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University of Amsterdam, Authors: Daniela Obradovic and José M. Alonso Vizcaíno

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Summary

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 the minimum standards). The Commission defines consultations as those processes through which it wishes to trigger input from interested parties for the shaping of policy prior to a decision by the Commission. 'Interested parties' means all who wish to participate in consultations run by the Commission, whether they are organisations, profit or non-profit or private citizens. The participation of various parties in the Commission consultations should endow the Commission with the accountability attributes. The Commission emphasised that those standards are intended that all parties affected by particular EU decisions are properly addressed and consulted on those measures and that an adequate balance is struck between them, depending on their social or economic character, size, specific target groups and country of origin since not only European level interest organisations are consulted, but also those operating at national level.

The paper examines the level of the participation of interest groups originating in the member states of Eastern Europe as an accountability constituency in the Commission consultations and the significance of thereof for this process.

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I. 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 the minimum standards).¹ The Commission defines consultations as those processes through which it wishes to trigger input from interested parties for the shaping of policy prior to a decision by the Commission. ‘Interested parties’ means all who wish to participate in consultations run by the Commission, whether they are organisations, profit or non-profit or private citizens. The participation of various parties in the Commission consultations should endow the Commission with the accountability attributes. The Commission emphasised that those standards are intended that all parties affected by particular EU decisions are properly addressed and consulted on those measures and that an adequate balance is struck between them, depending on their social or economic character, size, specific target groups and country of origin since not only European level interest organisations are consulted, but also those operating at national level.

The paper examines the level of the participation of interest groups originating in the member states of Eastern Europe as an accountability constituency in the Commission consultations and the significance of thereof for this process.

II. 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 the new forms of governance introduced by the European Union with the intention to improve its efficiency and legitimacy.²

The interaction between civil interest groups and public institutions operating at different levels is considered in the European Union to be highly important for the functioning of the system as such. This has been recognised in the White Paper on Governance, which promises ‘wide participation through the policy chain – from conception to implementation’.³ It also promises to ‘reach out to citizens and involve civil society, construct and consult better networks, and establish procedures and timetables for consultation’.⁴

The Commission is of the opinion that wider participation of civil society in EU governance through an early consultation will not only make the European integration process more inclusive and ensure that EU issues are debated by wide range of interested parties, but will also

¹ 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.

² Commission of European Communities (2001) ‘European governance: White paper’, COM(2001) 428, 25.7.2001, p. 11. as a policy entrepreneur, collecting views and recommending policies for action, and then acting as watchdog of the EU interest to see those policies implemented at the national level.² 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)

³ Commission of European Communities (2001) ‘European governance: White paper’, COM(2001) 428, 25.7.2001, p. 10.

⁴ Ibid, p. 14.

contribute to a more effective policy shaping in the Union.⁵ This participation is intended to enable the Commission to fulfil of the good governance principle of accountability general. The fact that the Commission advocates the involvement of civil society in the debate on the future of Europe⁶ illustrates how this issue has become important in the Union. The promotion of citizens' participation in EU governance is also one of the main objectives of the Commissions Action Plan to improve communication in the Union.⁷

The commitment to wider opportunities for stakeholders to participate actively in EU policy-shaping is one of the 'Strategic Objectives 2005-2009' with which the European Commission launched a "Partnership for European Renewal". In this context, the Commission emphasised, in particular, that inherent in the idea of partnership is consultation and participation".⁸

III. Civil dialogue in the European Union

The greater involvement of civil society in EU governance is to be achieved through the civil dialogue,⁹ which refers to the range of consultations such as Dialogue with Business,¹⁰ Dialogue with Citizens,¹¹ European Round Table on Democracy,¹² the Corporate Social Responsibility European Multi-stakeholder Forum¹³, Trade Dialogue with Civil Society¹⁴, consultations with stakeholders through Green and White Papers and Internet consultations via the web portal Your Voice in Europe,¹⁵ conducted between the Commission and interest groups in the pre-drafting phase of the European legislation or the open method of co-ordination (OMC) (designed to create conditions in particular policy domain such as employment or social inclusion, for mutual learning that hopefully will introduce some degree of voluntary pol-

⁵ Ibid, p. 15.

⁶ 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.

⁷ 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.

⁸ 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.

⁹ The EU Constitution denotes it as the concept of Participatory Democracy in its Article I-47:

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

¹⁰ <http://europa.eu.int/business/en/index.html>

¹¹ <http://europa.eu.int/citizens/en/index.html>

¹² 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.

¹³ http://forum.europa.eu.int/irc/empl/csr_eu_multi_stakeholder_forum/info/data/en/CSR%20Forum%20Rules.htm

¹⁴ http://trade.ec.europa.eu/doclib/docs/2005/june/tradoc_113527.pdf

¹⁵ <http://europa.eu.int/yourvoice/>

icy convergence) guidelines preparation process.¹⁶ The Commission views the Your Voice in Europe to be its single access point which offers citizens, consumers and business an opportunity to play an active role in the process of shaping Commission policy.¹⁷ This Internet site is to be replaced in the near future by a more encompassing contact centre, the Europe Direct, which will promote one-stop-shop access for citizens.¹⁸

The Commission has contact with around 1500 interest groups, representing 2,600 special interest groups whose activities generate an estimated annual turnover of 60 to 90 million euros in annual revenue.¹⁹ Two-thirds of these represent business, one-fifth citizen interests, with the remainder representing professions, trade unions, and public sector organisations at national and regional level. In addition to these interest groups, an estimated 350 large firms, 200 regions, and about 300 organisations supplying commercial public affairs services are active in engaging EU politics.²⁰ Both specialised interest groups advocating causes of particular sections of society, and the so-called diffuse interest groups promoting widely accepted causes such as non governmental organisations for the protection of environment participate in those consultations.²¹ Furthermore, not only European level interest groups are consulted, but also regional and national ones,²² such as those taking part in European Citizens' Panels established in some member states to discuss specific policy areas and which are in future intended to be organised at inter-regional level.²³ In principle all types of autonomous non-profit-making structures participate in the civil dialogue.

