational structure will develop in the long run. This kind of horizontal networking by organised civil society would offer a counterweight to disproportionately strong individual actors and pure lobbyism (Zimmer 2003, Section 5.3.1).

Certain overarching questions present themselves at this juncture. Can integration truly be accomplished, and will it offer real avenues of influence to newcomers? Which issues deserve attention? Are civil society actors seizing the opportunities available to them? I will explore these critical topics by focusing on Polish women's organisations, relative newcomers whose interests have traditionally been marginalised. The various steps and instruments the Polish women's movement has taken to influence political decision-making in the EU will be analysed.

This particular case is interesting on several different levels. To begin with, Polish NGOs in general are newcomers on the EU political scene as well as at home; they are not as firmly institutionalised on the domestic front as their counterparts in the EU-15. Women's interests in turn are fairly marginalised in the region. To compound matters, the general public does not yet see the EU as a standard channel of influence. On the other hand, the EU's gender policy is one of its most advanced, with relatively strong civil society participation. What women's organisations stand to gain from EU integration remains to be seen. National and regional actors in the new member states have been increasingly directing their activities on the EU level, and, as I will argue, have experienced political learning processes that are very useful for democratic consolidation.

After presenting EU gender policies and then moving on to describe and analyse the Polish women's movement and its role in the political decision-making on the EU level, I shall formulate some very tentative conclusions.

### **The significance of EU gender policies**

Gender policy as it pertains to the employment sphere is one of the most elaborated policy areas of the EU (see Lemke 2003, Pollack/Hafner-Burton 2000, Wobbe 2001), but the results have thus far been mixed: Women are seldom found in European decision-making bodies like the

Commission or Council of Ministers, and no binding directives mandate the fair participation and representation of women in these entities.

EU gender equality policy rests on three pillars:

Graph 1: The three pillars of gender equality policies in the EU

EU law	Programmes for the Promotion of Women	Gender Mainstreaming
<p>Agreements</p> <p>EU directives on</p> <ul style="list-style-type: none"> <li>• Equal pay</li> <li>• gainful employment</li> <li>• Access to social security</li> <li>• Maternity protection</li> <li>• Parental leave</li> <li>• Part-time employment</li> </ul> <p>Concept of direct and indirect discrimination</p>	<p>Action programme on equal opportunities</p> <p>Action programme Daphne for combating violence against women and children</p> <p>Mainstreaming of equality objectives into other programmes and strategies, such as European employment strategy</p>	<p>Integration of gender equality efforts in all policy areas</p> <p>1996 resolution of the European Commission</p> <p>Treaty of Amsterdam</p>

- Equal treatment since the 1970s: A set of directives to ensure equal treatment in the labour force (equal pay, access to training and admission to professions) was enacted in the 1970s.
- Positive actions: “Positive actions” further contributed to the elimination of unequal starting positions and living conditions in a patriarchal society, via e.g. women-specific legislation and support programmes or quotas.
- Gender mainstreaming (GM): Thirdly, in 1996 the European Commission declared “Gender Mainstreaming” as the official policy frame (see Bretherton 2001). Gender mainstreaming is the systematic integration of gender issues (priorities, needs, effects) in all policy fields and governmental institutions with the goal of promoting the equality of women and men. This objective is to be pursued during planning, implementation and evaluation phases.

The cross-sectional concept of gender mainstreaming is very demanding; it requires specialised knowledge in all areas and the political will to implement it. Initially, some progress was made. (Pollack/Hafner-Burton 2000: 451). Recent experiences with gender mainstreaming, however, indicate that gender equality objectives are omitted or sustaining severe setbacks despite gender mainstreaming’s supposed status as a political priority. Furthermore, explicit positive actions promoting women are in effect becoming cut back (see Thiel 2006 on the European Employment Strategy).

In the primary and secondary law of the EU, gender equality plays a central role. In the Treaty of Amsterdam, gender equality was likewise laid down as a fundamental principle of Community law and as a Community goal, including the obligation to implement an active gender equality policy in all spheres, and not just in the economy (see Art. 3 and 141 ECT). Ten gender equality directives have been issued in the secondary law so far. Due to the implementation obligation in national law and the binding jurisdiction of the European Court of Justice, these directives have proven influential, particularly in the concretisation of equal pay and indirect



discrimination (see Wobbe 2001). However, the quality and speed of implementation are very disparate in EU countries (see the contributions in Liebert 2003).

The adoption of the gender acquis by the new EU members took place in record time. It went ahead much faster than in the old member states and with a more homogeneous result (for the entire *acquis communautaire*, see Schimmelfennig/Sedelmeier 2005, 225), albeit at differing speeds depending upon national gender policies. The pressure exerted by the Commission in the negotiations was never particularly forceful; it increased only toward the end of the process, as inferred from the progress reports. A comparative analysis similar to the one conducted for the EU-15 is still pending, however. Presumably, strong incentives (membership promises) and/or a reliable threat of exclusion may have tipped the scales (external incentives model, Schimmelfennig 2004 and Schimmelfennig/Sedelmeier 2005). A “Potemkin harmonisation” (Jacoby 1999) may now be impending: Since the removal of membership conditionality, the gap between adoption and implementation of gender equality directives is widening, and domestic political factors, such as national gender regimes, adjustment costs and resistance from the bureaucracy or societal groups are gathering steam.

In recent years, the European Union has proven itself as a political opportunity structure, in which women’s groups can affect national policy and place otherwise ignored demands on the agenda. The Polish women’s movement is aspiring to do just that – without much enthusiasm, however. The experience of “Real Socialism” proved that equality solely in gainful employment has a minimal impact at best on gender relations overall. Other important aspects of a comprehensive gender equality, such as political power in decision-making processes, comprehensive civil rights (including control over one’s own body) and the gender-specific division of labour between gainful employment and family work are substantially more difficult to launch onto the EU agenda.

## Political influence of civil society in the EU and Polish women’s NGOs

### The European Women’s Lobby

The European Women’s Lobby, or EWL ([www.womenlobby.org](http://www.womenlobby.org)), was founded in 1990 on the initiative of the European Commission, and, according to its own data, represents over 2700 umbrella organisations. It is thus the largest women’s NGO on the European level (see also in the following Schmidt 2000, here 211). The EWL is a member of the European Advisory Committee on Equal Opportunities for Women and Men and is represented on the Social Platform. About 80% of its budget comes from Commission funds; a small part comes from membership dues.<sup>1</sup> The EWL takes a stand only on “non-controversial” topics in order to represent as many member organisations as possible. These include the struggle against violence against women (including all forms of prostitution), increasing women’s role in decision-making processes, fighting discrimination on the job market and employment policy, combating multiple discrimination and enlargement issues. Preparing dossiers for the Councils of Ministers constitutes a substantial part of their work. In light of this agenda, the question arises whether the EWL is an alter ego of the Commission. The EWL worked for the new directive for the same access to services. It was also successful with the codification of gender equality and mainstreaming in the Treaty of Amsterdam (Schmidt 2000: 218–220).

On the European level, the EWL holds a quasi-monopolistic position, which weakens the legitimisation opportunities of other actors. For local women’s organisations and those which are

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<sup>1</sup> A reason for the European Commission’s support surely was the fact that it saw women’s politics as an important tool for the expansion of its own authority and was able to legitimise it via the establishment of the EWL (Schmidt 2000: 222).

not members of the national EWL coalition, the hurdles for direct influence are thus very high (Schmidt 2000: 222). Women's NGOs active in at least four member states can join the EWL; smaller groups can affiliate with national co-ordinating groups. These in turn send members to the EWL General Assembly, which elects the executive committee. Organisations from candidate countries have only been able to join since January 2003.

Strong institutionalisation causes a "middle class bias": Poorly organisable interests (e.g. migrants) are at a disadvantage, with professional associations overrepresented in comparison with trade unionists (Schmidt 2000: 213). In 2004, the women's lobby set itself the goal of finding a national partner organisation and/or a national co-ordinating group in all new member countries in order to recruit as many national women's organisations as possible (Greboval 2004). Such co-ordinating groups exist in all new member states except Slovenia, as well as in the candidate country Bulgaria. In Slovenia and Romania single organisations are associate members. In political practice, the *de facto* motto is "Take it or leave it". The option is to move into the institution of the EWL and change it from within rather than to ignore it. However, alternatives to this channel of influence require further discussion.

### Conditions and paths to political influence by Polish newcomers

Polish women's NGOs have had to fulfil several conditions and overcome numerous obstacles in order to influence the European Union as civil society actors. This has included the colossal undertaking of creating a civil society with the associated movements and NGOs, acknowledging the relevance of the EU for their own agenda and development of their own country. At the time, "Europe", was used as an argument, image and master frame. The organisations have since learned to move into the institutions and set the agenda. Last but not least, building capacities and alternative networks has been crucial for gathering momentum.

The "Europeanisation" of Polish women's organisations analysed here clarifies the contradictions of this Commission programme for civil society and for the dismantling of the legitimisation deficit. It is implicitly assumed – erroneously – that interests within a single group are harmonised, and that despite barriers, all interests can be organised.

### The constitution of the movement

The Polish women's movement has crystallised around different issues since 1989. These include the planned ban on abortion since 1989 and the transformation of living conditions, along with issues of education and work and other gender-political conflicts. Only democracy and freedom of association allowed these controversial topics to be discussed and debated at all. In a first phase of "social self-defence", many informal women's groups that had already existed prior to 1989 registered themselves officially. The Federation for Women and Family Planning was founded in 1992 ([www.federa.org.pl](http://www.federa.org.pl)). On the abortion question, which is still heavily taboo today, activists began to formulate political interests and to define themselves as political actors. The debate between women's groups and pro-life politicians triggered numerous political and theoretical considerations in the formation of a new post-socialist state: Which concept of state and citizen was going to be implemented? What would the citizen be allowed to decide individually? How would the relationship between state, individual and nation be constructed? Were Polish women to be viewed as mothers or autonomous persons first? (cf. Gal/Kligman 2000, Ch. 3). In November 1994, twelve important women's organisations united to form the Social Committee of Non-governmental Organizations (SKOP). They proceeded to compile their own shadow report for the 1995 World Women's Conference and to exert pressure upon the government to produce an official report. The organisations seized the political opportunity presented by the conference to legitimise their own demands in terms of international and domestic law. SKOP linked the slogan of the international women's movement "Women's Rights are Human Rights" with the Polish conviction of being part of Europe. Until 1997 and between 2001–2005, a forum of the women's organisations co-operated with the government in the im-

plementation of the Beijing Action Platform as well as on other questions of gender equality. Since the World Women's Conference, almost all of the women's organisations' demands have been legitimised with reference to the law. The law became the primary medium for calling attention to violence against women, forced prostitution, job discrimination and severely restricted reproductive rights.

The terms of Polish conservative governments – 1997–2001, and since 2005 – have been characterised by inferior co-operation with state institutions and actual steps backwards in terms of gender policies (as evidenced in the now partially privatised social security system, to name just one instance). The post-communist government of 2001–2005 had appointed an equal opportunity officer in the ministerial rank, whose office launched many domestic as well as international co-operation projects. Among other things, equal opportunity officers were appointed in the regions. Overall, the implementation of gender equality machineries is weak, sketchy and overly dependent on changes of government. The office was dissolved in 2005 and a subsection for family issues in the Ministry of Labour and Social Policy was established. While the chairwoman of the Women's League (the former socialist front organisation), as well as a high-profile feminist philosopher formerly occupied the post (Izabela Jaruga Nowacka and Magdalena Środa, respectively), Joanna Kluzik Rostkowska is now at the helm. She represents moderate Christian-Democratic views in terms of economic opportunities – namely, that the gainful employment of women will remain a component of modern societies, but she advocates discrimination against gays and lesbians and knew virtually nothing about the principle of gender mainstreaming when she took office (see *Gazeta Wyborcza* of 8 November 2005).

Today, around 300 women's organisations, groups and research centers are active across the entire country, engaged in particular in the areas of employment and qualification, social assistance, violence and health. In recent years the work of the Women's Information Centre Ośka (Ośrodek Informacji Środowisk Kobietych, [www.oska.org.pl](http://www.oska.org.pl)) was instrumental for networking and discussion in the women's political environment. Numerous drafts for an anti-discrimination law and action alliances for the election of female candidates have sprung from this environment. In the new millennium, feminist points of view are gradually gaining momentum in public awareness: women are discriminated against, they are entitled to more political power and legal protection should be granted to homosexual partnerships. The movement has tried time and again to obtain strong public support by issuing public statements. Overall, it can be characterised as a small movement consisting of numerous organisations and an increasing number of sympathisers. It is carving out a niche in the general public by creating its own infrastructure and protest culture. The movement is thriving despite the current conservative-populist hegemony.

### Europe in the movement's discourse

Up until roughly 1998, women's organisations usually deployed the "international law" master frame to mobilise followers and legitimise their goals in the public (on framing in general, see Snow/Benford 1988 and 1992; for the international women's movement, Joachim 2003). Framing is a very important strategy by which social movements assign new meanings to familiar events and conditions (realignments). Social facts once only seen as regrettable but tolerable, can now become a real scandal. If domestic violence is seen in the traditional frame of the domestic duties of housewives and mothers, it is usually perceived as an unfortunate by-product of male alcoholism; re-framing the phenomenon in the context of equal partnership, the fundamental right to physical integrity and adherence to international conventions reveals it to be an intolerable disgrace. Its unequivocal abolition is the responsibility of a state with a democratic rule of law.

In framing the issues, the Polish women's movement built upon the fact that the relevant political forces in Poland affirm the affiliation with the European value system as well as the adherence to international norms. Since the 1970s, the reference to Europe has been a vital argument

of the Polish opposition vis-à-vis the socialist state. Since the nation's accession to the EU, these norms and values now apply directly. If Poland is part of Europe, then it must adopt and obey the obligations resulting from international and European treaties. This is particularly important in terms of the civil rights of inviolability and individual freedom of choice, especially regarding the abortion question.

This argument strengthens the very meaning of the democratic rule of law both in citizens and the state (demanding the state to adhere to the rule of law). It contributes therefore to democratic consolidation.

### Acknowledging the relevance of the EU and using Europe as a master frame

A more systematic reference to "European law" began in 1998 with the accession negotiations. Little by little, women's organisations began to decry the failure to adopt the "gender acquis". They proceeded to inform themselves about the gender equality policies of the European Union and launched their own projects with European Union support. In addition, they networked on the European level. They stressed the need for political action via comparison with other European Union states. This strategy can be seen as a consequence of the political learning process: Political changes do not come about via appeals to political decision-makers, but require self-initiative (especially if misleading information policies are to be improved).<sup>2</sup> The women's organisations' own information policy offensive ("Europe Supplement", "European Travel Kit for Women", etc.) effected a psychological distance from the state-society antagonism in Polish political culture. The state is no longer the sole addressee for political demands; society as a whole is increasingly seen as an invaluable participant in social change.

While the concepts of direct and indirect discrimination were finally embodied in the labour code (just prior to the conservative-liberal coalition's exit from office in 2001) after numerous protests and appeals, women's rights nevertheless remained controversial in the Polish public. The fate of the "Letter from 100 Women" ("list stu kobiet") of February 2002 illustrates the limitations of an appeal strategy and dependence upon external allies. The letter was addressed to the European Parliament and the Commissioner for Employment and Social Affairs, Anna Diamantopoulou. In it, prominent personalities (e.g. Wisława Szymborska) and the most important women's organisations expressed their concern about the course of the accession debate in Poland. Due to numerous public declarations, it could be inferred that a pact between the Catholic Church and government had been established: The Church would support the accession in exchange for the renouncement of a recent liberalisation debate on abortion. Furthermore, strong – and public – ideological intimidations had taken place. In a prime example, Bishop Pieronek criticised the equal opportunity minister by calling her "feminist concrete that does not melt even under hydrochloric acid",<sup>3</sup> because she had flatly demanded this particular liberalisation as well as matter-of-fact sex education in schools. An open discussion about it should have been able to take place without intimidation. In her reply two months later, Diamantopolou pointed out that the abortion question was a "difficult topic" and fell under the exclusive legislative jurisdiction of the member states.<sup>4</sup> The strategy of international criticism can only succeed if the persons and institutions being addressed are receptive and responsive to the demands.

<sup>2</sup> In April 1999, the Ośka Conference on "Government Politics vs. Women" wrote an open letter to the Integration Committee; it may strike its brochure "European Union – Women" (Unia Europejska – kobiety). Its incorrect, distorted contents exemplarily demonstrate that the importance of independent information, particularly in the climate of the reactionary gender politics of the conservative government at that time, can hardly be overrated.

<sup>3</sup> In reaction, T-shirts which read "More feminism, less hydrochloric acid" soon emerged.

