

The paper reflects the views of the author and not necessarily the opinion of the EU Civil Society Contact Group

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**Participatory Democracy: organised civil society and the “new” dialogue**

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**Abstract:**

The chapter on Participatory Democracy in the draft Constitution is a novelty. Yet, civil dialogue between NGOs and the European institutions is not a new concept in the European model of democracy. In recent years the institutions, particularly the Commission and the European Parliament, have acknowledged that NGOs are a channel between citizens and the EU institutions and that the expertise and advice they are receiving from civil society organisations are invaluable and necessary for the design and implementation of many EU policies. Increasingly, channels were set up to ensure regular dialogue and a continual exchange of information. However, the implementation of art. 46 raises some difficult questions about the precise structures to be set up, the conditions under which such dialogue can be conducted, and the nature and future of the dialogue partners. From the viewpoint of rights and value based NGO – such as environment, social, development, women, culture and human rights – this paper will critically assess the concept of civil dialogue, the history of interaction between NGOs and the institutions – including the Constitution process – and what direction article 46 would have to take to turn participatory democracy into a tenable concept.

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Much has been said in recent years about a political fatigue in Europe: an increasing percentage of the population across Europe feels entirely disconnected even from local politics, let alone their national one. And I confidently hazard the guess that for the large majority of people in Europe Brussels could be on the moon as far as they are concerned. It is evident that the political processes of today – as much as we cherish and safeguard the establishment of parliamentary democracy – cannot deal with the socio-economic and environmental crisis Europe is facing. A dramatic loss of trust in politicians and democratic institutions is blatantly evident; a sense of disconnection between people and “their” representation is the feeling of the age. Many have tried to find answers to this problem, politicians obviously, and academics with a thorough interrogation of the conditions of modern European democracies. One answer that has been propagated over the years is the establishment of more participatory elements that complement the political process of representative democracy. This participation is called civil dialogue – or as I prefer participatory democracy. Civil dialogue is neither the sole solution nor the most groundbreaking change, but within the context of the European Constitution, on which this conference focuses, it is indeed one of the tools proposed to tackle the problem. This paper will, thus, give a NGO perspective on participation tools, the history of EU dialogue with NGOs, and an analysis of the needs for implementing art. I-46.

### **NGOs as part of civil society**

Civil society has become a term of reference for the involvement of actual people in “their” communities. As with many such terms, “civil society” not only creates undue assumptions about who is actually the decisive opinion-making element of “us all”. It also becomes hazier the closer one looks at it and often gets caught up in what it is not rather than in what it could become: are public authorities still in? Are all state institutions out, including educational institutions? Are we talking about a mass of individuals or structures and organisations that people have created and which, subsequently, have developed their own dynamics and *raison d’être*? Are we defining a partner in dialogue simply as the actual people who can go to elections (leaving out all those who live in Europe and are excluded from voting rights)? Why then should civil dialogue be any added value to elections and representative democracy?

The term civil society is a Pandora’s box – or a can of worms if you wish - its call to inclusion and participation is strong, but so are its dangers of yet again creating a civil society in which not all parts of society can participate. There has been a lot of very intelligent research on the subject that does indeed look more or less critically at a term that has become - or is in the process of becoming - a political concept. I will not repeat or assess these findings here. I rather want to take a look at the phenomenon from a NGO perspective. Fact is all across Europe people choose to organise themselves en masse around interest groups.

Research shows that almost 40 % of the general population volunteers in one way or the other on issues of their concern. Community organisations, more or less structured, emerge and despite common beliefs about these so-called NGOs, they tend to focus on their practical often local concern: providing social services, giving advice to refugees, protecting the local habitat, running a women's shelter, organising a project for a community in Africa etc.