The Commission consults interest groups when formulating its policies. It seeks opinion from interest groups when it embarks upon drawing up legislative proposals on OMC guidelines.

¹⁶ Consultations of interested parties by the Commission take place on an ad hoc base 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.

¹⁷ Commission of the European Communities (2004) 'Report on European governance (2003–2004)', SEC(2004) 1153, p.12.

¹⁸ 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.

¹⁹ 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).

²⁰ 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.

²¹ The 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 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 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).

²² 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.

²³ 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.

Those consultations concern the process through which the Commission wishes to trigger input of interested parties on the occasion of the formulation of an EU legislative proposals or OMC guidelines. Such consultation enables the Commission to gather opinions of interested parties and take into account different views while drafting law initiatives. It also intends to assess the impact of any legislation or policy co-ordination objective by carrying out those consultations.²⁴ They are supposed to help the Commission and the other institutions to arbitrate between competing claims and priorities and to assist in developing a longer-term policy perspective. It 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.²⁵

The Commission does not only regard consultation of interested parties to be beneficial for the process of legislation drafting because it helps to ensure that its legislative proposals are sound, but it considers itself to be legally bound to do so.²⁶ The Commission finds that its duty to wide consultation flows from the Protocol No. 7 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.

III.1 Rules for the participation of interest groups in EU consultations

Civil dialogue was, until recently, not formalised,²⁷ although the 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.²⁸ The Commission endorsed the policy of unrestricted access of interest groups to its officials and declined to introduce any system of licensing for groups that it consulted.²⁹ It did not impose any particular requirement upon interest groups that it engaged in dialogue with, nor did it request them to fulfil some formal conditions in order to be consulted.

This approach has been changed after the publishing 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.³⁰ The open access policy

²⁴ On the Commission’s implementation of impact assessment for all major initiatives as from 2003, see Commission of the European Communities (2002) ‘Communication from the Commission on impact assessment’, COM(2002) 276, Brussels, 5.6.2002.

²⁵ 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.

²⁶ 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.

²⁷ 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.

²⁸ Sargent, Jane A. (1985) ‘Corporatism and the European Community’ in Wyn Grant, (ed.), ‘The Political Economy of Corporatism’, (London: Macmillan), pp. 229–253, p. 236.

²⁹ 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.

³⁰ 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.

deployed by the Commission in its relations with interest group has been changed on the grounds that ‘with better involvement comes greater responsibility’.³¹

The Commission formalised the civil dialogue process through the adoption minimum standards and general principles for consulting interested parties (hereafter the minimum standards).³² They have been applicable since January 2003.

The Commission sets out the following five minimum standards for the consultation process: A) *Clear content of the consultation process*: all communications relating to consultation should be clear and concise, and should include all necessary information 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’³³; 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 reception of responses to written public consultations and 20 working days notice for meetings; and E) *Acknowledgement and feedback*: receipt of contributions should be acknowledged. Results of open public consultation should be displayed on website linked to the single access point on the Internet.³⁴ Standards should be applied together with the following general principles: participation, openness, accountability, effectiveness and coherence.³⁵ This means that the involvement of all interest groups in EU governance is subject to their compliance 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 the bodies or persons consulted and from that of the legislator’s point of view; Third, to demonstrate accountability vis-à-vis the bodies or players consulted, by making public, as far as possible, the results of the consultations.³⁶ The Commission wants to assure that all parties involved in the consultation are properly addressed and that an adequate balance is struck between them, depending on their social or economic character, size, specific target groups and country of origin.³⁷ The minimum standards are applied systematically to all major policy initiatives.³⁸ Those standards are deployable to consultations on the Commission’s major policy

³¹ Commission of European Communities (2001) ‘European governance: White paper’, COM(2001) 428, 25.7.200, pp. 15, 17 and 18.

³² 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.

³³ See http://europa.eu.int/yourvoice/consultations/index_en.htm.

³⁴ 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.

³⁵ Ibid, pp. 16-18.

³⁶ Commission of the European Communities (2002) ‘Communication from the Commission: “European Governance: better lawmaking”’, COM(2002) 275, 5.6.2002, p. 3.