<sup>4</sup> Text via [www.oska.org.pl/infopage.php?id=41](http://www.oska.org.pl/infopage.php?id=41), available on 8 March 2002; Reply by Diamantopolous in Chołuj 2003, 224.

A letter from January 2003 demanding that the European Parliament reject the Polish “Declaration on Morality, Culture and Sanctity of Life” as part of the treaty of accession experienced a similar fate.

Over the course of the accession negotiations, the Polish public became increasingly critical and sceptical of the European Union. The information politics of the government improved only haltingly (see Grabowska 2001: 34). During the preparation for and the negotiations themselves, gender issues and gender mainstreaming did not factor in (see Bretherton 2001: 69–72). The ability to implement the *acquis communautaire* of the EU was indeed one of the three Copenhagen Criteria; however, in terms of the “gender *acquis*”, it was not central for either side.

### Move into the institutions

However, the Committee on Women’s Rights and Gender Equality of the European Parliament repeatedly underscored the importance of adopting a gender perspective in the enlargement (see Hadj-Abdou/Mayrhofer 2006). It co-operated with women and women’s organisations in the accession countries by means of joint projects, hearings and delegations that initiated “deliberative processes”. Co-operation especially flourished in common problematic areas like political participation. However, work in parliamentary commissions is rather actor-centred, and therefore depends on the activities of its individual members. Of the three Polish MEPs, only the Social Democrat Lidia Geringer is attuned to gender equality. She co-operates with several women’s organisations in her constituency in Lower Silesia and highly appreciates the activities and accomplishments of the EWL as well as the Polish Women’s Lobby (Geringer 2006)<sup>5</sup>.

An important step in terms of European networking was the establishment of a co-ordinating group in Poland in the summer of 2004<sup>6</sup> that should discuss and prepare the conditions for the accession to the European Women’s Lobby. Nearly all major organisations took part in it, but not without tension: The EWL had supposedly not been interested in co-operating with women’s organisations from the accession states for quite some time. They apparently ceded only upon pressure from the European Commission. In terms of content, there were numerous reservations, e. g. regarding the EWL’s conservative attitude towards the prohibition of prostitution. The idea of a platform of Eastern-Central European women’s organisations for the European level was ultimately rejected in order not to accentuate or perpetuate the East-West divide. The question was not if, but *how* one could become involved in the EWL. It was soon obvious that a “Polish Women’s Lobby” ought to take the form of a co-operative protocol based on an open formula rather than an umbrella organisation. It was also felt that organisations should be able to join at any time. After further consultations with EWL representatives and a Latvian colleague, it was decided at a nationwide meeting to set up the national co-ordination as well as its spheres of activity, authority and statutes. As far as the representation of Polish organisations and interests on the European level is concerned, the emphasis lies on the women’s lobby as well as on participation in the EU’s control and advisory committees (e.g. for structural funds). Information access for Polish organisations and the preparation of common (Polish) standpoints vis-à-vis European Union policies are two more critical goals. In the national co-ordinating committee, experts will analyse six areas: the labour market and social politics, women in decision-making processes, violence against women, women’s health (including reproductive health), women in rural areas and sexual and national minorities. In addition, the protocol states: “The first three topics are fully compatible with the priorities of the EWL – the last three with the local priorities”.

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<sup>5</sup> Vgl. [www.lgeringer.pl](http://www.lgeringer.pl); she also points to the role of the Polish Lobby as experts for the Ukraine and Belarus.

<sup>6</sup>The following description is based on minutes and reports for the establishment of the *Polskie Lobby Kobiet* (Polish Women’s Lobby), which was available under [www.oska.org.pl](http://www.oska.org.pl) in October 2004.

About three dozen organisations have signed the co-operative protocol so far; however, some discord has surfaced. The Coalition for Gender Equality (Karat) did not participate in the preparations at all and the Family Planning Federation later withdrew.

If one compares the agendas of Polish women's organisations with the key activities of the European Women's Lobby, large discrepancies become apparent. In particular, questions concerning women's health and reproductive rights, namely access to legal and safe abortion, are non-issues for the EWL. For the Polish women's movement, however, the abortion question is *the* focal point, the *pièce de résistance*. Questions of economic and social rights beyond the labour market, such as future EU enlargements and the question of new dividing lines between EU and non-EU, are likewise ignored (evidenced in part by the institutional focus of the women's lobby). There is nonetheless agreement in the struggle against violence against women and demands for the sustained and balanced political representation of women.

The representation of Polish women's organisations at the EU level will probably prove tricky. The Polish Women's Lobby is closely affiliated with Ośka, whose former director was elected delegate to the Executive Board of the EWL. Recent debates on the strategic positioning of Ośka, an exchange of staff and slashing of funds have weakened its political impact. However, the co-ordination of the political discussion in the women's movement facing the new conservative-populist government has been taken over by another organisation.<sup>7</sup>

#### Building capacities and networks

Since the early 1990s, regional networks of women's organisations reaching from Central Eastern and South Eastern Europe to the CIS have been emerging. Karat, or "Coalition for Gender Equality", was officially established in Warsaw in 1997 as a result of discussions among regional organisations during the Women's World Conference in Beijing (see Marksová-Tominová 2006). Karat consists of about 30 women's organisations and focuses on the UN level, but addresses the EU as well. It monitors the implementation of international agreements, lobbies for national gender equality mechanisms and supports the political participation of women leaders in the region. Since 2002 Karat has repeatedly warned against a new division in Europe due to the accession processes of certain Eastern European states. It has emphasised the importance of considering the viewpoints, achievements and problems of non-candidate countries. Enlargement must not lead to a widening of the economic gap in the region or to the breaking of ties between member and non-member countries.<sup>8</sup>

In a joint declaration with the German NGO Women's Forum at the end of 2003, the human rights-oriented approach was emphatically endorsed throughout the entire legal infrastructure of the EU. On the agenda were reproductive as well as social and ecological rights, which will have to be safeguarded and promoted against the purely economic objectives of the EU. Effective mechanisms for actual gender equality as well as for the balanced representation of women in elected and appointed committees are considered essential (Karat/NGO Frauenforum 2003). In a common position paper for the 49th session of the UN Commission on Women in 2005, Karat and the Stability Pact Gender Task Force for South Eastern Europe (SPGTF) stated:

*KARAT and SPGTF proved in practice that political action towards gender equality could be strengthened through broad regional partnerships ... and exchange of best practice with the strong support of EU, Council of Europe, Stability Pact for South Eastern Europe, OSCE/ODIHR, UN agencies and donor governments. (...) Developing common agenda for the women in the whole Europe is crucial to prevent a new South/East-West*

<sup>7</sup> NEWW, the Network of East-West Women, organised a national strategic conference in December 2005; see [www.neww.org.pl](http://www.neww.org.pl).

<sup>8</sup> See [www.karat.org/eu\\_and\\_economy/regional\\_contribution.html](http://www.karat.org/eu_and_economy/regional_contribution.html), available on 12 October 2004, as a letter to the Convent for the Future of Europe in 2002.

*divide (...) Hence the EU should accelerate their efforts to implement the new neighborhood strategy* (Karat 2006, 2).

Karat builds strategic partnerships with other organisations (e.g. with the above-mentioned SPGTF) for campaigns on specific issues. Since 2001, Karat has concentrated on economic issues (including economic empowerment) and literacy in the context of EU enlargement. In 2005 an Economic Literacy Kit for CEE/CIS (Russian translation 2006) was published to enable women's organisations to lobby effectively for the improvement of the economic situation of women. Together with WIDE (Women in Development in Europe, see [www.eurosur.org/wide/home.htm](http://www.eurosur.org/wide/home.htm)), the so-called Gender Assessments were compiled, which can be seen as the shadow reports to the Joint Assessment Papers for the new member countries to the European Employment Strategy. The "Labour Market and Entrepreneurship: Overcoming Gender Stereotypes" project has been running since 2005. To this end, Karat is involved in twelve national reports on the position of women in the labour market. In 2004, Karat conducted a survey in cooperation with the Clean Clothes Campaign (CCC) about the working conditions in four textile factories in Poland (Łódź) and reported the results to the 49th session of the UN Commission on Women.<sup>9</sup> It is important here that Karat addresses the negative impacts of globalisation and neo-liberal reforms on women's social and economic status as well as the feminization of poverty. Karat integrates economic rights into the human rights discourse. These activities somewhat counter the frequently expressed criticism that feminist women's organisations in post-socialist Europe have ignored burning questions of economic transformation and social inequality, concentrating instead on a classical liberal agenda of individual freedoms (e.g. Miroiu 2006).

Another important regional network worthy of mention is Astra, which advocates sexual and reproductive health rights (SRHR) as fundamental human rights ([www.astra.org.pl/articles.php?id=127](http://www.astra.org.pl/articles.php?id=127), 26.06.06). Astra is engaged in awareness-raising and elevating SRHR to the top of the agenda, particularly in the EU and UN. Instruments for this mission include monitoring and reporting on the status of implementation of SRHR and gender-related policies. The network organises public events, conferences and workshops. In February 2006, Astra and the Polish Delegation of the Socialist Group held a hearing in the European Parliament. Its goal was to draw the European policymakers' attention to their obligations in this area. If, as Astra argues, SRHR are human rights, then EU institutions (which are fundamentally committed to the guarantee of human rights) are obliged to develop policies which secure them. ([www.astra.org.pl/news.php?id=21](http://www.astra.org.pl/news.php?id=21), 26.06.06).

These examples show how the master frames of human rights and Europe are being employed to legitimise the movement's demands and that several channels for influencing the EU institutions are available. Co-operation is crucial to these activities, but not without pitfalls. Central to the deliberations for co-operative efforts is the anticipation of competition for funding (Holz 2006) and the dwindling access to European Union funds in particular. With the departure of important donors from the new member countries as well as the EU's increasingly restrictive funding policies, these fears have largely been borne out. The funding periods barely exceed two years and are insufficient for the long-term development of NGOs (which EU evaluations confirm time and again). The required consortia and networks, to which they have limited access and/or in which they would be impotent, are high barriers for smaller and informal. To put it bluntly, the patriarchal hierarchical organisational model of the EU is once again present here (Payer 2006, based on field research in Bulgaria). In recent years only a fraction of the EU funds have gone towards the support of the development of democracy and a free-market economy in the sphere of civil society, of which women's organisations represented only a small part (see Funk 2006, 76–77).

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<sup>9</sup> See [www.womenslabour.org/\\_en/conditions/ccc\\_rep.html](http://www.womenslabour.org/_en/conditions/ccc_rep.html), accessed on 26 June 2006.

## Conclusion

This analysis has pointed out how important involvement in European civil society is for newcomers and marginalised interests like Polish women's organisations. The process-oriented analysis showed that the Polish women's movement has learned by doing: Step by step, from appeals for information, to fundraising and networking, it has become clear just how important and effective political activism can be in multilevel governance. Civil society has succeeded in making a critical step towards the elimination of the gap between political actors and European policy. It has contributed, not least with spreading information of funding opportunities, to the popularisation of the EU. However, the Europeanisation of civil society on the one hand and integration on the other also means that new members are becoming lost in the shuffle. Their experiences and points of view must be integrated.

The Polish women's movement's emphasis on Europe, the EU and European law was a useful political strategy, but one which nonetheless has clear limits. Joining the European Women's Lobby was therefore a logical next step towards Europeanisation, one which took place after a lengthy deliberative process and was linked to compromises. The Women's Lobby itself appears to be a prime example of a European umbrella organisation which is already well integrated into the negotiation system and can definitely boast successes. However, the exclusion of minority interests is also clearly illustrated by the principle of the "smallest common denominator". The solution to the dilemma lies in the establishment of alternative networks and coalitions, such as Karat or Astra, also wishing to exert influence on the EU. One can speak in this instance perhaps of a division of labour rather than competition: several issues, several channels.

It is difficult to assess if women's organizations gained from European integration, especially if one takes funding policies into account. Generally speaking, gender policies in the new member states now rely more on European regulations, but are still contested and without ongoing political pressure backlashes are probable. There are some areas for future research. Analyses should be done on how the described lobbying policies, initiatives and protests are in fact received on EU level. What is their impact and what outcomes can be measured? Comparative research with other policy areas would be especially useful in order to assess the special character of gender policies.

In principle, the legitimisation deficit in the EU can only be eradicated if the diverse and sometimes conflicting interests of a social group are represented effectively. This would entail a proliferation of advocating entities, which may be seen as counterproductive to the EU's desire for efficiency. Accordingly, the Commission's hopes to integrate European civil society by means of more or less uniform umbrella organisations will probably not be fulfilled.

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## **Case Study: Czech Trade Unions and Employers' Associations on the Way to Multi-Level Dialogue**

### **Introduction**

In democratic societies, interest organisations and political parties are key actors in the structured process of mediating interests. In a system of multi-level decision-making and governance, intermediary organisations are often ascribed the function of bridging between the citizenry and the European level. The process of interest mediation has become an important part of the functioning of modern democratic societies. In market-economy pluralistic democracies, there are always social and interest groups with differing interests and expectations, at least in the short-term. The Czech Republic's accession to the EU on 1 May 2004 created a new situation in many respects, including changes on the national political stage as well as entry into the European political arena as an equal member. This development has also brought other, multi-layered possibilities of interest representation. In order for organised interests to be able to take advantage of this potential, they have to be both ready and mature. Are the entities representing organised interests indeed sufficiently ready in this case? Do they have the capacity for it?

Among the large number of interest organisations and civic associations active in the Czech Republic, there are trade unions and organisations representing employers and businesses. Thanks to their prominent position and permanent access to political decision-makers, they have a tremendous chance to influence the shape of public policies. They played an important role during the transfer to a market economy in the process of economic restructuring, and their importance has increased as a result of both the accession of the Czech Republic to the European Union and their subsequent contributions to the European social dialogue.

It is in the public interest for interest differences in the sphere of labour and capital to be resolved democratically, peacefully and without disrupting basic social functions and values. Such a solution is offered by social dialogue involving various forms of communication between social partners, employers and employees (or, more precisely, organisations representing their different and often antagonistic interests); at the top level, the dialogue would include the government. Social dialogue helps to create conditions for seeking consensus in the traditional conflict line between labour and capital (including decent solutions to collective disputes) while simultaneously preserving social peace.<sup>1</sup>

Social dialogue and its institutionalised form – the Council for Economic and Social Agreement (CESA) – were established in the Czech Republic at the beginning of the 1990s. Its initiators built on the practical experience in Western Europe with social dialogue. Since the start, three partners have been involved in the CESA: the State (represented by the government), employers [represented by the Confederation of Industry the Czech Republic (Svaz průmyslu a dopravy ČR) and the Confederation of Entrepreneurial and Employers' Unions (Konfederace podnikatelských a zaměstnavatelských svazů, KZPS)] and employees [represented by trade unions (the strongest trade union centre is the Czech-Moravian Chamber of Trade Unions (Českomoravská komora odborových svazů, ČMKOS) and the Association of Independent Trade Unions (Asociací samostatných odborů, ASO)].

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<sup>1</sup> The definition of the term “social dialogue” is ambiguous; generally, in the Czech Republic it is regarded as communication between social partners. Usually, however, it is reserved for negotiations at the supra-enterprise level and especially for tripartite negotiations [Kroupa et al. 2002, Mansfeldová 2005a].

Social partnership and its institutionalised form – the tripartite/CESA – have contributed to the transformation while developing in changing political, economic and social conditions; meanwhile, the social partners themselves have been “maturing.” During the negotiation period and after the accession of the CR to the European Union, the social partners’ activities assumed a supranational and European dimension. On the one hand, the number of levels of potential interest representation has multiplied and the possibilities for social partners have expanded; on the other hand, the gap between the top representation and the membership base has widened.

## The main actors and their capacity to participate in the European social dialogue

Existing top centres among associations and the unions represent consensus achieved through negotiations within organisations, sectors, fields and regions. The functioning of these structures is not, of course, unproblematic, especially when it comes to relationships between representatives and the represented along fixed vertical axes that are also supposed to foster the member organisations’ autonomy. The function of interest articulation is closely linked to democratic intra-union communication processes, which should convey the information from the bottom up about differing interests necessary to shape the concrete demands for the leadership to represent. In practice, the situation is often reversed; the leadership represents the interests of members without having any immediate feedback from the membership base. It may also lack a generally formulated mandate to represent the interests of members of a concrete organisation in the decision-making sphere, political institutions or the public arena, or the capacity to mobilise its members to support these demands. Interest articulation thus includes processes that allow individuals to become aware of their interests as common collective interests [Wessels, Paschen 2004].