The move to political advocacy work in almost all those organisations can historically be traced as a secondary move once it became clear that the political circumstances relating to their work needed to be changed. It is important to understand that so-called organised civil society, or rights and value based NGOs, in e.g. the social, environmental, development, cultural, or consumer field, still have those strong roots to local activity: it is their history, it is their membership, it is their goal. Advocacy and the provision of practical resources or services are two sides of the same coin. This impacts on the question of representativity to which I will return later. My point here is to highlight the complexity of the structures and affiliations across Europe, which have become a partner in the already existing civil dialogue. European NGOs in our sense represent their members – these can be individuals, groups with the same interest (e.g. member of social or ethnic minorities), their own internal organisations (e.g. Amnesty International, Greenpeace, Friends of the Earth), or national platforms created by diverse NGOs (e.g. European Women's Lobby, European Disability Forum). They represent issues – e.g. the protection of the environment, – and they represent segments of society who do not have a voice – e.g. people experiencing extreme poverty or refugees. The European NGO (ENGO) networks that were created over the last 15 to 20 years are with very few exceptions a result of creating added value to the local, regional and national work that other NGOs do. They depend and are distinctively steered by those organisations, which wanted a Brussels office to add value to their work. ENGO networks have historically grown and they are widely diverse. There will never be only one form of organisational structure. Participatory democracy and its tool civil dialogue will have to accept that diversity and create criteria that make participation possible for many.

European NGOs might sometimes be on the moon as the rest of Brussels for many individual NGO people. But those who know the connections between the organisations they work for and “their” ENGO are aware that their interests are monitored here, there, and along the way in between. Yet, the European structures have become a bit complicated. ENGO networks have created sector platforms to enforce their joint message, particularly because EU institutions originally tended to grant participation rather randomly and their ear widened at the point where many joined in the same chorus. By now there is the structured Social Platform with 40 social ENGOs, the looser Green 8 (8 environmental ENGOs), the loose network HRDN for the human right sector, the relatively new emerging culture platform EFAH, the consumer platform BEUC and the structured development platform CONCORD with several hundred members. The necessities of civil dialogue and the powerlessness even those large platforms experience regularly vis-à-vis the

EU institutions has led to yet another joint venture: the Civil Society Contact Group. While the context of this 4<sup>th</sup> tier organisation becomes rather complicated, it was this group, which established a large campaign, called act4europe, to reach out to the national level and re-connect NGOs cross-sectorally to the European agenda. I hazard to say that with act4europe and even more so the many activities of ENGOS on enlargement, the NGO world has been a lot more successful in being close to “our” citizens than the EU institutions with all their money. However, the NGO world still has a long way to go before organisations in 25 Member States are fully integrated.

## **EU civil dialogue<sup>2</sup>**

The need to create platform NGO structures that combine joint strength but respect the autonomy and the specific work of individual ENGOS became more apparent in relation to the principle of civil dialogue than in relation to hard political issues.

In 1998 the College of Commissioners took the unexpected decision to block some 800 million Euro of expenditure mostly destined to support NGO activities. Their argument was that the budgetary authority, the European Parliament, had created new expenditure lines without ensuring it had the required authority to do so and put the Commission in the unenviable position of having to find personnel resources and expertise to fund activities for which they had no legal authority. The row managed to win the European Union some negative front pages as the media concentrated on how vital aid and human rights work would be blocked. The NGOs involved in social issues, human rights, development and the environment went into action and created a strong alliance between themselves and the European Trade Union Confederation (ETUC). They also discovered that they could mobilise their members in the capitals to create a strong lobby. Meetings were arranged with Ministers at very short notice, and pressure exerted both in Brussels and in national Parliaments. The NGOs and the trade unions mounted a series of high profile actions which ranged from a demonstration in front of a meeting of the EU Council which forced Ministers to enter from a side door, to a rather more flamboyant moment when the then President of the Commission, Jacques Santer, was shown the Red Card, by some 1000 NGO activists he was about to address. In the end the whole affair was resolved with an agreement between the EU Institutions. The budgetary powers of the European Parliament were curtailed, but not before the NGOs had learnt the importance of alliance building between each other and of co-ordinating lobbying actions in Brussels with those in the capitals

Yet, the four groupings of NGOs had different traditions of civil dialogue with the EU Institutions. Although there was no legal basis obliging the EU to engage in dialogue with the NGOs, the practice has been thriving with rich experiments. The EU Institutions maintained an ambivalent position to civil

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<sup>2</sup> This section is based on a summary of EU Civil Dialogue from a social perspective written by Giampiero Alhadef, President of the Social Platform and Secretary General of SOLIDAR, and Simon Wilson, Director of the Social Platform in “European civil society coming of age”, May 2002.

society, publicly welcoming their involvement whilst more or less privately ensuring that NGOs did not encroach on what they perceived as their territory. In spite of this resistance the Parliament and the Commission were prepared to be innovative in their approach to civil society.