³⁷ 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

³⁸ The largest number of consultations related up to now include agriculture and fisheries; employment and social policy; external relations; industry; justice and home affairs; transport and energy; environment; eco-

proposals for which an impact assessment is required: these proposals are listed in the Commission's Annual Work Programme³⁹ They should be considered as a tool created by the Commission for the purpose of the operationalization of its new commitment to introduce an impact assessment analysis for its initiatives in all EU policy areas, which is taking into account the economic, social and environmental impact of the proposal concerned.⁴⁰

The Commission had considerable experience in single sector type impact assessments. Those tools covered for example impact on businesses, trade, the environment, health and employment. These impact assessments were, however, often partial looking only at certain sets of effects. This partial approach has made it difficult for policy makers to assess trade-offs and compare different scenarios when deciding on a specific course of action. Therefore, the newly adopted Extensive Impact Assessment (ExIA) is 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 for their impact upon the widest possible group of potential stakeholders, in order to ensure that consideration of the impact of measures is not simply restricted to an elite of those who are politically active on them. 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. The application of minimum standards should identify trade-offs in achieving competing objectives, but they are not substitute for political judgement of EU decision makers.

The Commission claims that it wishes to maintain an inclusive approach and not to create hurdles in order to restrict access to the consultation process. Those standards also should not prevent lobbying.⁴¹ In other words, it does not intend to create new bureaucratic obstacles for the purpose of limiting the number of those that can participate in consultation processes. Indeed, it provides assurance that 'every individual citizen, enterprise or association will continue to be able to provide the Commission with input'.⁴² Its intention is to achieve the balance between open and focused, targeted consultation of those with a pertinent interest.

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 the policy-makers just listening to one side of the arrangement or of particular groups

conomic 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.

³⁹ Work programme website http://ec.europa.eu/atwork/programmes/index_en.htm , Impact assessment website http://ec.europa.eu/governance/impact/index_en.htm

⁴⁰ 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.

⁴¹ 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 the 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.

⁴² Ibid., p. 11.

getting privileged access.⁴³ However, it does not apply the accreditation requested by some NGOs.⁴⁴ The Commission has always rejected an official consultative status for NGOs along the lines of existing accreditation systems in the United Nations or the Council of Europe.

Consultation of civil society groups does not go beyond the provision of an opportunity for interested parties to be heard. The Commission views those consultations as ‘the listening process’.⁴⁵ The minimum standards do not require the Commission to provide all interested organisations of the civil society with individually issued invitation to participate in an EU consultation or feedback on how their contributions and opinions have affected the eventual policy decision.⁴⁶ This is confirmed by the Ombudsman which finds that the publication of the results of EU consultations with civil groups on the webportal ‘Your-Voice-in-Europe’ is an appropriate means for the fulfilment of the minimum standard C on publications.⁴⁷

The participants in the civil dialogue do not enjoy a right to receive an answer. The minimum standards do not provide for an effective follow-up procedure. The obligation of the Commission to react appropriately to comments received stipulated by the minimum standards does not confer any right upon parties, which forwarded their opinions during the consultations, to be informed individually in which extended their view has been embraced by relevant EU policy documents. The Commission finds the idea of providing feedback on an individual basis (feedback statements) not to be compatible with the requirement of effectiveness of the decision-making process,⁴⁸ although it recognises in its more recent documents the necessity ‘to draw more systematically on feedback from citizens.’⁴⁹ Regarding the provision of feedback, the minimum standards only provide for the obligation of the Commission to include an explanatory memorandum accompanying its legislative proposal and communications, including the results of the consultation and the consideration taken of the stakeholders’ contributions.

Interest groups have not been recognised or licensed by the Commission. Organisations are not granted a representational monopoly or accreditation and, in practice, the Commission consults numerous organisations. Even though it has established procedures for according

⁴³ Commission of European Communities (2001) ‘European governance: White paper’, COM(2001) 428, 25.7.2002.

⁴⁴ See the document elaborated by the Platform of European Social NGOs ‘Political recommendations on civil dialogue with NGOs at European Level’, 14 October 1999.

⁴⁵ 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. 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.

⁴⁶ 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.

⁴⁷ 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>

⁴⁸ 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.

⁴⁹ 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.

special status and preferential treatment to particular interest groups, that recognition is not generally limited to one organisation per category. So, in practice, the Commission has the unlimited discretion to choose which organisations to consult. As the consequence of that discretion, the Commission has formulated the conditions for the participation of groups the civil dialogue consultations.

It is important to emphasise that the determination of eligibility of groups to take part in consultations firmly rests with the Commission, but since the Commission does not wish to reduce the number of potential participants in civil dialogue, it does not make access to consultations subject to a prior eligibility check. It examines whether they meet its requirements at the later stage, i.e. when it assesses the relevance or quality of comments expressed during the consultation.

III.2 Input of Eastern European interest groups in the Commissions consultations

From the beginning of 2003 when the minimum standards came into force till the end of September 2006 the Commission had completed more than 350 major proposals to which the minimum standards applied: 60 in 2003, 95 in 2004, 106 in 2005 and 95 in the period of January to the end of September 2006⁵⁰ as illustrated by the Figure 1. In addition, the Commission published 33 Green Papers over these four years, to which standards also applied.⁵¹

The Commission consider that over this period the execution of the standards for the Commission consultations was successful. Its Better Lawmaking reports state that most of the minimum standards have been properly applied by the Commission departments.⁵²

In contrast to this Commission's generally positive evaluation of the application of its minimum standards for consultations, our research shows that at present the most important objective of its consultations, the adequate balance between contributions, depending on their country of origin, is not ensured.⁵³ Namely, interest groups operating in the Eastern European member states submitted extremely low number of contributions comparing to the number of submissions coming from 15 states holding the EU membership prior to the 2004 enlargement when the Eastern European countries joined the Union.

