

“LISTENING TO CIVIL SOCIETY: What relationship between the European Commission and NGOs?”

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Preface

1. This paper is one in a series, produced by ECAS, designed to contribute to a variety of debates important to civil society organisations. It is stimulated by the recent Commission discussion paper “The Commission and Non-Governmental Organisations: Building a Stronger Partnership”. NGOs were invited to comment on this Paper – which is available on the Commission’s web site. The consultation period is officially over, but no decisions have been taken or are likely to be for some time. Moreover the Commission has yet to decide on the important range of policies which go under the general title of “governance” on which a White Paper will be appearing in the early part of 2001. We believe, therefore that further comment on the issues raised in the consultation paper is timely. The web address for the Commission’s paper is:

http://europa.eu.int/comm/secretariat_general/sgc/ong/en/index.htm
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2. ECAS is grateful for the assistance of the Charities Aid Foundation (CAF) in preparing this paper.

Introduction

3. Governments and other public authorities – local, regional, national, and international – are increasingly recognising that they need to take account of the views of civil society organisations (NGOs, Third Sector organisations, public interest foundations, voluntary bodies, charities, non-profit organisations), and with the help of these bodies are beginning to develop effective ways of doing so.

4. The natural point of contact for many NGOs, the vast majority of which, if they are not entirely voluntary, are small in terms both of funds and of staff, is their local authority or commune. On the whole communication here is easiest: officials and representatives are relatively accessible and the area of operation is small enough to know with some intimacy. It is not surprising therefore that local relationships of open communication and dialogue are reasonably well developed in most Member States.

5. Relationships are fast developing too at the level of the region of county or department. Here again concerns are essentially local in nature and contact can relatively easily be made between NGOs public servants and representatives. In some Member States representatives of NGOs judged to have a legitimate interest in some area of policy as well as the necessary expertise sit on council committees sometimes as of statutory right. At this level there are now abundant examples of contractual relationships where NGOs carry out tasks traditionally undertaken by the local authority. Indeed these service contracts are now a very significant source of funds for NGOs – and, some have argued, a potential threat to the independence of

participating NGOs. Whatever the view taken, there is no doubt that contractual relationships entail working closely together and a degree of open communication that might not otherwise exist. In the best cases the relationship has developed to the point where NGOs are not simply 'agents' or a 'delivery mechanism' for the local authority but have a real input to policy formation and monitoring.

6. Co-operation is gaining ground at international level too, though as recent events at Seattle and elsewhere have demonstrated, by no means all important international organisations have yet appreciated the contribution that NGOs can make to their work or to the development and monitoring of appropriate and equitable policies. There are, nonetheless, a good number of organisations which have established arrangements for NGO participation. Some of these are presented in a useful booklet "Accreditation Schemes and Other Arrangements for Public Participation in International Fora published at the end of last year by the International Centre for Trade and Sustainable Development (ICTSD)¹.

7. For the purposes of this paper the chief interest of the booklet lies in its description of a number of accreditation schemes. The features of these schemes vary, though it is noteworthy that in only one case – that of the NGO-World Bank Committee – are the participating NGOs selected by their NGO colleagues, being elected by the members of the NGO Working Group on the World Bank. In the great majority of cases NGOs are chosen by Member States, usually on the advice of the Secretariat of the organisation concerned, though the Secretariat or Member States individually may make the choice. Selection criteria usually include proven expertise as well as an interest in the relevant area of public policy, and 'representivity'.

8. Once accredited, the extent that NGOs are permitted to participate also varies widely. The typical UN model allows NGOs to participate as observers, and to make oral statements and submit written statements during public meetings. In most cases NGOs have access to official (unrestricted) documents. It is however comparatively rare for NGOs to be permitted to propose agenda items.

9. There is no doubt then that dialogue between NGOs and public authorities is increasing at all levels. The trend towards co-operation has, however been uneven and there are still many places where the desirability of (even relatively) open communication is not recognised and consultation is rare. And, on the whole, the process has been hesitant - progress being made only under steady pressure from NGOs.