The environment NGOs were probably the most advanced in terms of civil dialogue. Recognised in a Council regulation and enjoying since many years a solid basis of core funding, they held regular consultations with the Environment Directorate General and Commissioner, and were also regularly consulted in over fifty Commission Committees of Experts.

The development NGOs have had long established lines of communication with the Commission, though the extent of their influence was not always obvious. By the mid 1990s the development NGOs had become the most structured coordination of NGOs, and had developed a variety of consultation methods with the European Commission and with the Parliament. On occasion, when they did mobilize their strong membership, such as on the future of the Lomé agreement, they were most effective. However although their dialogue with the Institutions was extensive, it was also less structured and generally confined to specific areas of work. Also unstructured, but effective was the communication between the human rights NGOs and the various institutions. Counting some very influential organisations amongst them, such as Amnesty International and Human Rights Watch, they were able to back their dialogue with well targeted lobbying and media work.

It was the Social Platform, which tried to create a structure for civil dialogue. Following two successful consultative conferences organised by the Commission, the Social Policy Fora in 1996 and 1998, an agreement was reached between the members of the Platform and the Commission's Directorate General for Employment and Social Affairs to hold twice yearly consultative meetings around mutually agreed agendas. These meetings have become the underpinning for discussions on more specific topics of mutual interest and bring together all of the Platform members with either the Commissioner or high officials of the Commission. One of the strengths of the meetings is the Employment Directorate's ability to involve key officials from other services to attend. However, it has become evident that the formality of this system needs to be complemented by an informal communication mechanism to ensure a good flow of information between the two sides.

The Commission's Trade Directorate introduced a novel approach to civil dialogue. Following a series of successful demonstrations at the time of the Geneva WTO Ministerial Summit, the then Commissioner Leon Brittan invited civil society, trade unions and business interests to a one day "consultation" on the preparations for the Seattle WTO Ministerial (1999). The meeting pleased very few NGOs, but indicated that there was a need for a dialogue. By September the same year the entire Santer Commission had resigned and Pascal Lamy, had replaced Leon Brittan. The Trade Directorate was the first to appoint a civil society liaison officer, and Pascal Lamy the first to appoint a member of his cabinet to take responsibility for this area of work. Even before the Seattle meeting, only two months away, a Civil Society Contact Group on

Trade was set up and included representatives of four sectors of NGOs (human rights, social, environment, development), the consumers' organisations, the unions and employers organisations and the EU's Economic and Social Committee, Lamy broke new ground by persuading the Council of Ministers that the Contact Group should be included in the EU's delegation to Seattle. Since then the dialogue has continued and the structure created in 1999 has now evolved into a pattern, which allows for both formal and informal contacts between civil society and the Commission.

It has been more difficult to introduce a structured dialogue with the Parliament and the Council. In relation to social issues, for example, there had been an initiative of Stephen Hughes, then President of the Social Affairs Committee of the European Parliament in 1998, but this was abandoned by Michel Rocard, his successor, only to be re-introduced by the following President. However, Social Platform members, like all active NGOs, have found the Parliament and its members the most accessible of the EU Institutions. Contact with parliamentarians continues to be frequent and collaborations can be extensive and fruitful and the EP issues advocacy access badges for accredited NGOs.

The least open of all the EU Institutions, the Council of the European Union, is also the most powerful. NGOs are kept beyond the crowd control barriers that protect Ministerial meetings despite of the efforts, which have been made by a number of the more enlightened Presidencies. Some of the NGO sectors are occasionally invited to the Council meetings relevant to them and enjoy some speaking right. For example, the Portuguese invited the Social Platform to send a delegation to an informal Social Affairs and Employment Council Meeting (2000) and gave them speaking rights alongside Ministers and representatives of the trade unions; the French, the Swedish and the Belgians repeated the invitation with some variations, but it was consultation by grace and favour. No such offer was made by the 2002 Spanish Presidency, but has since then been picked up again, only to be interrupted by the Dutch now. There is no framework for relations between civil society and the Council. In fact simple issues such as NGOs having access to a EU Summit press conferences are still wrapped up in red tape, forcing NGOs to seek accreditation as journalists.