The CESA working teams play an important and growing role; they are permanent expert bodies ensuring and drafting expert opinions and other documents for CESA bodies. Their activities concentrate on wages, salaries and related issues; social issues; public services and public administration; work safety; the development of human resources and education; and the position of the Czech Republic in the EU. The Working Team for European Integration (WTEI CESA) has been active in the CESA since 1998. From the very beginning, this team has been presided over by the deputy minister of foreign affairs for EU affairs. The team brings together seven representatives of the government, trade unions and employers and also includes the Economic and Agrarian Chambers (albeit on a different principle). Their participation was especially important during the screening process, when it was occasionally necessary to obtain their expert opinion. As the regular members are not able to cover the broad spectrum of problems, the participation of both Chambers continues to be necessary. The CESA Working Team for European Integration is a platform for information and consultation on important matters related to the activities of the Czech Republic in the EU, and the output of the team is presented at CESA plenary sessions.

Trade unions have actively contributed to the process of institutional inclusion of the Czech Republic in the EU and have helped to co-ordinate decision-making. During the pre-accession period, a Committee for European Integration was set up on the governmental level at the Ministry of Foreign Affairs and in each department an office was established dedicated to issues concerning European integration and to the preparation of directives. This system is still in place, and the largest trade union confederation, ČMKOS, has been a member from the start. The trade unions are interested in the broadest possible participation in policy document preparation. For trade unions, the co-ordination commission at the Ministry of Labour and Social Affairs, as well as at the Ministry of Industry and Trade, is of paramount importance. The strong involvement of the unions in the process of institutional inclusion should not be credited to Czech corporatism but rather to the trade unions themselves, which have managed to push their interests

in an environment that can hardly be said to favour corporativism. This system of participation is different from CESA; it is another channel for promoting the interests of trade unions.

Employers were active in European structures long before the EU accession, forming institutional representation of their interests. The basic agenda of employers and entrepreneurs is quite clear; generally, it involves the achievement of conditions for maximising Czech companies' profits, via, for example, low total taxation, the minimisation of interventions in labour law relations by the government or trade unions, the absence of regulations in production or business activities, protection and support for the domestic market, etc. The manner of interest promotion and the efficiency of lobbying, however, depend largely on the type of organisation [Kunc, Hartoš 2005:159].

In 1990, a common umbrella organisation was created in the Czech Republic which was to bring together all major business and employers' associations and represent them at negotiations with the government and the unions. In 1993, the organisation adopted its current name, the Confederation of Employers' and Entrepreneurs' Associations of the Czech Republic (Konfederace zaměstnavatelských a podnikatelských svazů, KZPS). Although originally only an umbrella organisation, it saw its membership base erode over the years (and, subsequently, its prominent position). In 1995, its largest member, the Confederation of Industry of the Czech Republic (Svaz průmyslu ČR), left the Confederation, and later, its second largest member, the Czech Confederation of Commerce and Tourism (Svaz obchodu a cestovního ruchu), followed suit. In comparison to the original organisation, the Confederation is weaker today, but nonetheless still brings a lot of utility to its members. It takes part in the tripartite and is a member of the Council for Economic and Social Agreement.<sup>2</sup>

The Confederation is not a member of any European association of employers (unlike its member associations, which are often members of these federations). Through its members, the Confederation is represented in the European Economic and Social Committee (EESC), which associates representatives of employers and of trade unions as well as representatives of various civil associations. A representative of the KZPS in the EESC is employed and paid by the Union of Czech and Moravian Producer Cooperatives and not by the Confederation, although this representative is expected to be active on its behalf (e.g. when submitting comments on European directives).

The Confederation serves primarily as a co-ordinating body harmonising the approach of member organisations to negotiations in the tripartite or comment procedures. The Confederation cooperates with the Confederation of Industry of the Czech Republic (Svaz průmyslu a dopravy ČR), the Union of Commerce and Tourism of the Czech Republic (Svaz obchodu a cestovního ruchu ČR), the Economic Chamber of the Czech Republic (Hospodářská komora ČR), the Agrarian Chamber of the Czech Republic (Agrární komora ČR) and other organisations. The need to co-ordinate approaches and activities resulted in the formation of the Entrepreneurial and Employers' Council of the Czech Republic (Podnikatelská a zaměstnavatelská rada ČR), which integrates representatives of the Confederation, the Agrarian Chamber of the Czech Republic, the Economic Chamber of the Czech Republic and the Confederation of Industry of the Czech Republic in a voluntary grouping.

The Confederation strictly represents its members in the tripartite; it does not concentrate on lobbying in the Parliament, and its activities are more or less reactive with respect to govern-

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<sup>2</sup> Today KZPS associates seven entities: the Employers' Union of Mining and Oil Industries (Zaměstnavatelský svaz důlního a naftového průmyslu), the Association of Textile, Clothing and Leather Industry (Asociace textilního-oděvního-kožedělného průmyslu), the Union of Czech and Moravian Producer Cooperatives (Svaz českých a moravských výrobních družstev), the Association of Entrepreneurs and Traders of the Czech Republic (Sdružení podnikatelů České republiky), the Association of Building Industries of the Czech Republic (Svaz podnikatelů ve stavebnictví v České republice), the Union of Employers' Associations of the Czech Republic (Unie zaměstnavatelských svazů České republiky) and the Union of Agriculture of the Czech Republic (Zemědělský svaz ČR).

mental bills of laws, especially those that are debated in the tripartite. Lobbying activities and initiatives are left to its members and their individual courses of action. The most influential entity representing employers' and entrepreneurs' interests, the Confederation of Industry of the Czech Republic, opts for a different strategy. Thanks to a large membership base (including around thirty associations), it is the largest employers' union in the Czech Republic; it therefore also represents Czech entrepreneurs' and employers' associations at the European and global levels. Unlike the Confederation, it does not concentrate only on the tripartite, but is active along other lines as well. The union defines itself as a voluntary organisation associating employers and entrepreneurs in the Czech Republic in the field of industry and transport and, as a non-governmental organisation, is independent of the government, political parties and trade unions. The Union is a member of the International Organisation of Employers (IOE), the Union of Industrial and Employers' Confederations of Europe (UNICE) and the Business and Industry Advisory Committee to OECD (BIAC).

Today, thirty independent sectoral unions are associated in the Confederation of Industry of the Czech Republic, which represents approximately 1,660 companies; the number of members has been falling in recent years, however. The Union strives to represent larger industries rather than companies or unions active in business and services. It does co-operate with other employers' organisations that are not members with which it can push certain concrete interests. The most important companies, creating up to 85% of the GDP in industry, are associated in the Union through membership in sectoral associations [Kunc, Hartoš 2005:160–161]. The Czech Confederation of Industry is active at the European level especially through CEBRE (Czech Business Representation), which the Association established with the Confederation of Employers' and Entrepreneurs' Associations (KZPS) and the Economic Chamber of the Czech Republic with the goal of defending Czech business interests directly in Brussels. CEBRE offers a large number of paid services, such as information services, news and legislation monitoring, analyses, trainings and fellowships, consultations on project preparation and mediation of contacts and lobbying meetings. Co-operation between foreign associations and representatives of Czech industry at the international level also occurs through the Union of Industrial and Employers' Confederations of Europe (UNICE), where the Czech Confederation of Industry has a delegate. In addition to this, the Confederation of Industry has ten representatives in European Commission advisory bodies. It strives to create an institutional base for mediating information, contacts at the national and European levels and for consultation. One example is the Contact Point for Industrial Research and Development in the Czech Republic (Oborová kontaktní organizace pro průmyslový výzkum a vývoj v ČR, OKO SPČR, [www.okospcr.cz](http://www.okospcr.cz)), created in 2000 under a programme funded by the Ministry of Education, Youth and Sports. The goal of the organisation is to create an information infrastructure for industrial research and development in the Czech Republic, make information on research programmes of the European Union accessible, and mediate contacts and expert consulting to Czech entities wishing to become involved in the programmes. Another institutional basis for co-operation is the Council for the Development of the Business Environment (Rada pro rozvoj podnikatelského prostředí), which associates representatives of ministries, the CzechInvest and CzechTrade agencies and representatives of entrepreneurs, the Confederation of Industry of the Czech Republic, the Economic Chamber of the Czech Republic, the Association of Entrepreneurs of the Czech Republic, the Association of Entrepreneurs in Civil Engineering and other interest groups [Kunc, Hartoš 2005].

Regardless of the various focal points and strategies of the two centres of employers' associations (as described above), purpose-driven liaisons are formed to strengthen the negotiation potential of employers' associations. In May 2006 the largest employers' union, the Union of Industry of the Czech Republic, signed an agreement on co-operation with two other important entrepreneurial unions: the Association of Textile, Clothing and Leather Industry and the Association of Building Industries of the Czech Republic, a member of the Confederation of Employers' and Entrepreneurs' Associations. Together, they represent the employers creating the majority of jobs in industry and transport. The agreement concerns the promotion of the inter-

ests of employers and entrepreneurs in the preparation of bills of laws and joint procedures when negotiating with the cabinet, trade unions and interest organisations. As the president of the Union of Industry, Jaroslav Míl, emphasised:

*Our goal is to create one lobbyist group which will be strong enough during tripartite negotiations and in the Chamber of Deputies of the Parliament to manage to influence economic and legislative conditions for enterprising in this country. We absolutely need a joint representation of employers. Especially recently we can see that some politicians do not realise that it is not themselves but employers who create economic values and give people jobs.<sup>3</sup>*

Another goal is to react jointly to demands coming from the European Union.

Social partners – both trade unions and employers’ associations – take their participation in the European social dialogue very seriously. Both of them have long prepared for this task. The largest trade union confederation, Czech-Moravian Chamber of Trade Unions (ČMKOS), established its European Integration Team (Evropský integrační tým ČMKOS – EIT) in 1996, a multi-disciplinary group consisting of representatives and experts of ČMKOS and its member trade unions. The team was set up based on an initiative of ČMKOS and the European Trade Union Confederation, of which ČMKOS is a member and which has helped the activities of the EIT since the beginning. Until May 2004, the EIT concentrated mostly on the preparations for the CR’s accession to the EU; its mission has since expanded. Its main tasks consist of ensuring that trade unions are consulted at the national level as a social partner during preparations for all major steps and documents concerning activities of the CR in the EU, and co-ordinating representation of the CR in national structures related to the EU and European bodies where social partners are represented.

The main tasks of the EIT include:

- working towards including trade unions as social partners to be consulted during preparations of all major steps and documents concerning the activities of the CR in the EU and co-ordinating the representation of ČMKOS in national structures related to the EU and European bodies where social partners are represented;
- drafting proposals for union positions on issues related to the EU for ČMKOS bodies and contributing to strengthening the European dimension of ČMKOS activities;
- collecting and disseminating information about the European Union and its policies and the positions of the Czech Republic, ČMKOS and European trade unions on debated policy proposals among member trade unions as well as regional councils of trade unions. The EIT fulfils this task especially by publishing a bulletin entitled “Information of the ČMKOS European Integration Team,” of which more than twenty issues per year have been published since 1997. ČMKOS EIT members also serve as lecturers on European integration in the ČMKOS trade union education programme. EIT also has a group for project preparation and participation in European programmes.

The European Integration Team also drafts proposals of expert opinions on issues related to the EU for ČMKOS bodies and collects and disseminates information in trade unions about the EU and its policies, opinions about the CR, ČMKOS and European trade unions on debated policy proposals. It also concerns itself with the development of cross-border contacts with trade unions in neighbouring countries (Germany and Austria) within inter-regional trade union councils.

An important aspect of the participation in policy formation is the formalisation and structuring of consultation. An example of participation in policy formation is the National Strategic Reference Framework (NSRF) (Národní strategický referenční rámec ČR, NSRR), formulated in

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<sup>3</sup> <http://www.spcr.cz/cz/dynamic/article.php?artid=827>

relation to the general strategic principles of the Communities and worked out in detail for the years 2007 to 2013. The ruling and co-ordination committee of the NSRF is governed by the Ministry for Regional Development and drafts national reference frameworks for the spending of European funds. Trade unions, representatives of employers' and business interest associations and non-governmental non-profit organisations can participate in these preparations and influence the formulation of programme documents. These organisations, especially the trade unions, actively take advantage of this possibility.

No organisation has been established in the Czech Republic to harmonise the interests and intensify the dialogue between economic and social partners at the national and European levels. There was none during the preparations for the accession of the CR to the EU, nor is there a need for one now. Such a forum – the national-level Economic and Social Council (ECOSOC) – was created in Slovakia in 2000 during the pre-accession preparations, however. It was established based on a decision of the Consultation Committee of the Ministerial Council of the Government for European Integration, and brings together both representatives of the tripartite and social partners as well as members of academic and non-governmental institutions.<sup>4</sup> The goal of ECOSOC in Slovakia as an independent body was to contribute to the integration process in Slovakia. Since its accession to the EU, its activities have focused primarily on European funded programmes.

When studying the manner in which consensus is reached and support sought for opinions at the national and European levels, we concentrated in particular on network strategies. For network strategies, direct contact of individual actors and exchange of information (in the widest sense of the word) is crucial. In view of the fact that decision-making in the EU is a multi-level process, a multiplicity of approaches and contacts is important. It is also necessary to take into account that EU institutions prefer co-operating with supranational organisations and European-level organisations; national interest groups thus enjoy limited influence and access to decision-makers [Mohr, Wessels, Beyers, Kerremans, 2005]. Therefore, national interest groups seek access to supranational groups as well as support at the supranational or European levels. They seek this support directly or indirectly through supranational networks of interest organisations.

The European parliament, co-operation with Czech members of European Parliament (MEP) and other MEPs provide alternative avenues for networking. Though experience is still limited, first assessments indicate that ČMKOS does not value co-operation with Czech MEPs very highly. Although at the national level it often finds support in its natural partner, the social democrats, only a few MEPs provide individual support at the European level. ČMKOS has striven to explain its policy to Czech MEPs and to debate their positions with them, but the interest proved to be one-sided.<sup>5</sup> Trade unions therefore rely more on the lobbying activities of the European Trade Union Confederation in the EP. Sometimes they use their networks and the unions and MEPs of other countries. A great weakness of the union representation at the European level is that ČMKOS does not have permanent representation or an office in Brussels. Representation would contribute greatly to interest promotion, obtaining information and functioning in the network. However, the Czech trade unions have thus far not found this to be necessary.

At the EU level, trade unions, like representatives of employers' associations, participate in social dialogue. Representatives of ČMKOS are members of the European Economic and Social Committee (EESC), the Committee for the European Social Fund, the Committee for Social

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<sup>4</sup> These were the Slovakian Rector's Conference and the Committee for the Third Sector.

<sup>5</sup> In 2005 ČMKOS invited all Czech MEPs to a discussion, but 90 % apologised and did not come despite originally having expressed interest.



Dialogue, advisory groups of the European Commission where social partners are represented, and other bodies.<sup>6</sup>

## Problems of representativeness

One important practical as well as theoretical problem of social dialogue is the representativeness of the representatives of individual parties. This concerns both the choice of associations or societies representing interests as well as the choice of concrete individuals to represent the different associations. The issue of representativeness is related to the plurality of trade unions and employers' organisations. CESA statutes have contained the criteria of representativeness since 1995. Besides the focus of activities, the required organisational structure and sphere of activity, the statutes also define a minimum number of organised members. In view of the demand for opening democratic social dialogue, such a restrictive quantitative criterion is considered to be problematic by those trade unions thus excluded from participating. The application of the representativeness criteria, especially the minimum number of members, leads to the exclusion of some influential trade organisations and places great demands on the trade union centres represented in CESA as far as the aggregation of union interests is concerned.

The Czech tripartite has preserved – and we can say suffers from – a tendency to define which groups may or may not become members of the tripartite according to their nature (provided that they meet the other criteria of representativeness given in the statutes). This especially concerns the Economic and Agrarian Chambers.<sup>7</sup> At the national level, this may well be justified, but where there are more partners to social dialogue, it poses a problem. Moreover, after the accession to the EU it is no longer possible to cleanly delineate the national and supranational levels. The tripartite must adopt positions on issues that are not covered by its members. This leads to wider co-operation at the level of the tripartite's working bodies, the working teams and groups.

Another issue is the co-operation with civil society organisations. Because civil organisations representing various interest groups are included in the European social dialogue, and here we concentrate primarily on the European Economic and Social Council, more attention should be paid to the organised segment of the civil society, especially non-governmental organisations. In modern democracies, NGOs play a most important role or, more precisely, roles. The first is a participative role. Through participation in non-profit organisations, citizens strive to express their common interests and needs; they create associations with the aim of addressing common issues. In this way, citizens can participate actively in the decision-making processes of, for example, a community, region, or the government, and at the same time assume their share of responsibility for decisions taken by public authorities. Such co-operation between the non-profit sector and state administration or local governments is beneficial for both parties, as NGOs are often much closer to the reality on the ground and therefore may be helpful in identifying what problems need to be addressed. Apart from this, there are specialists in NGOs whose expertise and comments in the public debate also contribute to perfecting proposed solutions [Rakušanová 2005a,b; Mansfeldová 2005b].