Our conclusion is based upon the assessment of civil society groups contributions submitted to 63 consultations. The number of consultations analyzed per year is given in the Table 1. The policy issues of the consultations assessed are mostly of economic nature, as displayed in the Figure 2.

We could not analyse the origin of contributions submitted to all 350 consultations because input to open public consultations was not published on the internet in every case⁵⁴ as it

⁵⁰ These proposals are available on the impact assessment site:
http://ec.europa.eu/governance/impact/index_en.htm

⁵¹ Green Papers are available on the following site:
http://europa.eu/documents/comm/green_papers/index_en.htm

⁵² The Better Lawmaking reports report on application of the minimum standards for consultation:
Better Lawmaking 2005: http://eur-lex.europa.eu/LexUriServ/site/en/com/2006/com2006_0289en01.pdf
Better Lawmaking 2004: http://europa.eu.int/eur-lex/LexUriServ/site/en/com/2005/com2005_0098en01.pdf
Better Lawmaking 2003: http://europa.eu.int/eur-lex/en/com/rpt/2003/com2003_0770en01.pdf

⁵³ See above

⁵⁴ Commission of the European Communities (2006) 'Green paper: European Transparency Initiative', COM(2006) 194, Brussels, 3.5.2006, p. 12.

should be according to the minimum standard C.⁵⁵ Furthermore, in some cases the data are not accessible or they are missing. In many cases the country of origin of a contribution was not specified. The information on submissions are not uniformly presented in each and every consultation in accordance to the standard model of presentation, but, rather, the way of presentation varies from one consultation to another, resulting in heterogeneous manner of data display. Very often the contributions are attributed to the category designated as ‘others’ for which no specification as to the country of origin can be found. Consequently, it is not possible in each case to determine the county of origin of a contribution.

Our assessment of the contributions submitted which are publicly accessible on the internet demonstrates disproportionately low input of civil groups coming from the Eastern Europe in comparison to the submissions forwarded by interested parties originating in the rest of the member states. The examination of the total number of contributions submitted in our sample of consultations demonstrates this finding as presented in the Figure 3 and the Table 2. For example, while interest associations from Germany and France submitted 19.986 and 12.244 contributions respectively, civil groups from Lithuania and Latvia in the same period of time contributed 335 and 231 opinions respectively. Civil organisations from seven out of the eight Eastern European countries belong to the list of the 10 least active contributors. This disparity is not changed even in the situation of comparing the contributions submitted per 10.000 inhabitants, as it can be seen in the Figure 4 and the Table 2. The cases of Estonia and Slovenia pointed out in the Figure 4 are somehow misleading given that, although they show a relatively high rate of participation, more than 50 per cent or their contributions are submitted in response to just two of the consultations examined.

Our research shows that there is no consistent approach adopted by Eastern European interest groups regarding the policy area in which the impact assessment consultations are launched. Indeed, the Figure 5 demonstrates that there is no systematic pattern in the choice of policy area for which they submitted their opinions.

The quality of contributions solicited by East European interest groups are as yes to be asses because it is very difficult at present to exactly determine in what extent their positions are incorporated in the Commission’s legislative proposals which impact has been assessed through those consultations. The existing manner of presentation of those data is very user unfriendly and requires the investment of considerable time for systematic exploration. There were also cases of insufficient feedback on how comments received via consultations were or were not taken into account in the final policy proposal from the Commission.⁵⁶ Those are the reasons why the qualitative effect of those submission requires further research.

III.3 Reasons for low participation of East European civic associations in the European Commission’s consultations

There are several reasons for such low involvement of civil organisations originating in the Eastern Europe member states in the Commission’s consultations.

Firstly, there is a lack of awareness of the general participatory framework not only among Eastern European civic organisations, but among all interest groups operating in the European Union. The existence of the possibility to be engaged in the Commission’s consultations re-

⁵⁵ See above

⁵⁶ Commission of the European Communities (2006) ‘Green paper: European Transparency Initiative’, COM(2006) 194, Brussels, 3.5.2006, p. 12.

mains largely unknown.⁵⁷

Furthermore, mayor European level groups and platforms which regularly submit their contributions within the Commission's consultation process have not undertaken any measures intended to promote participation of their members or supporters in the preparation of those submissions.⁵⁸ Moreover, following the biggest simultaneous enlargement in the EU history, a number of European level associations are still building their membership in the new member states.⁵⁹

It is stated in literature that various case studies illustrate that, by default, rather than attempting to shape legislation accessing EU institutions and networks, some types of civic organisations such as business interest associations from the Eastern European countries focus on gathering material about specific legislation that will need to be transposed at the domestic level. Hence, it is concluded, that the Europeanised activities of Central and Eastern European interest groups reproduce a model of interest mediation, where the exchange and ownership of information are more important than the actual impact on policy making.⁶⁰

However, the main reason for modest involvement of Eastern interest groups in the Commission consultations lays in their limited financial and organisational capacity to participate in those consultations because of relatively poor financial viability and the lack of sustainable operational structures which are very well empirically documented in literature.⁶¹

III.4 Capacity building

The better participation of civic groups from East Europe in the Commission's communications is perceived in literature that can be achieved through the provision of EU findings for the capacity building of those organisations. Structural funding appears as one of the solutions allowing civil society associations to make quality input in the policy process, by providing them with essential resources needed to develop essential organisational structures for active participation in EU policy making. For example, the already mentioned study on the civil dialogue commissioned by the Civil Society Contact Group stresses that greater involvement of groups from the Eastern European member states in European consultations can be ensured only by the provision of necessary funding for building their organisational capacity to take

⁵⁷ Fazi, Elodie and Smith, Jeremy (2006) Civil Dialogue: making it work better, Study commissioned by the Civil Society Contact Group, <http://act4europe.horus.be/module/FileLib/Civil%20dialogue,%20making%20it%20work%20better.pdf>, p. 39.