After the resolution of the 1998 Budget Crisis the four NGO sectors felt that relations with the Commission had worsened. The Commission had announced the introduction of new rules for the funding of NGO activities. They had done so with no consultation and as a consequence the new rules were ambiguous and over bureaucratic. At a stormy General Assembly Meeting of the CLONG (predecessor of the development platform CONCORD), the Commission came under sustained attack from representatives of the four groupings. It responded by the creation of an internal Committee charged with the preparation of a "Communication" which would aim to improve relations with NGOs. The NGOs made a common stand. They wanted more effective procedures and a legal basis for the consultation of NGOs. The Social Platform led the way in demanding a Treaty Article, which provides a legal underpinning to civil dialogue and would

guarantee that it is no longer be a question of grace and favour. There was backing from the other NGO sectors and the ETUC. The position was however not supported by the EU's Economic and Social Committee (ECOSOC), who saw such recognition as weakening their own demand to be recognised as the "house of organised civil society".

Hopes of positive change coming from the Commission were short-lived. In January 2000 the promised 'Communication' was reduced to the status of a discussion document and the two working parties to be set up to look into different aspects of the funding of NGOs never commenced. The new Commission and its new President Romano Prodi, however, announced that Governance and Democracy were to be new words to re-energise the flagging European process. Civil society was to be a key component of this new Europe. Staff was put in place, offices requisitioned and a great deal of excitement was generated. The European Parliament went into opposition mode, thinking that its powers might be potentially undermined. The Council of Ministers paid the Commission's initiative little or no attention, but for a while NGOs engaged time, energy and resources in the process. The four NGO sectors made recommendations to the various Commission working groups taking forward the debate, but within months it was clear that this too was going nowhere fast. It had been taken over by another political reality.

The unseemly debacle of the Nice Summit and the need to revisit most of its decisions if the Enlargement of the Union was to be successful effectively confined the governance and democracy debate to the margins of history. However, NGOs rose to the main challenge of the Nice Summit, which was to prepare for a debate on how to reconnect the European Union to its citizens. The Belgian Presidency was to present concrete proposals for approval at the Laeken Summit and NGOs formed a loose collaboration, the Citizens Assembly 2004, to influence the Laeken Declaration. A broad manifesto "Europe is our Future" was launched in September 2001, and a Citizens' Assembly was held at the same time as the Summit.

By Christmas 2002 the Belgian Presidency had launched the Convention on the Future of Europe. Civil society was referred to in the Laeken Declaration and was to be included in a Forum, which would be consulted by the Convention. Representatives of the environment, social, development, and human rights NGO sectors were invited at the conclusion of the Summit to meet with President Prodi and with Belgian Prime Minister Verhofstadt, the current President of Council.

Hidden from view was the NGO's latest failure to convince the Belgian Presidency to make a bold statement about the need to strengthen European civil society. The Social Platform had asked them to consider a proposal of the European Parliament's Socialist Group asking the Commission to draw up an agreement between the three main Institutions, which would give a legal base to civil dialogue. For a time it seemed that the Belgians might support such a position, but they received no support for this from other member states or from the Commission.

Part of the problem was that for some politicians the issue had been settled in the Nice Treaty, which contained an article confirming the EU's Economic and Social Committee (ECOSOC) as having a special role in relation to civil society. This Article introduced in the Treaty, with no consultation with civil society, was received with surprise by NGOs who responded by asking the ECOSOC to reform itself, to ensure that it did have sufficient civil society representation before it could pretend to have some credence to its aspirations. For civil society, the aspirations of the ECOSOC could be no substitute for a legal base for civil dialogue. ENGOs have engaged in a debate with ECOSOC since then, but the result in terms of reform is not promising.

