

## **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**

### **Comments by Mark Boleat**

On 5 June 2002 the European Commission published a 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 (2002) 277 final). The amazingly long title usefully summarises the document's purpose. Comments are invited by the end of July 2002.

The comments are those of an individual, but one who has had substantial experience in the consultation process and policy-making process in the UK and also in working with trade associations, one of the components of "civil society". A biographical note of the author forms Appendix 2.

### **Key points**

The proposals generally are very welcome. They usefully codify best practice.

However, good quality consultation needs to be firmly embedded within the Commission. Merely stipulating minimum standards will not be sufficient. The proposals need to include some measures aimed at securing compliance. Drawing on UK best practice suggests that requiring each Directorate to appoint a Consultation Co-ordinator, requiring "responses to responses" and requiring Directorates to conduct and publish annual reviews of consultation procedures would help ensure that the intentions of the standards are realised.

Those seeking to influence the policy making process should be required to provide information on their own structure and organisation and the extent to which they can legitimately claim to be representative of a particular interest group.

The Coneccs database should be a useful tool to assist the consultation process. However, the database is poorly constructed and needs to be substantially improved if it is to assist in the improvement of consultation procedures.

### **The rationale for consultation processes**

The Commission's analysis of why consultation is a "win-win" option for all participants is exactly right.

It is significant that in the long list of civil society organisations there is no specific mention of trade associations. This perhaps reflects the traditional European view that unions and employers' organisations represent the two sides of business. Most business sectors, at the European and the national level, are represented by trade associations which are not also employers' organisations. The functions of a trade association (predominantly representation of members' interests and provision of information to members) are very different from those of an employer's organisation (collective bargaining with unions and other services relating to employment matters). Perhaps there might be merit in the Commission undertaking or commissioning a

brief report on the various types of civil society organisation and their interest in the consultation process.

### **Improving Commission consultation procedures – an ongoing process**

The Commission recognises the value of open consultation procedures but also notes the practical constraints, in particular: “open consultation processes tend to lead to a large number of comments, which often can be difficult, even impossible to process”. This problem can be addressed in a number of ways –

- Ensuring that consultation documents are well drafted, making clear in particular what is up for discussion and what is non-negotiable (because a decision has already been taken or because of a treaty obligation), setting out in a summary a list of points of which comments are being sought, and numbering paragraphs (unlike in the Consultation Document).
- Having a mechanism that enables views to be weighted according to how representative the organisation making them is (weighting for quality cannot be done mechanically).
- Using innovative consultation mechanisms such as hearings and seminars.
- Commissioning outside experts to review and summarise the consultation responses.

The Document mentions the “Interactive Policy Making Initiative” as a means of overcoming the problem. If this is a box ticking exercise it will merely lead to a dumbing down of the consultation process; a sort of instant public opinion poll. This is no way to make policy. On the other hand if it is an efficient means of rapidly obtaining views from a representative sample of interest groups then it may have some merit if properly used.

More focussed consultation exercises, either with formal consultation fora or structured consultation groupings, have a role to play. The Commission must ensure that there is a proper balance of interests among those invited to participate in such exercises. Also, the Commission needs to be mindful of the constraints on some interest groups. Business groups will always wish to be represented. Consumer and voluntary organisations may not be able to afford to be represented and independent experts have to ask themselves why they are helping develop policy which is not directly relevant to them at their expense. (The author commented on the Commission Green Paper on consumer policy. Presumably because this contribution was felt to be useful he was invited to travel to Brussels and attend an all-day hearing - at his own expense.)

### **The Coneccs database**

The Coneccs database of business associations and other interest groups should be a tool that can be used by policy makers in the European Union and also by commentators. However, as currently organised, the database is of limited use. In particular it goes no real indication of the membership of interest groups and therefore the extent to which they can claim to be representative. At comparatively modest cost it could be substantially improved through a series of initiatives -

- The database must be made more accessible through links from the institutions of the European Union, national trade association organisations and other relevant websites. The database also needs to be publicised.

- At present the database cannot be used to search for an organisation unless part of its name is known. The database should be categorised by broad industry classifications, such as food and drink, financial services and engineering, and also by sub-sectors, such as banking, insurance and electrical engineering. The search engine should operate by sub-sector as well as name or acronym.
- The database must be made accurate, comprehensive and up to date.
- The information should be verified, that is someone with a reasonable degree of experience in the area should look at each entry when it is received and check anything which, at first sight, seems suspicious. An e-mail should be sent to each organisation on the database every six months asking it to confirm the data.