⁵⁸ 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 (EPHA).

⁵⁹ Fazi, Elodie and Smith, Jeremy (2006) Civil Dialogue: making it work better, Study commissioned by the Civil Society Contact Group, <http://act4europe.horus.be/module/FileLib/Civil%20dialogue,%20making%20it%20work%20better.pdf>, p. 47.

⁶⁰ Borrigan, Nieves Perez-Solorzano (2004) 'EU accession and interest politics in Central and Eastern Europe', *Perspectives on European Politics and Society*, 5(2): 243-272, p. 262.

⁶¹ See Lane, David (2006) 'Civil society formation and accountability in the new post-socialist EU member states', Bremen: Working papers of the Research Centre for East European Studies, No, 74, pp. 7-22, pp. 14-17.

part in this mode of the EU governance.⁶² This solution is in concert with the EU initiatives adopted for the purpose of improving civil society input in other modes of EU governance which entail civic involvement such as the social dialogue (which denoted by the virtue of the Treaty standardised procedure for the involvement of employers and employees association in EU law making)⁶³ or the structural funding (entailing the civil society participation of the process of determining and implementing the distribution of EU resources for the purpose of regional development).⁶⁴

There are EU programmes designed to support its policies which can be utilize by Eastern European interest groups for strengthening their capability to take part in the Commission's consultations. Those include, for instance, EIDGR, European Initiative for Democracy and Human rights or Daphne Programme to combat violence against children, young people and women. However, the majority of those funding are dedicated to support the activity of European networks⁶⁵, and not to built capacity of national Eastern European interest organisation to take an active part in the Commission's consultations.

Although it appears that EU funding of civil society organisations is necessary for enabling them to take active part in the Commission consultations, one cannot deny the risks linked to an over dependency from one main source of funding which can lead to a competition between organisations, or the likelihood for interest associations to be bound by the institutions' agenda rather than being able to impose their own priorities. On the other hand public finding can be perceived as a guarantee of their independence, by preserving them from being influenced by private interest.

IV. Conclusions

The European Commission's consultations designed to trigger input from civil society associations prior to drafting of EU legislation by the Commission intend enable this institution to take into account different views when making policy proposals. At present it does not attain this objective because of the disproportionately depleted input from citizens' organisations originating in the Eastern Europe. Our research shows that the number of submission to consultations launched by the Commission on major policy proposals coming from interest groups operating in the Eastern European member states is excessively lower than number of contribution forwarded by civic organisations carrying their activities elsewhere in the Union. If there is participation, it takes place almost exclusively through European networks.⁶⁶

⁶² Fazi, Elodie and Smith, Jeremy (2006) Civil Dialogue: making it work better, Study commissioned by the Civil Society Contact Group, <http://act4europe.horus.be/module/FileLib/Civil%20dialogue,%20making%20it%20work%20better.pdf>, p. 88.

⁶³ Commission of the European Communities (2004) 'Communication from the Commission: Partnership for change in an enlarged Europe – Enhancing the contribution of European social dialogue', COM (2004) 557, Brussels, 12.8.2004, p. 5.

⁶⁴ See Art. 42 of the Council Regulation EC no 1083/2006 of 11 July 2006 laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund and repealing Regulation EC No 1260/1999, Official Journal of the European Union, L 210/25 of 31.7.2006.

⁶⁵ Fazi, Elodie and Smith, Jeremy (2006) Civil Dialogue: making it work better, Study commissioned by the Civil Society Contact Group, <http://act4europe.horus.be/module/FileLib/Civil%20dialogue,%20making%20it%20work%20better.pdf>, p.20.

⁶⁶ Ibid.

Our research result empirically confirmed some earlier indications given by other studies of little direct engagement of Eastern European interest groups in the Commission's consultations.⁶⁷ Similarly, the empirical evidence show very low level of the Eastern European interest groups participation in other forms of EU governance which formally require civil organisations' input such as the open method of coordination,⁶⁸ the social dialogue,⁶⁹ and the EU structural funds.⁷⁰

⁶⁷ For cases of Czech and Latvian civil groups see Fazi, Elodie and Smith, Jeremy (2006) Civil Dialogue: making it work better, Study commissioned by the Civil Society Contact Group, pp. 72-73 and pp. 76-78 respectively.

⁶⁸ See Commission of the European Communities (2004) 'Commission staff working paper: Social Inclusion in new member states: A synthesis of the joint memoranda on social inclusion', SEC(2004) 848, Brussels, 22.6.2004, pp. 35-36.