Although there are no institutionalised links between social partners and civil society organisations, we have been witnessing an increase in contacts and the use of their expertise in formulating opinions on draft directives, etc. In light of the fact that various NGOs and civil society groups are active in the third group of the EESC, representatives of employers and above all employees consult these civil society groups. Harmonisation of interests is connected with spe-

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<sup>6</sup> <http://www.cmkos.cz/eit.php>

<sup>7</sup> Chambers, Economic or Agrarian, have never been represented in the delegation of employers. This is the case in some post-communist countries because they were established later, by law, in 1992, and it was never foreseen that they would participate in social dialogue.

cific tasks, such as working hours, environment, etc. Undoubtedly, there is sufficient cause to talk about the influence of the expansive understanding of social dialogue at the European level and its impact on the national level.

## European Economic and Social Committee (EESC)

The European Economic and Social Committee (EESC) is a non-political body that gives representatives of Europe's socio-occupational interest groups and others a formal platform on which to express their views on EU issues. Its opinions are forwarded to larger institutions – the Council, the Commission and the European Parliament. It thus has a key role to play in the Union's decision-making processes. Members belong to one of three groups: employers, employees and various interest groups. The 317 members of the EESC are drawn from economic and social interest groups across Europe. Members are nominated by national governments and appointed by the Council of the European Union for a renewable 4-year term of office. In the EESC, the Czech Republic is entitled to twelve positions in its three groups (three times four positions). In addition to representation in these three groups, social partners are represented in all sections of the EESC and attribute a high level of importance to it.

In the first group, employers are represented by representatives of following organisations: the Confederation of Industry and Transport of the Czech Republic; Union of Czech and Moravian Producer Cooperatives (member of Confederation of Employers' and Entrepreneurs' Associations of the Czech Republic); Czech Coal a.s., a trader in energy commodities (e.g. coal, electricity, heat and allowances for CO<sub>2</sub> emissions); and Hutnictví železa, a.s., a steel association bringing together enterprises in the Czech Republic and Slovakia. Its members are major Czech and Slovak steel companies as well as firms whose activities are immediately related to the steel industry; and the Economic Chamber of the Czech Republic. Unlike the national tripartite, employers are also represented by the Economic Chamber at the European level. It can be said that the representation at this level is not restricted by the narrow definition of representativeness that applies at the national level; it remains to be seen to what extent the European level will influence the national level. The effects of the European social dialogue on social partnership in member countries have been thus far little studied even in the old EU member states, and it is too early for such analyses in the new member states. We can expect the strengthening of the position of social partners, as experience in the old member states shows [Leiber, Falkner 2005:160].

The second group – employees – is made up of members with a background in national trade union organisations, both confederations and sectoral federations. The Czech Republic is represented by representatives of the larger confederation ČMKOS; Trade Union in Energy and Chemistry (ECHO); the Trade Union of Textile, Clothing and Leather (OS TOK); and the Trade Union Association of Railway Workers, which is a member of the second biggest trade union umbrella group in the Czech Republic, the Association of Independent Trade Unions (Asociace samostatných odborů ASO).

In the third group (which covers various interest groups such as farmers organisations, small businesses, foundations, co-operatives and non-profit associations, consumer organisations and environmental organisations), the representatives of the following organisations are members: Union of the Trade Conference of Non-governmental and Non-profit Organisations Active in Social and Healthcare Areas (Spolek oborové konference nestátních a neziskových organizací působících v sociální a zdravotní oblasti, SKOK); the Civil Society Development Foundation (NROS), the Coalition of Civil Consumer Activities of the Czech Republic (Koalice občanských spotřebitelských aktivit ČR, KOSA); and the Agrarian Chamber of the Czech Republic and environmental organisations.

All these members of individual EESC groups belong to one of the six sections of the EESC. Trade unions and employers strive to represent their interests, promoting them at the European

level through various bodies. The number of existing bodies is often subject to critique; some authors are critical about the “fragmented forms of representation” as well as their sheer number [Magnette 2005:38]. Despite this fragmentation, and perhaps even because of it, the European Economic and Social Council is one of the most important bodies.

## Participation in European sectoral dialogue

For trade unions, but perhaps even more so for employers, representation of interests in the European social dialogue at the sectoral level is very important. The sectoral dialogue is usually criticised for falling short of the expectations placed on it, including its limited impact. The outcomes of the European social dialogue strive to influence joint European policies rather than to create agreements whose content is labour relations. One of the reasons for this is a lack of interest on the part of national trade unions as well as employers to organise and carry out social dialogue at the European level [Veverková 2006a]. De Boer et al. [2005:5] caution that social dialogue in the individual EU countries takes place in different ways; organisations in the individual nations participating therein have different structures and interests, and have gone through different types of development, build on different traditions, have various member ratios in terms of employees and employers, etc. If their goals are not in synch, it is difficult to organise social dialogue anywhere other than at the national level. This is also the confirmed case in the Czech Republic; there are differences among individual sectors (a phenomenon which is not unique to the Czech Republic, however).

The favourable or reserved relationship to the European sectoral dialogue is not manifested only by the development at the European level but also by the strategy of national associations, which give priority to the national level even when the sectoral dialogue at the European level is functioning well. One reason for this is the necessity of respecting the preferences of the membership base and the capability of functionaries to persuade members of the importance of international co-operation. For example, the chairman of the Trade Union in Energy and Chemistry (ECHO), Zdeněk Černý, emphasised the importance of international co-operation at the annual conference in the following words:

*I believe that it is not a secret that the opinions about the activities of our union in this respect differ. What is important is that experience forces us to this and after the accession of the CR to the EU this is true even more so, that it is necessary to continue the commenced international activities, even despite the fact that such activities place high demands on the expenditures of the budget and unfortunately despite the fact that it may sometimes seem that these activities do not have an immediate, tangible result for the union. I personally believe that it is necessary to support international activities but only such that are efficient and necessary for the activities of the union.<sup>8</sup>*

An opposite example is the Association of Building Industries of the Czech Republic, which, although a member of the European Construction Industry Federation (FIEC), does not develop any special activities. Furthermore, the expression “European social dialogue” is alien to some representatives [Veverková 2006b].

Veverková, who analysed the subjective view on the part of Czech social partners of the European social dialogue, reached the conclusion that representatives of employers’ associations and trade unions particularly positively evaluated the possibility of sharing information that is otherwise hard to come by and the potential for consultations in European social dialogue; furthermore, they appreciated the opportunity to voice their opinion on European legislation in their sectors. Trade unions also highlighted the possibility of forming joint strategies vis-à-vis em-

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<sup>8</sup> See Report on the activities of the ECHO trade union (Zpráva o činnosti Odborového svazu ECHO), page 5, [http://www.os-echo.cz/data/files/konference\\_1/Zprava\\_o\\_cinnosti.doc](http://www.os-echo.cz/data/files/konference_1/Zprava_o_cinnosti.doc)

ployers – especially in sectors where supranational companies predominate. At the same time, representatives of employers and employees harbour a number of reservations about the ESD:

- For some trade unions and employers' unions, membership in European organisations is quite costly.
- As part of the membership, it is necessary to consult and comment on European legislation, contribute to drafting documents concerning the sector, etc., but for various reasons, a number of trade unions and employers' unions do not take advantage of this option and thus remain passive members. This is most often due to insufficient human and financial resources for active membership (i.e., experts knowledgeable in issues of social dialogue in the sector in the Czech Republic who are also capable of negotiating in English; furthermore, they do not have the funds for the frequent foreign trips which active membership would necessarily require, etc.).
- Organisations participating in the European social dialogue demand that their members submit various documents and reports on developments in the sector; the drafting of such documents is, however, administratively demanding and strains human resources, not to mention that in some cases the data is hard to come by.
- Few problems that the sector perceives at the national level about which consensus can be reached can be addressed at the EU level.
- The development of the ESD in any given sector is also complicated by varying degrees of development and different historical evolution of social dialogue in general. In the EU there are countries with a high quality of social dialogue and countries (especially post-communist countries) where it is still developing. In such conditions it is difficult to negotiate at the EU level, and only some member states participate actively in the ESD.
- Neither members of trade nor of employers' unions appear interested in topics addressed at the EU level; they do not request information about them. Furthermore, the ESD appears to be too distant, and is thus becoming an elite body of trade unions and employers' unions without links to the needs and opinions of the membership base [Veverková 2006b].

## Inclusion in supranational horizontal structures

Accession to the EU has facilitated the development of cross-border contacts with trade unions in neighbouring countries (Germany and Austria) within inter-regional trade union councils. Trade unions struggle with social dumping at border regions. Cross-border contacts with trade unions in neighbouring countries are forged either as part of inter-regional trade unions (Meror) active thanks to the support of European Trade Union Confederation and the EU, or as part of bilateral cross-border co-operation. Czech trade union organisations are members of three Merors – “Boba” (Western Bohemia / Bavaria), “Elbe/Nisa” (Northern Bohemia / Saxony / Jelenia Góra) and “Moldau / Danube” (South Bohemian region / Upper Austria).

Another example of supranational dialogue is the inclusion in the social dialogue of transnational enterprises through membership in the European Works Councils (EWC). EWCs are a sign of the Europeanisation of labour relations and they are supposed to function as intermediaries between Eastern and Western Europe; they do so in the Czech Republic. The growing volume of foreign investment in the CR is certainly a significant phenomenon from the perspective of the Czech economy. In 2003, for example, the numbers of companies under foreign control grew to over 21% of the total number of companies operating in Czech industry, with foreign firms posting almost 50% of the total returns from industrial activities and accounting for a 70% share of returns from direct exports.<sup>9</sup>

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<sup>9</sup> <http://www.eiro.eurofound.eu.int/2005/11/word/cz0508103s.doc>

In scientific and political debates, the EWCs are seen as a mediator between the East and West, as a bridge arching over existing differences between the parent company and its subsidiaries. According to current findings [Tholen et. al. 2006], three developmental levels of the EWCs have been identified:

- EWCs as information bodies. For Central European and Eastern European representatives, the EWCs are places where they can obtain information on the general developments in a company and thus develop their economic-political competences. For Western European representatives, they are sources of information about labour relations from their branches in Central and Eastern Europe and places to develop their intercultural competences. The EWCs served as information bodies as early as the pre-accession period because some companies granted the status of an observer to representatives of their subsidiaries in the associated countries.<sup>10</sup>
- EWCs as integration bodies. Secondly, the EWCs integrate central and eastern European representatives in this body as equal members; this happened after the accession of these countries to the EU.
- EWCs as mediators between the East and West. At this stage it is possible not only to discuss existing differences in wages, working conditions, etc. but also to seek a European solution.

At present, most EWCs are between the first and the second developmental stage. There are still several barriers to the third stage. Western and especially German interest representatives advocate a rapid wage levelling, if possible, in order to create certain competitive conditions that would benefit the sites of their companies. In contrast, Central and Eastern European union enterprise representatives (who often enter into collective wage agreements with management) have an interest in maintaining indefinitely wages that represent a competitive advantage for them. The classic conflict between increasing wages on the one side and maintaining a comparative competitive advantage on the other comes into play in this case as well. Another problem is the ambiguity of the election of representatives for the EWCs in companies with no institutionalised representative of employees' interests, i.e., no trade unions or works councils. Based on our research findings, we can say that trade unions in foreign companies in the Czech Republic that have a representative in the European Works Councils are better informed about developments in the company as a whole and about its intentions. They are then better equipped with information to negotiate with their own management.

## Conclusion

The goal of this case study was to show how the process of European integration has affected organised interest groups and interest representation in the Czech Republic, especially in the field of social dialogue. Accession to the EU has opened up a new space for social partners and representatives of interests of employers and employees, giving them new options and putting them face to face with new challenges. This concerns not only activities at the supranational level, but also the creation of new activities at the national level with the goal of implementing European policies and the use of European funds. The need to co-ordinate the approaches and activities leading to the promotion of members' interests has resulted in the formation of various voluntary groupings that should strengthen negotiating power during the drafting of legislation vis-à-vis the government, social partners, and interest organisations. In view of the wider understanding of the social dialogue at the European level compared to the national level, we are see-

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<sup>10</sup> For example, in the KOVO trade union 200 large companies – subsidiaries of foreign companies met the criteria for a membership in the EWC as early as during the pre-accession period. Of these forty had a representative-observer in the EWC.

ing co-operation with entities that up to now have not been included in the national social dialogue, such as the Economic Chamber, the Agrarian Chamber, and civil society organisations.

Looking at the development in the Czech Republic over the last several years, we can say that the acting power as well as the maturity of the actors has increased. The internal structures have adapted to the new requirements by creating committees specialised in EU matters. The success of this process is due to the (human resource and infrastructure) capacities of the actors as well as their attitude towards the process of integration and their assessment of the importance of the potential impacts. As stated above, trade unions at the national level have assessed the importance of the integration process well and have created conditions for wide and co-ordinated participation.

The favourable or reserved attitude toward interest representation at the European level and to the European social dialogue is a result of trends at the European level as well as the strategies of national organisations, which can give priority to the national level even if social dialogue at the European level is working well. One reason for this is the necessity of respecting the preferences of the membership base.

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## Case Study: the Activities of Polish Trade Unions at the EU Level

### Introduction

Trade unions played a significant role during the historical processes of economic and political transformation in Poland. Nowadays, among all civil society organisations, trade unions are, with permanent access to political decision-makers at the national level, still the most influential actors. Thus, considering the growing and already far-reaching regulatory powers of the European Union (EU) in the areas of the trade unions' interests, it is not surprising that Polish trade unions are becoming more and more active at the European level as well. They seem to be following the motto once cited by Mazey and Richardson: "You need to shoot where the ducks are."<sup>1</sup> As a consequence of Poland's accession to the EU, the Polish trade unions' spheres of influence have widened considerably; European bodies are now among their addressees and European trade union organisations, such as the European Trade Unions Confederation (ETUC) and the European Industry Federations, have become their allies in interest representation.

The focus of this paper is on the European activities of the two largest Polish trade union federations. The first group of factors to be analysed can be viewed as internal indicators of Europeanisation. They include changes in internal structures and the inclusion of European issues in the work programmes. On the other hand, external indicators, such as formal representation and co-operation as single interest groups and within transactional umbrella organisations at the European level, will be taken into consideration. The crucial questions discussed are: How are Polish trade unions represented at the European level?; What problems do they face?; What successes have they scored two years after Poland's accession to the EU?

The first trade union federation to be analysed is the Independent and Self-Governing Trade Union Solidarity (NSZZ Solidarność),<sup>2</sup> founded during the worker protests on the basis of the Gdańsk Accords of August 1980. Today it represents nearly 1.2 million workers from all industry branches and services (i.e. 7.6% of the total workforce in Poland). The structure of the union consists of around 14,000 local organisations associated into 37 regions and organised as national branch sections, forming 16 national branch secretariats. The second, the Polish National Association of Trade Unions (OPZZ),<sup>3</sup> was founded in November 1984 as a state-run trade union federation. It consists of 104 national federations and trade unions, with a total membership of about 800,000. Both organisations were directly entangled in politics for quite some time; NSZZ Solidarność and OPZZ have been seen as representing the right and left wings of the Polish political scene, respectively.

### European issues as a framework

Of the international issues which have occupied Polish trade unions for the last few years, questions concerning the eastern enlargement of the EU and Polish EU membership in particular have played major roles. The hitherto existing aims, orientations and modes of action have been challenged by these new political constellations. They have forced the whole trade union movement to work out new approaches, including structural changes and a stronger focus on activities at the international and European levels.

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<sup>1</sup> Mazey, Sonia / Richardson, Jeremy. 1996. "The Logic of Organisation: Interest groups". In: Richardson, Jeremy (Ed.). *European Union. Power and policy-making*. Routledge: London, p. 200.

<sup>2</sup> See: <http://www.solidarnosc.org.pl>

<sup>3</sup> See: <http://www.opzz.org.pl>



This new orientation can, for example, be clearly recognised in the current Programme Resolutions of NSZZ Solidarność, adopted by the 15<sup>th</sup> National Congress of Delegates held in Warsaw in September 2002.<sup>4</sup> The Congress addressed the various challenges to the Polish as well as the international trade union movement posed by the ongoing effects of globalisation and European integration. According to the resolutions, co-operation with the International Confederation of Free Trade Unions and the World Confederation of Labour will comprise the focal point of NSZZ Solidarność's international activities in its next terms of office. The aims set include the further democratisation of the world economy, the establishment and growth of independent union movements worldwide, and the exertion of influence on decision-making processes in the international concerns, organisations and governments of the richest countries. NSZZ Solidarność especially wants to pressure the Polish government to adopt the social dimensions and the ILO basic standards into the World Trade Organisation rules as well as to ratify ILO conventions, EU directives and the Social Charter in Poland.