10. This is a pity because properly handled an open and consultative relationship can be as rewarding for public authorities as it is for those NGOs who seek action, policy changes and/or a voice in decision making. It is, for example, now almost universally recognised that voluntary aid organisations, besides engaging the interest and generosity of the public, can deliver vital aid in parts of world where, for political or other reasons governments cannot. Organisations with expert knowledge – and some are now leaders in their field – can greatly improve the design of (necessarily increasingly complex) policies and, since they typically work closer to the ground than public authorities, can give early, accurate and objective feedback on their success or otherwise in practice. Finally, NGOs are often the pioneers of policies and practices

¹ The booklet was published as "a contribution to the debate on the World Trade Organisation and transparency". The arrangements examined in the booklet – for example, UN; UNCED; the NGO World Bank Committee; OECD; the Joint Public Advisory Committee of the NAAEC; the UN Committee on Economic, Social and Cultural rights; the OECD Development Assistance Committee; the IMF Article IV Consultation; etc; - are those most relevant to this continuing debate.

which are later “mainstreamed” and, importantly, the first to spot developing social or other problems for which they develop approaches and procedures (and sometimes the necessary infrastructure) on which governments come later to rely. The example of the AIDS epidemic is a classic case in point here.

11. Open and reciprocated communication with public authorities is especially important for those NGOs with concerns beyond action in their immediate environment or neighbourhood. For many at regional, national or international level it is becoming essential, as it is for the increasing number of NGOs which are being asked to take on tasks (in many fields) formerly undertaken by public authorities. NGOs dealing with problems that are by their very nature international come into the same category.

12. For public authorities too the arguments in favour of a closer and more productive relationship with NGOs are gaining weight. On one side this is being driven ‘negatively’: the NGO sector is better organised, more professional, and campaigns more effectively than in the past. Above all with the advent of the Internet the monopoly of information once enjoyed by public authorities is fast disappearing. More ‘positively’, there is a growing appreciation on the part of public authorities that in complex and sophisticated modern democracies the consent of the electorate – and indeed of the effectively disenfranchised - needs constantly to be renewed, and that the continuous renewal of consent is unlikely to be achieved unless they are prepared to enter into genuine and productive dialogue with civil society. Greater openness and flexibility (e.g a willingness to allow local solutions or exceptions) will certainly be required on all sides: the difficult question of the extent to which the process can be fostered by formal consultation is discussed below.

The European Union.

13. All these arguments apply to institutions of the EU - and with the Commission’s declared policy of greater transparency and emphasis on the citizen, the time is opportune for a new look at how best relations between it and NGOs might be structured – if at all. The Commission’s Paper is therefore particularly to be welcomed as much for its recognition of the importance of the issues it raises – essentially that of giving the European citizen an effective voice in the conduct of the Union - as for many of the particular points made in it.

The Commission’s Paper

14. The Commission’s paper begins by noting that “Over the last two decades the partnership between the European Commission and NGOs has expanded on all fronts”. It adds that although the Commission’s current practice clearly proves its willingness to maintain and strengthen its partnership with NGOs, the structures and procedures involved have not kept pace with the increasing complexity and scope of the Commission’s work nor thoson to remark that “However, the complexity of EC policies as well as the growing number of regulations and funding sources (budget lines) coupled with recent financial security problems have created a great deal of uncertainty for NGOs about co-operation with the Commission.” (Our italics.)

15. The Commission notes – by way of background - that it has “recently launched a far-reaching process of administrative reform which includes among its aims a more service-oriented behaviour and an improvement in the management culture of the institution. A greater effort will be made to increase transparency and accountability to principal interlocutors as well as improving efficiency for instance by speeding up payments to all beneficiaries.” It adds later

that “it is clear that specific proposals” (designed to give new impetus to an ongoing process of internal and external appraisal of the way the Commission works with NGOs) “must be established as part of the process of overall administrative reform”. (Again, our italics.)

16. This is a crucial passage, for what the paper only hints at is that an important (its proponents would say key) feature of reforms the Commission will need to put in place is a concentration on what are described as its ‘core functions’. The question of what is the proper scope for the Commission – of what it is proper for the Commission to involve itself in – is a highly political matter as recent legal action to freeze certain budget lines of interest to NGOs well demonstrates. There is, therefore, a distinct danger that far from putting its relationship with NGOs on a new and better footing, the Commission will be forced to withdraw from much of its direct contact with NGOs and to abandon many smaller grant regimes of great interest to them. This danger is reinforced by an evident lack of staff to deal on a day to day basis with even the present number of grant applications from NGOs and the management and financial accountability problems the Commission has experienced in dealing with intermediary bodies.

17. In ECAS’s view it would not merely be a great pity were the Commission to be forced to withdraw from some activities which it has taken many years to develop, such a step would also have very immensely damaging consequences both for civil society organisations dealing with problems of great concern to European citizens and, perhaps more important in the long run, for the Commission’s capacity sympathetically to understand and deal effectively with the voluntary sector. In other words the danger for the sector – and we would say also for the Commission – is not simply loss of funds for the sector and a lessening of its capacity to operate at European level in some fields, but loss of official expertise in dealing with NGOs.