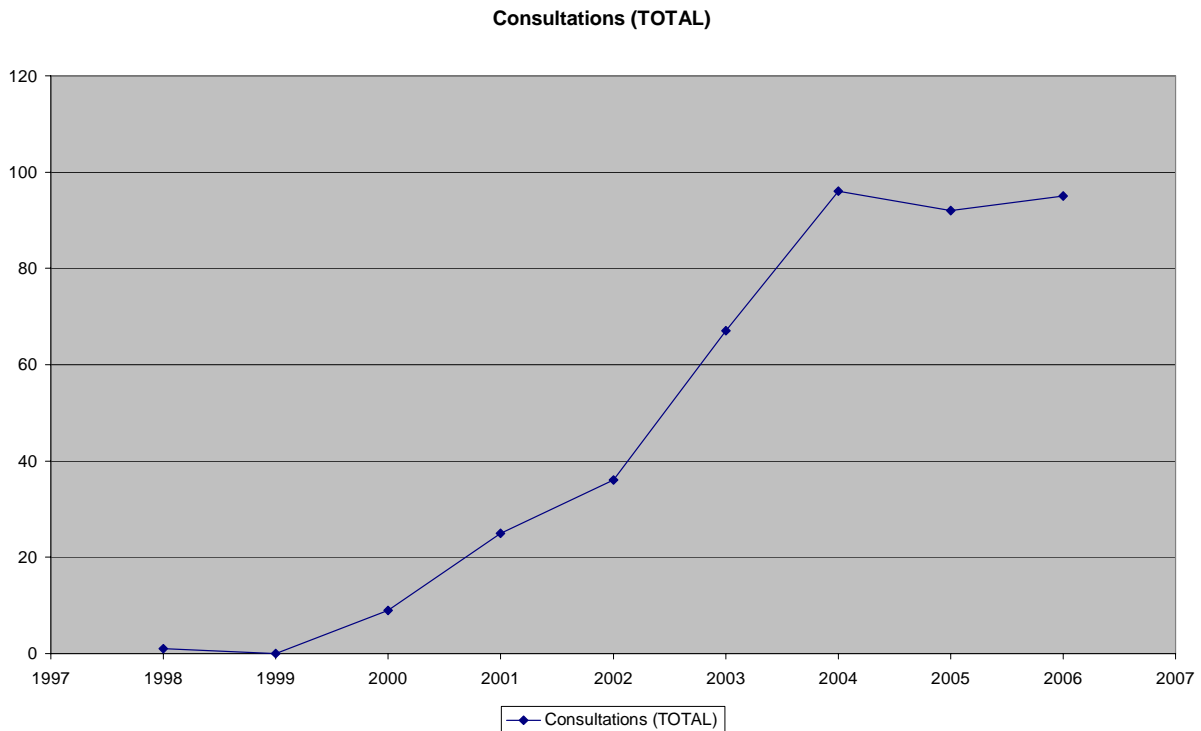
⁶⁹ Mailand, Mikkel and Due, Jesper (2004) 'Social dialogue in Central and Eastern Europe: present state and future development', *European Journal Of Industrial Relations*, 10(2): 179-197.

⁷⁰ Harvey, Brian (2004) *The Illusion of Inclusion*, Brussels: ECAS.

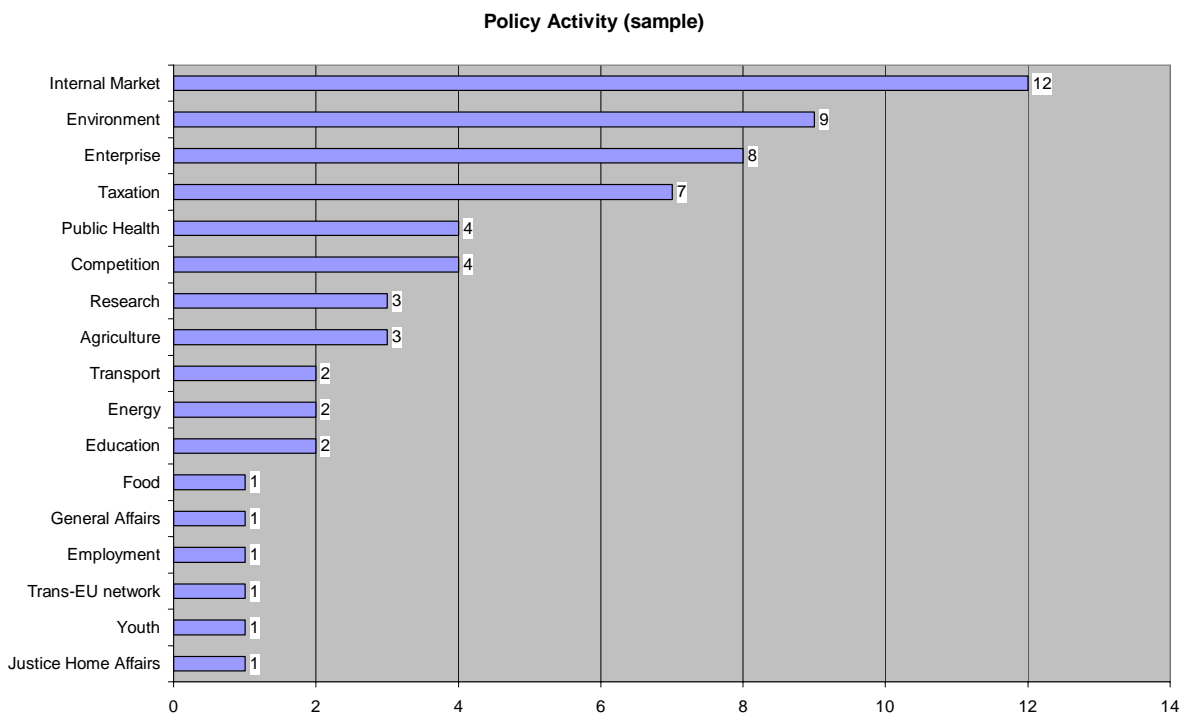
V. Annex: Graphs and Tables

Sources for all graphs: Own compilation based on documents of the European Commission.