Within the European context, NSZZ Solidarność considers the EU not only a treaty or constitutional commonwealth, but an entity based on a common European identity consisting of shared roots, heritage and values, such as Christian traditions. On questions of European integration, the Programme Resolution refers to the words spoken by the Polish Pope John Paul II in front of the Polish Parliament: "We must build new European unity, if we want it to be a lasting one, on the spiritual values that once shaped it; and the richness and diversity of cultures and traditions of individual nations must be taken into account. It must be a great European Spiritual Community."<sup>5</sup>

The conditions of Poland's EU accession became, however, a highly discussed issue among Polish politicians and citizens, revealing a lot of hopes and fears. In response, NSZZ Solidarność issued a resolution stating that the EU integration process should respect Poland's national sovereignty and identity and entail the adoption of the socio-economic standards determined by the European Directives and the European Social Charter. At the same time, NSZZ Solidarność saw itself as obligated to obstruct decisions which would be disadvantageous for the Polish workforce. It also stressed the necessity for the Polish government to present reliable reports on the state of negotiations as well as on the benefits and risks of the EU accession. The union made it its duty to inform its members on these topics before the accession referendum.

Two National Commission Departments in particular became active on these issues: the International Department, which handles the trade union's foreign affairs, such as its relations with international bodies, foreign trade union centres and other international organisations, and the Commission for European Integration, which concentrates more strictly on European issues. Various working papers and statements whose objective was to communicate the union's position regarding the EU integration to the Polish government and to raise its members' awareness on these issues have subsequently been published. In its resolutions, NSZZ Solidarność criticises the manner in which the accessions negotiations were conducted by the Polish government as well as the way the citizenry was informed about their course. Moreover, the union claims that Poland was not prepared for the accession to the EU. At the same time, it strongly encouraged Polish citizens to participate in the accession referendum and later in the elections to the European Parliament in June 2004.<sup>6</sup>

Furthermore, in order to accomplish the tasks mentioned above, NSZZ Solidarność underlines in its Programme Resolution the necessity of strengthening international co-operation, exchanging experience, information and expertise and further developing joint programmes together with trade unions from other EU member states and EU-level trade union organisations. As far

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<sup>4</sup> See: [http://www.solidarnosc.org.pl/dokumenty/xv\\_kzd/u\\_prog.htm](http://www.solidarnosc.org.pl/dokumenty/xv_kzd/u_prog.htm)

<sup>5</sup> [http://www.solidarnosc.org.pl/english/docs/15eng\\_pr.pdf](http://www.solidarnosc.org.pl/english/docs/15eng_pr.pdf), viewed on 21.11.05

<sup>6</sup> See: [http://www.solidarnosc.org.pl/integracja\\_europejska/stanowiska.html](http://www.solidarnosc.org.pl/integracja_europejska/stanowiska.html)

as the activities planned at the European level are concerned, the ETUC plays the crucial role. NSZZ Solidarność therefore wants to actively participate in the European social dialogue through the ETUC and the European Trade Federations. The strengthening of the European social model, including the common policy of employment, working conditions and social protection is among the most important issues mentioned in this context. Moreover, NSZZ Solidarność formulated its further aims in the Resolution of the 16th National Congress of Delegates on International Co-operation. First and foremost, they included constitutional guarantees in the EU for the right to organise cross-border trade unions and negotiate cross-border collective agreements, implement the social model based on the dialogue of the social partners, to access information, participate in consultations and exercise co-decision-making power. The democratisation of EU institutions through the strengthening of the role of representative bodies, more transparency in the decision-making processes and the limitation of the unanimity principle to constitutional matters are further postulates.<sup>7</sup> Yet Poland's accession to the EU provides NSZZ Solidarność with new instruments and paths of action in order to put these into force.

OPZZ has dealt with similar questions and challenges during its last few terms of office. For example, the work programme for the 2002–2006 period was adopted during its 5<sup>th</sup> Congress in Spala in May 2002.<sup>8</sup> Its preamble stresses OPZZ's commitment to Poland's integration with the EU and confirms the objectives of the previous programme, which identified integration with the EU as Poland's highest priority. At the same time, however, OPZZ demanded a public debate regarding the conditions of Poland's membership in the EU and the consequences thereof, especially concerning social policy. Similar to NSZZ Solidarność, OPZZ required the Polish government to present appropriate position papers involving the participation of social partners. Accordingly, OPZZ organised various conferences and lectures addressing these issues prior to the accession referendum. Furthermore, in a later chapter of the programme committed to social policy, OPZZ also demands the Polish government's adjustment of Polish employment and social laws to meet the standards of the ILO conventions, the European Social Charter and the EU Directives. These demands are further elaborated upon in a separate chapter on OPZZ's international activities. In light of growing globalisation and industrial integration, OPZZ stresses the necessity of co-operation with international trade union movements for establishing a stable social model. The commitment to the idea of 'social Europe' plays an important role in this context, a goal which can be reached, according to OPZZ, through tight co-operation with the European trade unions and social organisations as well as through bilateral partnerships with trade unions from other countries. The strengthening of Polish trade unions' active participation in the EU social dialogue is one of OPZZ's major priorities.

## European-level activities

One of the most significant aspects of the European engagement of Polish trade unions and an external indicator of their Europeanisation is their activities with the European Economic and Social Committee (EESC). The EESC is a consultative body providing direct access for representatives of national socio-occupational interest groups (including social partners and other major players in civil society) to a formal platform for voicing their opinions at the European level. It also plays an important role in the EU decision-making process. Hence, among Polish trade unions, it has become one of the major European avenues for their interest representation. Even preceding the eastern enlargement of the EU, the EESC maintained relations with Polish interest groups. For example, in 1997, on the initiative of the then-secretary of the Polish Committee for European Integration, a joint committee with the EESC was established. It mirrored the EESC's structure and aimed at a higher degree of involvement of social partners in the negotiation process. NSZZ Solidarność and OPZZ belonged to this committee from the beginning

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<sup>7</sup> See: <http://www.solidarnosc.org.pl/english/docs/16eng.pdf>, viewed on 21.11.05

<sup>8</sup> See: <http://kongres.opzz.pl/?i=13>, viewed on 21.11.05

on. With Poland's EU accession in May 2004, the Polish government gained the right to nominate 21 members for appointment by the Council of the European Union for a renewable 4-year term of office. In this term of office, NSZZ Solidarność and OPZZ are represented within the employees' group by three and two members, respectively. Moreover, another Polish trade union federation, the Trade Union Forum, has one representative to the EESC (see Table 1).

Table 1: Polish trade union representatives to the EESC<sup>9</sup>

<b>Federation</b>	<b>Representative</b>	<b>Position</b>	<b>Section of EESC*</b>
OPZZ	Rożycki, Stanisław	Vice-President of the Federation of Unions of Polish Higher Education and Science Teachers	ECO, TEN
	Jasiński, Tomasz	Senior Specialist in International Co-operation and European Integration	REX, SOC
NZSS Solidarność	Krzaklewski, Marian	Member of the National Commission	ECO, TEN, CCMI
	Adamczyk, Andrzej	International Secretary	REX
	Sobon-Bartkiewicz, Katarzyna	Expert in European Integration	SOC
Trade Union Forum (FZZ)	Szynaka, Edmund	Secretary General of FZZ	REX, SOC

\* ECO = Economic and Social Cohesion; TEN = Transport, Energy, Infrastructure and the Information Society; REX = External Relations; SOC = Employment, Social Affairs and Citizenship; CCMI = Consultative commission on industrial change; NAT = Agriculture, Rural Development and the Environment

The Polish trade unions' involvement in European networks and international partnerships can be viewed as a further indicator of their Europeanisation. NSZZ Solidarność, as a pioneer of the free trade union movement in Eastern Europe, was immediately recognised by international bodies and established various institutionalised and non-institutionalised contacts with its European and international counterparts even before the break-down of the socialist regime in Poland. In 1986, as the only East European trade union, it became a full member of the International Confederation of Free Trade Unions and of the World Confederation of Labour. It has been represented in the Trade Union Advisory Committee of the OECD since 1997. At the European level, NSZZ Solidarność gained observer status in 1991 at the European Trade Union Confederation and became its affiliate only four years later. Furthermore, the former coordinator of the European Integration Commission and vice-president of the National Commission of Solidarność, Józef Niemiec, was elected one of the four confederal secretaries of the ETUC in May 2003. Janusz Śniadek, the current president of the National Commission, and Andrzej Adamczyk, head of the International Department, are additional Solidarność representatives in the Executive Committee of the ETUC. The ETUC is a European social partner and is recognised by the European Union as the only representative cross-sectoral trade union organisation at the European level. It works with all the EU institutions and is involved in economic and social policy-making as well as the European social dialogue with the aim of improving the European social model. Considering the significance of the ETUC, Andrzej Matla from the

<sup>9</sup> Source: <http://eescmembers.esc.eu.int>, 21.11.2005

International Department of NSZZ Solidarność stated: “Being represented in the ETUC means that our voice has influence on the shape of the European social dialogue.”<sup>10</sup> Nearly all of NSZZ Solidarność’s branch sections and secretariats are also affiliated to the European Industry Federations (many of which are also affiliated to the ETUC) (see Table 2) as well as to the Global Union Federations. For example, the former president of NSZZ Solidarność, Marian Krzaklewski, is Poland’s representative at the Council of European Professional and Managerial Staff.

Table 2: Affiliations of Polish trade unions and federations to the European Trade Union Federations<sup>11</sup>

<b>European Trade Union Federations</b>	<b>Branch structure of NSZZ Solidarność</b>	<b>Branch federations of OPZZ</b>
EMCEF (European Mine, Chemical and Energy Workers Federation)	Chemical Workers’ Secretariat; Energy and Miners’ Secretariat	Trade Union of Miners in Poland (ZZG w Polsce); Federation of Oil and Gas Industry Workers’ Unions (FZZGNiG); Federation of Chemical, Glass and Ceramic Industry Workers Unions in Poland (FZZPCSIC)
UNIEUROPA (Union Network International Europe)	Commercial, Clerical and Professional Employees’ Secretariat; Postal Telegraph and Telephone Workers’ Secretariat	Affiliate of UNI-Europa Graphical: Trade Union of Graphic Industry Workers (ZZPPP)
ETUCE (European Trade Union Committee for Education)	National Section of Education; National Section of Science	Polish Teachers’ Union (ZNP)
EFFAT (European Federation of Trade Unions in Food, Agriculture and Tourism Sector and Allied Branches)	Food Workers’ Secretariat; Agricultural Worker’s Secretariat	–
ECF-IUF (European Committee of Food, Catering and Allied Workers’ Unions within the IUF)	Food Workers’ Secretariat	–
ETUF-TCL (European Trade Union Federation – Textiles, Clothing and Leather)	–	Federation of Independent and Self-Governing Trade Unions of Light Industry (Federacja NSZZ Przemysłu Lekkiego)

<sup>10</sup> In: *Tygodnik Solidarność* 35(884)/2005, <http://www.tygodniksolidarnosc.com>, viewed on 21.11.05 (author’s own translation)

<sup>11</sup> Sources: [www.solidarnosc.org.pl](http://www.solidarnosc.org.pl), [www.opzz.org.pl](http://www.opzz.org.pl) viewed on 21.11.05, *Przegląd Wydarzeń Związkowych* 1(125)/2005

<b>European Trade Union Federations</b>	<b>Branch structure of NSZZ Solidarność</b>	<b>Branch federations of OPZZ</b>
EMF (European Metalworkers' Federation)	Metalworkers' Secretariat	–
ETF (European Transport Federation)	National Maritime Section; National Section of Sea Port Workers; National Section of Railway Workers	Federation of Trade Unions of Seamen and Fishers (FZZMiR); Trade Union of Aviation Workers (ZZ Personelu Latającego i Pokładowego)
EPSU (European Public Service Unions)	Health Protection Secretariat	–
EFBWW (European Federation of Building and Woodworkers)	–	<i>Observer status:</i> Trade Union of Building Workers "Budowlani"
EUROCADRES (Council of European Professional and Managerial Staff)	National Section of Science	–
FERPA (European Federation of Retired and Elderly Persons)	Secretariat of Retired Employees and Pensioners	–

NSZZ Solidarność stresses the importance of the model of social dialogue established in the EU as an example for the Polish social partners: "The experiences of the European dialogue became an inspiration for social partners in Poland even before its EU accession. Now we have gained not only a real influence on the course of this dialogue, but we also benefit from its achievements. We are convinced that the quality and the intensity of the social dialogue at the European level directly influence the course of the dialogue at the national level."<sup>12</sup> NSZZ Solidarność also emphasises that the European social dialogue is far more developed and efficient than the one taking place in Poland. Józef Niemiec pointed to a serious obstacle in this context: "It often happens that it is much easier to reach advantageous agreements at the European level than to implement them later at the national level."<sup>13</sup> Thanks to Poland's EU accession, Polish trade unions have gained new channels of participation in the European social dialogue and the development of social policy. NSZZ Solidarność, as a full member of the ETUC, the European umbrella trade union organisation, as well as of numerous European trade union federations and one of the social partners at the EESC, became actively involved in the transnational decision-making process and established structures for interest representation both on the national and supranational levels.

In contrast to NSZZ Solidarność, which achieved international recognition shortly after its founding and established relations to international and European structures early on, OPZZ is

<sup>12</sup> Janusz Śniadek, President of the National Committee of NSZZ Solidarność. In: *Tygodnik Solidarność* 35(884)/2005, <http://www.tygodniksolidarnosc.com/>, viewed on 21.11.05 (author's own translation)

<sup>13</sup> In *Tygodnik Solidarność* 35(884)/2005, [http://www.tygodniksolidarnosc.com](http://www.tygodniksolidarnosc.com/), viewed on 21.11.05 (author's own translation)

still endeavouring to make inroads into the European arena. In 1991, OPZZ officially left the World Federation of Trade Unions (WFTU) (to which trade unions of the Eastern bloc used to belong), but maintained a partnership with it, and some OPZZ federations are still members of the branch trade unions of this international organisation. In the 1990s, OPZZ also established its first relations with West European trade union organisations. In May 1998, OPZZ's 4<sup>th</sup> Congress set "the rapprochement to the European Trade Union Confederation, as the most representative organisation of the trade union movement in Europe"<sup>14</sup> as one of its priorities.

In December 1998, OPZZ applied for membership in the ETUC. The general rule is for the ETUC to have one affiliate per country, usually the largest national centre, despite the presence of multiple union confederations (as is the case in Poland). Regarding new admissions, the ETUC seeks the views of its existing affiliates. The tensions between NSZZ Solidarność and OPZZ indeed seemed to constitute a significant obstacle here. The decision of the ETUC was continually postponed, and OPZZ finally abandoned its efforts. OPZZ further claims that NSZZ Solidarność hinders the development of its international activities in general. As reasons, it primarily cites OPZZ's communist heritage and the unsolved problem of the confiscated Solidarność property inherited by OPZZ in the 1980s. These issues are also advanced as the reasons for the failure of the negotiations with the ETUC.<sup>15</sup> OPZZ does not currently belong to any European or international trade union organisation. However, neither does it remain a passive object of the international trade union movement.

The International Labour Organisation plays an important role in OPZZ's international activities. Several OPZZ representatives are members on its committees. It also maintains tight bilateral relations to trade unions from East and West European countries, including Austria, Denmark, France and Spain. In some branches, such as the graphic, chemical and mining industries, as well as the teaching trade, intensive co-operation takes place between the German Confederation of Trade Unions (DGB) and the corresponding federations of OPZZ. Various OPZZ member organisations are also members of international and European union federations (see Table 2 on p. 83/84).

The representatives of the OPZZ branch federations complain, however, that particularly in the initial stage of their international activities, they faced mistrust due to OPZZ's negative reputation among foreign trade unions. Under such circumstances, OPZZ has had to work hard to convince its international counterparts of its competence.<sup>16</sup> Furthermore, in many European industry and branch federations, the membership of the national umbrella organisation in the ETUC is a precondition for membership for the national branch federations. This pertains to the case of the Budowlani trade union in Poland, which organises building workers. Budowlani is unable to become a member of the European Federation of Building and Woodworkers (EFBWW) despite years of good co-operation and unofficial observer status to the EFBWW. Other OPZZ branch federations were admitted into the European structures and have scored successes, however. For example, Sławomir Broniarz, the president of the Polish Teachers' Union (ZNP), the oldest and largest trade union for teachers in Poland, became Poland's representative to the Council of the European Trade Union Committee for Education in 2003.