### *The Convention on the Future of Europe*

The Convention on the Future of Europe became an exceptional change in the picture. By early 2002 the leader of the Convention on the Future of Europe, the former French President Giscard D'Estaing, had given the task to liaise with civil society to Jean-Luc Dehaene, himself a former Prime Minister of Belgium. The four NGO sectors now formally constituted a EU Civil Society Contact Group together with the ETUC and began to organise joint work. Not surprisingly the ECOSOC jumped into the fray, wanting to assert its own role in relation to civil society and Prime Minister Dehaene demonstrated the collective weakness of the NGO position by giving the impression that he might ignore calls for a structured dialogue with civil society. By June 2002 there were signs that the NGOs were winning their battle and that a more structured dialogue would take place. The need for an Inter-Institutional Agreement on civil dialogue now raised more support from some influential politicians. The Spanish Presidency's dismal failure to consult civil society and the confusion apparent at the start of the Convention had convinced a greater number of politicians and Commission officials that a treaty article on civil dialogue has a future. The Convention held an official hearing for civil society in July 2002, which was attended by a huge number of ENGOs. The actual political impact of this meeting was small, yet its symbolic character rather important.

The exceptional difference of the Convention in real terms rested in its relative openness and possibility to monitor it closely. Latest by July 2002 the ENGOs, the platforms and the Civil Society Contact Group had established firm connections with a strong segment of Convention Members. Although the lobbying process was channelled in the usual way of personal contacts, the effects of NGO campaigns – backed through a strong cross-sectoral network at national level aided by the act4europe campaign and by the sectors themselves – were high. Many closing speeches, certainly including Jean-Luc Dehaene's, acknowledged the enormous work civil society had contributed to the Convention process and rated it positively. And the draft Constitution indeed contained quite a number of the essential demands of the NGO sectors, although many were missing. One of the welcome gains was the inclusion of art. I- 46 on civil dialogue.

## *The IGC*

After this upward trend during the Convention, the retreat of the IGC behind closed doors was particularly disappointing. NGOs across Europe stepped up their national campaigning and were aided by the small resources that act4europe could give in cross-sectoral information and encouragement to form NGO steering groups around the national campaigning. Information gathering was notoriously difficult, and the Italian Presidency refused any kind of civil dialogue – apart from talks with the Catholic Church. The Irish Presidency subsequently met with representatives of the large NGO sectors through its Permanent Representative once, but the possibility for influence was reduced to the very few NGO players with particular relationships to certain Ministers. Some improvements were indeed made this way on, for example, gender equality and animal protection, plus a horizontal social protection clause was added. Yet, many other decisive gains during the Convention were also lost again. I am blowing into the same horn as many voices in the public, the press, the Commission, the European Parliament, if I state that the IGC process was steered by national horse-trading and the outcome is maybe a deal, but definitely not a vision for the Future of Europe. Whether it ever enters into force remains to be seen. But if it does, art. I-46 will potentially be an important contribution.

### **The outcome: art. I-46, ensuring real participation**

#### *Article I-46: The principle of participatory democracy*

- 1. The Union Institutions shall, by appropriate means, give citizens and representative associations the opportunity to make known and publicly exchange their views in all areas of Union action.*
- 2. The Union 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.*
- 4. No less than one million citizens coming from a significant number of Member States may invite the Commission to submit any appropriate proposal on matters where citizens consider that a legal act of the Union is required for the purpose of implementing the Constitution. A European law shall determine the provisions for the specific procedures and conditions required for such a citizens' initiative.*

The inclusion of this article is a milestone in the development of participatory democracy and civil dialogue. Some of its elements are radical; particularly the citizens' initiative could potentially become an important tool in involving

citizens. However, some of the formulations in this article also give scope to becoming a blast of hot air with little to no consequence for civil dialogue as a concept of participation rather than mere consultation.

As so often, the first thing that springs to mind is what art. I-46 should not become:

- The end to any more concrete plans for a participation system
- A legal base for internet sites as the *sole* form of participation;
- A dialogue that has no structure and process of participation, but that depends on the good will of the individual unit of an EU institution;
- A form of establishing strange distinctions between “representative associations *and* civil society” or a final list of associations that does not allow further development in organized civil society;
- A form of participation on everything that gives more power to those interests groups who have the largest resources, for example business.
- A citizens’ initiative that becomes another mere petition right for the EP.