A detailed analysis of the Coneccs database is set out in Appendix 1.

### **General principles for consultations by the Commission**

The four proposed principles – participation, openness and accountability, effectiveness and coherence – are sensible subject to a few minor qualifications.

#### *Openness and accountability*

The final paragraph states: “Interested parties that wish to submit comments on a policy proposal by the Commission must therefore be ready to provide the Commission and the public at large with the information described above [which interests they represent, how inclusive that representation is and how accurately they reflect those interests]. The Coneccs database should prove to be a useful tool in this context.” The point has already been made that the Coneccs database as currently constructed is not a useful tool in this context. Rather than saying that those commenting on Commission proposals should “be ready to provide” the necessary information it would be better to require them to provide it, either permanently through a proper entry on the Coneccs database or as an attachment to the comments. All consultation documents published by the Commission should include such a requirement, without which the responses would be ignored.

#### *Effectiveness*

The Commission is correct to point out that a better understanding of the constraints within which it work, in particular treaty obligations, will help interested parties have realistic expectations; it could also save them wasting time on commenting on issues that are not negotiable. The Commission could help itself in this area –

- By clearly stating those constraints in consultation papers.
- By not exaggerating. There is a temptation to justify everything by reference to treaty obligations.

#### *Coherence*

The mechanisms for feedback, evaluation and review must be robust – a point developed in the next section.

### **Minimum standards**

The standards are appropriate but need expansion in some area. It is also important that the full standards, not just the headlines, are finally published in a single short

stand-alone document, readily accessible on the Commission website. The UK Cabinet Office guideline for consultation have seven headline criteria, which it requires to be published in all consultation documents. The words in the headline are generally observed; however, there are additional parts of the criteria that are not in the headlines, do not have to be published and accordingly are often not adhered to. For example there is headline criterion of “it should be clear who is being consulted, about what questions, in what timescale and for what purpose”. Under this criterion is a specific requirement that “representative groups should be asked in responding to give a summary of the people and organisations they represent”. This is often not complied with in consultation documents and even where it is many responses fail to give the required information.

#### *Clear content*

There should be an additional point: “A consultation document should be as simple and concise as possible. It should include a summary, in two pages at most, of the main questions it seeks views on.”

#### *Publication*

The proposals are sensible. However, the Commission should also develop a facility to use the Coneccs database to send an e-mail to parties known to be interested in a proposal, enclosing a summary of the consultation document and a link to the full document.

#### *Time limits for participation*

These time constraints are very tight. They would be more acceptable if the Commission had a somewhat better record in meeting its own deadlines. (According to the Governance White Paper, published in July 2001, the minimum standards would be published by the end of 2001, ie within six months. The paper was published 11 months later. Respondents are given just 8 weeks to comment. To add insult to injury in its regular (and useful) governance newsletter the Commission proudly announced that it “has decided to act swiftly and competently”.)

#### *Acknowledgement and feedback*

The expression “The Commission will encourage practices to provide adequate feedback to responding parties and the public at large” is far too vague. It should be strengthened as follows: “The Commission will publish a summary of the responses and its response to the comments made”. It is important that the summary is not simply a statistical analysis but rather that it gives proper weight to the views of key representative bodies – those most likely to be affected by the proposal.

The heading could usefully be extended to “Acknowledgement, analysis and feedback”. The sentence on analysis would better read: “Responses should be carefully and open-mindedly analysed.

There is also a need to build in compliance arrangements. An additional paragraph as follows would be appropriate –  
“Each Directorate and Agency of the Commission shall appoint a consultation co-ordinator who shall be responsible for ensuring that these standards are adhered to and for disseminating best practice. Each Directorate and Agency shall publish an annual

report certifying that it has complied with the standards and analysing the lessons learned about the consultation process. The Commission will establish a central unit to analyse these reports and to spread good practice. Departments and agencies should consider commissioning outside agencies to report on the effectiveness of their consultation processes, either in respect of a particular exercise or performance over a full year.