18. There is no doubt that a lack of such expertise can be a serious impediment to the forging of fruitful partnerships between public authorities and NGOs even in Member States where the public role of NGOs has long been acknowledged. The voluntary sector is extremely diverse and fragmented and has its own specific concerns and characteristic ways of working. As the paper rightly points out NGOs need to understand the concerns of government and to acknowledge the legitimacy of the democratic political process. But equally, officials and representatives need to understand the complexities and specificities of the sector and to acknowledge its legitimacy as an important intermediary between government and the citizen. Training may help, but in developing such understanding there is in our view no real substitute for regular and personal contact between those responsible for government and representatives of NGOs. Such contact can of course take place in a variety of contexts and for a variety of purposes, but in practice relationships are most often forged – particularly with smaller organisations (which are often the liveliest) against the background of applications for grant.

19. ECAS very much hopes therefore that the Commission will resist any temptation to withdraw from smaller grant regimes or to narrow its focus to large organisations or to consortia of NGOs working in restricted fields. We understand, of course, the constraints on staffing and the problems that there have been with intermediary organisations. There is however, we believe, one possible solution which the Commission should seriously consider and that it is to confer the role of intermediary grant-maker on foundations, or consortia of foundations operating at European level. Foundations have long experience of working closely with

associations², have great expertise in grant giving in their fields of interest and in managing projects, and have impeccable records of financial probity. Many now manage funds (separate from their own resources) of considerable size for companies or donors who do not wish to be involved themselves on a day-to-day basis.

20. Although there has as yet been no practical result, recent discussions between foundations and the Commission have demonstrated the willingness of both parties to work together on small (possibly co-funded) grant schemes which foundations would administer. In our view these discussions should be revived.

Principles of future co-operation

21. Whatever the future of small grants regimes there will still be a need for NGOs and the Commission to work together on the development and monitoring of Commission policies, and on such matters as the management and financial accountability of grant-aided bodies. The Commission's paper is naturally concerned with the detail and consistency of the approach it should adopt in these and other respects. Our aim in what follows is not so much to cast a critical eye on the Commission's discussion of the issues that arise but to set out what we believe ought to be the principles underlying future co-operation, responding to the Commission's paper as necessary.

Scope

22. The first thing to be said is that co-operation with NGOs should cover the whole of the Commission's remit. The Commission's paper describes many of the numerous contacts both formal and informal that already exist between officials and NGOs. Despite this (in many ways impressive) record of co-operation there are still very significant sectorial gaps – for example, youth, culture and Health – where competent NGOs are rarely if ever consulted. Consultation over 'horizontal' issues – those which concern overall EU strategy - also needs to be improved. There was, for example, very little consultation over the White Paper (which might better have been a green paper) on "Growth Competitiveness and Employment" or on Agenda 2000.

Legal basis

23. As the Commission's paper remarks many NGOs would like to see a legal basis for consultation with NGOs in the treaties and/or in the form of a horizontal regulation. The intention here would be to give the same right to dialogue and consultation as already exists for the social partners in the context of the social dialogue. A legal basis for consultation would, of course give the Commission the right to provide funds for consultation. It may not, however be necessary to enshrine it in the treaties since, as has happened on several occasions in the past, the same legal requirement can be written into Council decisions on particular matters. Furthermore we would question the use of the social dialogue as an implied model: still less do we believe that the statutory inclusion of NGO representatives in the Economic and Social Council would be the right way forward. What is needed are mechanisms appropriate to the diversity and range of bodies wishing to comment. In our view European citizens and their organisations would be better served by giving statutory backing to the principle of 'civil

² Although they are normally regarded as part of the voluntary sector along with associations, foundations have their own specific legal characteristics and vocation. Unfortunately they are not covered in paragraph 1.2 of the Commission's paper "Common characteristics of non-governmental organisations". This is an important omission.

dialogue'. We believe that this could best be done in the context of a Bill of Rights applying to all EU institutions and citizens. Such a Bill would need to enshrine at least:

- a right to be heard based on citizenship of which all NGOs, as organisations of citizens could take advantage;
- free access to information (and explanatory material where necessary) provided in good time to allow NGOs to consult their members before firm decisions are taken;
- the responsibility of citizens and their organisations to respect the legitimacy of the formal political process and, in particular, the need for public authorities to balance competing priorities and demands.

Such a Bill would give focus to a new relationship between citizens and the institutions (and in particular the Commission) based on open, continuing, and transparent dialogue.