For rights and value based NGOs the decisive guiding theme for implementing this article needs to be the willingness to enter into a phase of conceptual change of how decisions can be made with direct involvement of civil society in its diversity. This needs to happen under the roof of establishing the principle of participatory democracy, a structured civil dialogue and the citizens’ initiative would be one its tools. If this is to be one of the answers to the democratic fatigue in Europe than explorations have to start soon and seriously. Yet, the systems that are set up need to remain flexible and open for development. A real conceptual change will not happen tomorrow. Civil dialogue has to be more than proclaimed, but actively established and wanted by all actors: the institutions have to see the added value to their work, rather than leaving the demand for it to the NGOs who are outside the power circle.

#### *I-46/1: Exchange of views*

The article is a positive step in establishing the principle of participation in that the diversity of views is acknowledged. In order to make it a successful tool it will need to:

- Ensure a much enhanced information strategy with the capacity to run counter to the common habit of national governments of “blaming the problems on Brussels” and claiming the achievement forced on them by the EU as theirs (e.g. anti-discrimination legislation).
- Ensure that the access to the means of voicing opinions is as broad as possible.
- Finding a way of processing what was voiced and informing the institutions about it.

### *I-46/2 and 3: Civil Dialogue*

In implementing this part of the article, the guiding principle of participatory democracy becomes crucially important. The discussion around formalities and systems of dialogue should not take precedence over the content of the envisaged dialogue nor vice-versa. The principle of participation aims at facilitating more inclusion of those issue and people that are usually underrepresented but are of major concern for European citizens. The dialogue established should in fact take the values and objectives of the Union as the areas for which specific dialogue needs to be enhanced. With regards to employment the social dialogue already offers a solution. Coherence and transparency would fall under this article, but more important is the agreement on defining policy areas that have been underrepresented and concern a very large segment of society: equality, anti-discrimination, the fight against social exclusion, sustainable development (with all its three elements, economic, environment, social), improvement of the environment, fair trade, human rights, access to justice, and poverty eradication. It is these areas that the EU needs a guaranteed and structured dialogue for, if it ever wants to come close to its citizens.

Besides the definition of what we mostly need dialogue on, the organization of such dialogue is equally important. This is particularly so if the dialogue is to address the issues and people that receive too little attention but “cause” the biggest challenges of the future. As entry point for developing actual participation over a longer time period, 46/2 needs to lead to multidimensional systems of dialogue that stay as flexible as possible:

- The capacity for digestible information work needs to be increased and all partners of dialogue have to establish this capacity;
- The access to participation has to be assured in sustainable structures that are guaranteed and lasting, but not closed for future development.
- The process of dialogue has to be defined within a proper project cycle: an assessment of the need and a definition of the problems; a development of political concepts and strategies capable of addressing the needs; a clear implementation plan with interim evaluation (monitoring); and an honest evaluation process that compares aims and achievements.

Participatory Democracy – similar to democracy itself – has to be guarded and evaluated continuously: Any system of dialogue should, thus, be open to re-evaluation itself, not at least to ensure a good spread of participation. If the institutions are serious about implementing art. I-46, then the very implementation of this article has to be the first form of civil dialogue through a jointly agreed, binding, and monitored implementation strategy.

The exact system of dialogue cannot be pre-designed by NGOs, yet there are a few factors that will need to be included:

- Making the concept of participatory democracy a valued and central method of the EU institutions.
- Ensuring that participation is not arbitrary. The needs and the topic of the dialogue will have to define which organizations are dialogue

partners. The necessary credentials need to be defined in terms of their “issue track record” with a view to allowing new dialogue partners to emerge over a longer period of time.

- Defining indicators for participation.
- Ensure the legal and financial conditions for participation of all dialogue partners.
- Keeping the organizational structures of dialogue participation (such as accreditation or membership in a separate “dialogue body”) as small as possible to ensure flexibility and issue focus.