*Specific elements for focussed consultation*

The proposals are reasonable. It would be unwise to be prescriptive. The Economic and Social Committee's criteria are interesting but not always appropriate. In particular –

- “comprise bodies that are recognised at member state level as representative of particular interests”. The expression “recognised” has no meaning in Britain. For example the major trade associations are not officially “recognised”.
- “have member organisations in most of the EU members states”. This is impossible for some sectors – eg cricket clubs, olive oil producers, parmesan cheese manufacturers, champagne producers, scotch whiskey producers, investment banks, savings banks and stockbrokers. A more meaningful criterion would be “have member organisations in most of the EU member states in which the activity is undertaken” or “be open to membership from organisations in all member states”.

A properly constructed Coneccs database, with the requirement to clearly indicate representativity, would do away with the need for these criteria completely.

At present the permanent fora seem to be concentrated in a number of policy areas. There are 44 in the agriculture sector, 30 in employment, 23 in enterprise, seven in health and two in economic and financial affairs. This rather suggests that there are very different approaches to the use of permanent fora within the Commission.

## **Appendix 1**

### **Improving the Coneccs database**

#### **Introduction**

The Coneccs database of business associations and other interest groups should be a tool that can be used by policy makers in the European Union and also by commentators. However, as currently organised, the database is of limited use. At comparatively modest cost it could be substantially improved. The note is concerned specifically with business associations. However, the same principles can be applied to other interest groups.

#### **The purpose of the Coneccs database**

It is assumed that the Commission wish to have a database of trade associations for three separate reasons –

- To provide information for staff in the Commission to help them identify and communicate with organisations which can provide a useful input into policy making.
- To provide a source of information for commentators and opinion formers.
- To assist the Commission in its desire to improve the transparency of the decision making process. There has been some discussion as to whether the Commission should introduce standards for trade associations and some form of accreditation process. Such a concept would be difficult to implement. Trade associations can be created quickly to meet specific needs and some trade associations may legitimately have only a small number of members from a single country because those would be the only organisations affected. Rather than pursue the difficult concept of representivity, it would be preferable instead to have a rigorous standard of transparency such that those who wish to participate in the policy making process must be completely open about the nature of their organisation and their membership.

#### **The requirements for the database**

The database should meet four tests –

- It should be comprehensive including a very high proportion, if not all, of the relevant organisations.
- It should be accessible through links with other websites and being well signposted by the Commission and should also be easily searchable.
- It should be up to date.
- It should be accurate and provide the necessary information to ensure transparency.

#### **The present position**

The database does not score well against these tests at present. No attempt has been made to check whether it is comprehensive or up-to-date. However, it is certainly not complete, particularly in respect of membership of associations. For a number of major associations there is no indication at all of membership.

The database is not accessible. Unless its exact address is known it is unlikely that anyone will find it. It is not signposted from the main Commission website and is not identified in the Governance Unit's site. It can only be found by going to the index and then to Civil Society.

The main problems are that the database is difficult to use to find associations and the entries are not always informative.

One would expect that the database would be searchable by sector or subsector. In fact, associations are categorised according to the Commission's own organisation. This means that there are 318 organisations listed under the "Enterprise" category. The names, some in English and some in French, are listed alphabetically. (The Commission's categorisation throws up some odd results. For example, 14 associations are listed in the Taxation category including the European Federation of Business Parks.) In order to find, for example, the trade association for the brewing or mechanical engineering industry then this categorisation cannot be used. Rather, it is necessary to use the "defined search of organisation", but this works only if one knows one of the words in the name of the Association. For example, putting "beer" or "brewing" in the search engine will not find the brewing trade body. One has to know that its name includes "brewers". Similarly, putting agriculture into the search engine gets just four associations, not including COPA. CEFIC, the chemicals trade body, cannot be found by using "chemicals" in the search engine but is found if "chemical" is used. The European Banking Federation will not be found by searching with the words "banks" or "bankers"; "Engineering" scores just five hits which "engineers" scores three.

The entries do not enable a judgement to be made on the membership of an association and therefore how representative it is. Ticking boxes for each country is of little help. Taking the insurance industry for example it is important to know whether the member is the Association of British Insurers (which represents the whole of the UK insurance industry) or a one-man broking firm. Some, but not all, entries do give access to a complete membership list. This point can usefully be illustrated by reference to a number of the financial trade associations –

- The European Insurance Committee (CEA) can properly claim to be a European representative body; however, its entry does not have any of the country membership boxes ticked.
- The Banking Federation of the European Union can similarly claim to be a European representative body; its entry ticks all of the country membership boxes. However, clicking its "list of members" link yields nothing.
- The European Association of Co-operative banks (EACB) has none of the membership boxes ticked but a list of members is accessible.
- The European Federation of Building Societies (EFBS) has none of the membership boxes ticked. The link through to its own website suggests that it has members in most of the European Union countries. However, in reality it has one member in Britain (about the tenth largest lender), one in France (but clicking the appropriate button comes up with "not found") similarly one in Norway which cannot be found, one in Belgium (a bauparkasse), one (a savings bank) in Spain and four in Luxembourg (three of which are bauparkassen). The organisation is in reality a front for the German bauparkassen.