Representativeness and exclusivity

24. The possession by all citizens and their organisations of the right to be heard would have the welcome result of solving what would otherwise be the insoluble question of the supposed 'representativeness' of the bodies which the Commission would have to choose to consult. As has been mentioned the extent to which organisations are considered to be 'representative' is commonly one of the main criteria used by international bodies in choosing which organisations to consult. The result is that it is generally only the largest organisations which are invited to participate – and very often the same ones in different contexts – and the neglect of voices which may be fainter but can often be talking better sense. In any event we believe that the whole apparently vexed question of representativeness is misconceived. The fact is that no NGO can claim to represent the diversity of views in the sector, even when it is clearly predominant in its own field. What matters to public authorities (or what should matter to them) is that they are aware of the full range of views held by interested voluntary organisations from the sector no matter what their provenance.

Accreditation

25. It will be clear from the above discussion that ECAS shares the Commission's doubt as to whether formal consultative status should be granted to NGOs along the lines of some of the accreditation schemes briefly described earlier in this paper. Such systems inevitably exclude the vast majority of organisations desirous of a voice, and by their exclusive nature go very little way to helping public authorities to gain an accurate picture of the full range of views current in civil society organisations. They particularly risk excluding the views of smaller organisations at the cutting edge of understanding and opinion. In short ECAS believes that any such system would be as invidious for the Commission as it would be divisive for the sector. Finally, the Commission makes the important point that "unlike the system in international bodies, the decision making process in the EU is first and foremost legitimised by the elected representatives of the European peoples". We agree, and it is precisely because we see the relationship between citizens and their institutions as profoundly political in nature – as having for its essential context the EU's efforts to develop more democratic and participative procedures – that we believe that the right to be heard must be accorded to all and not just a chosen few, however faithfully they may try to represent the many.

The focus on Brussels

26. If attention needs to be given to the coverage of dialogue in terms of subject matter (see above) care needs also to be taken over its geographical reach. At present virtually all consultation between the Commission and NGOs takes place in Brussels and with organisations based there - often funded directly by the Commission. ECAS recognises the practical advantages of this situation but believes that greater efforts need to be made to communicate outside the 'Brussels establishment'. There are, first of all, dangers that bodies which appear to have a close or favoured relationship with the Commission, and especially those also funded by the Commission may be accused of 'clientism'. There are clearly dangers here for the Commission too. Second the present system may come to resemble an accreditation scheme without the safeguards that a formal arrangement might impose. Lastly, and this is an important point from the Commission's point of view, by no means all the views and expertise to which it should ideally have access are to be found in Brussels. On the contrary, it is often the case that the greatest experience and expertise exists in the Member States. Dialogue needs therefore to reach out to civil society organisations based in the different countries of the Union. For this purpose practical arrangements, perhaps involving national meetings on important topics, will need to be devised.

Practical Considerations

27. If the above were to be the main principles on which co-operation between NGOs and the Commission were to be based, what practical steps would need to be taken to put them into effect?

28. The first thing to be said is that we sympathise with the Commission's predicament. We wonder, indeed, whether with staffing levels as they exist the present situation could be much improved. The key here is the political will of the Union to engage wholeheartedly with its citizens and the organisations which represent them. If our governing institutions are serious about democracy then they will need to vote the means to make it work. The response of those institutions to the demands of the voluntary sector to be listened to, understood, and have its views taken into account will be an acid test of their willingness to create a truly democratic Union.

29. ECAS hopes, therefore, that a preoccupation with financial mismanagement and administrative reform will not be allowed to determine the Commission's policies towards co-operation with the voluntary sector. Certainly, there are difficulties for any public authority in establishing and maintaining a co-operative relationship with the voluntary sector, difficulties which are exacerbated in the case of the Commission which already has 15 countries to deal with and will soon have more. But it is not an easy matter for any public authority to relate in a fruitful manner to a sector as diverse and 'difficult'; and these difficulties whether they exist on a large or a small scale should not be used as an excuse for a failure to engage.

30. Our view is that if the principles on which we suggest co-operation should be based are sound, then in practical terms the Commission has little alternative but to pursue an 'open door' policy. It will need to consult and enter into dialogue with NGOs on all policies of interest to them, to reach out to organisations based in the Member States, and to listen to the widest possible range of views.

31. This is not to say that some, or indeed many of the existing arrangements for consultation should cease, indeed we welcome the Commission's intention to examine them with a view to deriving some understanding of 'best practice'. All we would say here is that we would hope that the Commission resists the temptation to standardise for its own sake. The present arrangements are, it is true, a hodge-podge, but that does not mean that they have not grown up as a reasonable response to the wishes of those most interested and involved. Better an untidy jungle than a straightjacket. For the moment, what is needed is to make these arrangements transparent and so far as possible accessible to all NGOs wishing to participate. In this respect we welcome, as a reasonable first step the Commission's desire to describe and publicise such consultation arrangements as already exist.