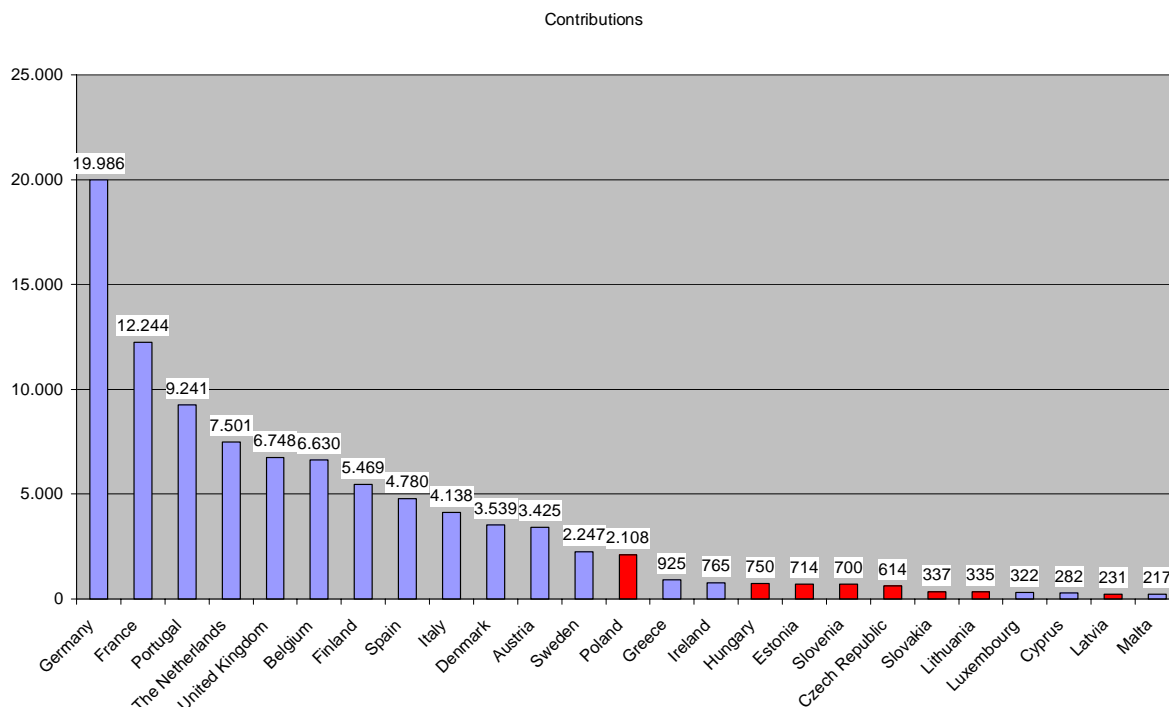
Graph 1: Increase in the number of the Commission’s consultations in the period 1998 – September 2006



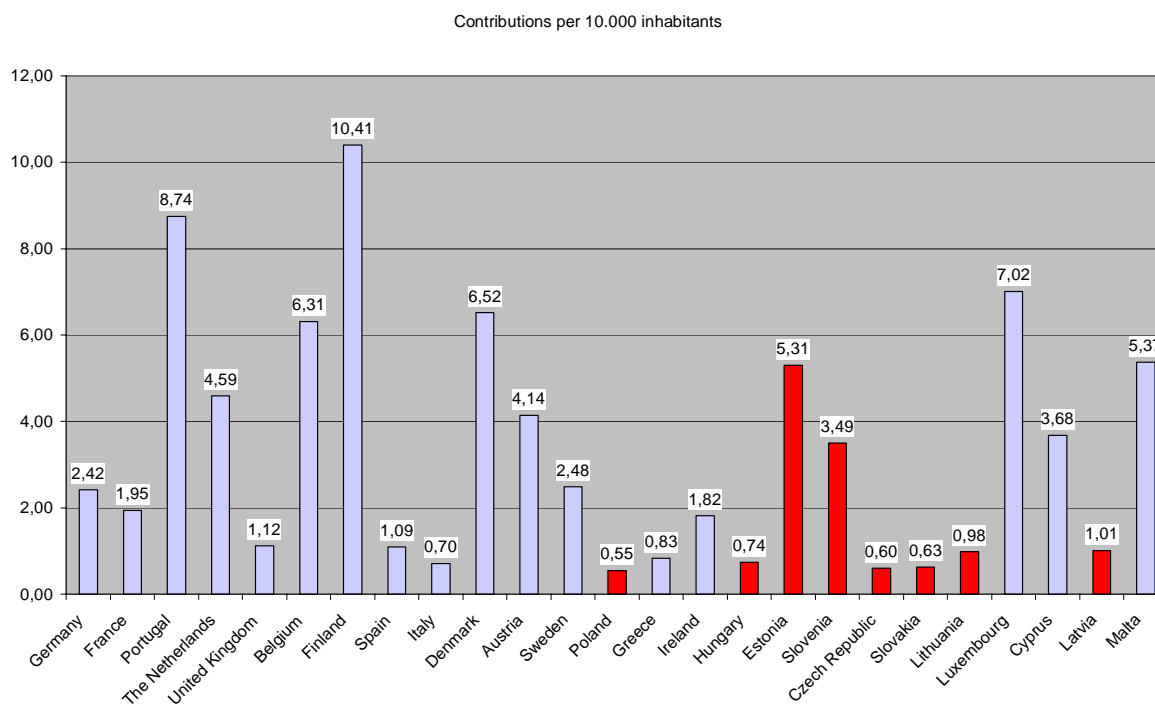
Graph 2: Policy issues covered by the examined consultations