The directories published by Landmarks and Euroconfidential should be used as a comparator for the Commission's database.

### **Proposal**

The Coneccs database could be substantially improved, and therefore made more useful, at comparatively modest cost through a series of initiatives.

The database must be made more accessible through links from the institutions of the European Union, national trade association organisations and other relevant websites. The database also needs to be publicised.

The database should be categorised by broad industry classifications, such as food and drink, financial services and engineering, and also by sub-sectors, such as banking, insurance and electrical engineering. The search engine should operate by sub-sector as well as name or acronym.

Most importantly, the database must be made accurate, comprehensive and up to date. One option would be to start again by introducing a new online questionnaire and then sending an e-mail to all the business associations operating at European level (using the Landmarks and Euroconfidential databases as well as Coneccs) asking them to complete it. A rough model for a new questionnaire is set out in the Annex.

A more modest approach would be to require some additional information from those already on the database, using the opportunity to ask organisations to verify their existing entries, and to target the major associations that are not currently listed. The new information that should be required is proper details of membership, ideally a full list of members with weblinks to them. This would greatly aid transparency. It is important that associations are not allowed to list countries where they have coverage simply because they have one institution buying a subscription service.

At the same time some of the present information could be dropped, for example–

- Year of establishment.
- Legal status – depends more on the requirements of the country than anything else; for example there is no need for a trade association established in Britain to have any legal status other than an unincorporated association.
- The sections on frequency and methods of consultation. These are meaningless and irrelevant.
- The section on sources of finance could be reduced to a requirement to record annual subscription income and annual budget.

The information should be verified, that is someone with a reasonable degree of experience in the area should look at each entry when it is received and check anything which, at first sight, seems suspicious. An e-mail should be sent to each organisation on the database every six months asking it to confirm the data.

## **Annex**

### **Draft questionnaire to interest groups**

**Name of person completing form**

**Telephone number**

**E-mail address**

**Name of interest group**

**Address**

**Website**

**E-mail**

**Phone**

**Fax**

**Contact**

Name

Title

E-mail

Phone

Fax

**Size of organisation**

Annual budget

Subscription income

Number of staff (full time equivalents)

**Interest covered**

[This should be no more than 20 words and should state precisely the sector covered in the case of trade or professional associations, or the interest covered in the case of interest groups.]

**Members**

[Trade associations should state the number of members and the largest five or ten (depending on circumstances) by subscriptions paid and should provide a full list of members. European associations whose membership comprises national associations should list those associations together with information about the largest direct company members if there are any. Professional associations should give the total number of members in each membership category. Both trade and professional associations should give an accurate assessment of the share of the market they represent by volume of business that their members cover. Interest groups should state the number of [paid-up] members and whether they are members because they support the interest group or because they are buying a service.]

**Other representative bodies**

[State any other relevant representative bodies to which your organisation belongs. Also, indicate other representative bodies that are in the same area as yours (this is to help the mapping process and will not be included in the published directory).]

**Areas of interest**

[For each area please put a tick in the box most appropriate to the interest your organisation has in the subject.] [A standard list of subject areas should be used.]

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Subject	Little or no interest	Some interest	Major interest
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## Appendix 2

### Mark Boleat – biographical note

Mark Boleat is an independent consultant specialising in trade associations and the relations between government and business. He has been Director General of three major national trade associations (the Building Societies Association, the Council of Mortgage Lenders and the Association of British Insurers) and one European association (the European Federation of Building Societies), he started the first benchmarking projects between associations and he founded the Trade Association Forum in Britain. His publications include *Trade Association Strategy and Management*, *Models of Trade Association Co-operation*, *Good Practice in Trade Association Governance* and *Trade Association Effectiveness at the European Level*.

He also has direct business experience as a director of two public companies (Comino Group and Countryside Properties) and three insurance companies, and experience of the handling of public policy issues as a member of the National Consumer Council and of the Gibraltar Financial Services Commission.

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