32. As we say above, we believe that the Commission will have little alternative but to keep an open door to the sector. The aim here should be to establish a continuing dialogue with NGOs wishing to contribute to the formation of public policy or otherwise to the Commission's work. There will, however, be occasions on which formal consultation needs to be undertaken. When such is the case we believe that the Commission should draw up a consultation plan in the light of which the results of the exercise could later be evaluated.

33. The primary purpose of a plan would be to help ensure that the consultation process was as inclusive as possible while ensuring that the Commission does not fail to consult organisations (whether at European level or in the Member States) with obvious expertise. It would need to be adapted to fit the subject in hand, and might be drawn up against a check list questions of the following kind.

- Have all the potentially interested partners been identified?
- Are there interests not represented at European level, and if so how can they best be identified and brought into play?
- Is it clear what interested bodies can offer by way of relevant and concerted views?
- What expertise (if any in particular) needs to be brought to bear?
- If the relevant expertise is not available or cannot be tapped, what action can be taken?
- Is suitable consultative machinery already available, and if so does it require strengthening or adapting in some way to meet the needs of the particular exercise?
- Does machinery need inventing for the particular matter in hand, and if so what models are available?³

In our view the plan should be made public in advance of the consultation exercise, and a report of the results published, either at the end of the consultation period, or in the case of standing arrangements, at regular intervals. In either case a full list of those consulted or commenting should be included as a matter of course.

³ There are a number of models available – temporary or permanent committees, hearings, requests through the Official Journal or web sites, Green Papers, special exercises etc. The choice of model or combination of models needs careful consideration. For many NGOs, responding to requests from public authorities is expensive and time consuming and it is important to remember that NGOs can be overstretched as well as excluded.

NGO Liaison points

34. Many NGOs have suggested that it would help both them and the Commission were there to be liaison points in each department and in the EC delegations abroad. ECAS believes that the establishment of such points of contact would be a useful step as would the creation of a small unit to deal with horizontal issues affecting the sector as a whole as well as (in the words of the Commission's paper) "playing a role in promoting and widening the debate on NGO issues amongst the Commission's services whilst respecting the specificity of NGO/Commission dialogue in the different sectors." It may be that it would be mainly NGOs which would make use of liaison points, but consistent with what we say above we believe that they should be available to all citizens whether organised or not.

Training

35. In ECAS's view a key factor affecting relations between the NGO community and public authorities is the degree of sympathetic understanding between the parties. It seems ironic that in recent years a great deal of effort has been put into encouraging officials and representatives in Eastern and Central Europe to become familiar with and achieve some understanding of the voluntary sector while so little appears to have been done at home. This is an important gap to fill. Officials whose jobs involve little or no contact with NGOs should not be expected automatically to understand a diverse and complex new world of interlocutors without help in the form of, for example familiarisation visits, and some training. For officials expected to stay some time in posts where contact with NGOs is an important part of their work short secondments to relevant voluntary organisations might also be considered.

36. In brief, we believe that training for officials should cover at least the following three areas: the different types of consultation mechanism and the factors affecting the choice between them; the NGOs themselves; contractual relationships with NGOs and the management of projects undertaken by them.

37. Of course, understanding cannot be all one way and it is as important that the voluntary sector understands the procedures followed by the institutions and the constraints under which they work. This is again partly a question of simple familiarisation – in which, for example, Commission 'open days' might play a part - but formal training courses designed by the Commission with the help of experienced NGOs would certainly be a positive step.

Conclusion

38. We have tried, in this short paper, to set out clearly what we believe to be the main principles on which the relationship between the Commission and NGOs should be based and the practical steps which will need to be taken if this relationship is to flourish to the benefit of all the parties to it. We write as an organisation dedicated to the European project, and to the ideals which inspire it, and in the belief that these ideals cannot be realised unless our institutions – all of them – are prepared to open the door to civil society and its organisations of citizens and admit them to full partnership in the governance of the Union. We repeat – the key here is political will. Proper consultation is time consuming and can be expensive, and consultation with NGOs can be particularly complex and untidy. If they are to do the job we expect of them our institutions will need more and better trained staff and the funds to enable them to listen to and digest what our citizens are telling them.

39. Certainly, not to listen will be to risk a future in which citizens will become further alienated from institutions whose understanding of the legitimate demands of those they govern will become progressively impoverished. The result, as recent events at Seattle and elsewhere have shown, is liable to be degree of anger and confusion which is helpful to nobody. The lesson is clear: we need to act now.