The representatives of the OPZZ federations count direct access to relevant information as among the most significant benefits of membership in European organisations and active participation at the European level. Broniarz claimed, for example, that the information the ZNP received from the responsible Polish ministries was often insufficient, and that access to international research programmes had therefore been blocked for his union<sup>17</sup>. The president of the

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<sup>14</sup> <http://opzz.org.pl/end/index.php?dzial=inter&nr=44>, viewed on 21.11.2005 (author's own translation)

<sup>15</sup> Ryszard Lepik, the vice-president of OPZZ. In: *Przegląd Wydarzeń Związkowych* 1(125)/2005, p.3

<sup>16</sup> See various interviews in *Przegląd Wydarzeń Związkowych* 1(125)/2005

<sup>17</sup> In: *Przegląd Wydarzeń Związkowych* 1(125)/2005, p. 4

Federation of Chemical, Glass and Ceramic Industry Workers' Unions in Poland (FZZPCSIC), Józef Wozny, once pointed out [in reference to the accession of his federation to the European Mine, Chemical and Energy Workers Federation (EMCEF)]: "Analysing the situation of the branch, we came to the conclusion that we were sustaining many losses by not participating actively in the European trade union forum. We couldn't wait any longer."<sup>18</sup> Despite the initial uncertainties and fears concerning the financial costs of membership in a European federation, Andrzej Chwiluk, the president of the Trade Union of Miners in Poland (ZZG w Polsce), also considers the accession of his union to the EMCEF in June 2004 as a turning point. The membership opened new possibilities for the union, allowing it to exert influence on the European legislative processes and access information and documents to which only the Polish government had hitherto had access.<sup>19</sup>

Another relevant focus of the European activities undertaken by NSZZ Solidarność and OPZZ was the establishment of the Works Councils in Poland and the strengthening of the Polish trade unions' participation in their work. The legislation implementing the European Works Councils Directive (94/45/EC) came into force in Poland when it joined the EU in May 2004. A part of the Polish workforce, however, has participated in European Works Councils since 1997. There are currently 72 Works Councils in multinational companies located in Poland. Ten workforce representatives are OPZZ members. However, over 50% of the Polish workforce representatives on EWCs are trade union activists with NSZZ Solidarność. They are represented in the EWC's executive committees at Heineken, Real, Thomson Multimedia, Volkswagen, etc.<sup>20</sup> Polish trade unions also actively participate in campaigns and protest actions across the European Union organised by the ETUC (in, for example, the run-up to the Intergovernmental Conferences).

## Conclusion

The trade union scene in Poland is fragmented and dominated by the two largest federations involved in ideological conflicts. Despite the similarities of work programmes concerning European and international issues, Polish trade unions are not able to speak with one voice either at the national or the subnational level. Furthermore, the tensions between NSZZ Solidarność and OPZZ have turned out to be a serious obstacle for OPZZ in establishing itself in the European arena. Nevertheless, in view of the deepening European integration, the ever-increasing regulatory power of the EU and the challenges of globalisation, a gain in the significance of the lobbying activities at the European and international levels can be observed among both Polish trade union federations and their members. Both internal and external indicators of Europeanisation are visible. Moreover, it can be observed that Polish trade unions employ the so-called multiple strategy of interest representation typical for European interest groups. Greenwood once elaborated on this strategy as follows: "The multi-level character of European policy process means that actors seeking to participate in European public affairs therefore have a number of so-called 'routes' of influence. At its most simple level, the 'national route' refers to the use of national contacts and national governments to influence EU decision-making, whereas the 'European route', or the 'Brussels strategy', involves seeking to exert influence by representation direct to the European institutions themselves."<sup>21</sup>

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<sup>18</sup> In: *Przegląd Wydarzeń Związkowych*, 1 (125)/2005, p. 13 (author's own translation)

<sup>19</sup> In: *Przegląd Wydarzeń Związkowych*, 1 (125)/2005, p. 11

<sup>20</sup> See: <http://www.solidarnosc.org.pl/erz/erzpolska.htm>, viewed on 21.11.05

<sup>21</sup> Greenwood, Justin. 2003. *Interest Representation in the European Union*. Palgrave MacMillan: London, p. 32f

## Case Study: the Polish Agricultural Lobby between Warsaw and Brussels

### Introduction

With the demise of the socialist planned economy and the liberalisation of prices at the expense of agricultural products, Polish agriculture fell into a crisis. Over the course of the 1990s, its share in the GDP sank from 7% to 3%.<sup>1</sup> As no alternative employment was created in the countryside, the agrarian crisis exacerbated over-employment in the agricultural sector and at the same time led to both high (often less visible) unemployment in rural areas and corresponding social problems.<sup>2</sup>

Concurrent to the EU accession negotiations, Poland began to align its national policy with the EU's Common Agricultural Policy in 2001. During this process, trade barriers were dismantled while market price support became less important in comparison with direct payments of subsidies.<sup>3</sup> Many Polish farmers viewed these measures sceptically and feared further losses in income as a consequence of entering the EU.

Polish farmers responded to the deterioration of their situation with repeated and occasionally violent mass protests. At the same time, representatives of the agricultural sector were able to win up to 28% of the seats in the Polish parliament. As of the October 2005 parliamentary elections, they still occupy 18%. This enables the farmers to exert considerable political pressure. Meanwhile, Polish agricultural interest groups became active at the EU level when their country joined the EU in May 2004.

This case study starts with an analysis of the Polish agricultural lobby and its strategies in national politics. In the second part, the way in which the domestic agricultural lobby's structure and strategies differ from those of its representation at the EU level will be examined. At this juncture, it will be possible to draw preliminary conclusions about the political impact of the lobby on EU policy-making and to address related questions of accountability.

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<sup>1</sup> On the economic situation of Polish agro-businesses since the end of the socialist planned economy, see e.g.: Ingham, Hilary / Ingham, Mike: How big is the problem of Polish agriculture?, in: *Europe-Asia Studies*, 2004, 2, pp. 213–234; Gorton, Matthew / Davidova, Sophia: Farm productivity and efficiency in the CEE applicant countries. A synthesis of results, in: *Agricultural Economics*, 2004, 1, pp. 1–16; Borsig, Agnes / Kriszan, Michael: Die Landwirtschaft Polens zwischen Transformation und Strukturwandel, in: *Europa Regional*, 2003, 2, pp. 46–56; Martin Petrick u.a.: Poland's agriculture. Serious competitor or Europe's poorhouse? Survey results on farm performance in selected Polish voivodships and a comparison with German farms, IAMO Discussion Paper, 2001, 37.

<sup>2</sup> On the social consequences of the agrarian crisis, see e.g.: Grolach, Krzysztof / Drąg, Zbigniew / Nowak, Piotr: Kusi zdezagraryzowanej? Ludność wiejska i rolnicza w świetle wybranych danych spisu powszechnego", in: *Studia Socjologiczne*, 2004, 1, pp. 31–45; Kühne, Olaf: Landwirtschaft und Arbeitslosigkeit im ländlichen Raum Polens, in: *Osteuropa Wirtschaft*, 2002, 2, pp. 149–172; Borsig, Agnes / Kriszan, Michael: Die sozio-ökonomischen Auswirkungen des Strukturwandels der polnischen Landwirtschaft. Dargestellt am Beispiel des Landkreises Złotów in der Wojewodschaft Wielkopolska, Hannover, 2002.

<sup>3</sup> Good overall portrayals can be found in: Rieger, Elmar: Wohlfahrt für Bauern? Die Osterweiterung der Agrarpolitik, in: *Osteuropa*, 2004, 5–6, pp. 296–315; Wrobel, Ralph Michael: Gemeinsame Agrarpolitik und EU-Osterweiterung. Strukturpolitische Konsequenzen für die Landwirtschaft in Polen, in: *Osteuropa-Wirtschaft*, 2004, 2, pp. 140–161; Czernielewska, Małgorzata: Measuring the effects of integration of the Polish agriculture with the European Union, in: *Comparative Economic Research. Central and Eastern Europe*, 2000, 1–2, pp. 195–213.



## Part I: The agricultural lobby in Polish politics

Contrary to all other socialist planned economies in the Soviet-dominated Council for Mutual Economic Assistance (CMEA), no comprehensive collectivisation of agriculture was implemented in Poland. Although the state-run large-scale agro-industrial enterprises were indeed given preference over the privately-run farms up to the beginning of the 1980s, their share of cultivated land nevertheless amounted to less than one quarter.<sup>4</sup> As a result, Polish agriculture remained characterised by small family-run farms, which, due to the mandatory sale of their entire output to state-run commercial enterprises and the overall regulation of the entire economic sector, were tightly bound to the planned economy.<sup>5</sup>

Relatively low acreage, coupled with relatively little specialisation, further contributed to the Polish private farms' low productivity. However, the distinctive historical development of individual Polish regions has resulted in substantial regional differences. The majority of the private farms can be found in central and eastern Poland. After the Second World War, most large-scale agro-industrial enterprises took root in western Poland via the conversion of former German farms. In southern Poland, on the other hand, small farms dominate due to the commonplace practice of the division of estates under the Habsburg monarchy. Due to their size, however, they are frequently run only as a supplementary source of income.<sup>6</sup>

While Poland's private farms survived beyond the end of the socialist planned economy largely intact, the state-run large-scale agro-industrial enterprises meanwhile underwent extensive restructuring. Since their high debts precluded privatisation, they were handed over to the State Agency for Agricultural Property, which sold a few and leased the rest. The tenants invested in operational modernisations and dismissed a large number of employees in order to boost efficiency. Due to the preponderance of private farms, however, Polish agriculture consists of a great many actors. The largest 10% of the agricultural enterprises manage only 40% of the farmland.<sup>7</sup>

Polish agriculture is therefore becoming dominated by unprofitable family businesses that regard state subsidies, immunity from restructuring and protection against competition as necessary for survival. While part-time farmers, who are by and large isolated from the market, depend on state aid, commercial farms, including many representatives of the large-scale enterprises, have a keen interest in erecting barriers to competition. These different agendas also explain the lack of a uniform stance towards the European Union. While the subsistence farmers seemed particularly hopeful for larger transfer payments, many of the commercial enterprises feared intensified competition within the common European Union market and the loss of the CIS market.<sup>8</sup>

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<sup>4</sup> In all other CMEA states, the percentage of state-run enterprises on agriculturally utilised land was approximately 85%.

<sup>5</sup> On agriculture in socialist-era Poland, see: Wilkin, Jerzy (Ed.): *Gospodarka chlopska w systemie gospodarki socjalistycznej*, Warsaw, 1988 (English as: *Peasant farming in the system of the socialist economy*, Warsaw 1989); Szurek, Jean-Charles: *Family farms in Polish agricultural policy 1945–1985*, in: *Eastern European Politics and Societies*, 1987, 2, pp. 225–254.

<sup>6</sup> Buchhofer, Ekkehard: *Agrarsoziale Veränderungen in Polen seit 1988 in ihrer regionalen Differenzierung im Überblick*, in: Buchhofer, Ekkehard / Quaisser, Wolfgang (Ed.): *Agrarwirtschaft und ländlicher Raum Ostmitteleuropas in der Transformation*, Marburg, 1998, pp. 35–58.

<sup>7</sup> Lerman, Zvi / Csaki, Csaba / Feder, Gershon: *Land policies and evolving farm structures in transition economies*, World Bank Working Paper, Washington, 2002, 2794, p. 110.

<sup>8</sup> Overviews of representative polling of Polish farmers are given in (in chronological order): Nawojczyk, Maria: *Facing the new challenge. Polish villagers on European integration*, in: *Eastern European Countryside*, 1996, pp. 71–76; Szafraniec, Krystyna: *Polish peasants – between „real socialism” and „real capitalism”*, in: *Eastern European Countryside*, 1998, pp. 49–64, here: pp. 58–59; Bienkowski, Andrzej u.a.: *Opinions of owners of family farms on the problems of integration of our agriculture into the European Union*, in: *Comparative Economic Research. Central and Eastern Europe*, 2000, 1–2, pp. 176–188; Wilkin, Jerzy: *Rural Poland in the process of systemic transformation*.

These divergent interests are probably one of the major reasons the farmers' level of organisation is comparatively low despite widespread discontent with national agricultural policy. In 1999, fewer than 20% belonged to a political party<sup>9</sup> even though parties (in the broader sense<sup>10</sup>) are the only relevant form of organised political representation of their interests.

The oldest of these parties is the Polish Farmers' Party (PSL), which emerged from the communist United Farmers' Party (ZSL). The ZSL was created in 1949 as official representation for the farmers and was intended to integrate the farmers as a communist sister party into the socialist system. Just as the National Union of Farmer Cooperatives and Organisations (KZKiOR), established in the 1970s and which functioned as both a trade union for those employed in agriculture and an umbrella organisation for private farmers, the ZSL was dominated by the communist party until the end of the 1980s with very limited room for manoeuvre.

In defiance of the communist party, starting at the end of the 1970s, some of the private farmers formed opposition groups which organised public protests. At the beginning of the 1980s, three factions of the Solidarity (Solidarność) movement dominated the rural opposition.<sup>11</sup> Before the 1991 parliamentary elections, the pro-Solidarity farmers' movements joined forces and established the Polish Farmers' Party-Farmers' Alliance (PSL-PL).

As the Solidarity-led government introduced free market reforms in 1989 as part of their "shock therapy" (which triggered the dramatic collapse of agricultural incomes), the ZSL exploited the farmers' discontent in order to establish itself in the post-socialist party landscape. It renamed itself the Farmers' Party (PSL) in 1990 and incorporated the Wilanów Farmers' Party from the anti-communist opposition in order to win legitimacy. Meanwhile, the PSL took over both the infrastructure and the membership of the ZSL, thereby taking the reins of a nationwide organisational foundation.

At the beginning of the 1990s, five farmer parties existed, each addressing a different rural constituency. On the one hand, they represented different political camps; on the other hand, they differentiated themselves in terms of their demands on the government's agricultural policy.<sup>12</sup>

The 1990s were shaped by the tension between the leftist camp that emerged from the communist parties (to which the PSL and KZKiOR belonged among the farmers' parties), and the conservative camp which evolved from the Solidarity opposition movement. The latter was represented first by the PSL-PL and later additionally by the Farmers' Christian Party (SLCh) after its split from the PSL-PL in May 1992. As a populist organisation, the Samoobrona or 'Self-Defence' movement does not fit neatly in this ideological spectrum.

In terms of their positions on agricultural policy, three groups can be differentiated. The anti-reformers were represented by KZKiOR and Samoobrona. The moderate reformers, who wanted to receive far-reaching subsidies and trade restraints on agricultural imports in the con-

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Attitudes of the rural population towards the market, state and European integration, in: *Emergo*, 1999, 4, pp. 75–86, here: pp. 80–83, 86; Ingham, Hilary / Ingham Mike: How big is the problem of Polish agriculture?, in: *Europe-Asia Studies*, 2004, 2, pp. 213–234, here: pp. 229–230.

<sup>9</sup> Petrick, Martin u.a.: Poland's agriculture. Serious competitor or Europe's poorhouse? Survey results on farm performance in selected Polish voivodships and a comparison with German farms, IAMO Discussion Paper, 2001, 37, p. 24.

<sup>10</sup> This broad concept of party encompasses all organisations that participated in national parliamentary elections, independent of their self-descriptions, which were often based on concepts like „union” or “social movement”.

<sup>11</sup> On the development of Polish farmers' political parties during the socialist era, see: Gorlach, Krzysztof: On repressive tolerance. State and peasant farm in Poland, in: *Sociologia Ruralis*, 1989, 1, pp. 23–33; Halamska, Maria: Peasant movements in Poland 1980–1981. State socialist economy and the mobilization of individual farmers, in: Kriesberg, Louis u.a. (Ed.): *Social movements as a factor of change in the contemporary world*, Greenwich / CT, 1988, pp. 147–160.

<sup>12</sup> The following categorisation is based on: Gorlach, Krzysztof: The peasant issue in contemporary Poland, in: *Polish Sociological Review*, 1995, 2, pp. 141–158.

text of a free-market economy, were represented by the Polish Farmers' Party (PSL) and the Polish Farmers' Party-Farmer Alliance (PSL-PL). Meanwhile, the Farmers' Christian Party (SLCh) supported a massive liberalisation of agricultural policy.

While the farmers' parties in their entirety represented the interests of the majority of the agricultural enterprises in the political arena into the 1990s, a smaller group of farmers repeatedly resorted to public protests. Two waves of protest can be differentiated. The first lasted from 1989–1993; the second peaked in 1998–1999. Their participants were not limited to farmers, however; various societal groups took part as well.

### The farmers' protests

The share of farmers partaking in the whole of the protests during 1989–1993 was only around 10%. Industrial workers and state officials both constituted a substantially larger proportion.<sup>13</sup> The majority of the rural protests took place on the local level; less than a quarter of them were organised on a nationwide basis.

In all the protests of the early 1990s, the farmers demanded an increase in farm subsidies and opposed a liberal economic policy. The first protests erupted spontaneously in 1989. Starting in 1990, the pro-Solidarity NSZZ RI Solidarity farmers' movement participated in a number of them. Most actions took place without the support of a social organisation, however. Up until 1991, demonstrations and road blockades had been the dominant forms of protest; the occupation of the Ministry of Agriculture building as well as hunger strikes was to follow. The pro-Solidarity government reacted to the protests of the pro-Solidarity farmers' movement with sanctions. In order to avoid an open break, discussions were eventually held that led to the creation of the Agency for the Agricultural Commodities Market, which was intended to stabilise the prices for important agricultural products. The government rejected a systematic subsidisation of agriculture, however.