Graph 3: Total number of contributions per country submitted in 63 Commission’s impact assessment consultations in the period 2003- September 2006



Graph 4: Number of contributions per 10.000 inhabitants per country submitted in 63 Commission’s impact assessment consultations in the period 2003- September 2006



Graph 5: Contributions of the 8 Eastern European countries per policy area

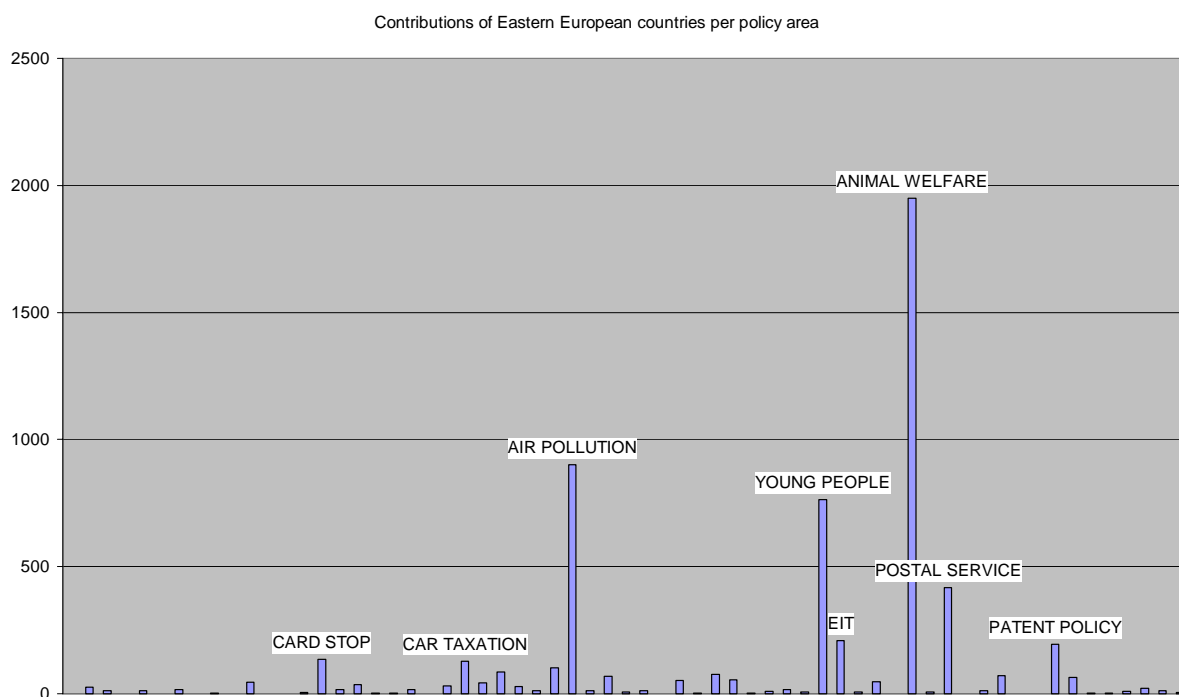


Table 1: Total number of consultations examined per year

Year	Consultations (sample)
2003	11
2004	17
2005	20
2006	15
TOTAL	76

Table 2: Total number of contributions per country submitted in 63 Commission’s impact assessment consultations in the period 2003- September 2006

Member States	Population	Contributions	Perform./10000 inhab.
Germany	82.438.000	19.986	2,42
France	62.886.000	12.244	1,95
Portugal	10.570.000	9.241	8,74
The Netherlands	16.334.000	7.501	4,59
United Kingdom	60.393.000	6.748	1,12
Belgium	10.511.000	6.630	6,31
Finland	5.256.000	5.469	10,41
Spain	43.758.000	4.780	1,09
Italy	58.752.000	4.138	0,70
Denmark	5.428.000	3.539	6,52
Austria	8.266.000	3.425	4,14
Sweden	9.048.000	2.247	2,48
Poland	38.157.000	2.108	0,55
Greece	11.125.000	925	0,83
Ireland	4.209.000	765	1,82
Hungary	10.077.000	750	0,74
Estonia	1.345.000	714	5,31
Slovenia	2.003.000	700	3,49
Czech Republic	10.251.000	614	0,60
Slovakia	5.389.000	337	0,63
Lithuania	3.403.000	335	0,98
Luxembourg	459.000	322	7,02
Cyprus	766.000	282	3,68
Latvia	2.295.000	231	1,01
Malta	404.000	217	5,37
TOTAL	463.523.000	94.248	3,30