As a consequence, the character of the protests changed starting in 1992 with the appearance of Samoobrona. In 1992–1993, Samoobrona organised nearly half of all rural protests and clearly contributed to their radicalisation. Apart from demonstrations and road blockades, violent attacks on police officers and debt collectors for agricultural enterprises were now occurring. Samoobrona rejected both a coalition with the other farmers' parties and government talks.

1993 showed a distinct drop in the number of participants in rural protests, and in 1994 hardly any protests were organised.<sup>14</sup> The end of the rural protests can be attributed to three main reasons. First of all, economic recovery began in Poland after the reform-induced transition crisis. Secondly, the left-wing coalition government that took office in 1993 implemented targeted support measures for the agricultural sector. Agricultural enterprises were now systematically subsidised. Thirdly, the rural camp was split both politically and economically. On the political level, the farmers' parties of the left and conservative camps opposed each other. On the economic level, a dividing line ran between commercial farms, for which the regulation of the agri-

<sup>13</sup> Ekiert, Grzegorz / Kubik, Jan: Collective protest in post-communist Poland 1989–1993. A research report, in: *Communist and Post-Communist Studies*, 1998, 2, pp. 91–117, here: p. 100. A more detailed study is given in: Ekiert, Grzegorz / Kubik, Jan: *Rebellious civil society. Popular protest and democratic consolidation in Poland 1989–1993*, Ann Arbor 1999. A critical assessment the data used by Ekiert / Kubik gives Kramer, Mark: *Collective protests and democratization in Poland 1989–1993. Was civil society really 'rebellious'?*, in: *Communist and Post-Communist Studies*, 2002, 2, pp. 213–221. See also the following debate *ibid.* pp. 223–236. The figures on the dimension of protests cited from publications by Krzysztof Gorlach et.al. are also based on the work by Ekiert / Kubik.

<sup>14</sup> All figures pertaining to the waves of protests in 1989–1993 according to: Foryś, Grzegorz / Gorlach, Krzysztof: *The dynamics of Polish peasant protests under post-communism*, in: *Eastern European Countryside*, 2002, 8, pp. 47–65. See also: Marks, Bartłomiej: *Trzy wymiary Samoobrony czyli źródła sukcesu partii Andrzeja Leppera*, in: *Studia Polityczne*, 2000, 14, pp. 7–33; Gorlach, Krzysztof: *Freedom for credit. Polish peasant protests in the era of communism and post-communism*, in: *Polish Sociological Review*, 2000, 1, pp. 59–83.

cultural commodities market was of central importance, and part-time farms, which were only interested in subsidies.

It was only after the conservative-liberal government coalition succeeded the neo-communist government that a wave of farmer protests resurfaced in 1998–1999. This was occasioned by the slump in agricultural exports to the CIS after the Russian financial crisis of 1998. The resulting plummet in agricultural income sufficed to unleash a new wave of protests. The farmers demanded compensation for their losses via higher state purchase prices and import restrictions on agricultural products. In contrast to the years 1989–1993, the protests were now nationwide, coordinated by NSZZ RI Solidarity in conjunction with the neo-communist KZKiOR and Samoobrona. The protests were backed by a radical minority among the farmers. All in all, only 12% of the farmers participated in protests at the end of the 1990s, and only 7% took part more than once.

The farmers were certainly not the only societal group to protest the economic policies of the conservative government at the end of the 1990s. But now the farmers became central players in the protest movement alongside workers in heavy industry. The protests began in July 1998 with a demonstration of 15,000 grain farmers in Warsaw. Winter witnessed the expansion and radicalisation of the farmers' tactics. Several traffic routes and the most important border crossing to the EU were blocked for two weeks. In February 1999, the government accepted the farmers' central demands and promised to implement a long-term development programme entitled the "Social Contract for the Countryside".<sup>15</sup> Despite these concessions, the farmers' continued to protest. Samoobrona's leaders rejected the proposed development programme. In May 1999, three protest organisers went on to negotiate with the government, which agreed to set higher state-guaranteed minimum prices for grain. The government's concessions from February and May finally quieted the mass protests; the government's pledges resulted in a steep rise in state subsidies. However, they were rescinded by the year 2000, and farm subsidies fell to the lowest level since 1992.<sup>16</sup>

Although several farmers' organisations mounted protests and negotiated with the government towards the end of the 1990s, Samoobrona increasingly proved itself to be the driving force. Starting in March 1999, Samoobrona acted primarily alone, sometimes organising parallel protests. Samoobrona's assumption of this dominant role was facilitated when the PSL, similar to the largest conservative farmer party represented in the government coalition, the SKL, did not participate in the protests. As a consequence, the PSL could profit only in a limited way from the farmers' discontent with the conservative government. In a 1999 poll, only 9% of the farmers believed that the PSL would defend their interests. Samoobrona meanwhile weighed in at 27%.<sup>17</sup> This signified a fundamental shift in the balance of power among agricultural parties.

### The farmers' parties in parliament

In the parliamentary elections in 1991, the PSL, with 9% of the vote, clearly came in ahead of the PSL-PL, which won a good 5%. The remaining farmers' parties failed to receive enough votes to qualify for representation in parliament. In the 1993 parliamentary elections, the PSL

<sup>15</sup> In July 1999 the government passed an "integrated structural policy for agriculture and the rural area". This seven-year programme included measures for economic promotion and infrastructural investments.

<sup>16</sup> Figures on agricultural subsidies appear in Table 3 towards the end of the paper.

<sup>17</sup> All figures on the waves of protest in 1998–99 taken from: Foryś, Grzegorz / Gorlach, Krzysztof: The dynamics of Polish peasant protests under post-communism, in: *Eastern European Countryside*, 2002, 8, pp. 47–65. See also: Plazynski, Jakub: Public protests. Legal regulation and legal responsibility in the Polish case, in: *Arbeitspapiere und Materialien der Forschungsstelle Osteuropa*, 2006, 75; Marks, Bartłomiej: Trzy wymiary Samoobrony czyli źródła sukcesu partii Andrzeja Leppera, in: *Studia Polityczne*, 2000, 14, pp. 7–33; Gorlach, Krzysztof: Freedom for credit. Polish peasant protests in the era of communism and post-communism, in: *Polish Sociological Review*, 2000, 1, pp. 59–83.

succeeded in winning the overwhelming majority of the rural vote with a nationwide haul of 15%, and at the same time entered the Sejm as the second largest party. Meanwhile, the PSL-PL, with 2%, clearly fell short of advancing into the parliament and even trailed Samoobrona, which received nearly 3%. Thus, in the mid-1990s, the PSL assumed the role of the main representative of Polish farmers' interests while simultaneously taking over the responsibility of government.

The government coalition with the Democratic Left Alliance (SLD) from 1993 to 1997 forced the PSL to accept considerable compromises in agricultural policy. The obvious deviation from the far-reaching demands made during the election campaign disappointed many PSL voters. At the same time, it caused internal party conflicts between the advocates of a traditional policy of subsidisation and reform-oriented forces. In the 1997 parliamentary elections, the party received only 7% of the vote, which meant a loss of power for the coalition. The resulting crisis within the PSL led to diminished influence on the part of the reform-oriented members.

The Solidarity camp exploited the PSL's weakness with the freshly established Conservative Peasants' Party (SKL)<sup>18</sup> in order to win back the rural vote. As a member of the Solidarity Electoral Action (AWS), the SKL, with 27 delegates, entered the parliament with exactly the same number of delegates as the PSL. Samoobrona, on the other hand, disappeared – with 0.1% – into oblivion.

With the AWS's election victory, the SKL could now take over the responsibility of government. But both the strained budgetary situation and the resistance of the liberal coalition partner, the Freedom Union (UW), prevented the creation of an agricultural policy that corresponded to the SKL's demands. In spring 2001, the majority of the SKL delegates decided to separate from the AWS faction and join the newly created Citizens' Platform (PO). This decision, just half a year before the parliamentary elections, did nothing to mitigate the disappointment of the rural constituency.

Due to heavy losses in votes in the 2001 parliamentary elections, the SKL, as a member of the PO, lost its political significance. With a 9% share of the votes, the PSL meanwhile could profit only to a limited extent from the SKL's weakness. Instead, the populist Samoobrona succeeded in joining the parliament for the first time. With over 10% of the vote, it became the strongest representative of rural interests in the Sejm. Samoobrona thus possessed 53 parliamentary delegates, the PSL only 42 and the SKL, which ultimately left the PO in 2002 to create its own faction, a mere 9. The Samoobrona faction nevertheless shrank substantially over the course of the legislative term and had only 31 members left prior to the October elections in 2005. After a 12% showing in the elections, the party once again became the most powerful representative of rural interests, followed by the PSL, with only 6%.

In the end, neither party joined the government. However, both supported the minority government in critical elections, such as those on the declaration of the new prime minister on 10 November 2005, or the budget law on 23 January 2005. In February, Samoobrona even entered into a stability pact with the governing Law and Justice Party (PiS) and the oppositional League of Polish Families (LPR). This pact made personnel changes in the government and parliamentary organs subject to approval by all three partners and assured support for 150 major laws to be passed in 2006. On the government's part, this was an attempt to assure stable support within the populist rightwing camp. The three partners commanded 53% of the votes in the Sejm. For Samoobrona, this meant a first step towards shedding its protest image and a reorientation towards a non-rural constituency.

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<sup>18</sup> The merger of the PSL-PL with the SLCh and numerous smaller parties.

Table 1: Farmers' parties in the Polish parliament 1991–2005 (share of factions in total votes)

	I. Sejm (1991–93)	II. Sejm (1993–1997)	III. Sejm (1997–2001)	IV. Sejm (2001–2005)	V. Sejm (Oct. 2005)
PSL	11%	28%	6%	9%	5%
PSL-PL	5%	-	-	-	-
SKL	-	-	6%	2%	-
Samoobrona	-	-	-	10%	12%
<i>total</i>	<i>16%</i>	<i>28%</i>	<i>12%</i>	<i>21%</i>	<i>18%</i>

Note: For Sejm I to IV the average percentage of votes for the entire legislative term is given.

Sources: Sejm ([www.sejm.gov.pl](http://www.sejm.gov.pl)) and State Election Commission ([www.pkw.gov.pl](http://www.pkw.gov.pl)).

In summary, it can safely be stated that the Polish farmers' parties, with a combined vote share of 15% to 20% in the 1991–2005 parliamentary elections, represent an important political force in Poland.<sup>19</sup> Depending on how many parties failed to overcome the minimum percentage hurdle, their share of the vote in the Sejm fluctuated stronger and climbed as high as 28%, as shown in Table 1. The farmers' parties' power of assertion was compromised, however, by their affiliation with rival political camps, which made co-operation impossible. Accordingly, one cannot speak of a collective agrarian lobby in the Polish case. At the same time, the strong fluctuations in the balance of power among the farmers' parties indicate relatively weak voter loyalty across the board.<sup>20</sup> A major tendency in parliamentary elections was thus dramatic losses in votes for whichever farmers' party happened to be involved in the government coalition.<sup>21</sup>

### The farmers' parties in the government

The Ministry of Agriculture is directly accountable for agricultural policy in the Polish government. From the end of 1991 until spring 2003, the Polish Minister of Agriculture was always a representative of a farmers' party, as Table 2 shows. All seven agricultural ministers serving in this period studied agrarian economics. Four of them operated a private agricultural enterprise during their terms of office. The remaining ministers likewise possessed professional experience in agriculture. With one exception, all had already been active in the communist farmers' party or in the oppositional pro-Solidarity farmers' movement during the socialist era.<sup>22</sup>

As representatives of a coalition party, the agricultural ministers were always in a position to influence government policy. The farmers' party thereby had a stronger position in the left-wing coalitions, since the PSL possessed greater voting power. This is also evidenced in the fact that agricultural ministers from the PSL were always simultaneously appointed to the position of Deputy Prime Minister. The same applies to the head of Samoobrona, Andrzej Lepper, who

<sup>19</sup> The combined farmers' parties received more than 80% of farmers' votes in all parliamentary elections.

<sup>20</sup> Due to its takeover of the socialist party organisational infrastructure, the PSL is the strongest Polish party in terms of membership and is represented nationwide. It appears to be the only farmers' party with a base constituency greater than 5%.

<sup>21</sup> On the development of the farmers' parties, see: Marks, Bartłomiej: Trzy wymiary Samoobrony czyli źródła sukcesu partii Andrzeja Leppera, in: *Studia Polityczne*, 2000, 14, pp. 7–33; Krok-Paszkowska, Ania: Samoobrona. The Polish self-defence movement, in: Kopecky, Petr / Mudde, Cas (Ed.): *Uncivil society? Contentious politics in post-communist Europe*, London, 2003, pp. 114–133; Szczerbiak, Aleks: The Polish Peasant Party. A mass party in post-communist Eastern Europe?, in: *East European Politics and Societies*, 2002, 3, pp. 554–588; Economist Intelligence Unit: *Country Report Poland*. June 2001, London, 2001, pp. 13–14; Górlach, Krzysztof / Mooney, Patrick: Defending class interests. Polish peasants in the first years of transformation, in: Pickles, John / Smith, Adrian (Ed.): *Theorising transition. The political economy of post-communist transformations*, London, 1998, pp. 262–283; Górlach, Krzysztof: The peasant issue in contemporary Poland, in: *Polish Sociological Review*, 1995, 2, pp. 141–158.

<sup>22</sup> All biographical data taken from: Polska Agencja Informacyjna: *Kto jest kim w polityce polskiej*, Warszawa 1993; Polska Agencja Informacyjna: *Kto jest kim w Polsce*, Warsaw 2001 and [www.ludzie.pl](http://www.ludzie.pl); [www.kprm.gov.pl](http://www.kprm.gov.pl).

joined a government coalition with the conservative populists of the Law and Justice Party (PiS) and the League of Polish Families (LPR) in May 2006.

Table 2: Polish agricultural ministers 1992–2005

<b>Agricultural ministers</b>	<b>Party</b>	<b>Term</b>	<b>Government coalition</b>
Gabriel Jankowski	PSL-PL	12/1991 – 10/1993	pro-Solidarity parties
Andrzej Smietanko	PSL	10/1993 – 3/1995	SLD, PSL
Roman Jagielinski	PSL	3/1995 – 4/1997	SLD, PSL
Jarosl�w Kalinowski	PSL	4/1997 – 10/1997	SLD, PSL
Jacek Janiszewski	SKL	10/1997 – 3/1999	AWS, UW
Artur Balazs	SKL	3/1999 – 10/2001	AWS (UW)
Jarosl�w Kalinowski	PSL	10/2001 – 3/2003	SLD, UP, PSL
Adam T�nski	unaffiliated	3/2003 – 6/2003	SLD, UP
Wojciech Olejniczak	SLD	7/2003 – 5/2005	SLD, UP
J�zef Jerzy Pilarczyk	SLD	5/2005 – 10/2005	SLD, UP
Krzysztof Jurgiel	PiS	10/2005 – 5/2006	PiS
Andrzej Lepper	Samoobrona	5/2006 –	PiS, LPR, Samoobrona

Sources: Office of the Prime Minister ([www.kprm.gov.pl](http://www.kprm.gov.pl)); EIU Country Reports Poland, London 1996–2004.

At the same time, however, there were other governmental actors possessing agrarian authority besides the Ministry of Agriculture. Agricultural departments existed in both the Ministry of Finance and the Treasury. In the negotiations over the EU accession, the Ministry of Agriculture had to co-ordinate its position with the entire government. Among the pro-Solidarity conservative-liberal coalitions in particular, there arose a regular conflict between the proponents of a free market liberalisation in the Ministry of Finance and the Treasury and the representatives of the farmers' parties in the Ministry of Agriculture. The Prime Minister could mediate between the two camps. Meanwhile, both camps could try to advance their position by exerting influence on the parliament during the legislative process. The resulting conflict led to numerous coalition crises.

The increasing load on the agrarian lobby from the EU accession negotiations, distinctly sinking farm subsidies due to a high budget deficit, and populist pressure from Samoobrona led, in spring 2003, to the resignation of a farmers' party from the government for the first time. Thus, for the first time since 1991, the Polish Minister of Agriculture was not a representative of the agrarian lobby. Instead, the post went to Adam T nski, a politically unaffiliated expert, whose objectives nonetheless quickly failed due to political resistance. Up to the parliamentary elections in October 2005, the Ministry was led by representatives of the SLD, who had forged their careers as party politicians in the parliament and as bureaucrats in the Ministry of Agriculture. In the PiS minority government, a professional politician with a technical education became minister for agriculture.

However, when Samoobrona became part of the governing coalition in spring 2006, the head of Samoobrona, Andrzej Lepper, became minister of agriculture and deputy prime minister. With that a representative of the agrarian lobby again gained responsibility for the government's agricultural policy. For the first time a representative of the more radical protest wing of the agricultural lobby assumed political responsibility. This was generally interpreted as an attempt by Samoobrona to react to the rising satisfaction of farmers with EU policies and to broaden the party's electoral base.<sup>23</sup>

<sup>23</sup> Office of the Prime Minister ([www.kprm.gov.pl](http://www.kprm.gov.pl)); EIU Country Reports Poland, London, 1996 – 2005.

## Summary

Following the free market reforms of 1989, Polish agriculture fell into an acute crisis. With the end of planned-economy support and the advent of price liberalisation, agriculture de facto subsidised private households in 1990. Resistance in the agricultural sector was sparked early on by the corresponding loss of income. However, due to disparate interests, the agricultural enterprises did not succeed in forging a common agrarian lobby. On the one hand, there was a line of conflict between left, conservative and populist forces. On the other hand, politico-economic priorities divided the different enterprise types (large-scale enterprises, privately-run commercial farms and subsistence farms).

The interests of the agricultural sector were thus represented by a multiplicity of rival farmers' parties and protest movements all espousing different strategies of exerting influence on politics. The PSL from the left camp, as well as the PSL-PL, SLCh and SKL from the conservative camp, aimed to advance the farmers' interests via government participation following success in the parliamentary elections. Within KZKiOR and NSZZ RI Solidarity, meanwhile, there was a grouping in both the left and right camps which pursued a confrontational strategy and organised protest actions. During the large waves of protest in both 1992–1993 and 1998–1999, however, both parties were eclipsed by the populist Samoobrona. True to form, Samoobrona exploited its representation in the Sejm elected in 2001 for the continuation of its confrontational strategy. However, after the parliamentary elections of 2005 Samoobrona agreed to join the government.

The channels of influence of the representatives of the agricultural sector are correspondingly different. The protest parties, most prominently represented by Samoobrona, were by and large politically isolated in the 1990s. Their only hope of forcing their way into political decision-making processes was via the successful initiation or orchestration of mass protests. Samoobrona established itself as a permanent political force only upon its entry into parliament following the 2001 elections.

The PSL, along with the conservative Farmers' Party, could only hope to implement its strategy of government involvement successfully if its political camp won the elections. The elections of 1991 and 1997 were granted to the conservative Farmers' Party, while the 1993 and 2001 elections went to the PSL. In all cases, an intra-governmental conflict developed due to the Farmers' Party's involvement in the government. While the representatives of the agricultural sector dominated the Ministry of Agriculture, other government parties occupied the Ministry of Finance and Treasury and demanded a reduction in state support for agriculture. This conflict provoked mass protests at the beginning and end of the 1990s and led to the breakup of the government coalition in 2003. As a result agricultural lobbyists remained outside the government for about three years until Samoobrona joined the government coalition in spring 2006. With that it may change from a protest strategy to meaningful government participation and thus replace the Farmers' parties of the conservative camp, which lost political representation in the 2005 parliamentary elections.

The representation of Polish agriculture's interests is thus characterised by changing constellations. Therefore, the degree of success in exerting political influence was also subject to substantial fluctuation. In the agrarian lobby's case, the main indicator for success is the extent of state subsidies, since government support has always been the overarching demand of all representatives of Polish agriculture.

In order to facilitate the quantification of state support for the agricultural sector, the OECD has developed a system which determines the monetary effect of all measures taken by the state and then sets it in relation to the market price of the entire agricultural production. This producer support estimate (PSE) indicates which part of the gross proceeds of agricultural enterprises was financed directly (e.g. via subsidies) or indirectly (e.g. via price regulation) by state measures.



The 1989–1990 price liberalisation led to a clear breakdown of the PSE in Poland, as indicated in Table 3. Since the prices for basic food were kept artificially low, agriculture in fact subsidised other sectors of the national economy, in particular private households. In 1990, the PSE in Poland hovered at around -18%. The government arranged a subsidisation system relatively quickly, which led to a positive PSE. However, the extent of the subsidies varied substantially according to the power constellation in agricultural politics.

Table 3: Farm subsidies 1986–2003 (PSE in %)

	<b>1986–1988</b>	<b>1990</b>	<b>1991</b>	<b>1992</b>	<b>1993</b>	<b>1994</b>	<b>1995</b>	<b>1996</b>
Poland	10	- 18	7	9	16	21	16	19
OECD	37	37	37	35	35	34	31	29

	<b>1997</b>	<b>1998</b>	<b>1999</b>	<b>2000</b>	<b>2001</b>	<b>2002</b>	<b>2003</b>	<b>2004</b>
Poland	18	28	24	15	15	19	8	N/A.
OECD	28	33	35	32	31	31	30	30

Source: OECD: Agricultural Policies in OECD countries, Paris 2005, 39; OECD: Agricultural Policies in OECD countries, Paris 2004, 64.

The PSL's strong government involvement from 1993–1997 resulted in the stable subsidisation of agriculture. On average, support for the agricultural sector, measured as PSE, was more than twice as high during the PSL's term in office than during those of the preceding conservative governments. At the same time, the extent of the subsidisation tended to vary only by a maximum of 5 percentage points, while the fluctuation was around 34 percentage points from 1990–1993 and 13 percentage points from 1998–2001.

Following the PSL's loss of power at the end of 1997, the potential success of a conflict strategy suggested itself. The highest PSE by far in post-socialist Poland was reached when mass protests were organised against the agricultural policy of the conservative government. Only in the protest years of 1998–1999 did the Polish farm subsidies (in their relative extent) come close to the average level of the OECD countries.

Once the protests died down, however, the liberal-conservative government immediately abandoned its subsidisation policies. In the framework of an agreement with the European Union from September 2000, trade in agricultural products was liberalised. All in all, the PSE sank to its lowest level since 1992. In 2002, the coalition with the PSL, which came to power in autumn 2001, increased the farm subsidies to the level attained during its previous term of office during the mid-1990s. As a consequence of the Polish budgetary crisis and the EU accession negotiations, the new government's room for manoeuvre was limited. At the Copenhagen Summit in December 2002, guidelines for the subsidisation of Polish agriculture were agreed upon with the European Union. Together with a clear decrease of the PSE to a mere 8%, this sparked the PSL's resignation from the government in the spring of 2003. It remains to be seen whether Samoobrona's participation in the government will have an impact on state support to agriculture. When joining the government, Samoobrona declared that it wanted to renegotiate Poland's EU agricultural subsidies and demanded a cut in excise taxes on fuel used by farmers.

## Part II: The Polish agricultural lobby and the EU's Common Agricultural Policy

### The EU's Common Agricultural Policy (CAP)

The Common Agricultural Policy (CAP) of the EU consists mainly of market regulation and income support, which accounts for more than 40% of the total EU budget. It also includes accompanying measures and, since 1998, rural development regulations mainly in the form of agro-environmental aid. In 2003, the EU agreed on a major reform of the policy that introduced the Single Payment Scheme and shifted funds from price and income support (Pillar 1) to rural development (Pillar 2).

The EU enlargement of 2004 entailed an eastward expansion of EU bureaucratic procedures. The CAP was non-negotiable for the accession countries at the time. Their role was to merely implement the decisions made in Brussels.<sup>24</sup> However, Poland forced through a compromise in last-minute negotiations, which allows for an expansion of Polish farm subsidies. While they were supposed to initially amount to no more than 25% of the average of the old EU countries, upper limits of 55% for 2004, 60% for 2005 and 65% for 2006 were ultimately agreed upon. The additional subsidies, which surpass the EU's original recommendation, must, however, come solely from the Polish national budget.<sup>25</sup>

In the decision-making pertaining to the CAP, the Council of Ministers and the European Commission are still the most important institutions. In terms of agricultural policies, the European Parliament remains a marginal actor. The Council of Agricultural Ministers decides on the main policy line.<sup>26</sup> Therefore, it is the focal point of intergovernmental bargaining on decision-making. Three groups of actors are involved in the decision-making process: the EU member states, the Directorate-General (DG) for Agriculture and Rural Development of the European Commission and agricultural interest groups.<sup>27</sup>

During the 1970s, the DG and the association of European farmers' organisations (COPA – Comité des Organisations Professionnelles Agricoles de l'Union) enjoyed unmatched power in finessing proposals through the system. COPA, which merged with the General Committee of Agricultural Co-operatives (COCEGA – Comité Général de la Coopération Agricole de l'Union Européenne) in 1962, was most frequently cited as the most powerful of all European-level interest groups.<sup>28</sup>

However, this position has started to erode since the 1980s for three reasons. The first is the increased strain placed on the CAP as its budgetary costs became unsustainable. Second, the circle of actors involved in agricultural policy formation has since widened. Budgetary pressure and international trade negotiations brought in what is now the Directorate-General for Eco-

<sup>24</sup> Rieger, Elmar: Wohlfahrt für Bauern. Die Osterweiterung der Agrarpolitik, in: Osteuropa, 2004, 54, 5–6, pp. 296–315.

<sup>25</sup> In this instance the state may also utilise EU structural funds. In terms of the agrarian lobby's role, the decisive factor is not the origins of the aid, but the fact that the government decides autonomously on the level of additional subsidies and that all additional monies allotted to farm subsidies must come out of the national budget.

<sup>26</sup> Meester, Gerrit: EU Institutions and the Decision-making Process for Agricultural Policy, in: Burrell, A. / Oskam, A. (Ed.): Agricultural Policy and Enlargement of the European Union. Wageningen (Wageningen Pers), 2000, pp. 37–52, here p. 37.

<sup>27</sup> Grant, Wyn: The Common Agricultural Policy, Basingstoke (Macmillan), 1997, p. 147; Meester, Gerrit: EU Institutions and the Decision-making Process for Agricultural Policy, in: Burrell, A. / Oskam, A. (Ed.): Agricultural Policy and Enlargement of the European Union. Wageningen (Wageningen Pers), 2000, pp. 37–52, here p. 48.

<sup>28</sup> Dissent from Sidjanski, D.: Pressure Groups and the European Community, Government and Opposition, 1967, 2(3), pp. 397–416. Less influential is the agro-business lobby due to its heterogeneity. Grant, Wyn: The Common Agricultural Policy. Basingstoke (Macmillan), 1997, pp. 170–171.

conomic and Financial Affairs.<sup>29</sup> Additional agricultural interest groups active at the EU level are the European Council of Young Farmers (CEJA), the Confederation of the Food and Drink Industries of the EU (CIAA) and the European Trade Union for Agricultural Workers (EFFAT). External oppositional interest groups (such as consumer and environmental groups) have also been established. Third, the divergence of interests within COPA has increased after several EU enlargements. The competitive nature of its relationship with a number of national members has resulted in the establishment of its own offices in Brussels.<sup>30</sup>

### The Polish farmers' parties in the European parliament

The representatives of Polish farmers' parties in the European parliament have no relevant influence on the EU's agricultural policy for a number of reasons. First, they are split among three factions and therefore unable to present a common position.<sup>31</sup> Second, there is no organised agricultural pressure group within the European parliament. Third, the European parliament is only marginally involved in the CAP. As a result, contrary to the situation in Poland, political parties cannot help to promote agricultural interests at the EU level.

### Polish agricultural interest groups and the European Commission

Agricultural interest groups, which have been sidelined by political parties in Polish politics, are rather active at the EU level. Eight different Polish agricultural interest groups are members of four different European-level agricultural lobby associations, as Table 1 indicates. However, again the distinction between political party and lobbying group is blurred in the Polish case. Samoobrona has members in the Polish and European parliaments and also acts as lobby group through COPA.

Table 1: Membership of Polish agricultural interest groups in associations at the EU level

<b>Polish interest group</b>	<b>website</b>	<b>Member of</b>
FBZPR – Federation of Agricultural Producers' Unions (Poland)	na	COPA
KRIR – National Council of Agricultural Chambers	<a href="http://www.krir.w.pl">www.krir.w.pl</a>	COPA
KZKiOR – National Union of Farmer Cooperatives and Organisations	<a href="http://www.kolkarolnicze.pl">www.kolkarolnicze.pl</a>	COPA
NSZZ RI Solidarity	<a href="http://www.solidarnosc.org.pl">www.solidarnosc.org.pl</a>	COPA, EFFAT
PFPZ – Polish Federation of Drink Producers	<a href="http://www.pfpz.pl">www.pfpz.pl</a>	CIAA
ZMWZK – Polish Rural Youth Organisation	na	CEJA
ZZ CNMR – Trade Union – National Centre of Young Farmers	na	CEJA
ZZR Samoobrona	<a href="http://www.samoobrona.org.pl">www.samoobrona.org.pl</a>	COPA
ZZPR – Union of Professional Agricultural Workers	<a href="http://zzpr.org.pl">http://zzpr.org.pl</a>	EFFAT

Sources: CEJA ([www.ceja.org](http://www.ceja.org)), CIAA ([www.ciaa.be](http://www.ciaa.be)), COPA ([www.cogeca.be](http://www.cogeca.be)), EFFAT ([www.effat.org](http://www.effat.org)), IFAP ([www.ifap.org](http://www.ifap.org)).

<sup>29</sup> See e.g. Swinbank, Alan / Daugbjerg, Carsten: The 2003 CAP reform. Accommodating WTO pressure, in: *Comparative European Politics*, 2006, 4(1), pp. 47–64.

<sup>30</sup> Grant, Wyn: *The Common Agricultural Policy*. Basingstoke (Macmillan), 1997, pp. 147–148, 157, 169; Greenwood, Justin: *Representing Interests in the European Union*. Basingstoke (Macmillan), 1997, pp. 124–125.

<sup>31</sup> Samoobrona became a member of the socialist faction. The PSL has joined the conservative Christian Democratic faction EPP-ED. However, in early 2006 a group within the PSL lobbied for a move to the Union for Europe faction. As a result, three PSL deputies of the European parliament were excluded from their party and became members of the Union for Europe faction.

However, main agreements concerning the integration of Polish agriculture into the CAP were made before Poland joined the EU and could therefore not be influenced by Polish agricultural lobbies in Brussels.<sup>32</sup> Moreover, the agricultural lobbies of the old EU member states mainly see Poland as a rival, as Polish demands for agricultural subsidies reduce their share in EU payments. "The prospect of accommodating the poorer agricultural economies of the former communist countries within the CAP has always appeared nigh-on-impossible, and the alternative of cutting benefits to those who currently receive them has long been deemed politically unacceptable."<sup>33</sup> As a result, the Polish agricultural lobby has not been able to promote its interests through European agricultural associations either.

## Conclusion

In Polish national politics, the agricultural lobby has been and still is a highly visible and rather influential actor. Its influence is based on a strong position in parliament and on the high protest potential of farmers and the rural population in general.

Neither factor is relevant at the EU level. The share of Polish agricultural parties in the European parliament is negligible, and the parliament itself only marginally involved in agricultural policy. The Polish agricultural lobby has no real incentive to stage protests in Brussels, especially as Polish farmers' fears about heavy losses after EU accession have not materialised.

In the multinational agricultural interest associations at the EU level, the Polish agricultural lobby is not only marginal but also rather isolated, as most interest groups from the old member states see Poland as a main rival for EU subsidies. Accordingly, the Polish agricultural lobby has no way of direct meaningful participation in EU decision-making processes.

Nonetheless, the Polish agricultural lobby can use its influence on the national government to promote its interests. First, as a result of the pre-accession compromise with the EU, a large portion of Polish agricultural policy, including decisions on substantial subsidies, will be made in Warsaw. The Sejm will therefore remain the stage for the representation of rural interests for the time being. Second, the final decision on the CAP rests with the Council of Ministers. As representative of a member state, the Polish government now has the power to block decisions. As a result, influence on the national government is sufficient for the agricultural lobby as long as EU decision-making procedures remain unreformed.

This situation also has important implications for an assessment of questions of accountability. First, the Polish agricultural interest groups are not vested with the power to hold organs of the EU accountable. Second, as they have no direct influence on decision-making at the EU level, issues of accountability cannot be said to come into play. At the EU level, questions concerning the accountability of interest groups in agricultural policy refer to the multinational associations and namely to COPA. Though Polish interest groups are members, their impact is too small to render them directly accountable. This means that even though Polish agricultural interest groups are active at the EU level, questions of accountability arise at the national level.

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<sup>32</sup> Rieger, Elmar: Wohlfahrt für Bauern. Die Osterweiterung der Agrarpolitik, in: Osteuropa, 2004, 54 (5–6), pp. 296–315.

<sup>33</sup> Rumford, Chris: The European Union. A Political Sociology, Oxford (Blackwell), 2002, p. 78.



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