Obviously the question of representativity will be one of the core issues. As explained above most NGO networks have indeed grown democratically and are democratic in their structure. The nature of rights and value based NGOs working on advocacy is to represent, yet not in a traditional sense of general popular election. In fact the diversity of NGOs and their diverse approach is in itself a potential value that can prevent some of the pitfalls that an unrepresentative dialogue might lead to: trust them to watch each other carefully. Yet, it will be crucial to keep the systems of dialogue open to a degree that allows for the further development of diversity. Any form of accreditation needs to be measured against future openness.

However, the question of representativity should not be discarded too easily. The onus is on the side of NGOs to define requirements and propose parameters for civil dialogue that include representativity along possibly the following lines<sup>3</sup>:

- Be European in character and include a significant geographical spread of membership;
- Have a proven track record of expertise in the specific area of dialogue that is built upon consultation.
- Provide direct access to members' expertise and hence rapid and constructive consultation;
- Arguably add value to the issue of dialogue;
- Represent general concerns that tally with the interests of European society and broadly fall under the EU Constitutions values and objectives;
- Have members at Member State level who are recognised as representative of particular interests;
- Have authority to represent and act at European level;
- Be independent and mandatory, not bound by instructions from outside bodies, democratic in structure and decision-making, and transparent about funding.

Additionally, the dialogue needs to be enabling and fulfill certain minimum conditions. They will depend on the legal framework that is offered – which is as of yet not clear – but will have to include a complex system of ensuring that there are:

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<sup>3</sup> Some of these criteria have been established in the ECOSOC response 535/2001 to the Commission’s White Paper on Governance and have since then been picked up by the Commission several times. The formulation here is changed in its wording and emphasis from that document and I have added aspects that are relevant to art- I-46/2.

- Open invitations, which contain the precise content of the dialogue issue and the decisions a certain forum may take.
- A realistic assessment of the reality of participation in terms of time, place, finances, transparency, and information.
- A clear indication about the role of the dialogue partners, their rights, the expectation on their work commitment, the authorship of the result, the obligations of the institutions in their final proposal, and how the results will be evaluated.

#### *46/4: Citizens' Initiative<sup>4</sup>*

The Citizens' Initiative is probably the greatest direct achievement of art. I-46. If implemented seriously, i.e. not reduced to another petition procedure for the European Parliament, its impact on involving people with the EU is potentially high. A few elements would have to be safeguarded to render it into a true tool.

- The formulation "for the purpose of implementing this Constitution" leaves room for an interpretation that would exclude constitutional amendments. Considering that the Constitution is of different nature than national Constitutions and includes in Part III the whole *acquis*, this reduction would render the ECI into a statutory initiative outside of the actual policy fields of the EU.
- The number restrictions make sense but need to avoid creating impossible barriers. Thus, the number of signatories has to be proportional to the number of Member States in which they have to be collected. The same accounts for the number of signatories specified for each country and the time period set needs to be realistic.
- Most ECIs will likely be sponsored by NGOs, large movements, or political parties. The formal requirements for ECI proposals do not have to remain completely general, but should include the possibility to present a formal draft legal act. The traditions in the area of welfare in e.g. France and Germany show that the professional expertise is quickly gained if NGOs are considered real partners.
- It will be important to define the role of the Commission in ECI. Certainly in the formal examination of the legality of an ECI in terms of EU competency and the Charter of Fundamental Rights (i.e. no ECI that aims at abolishing human rights), but also to not run counter to the Commission right of initiative (III-234). There can legally not be an obligation for the Commission to initiate the lawmaking process. Yet, it should have to give specified reasons for refusal, which ought to be challengeable at the ECJ.
- The initiative should have the right to be heard by the Commission before it makes its decision. It should also be consulted during the lawmaking process by the institutions and should keep the right to

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<sup>4</sup> Some of the ideas voiced here are taken from documents prepared for the NGO debate initiated by Democracy International, Michael Efler (IRI), Jürgen Meyer (ex Convention Member), and Victor Cuesta from the International Institute for Sociology of Law in Onati/Guipuzcoa (Spain). See also the extensive report on the effort of including ECI in this article: "Transnational Democracy in the Making. IRI Europe Handbook 2004", Bruno Kaufmann, Alain Lamassoure, Jürgen Meyer (eds.).

withdraw the initiative in case the legal situation changes during the time of the ECI. The status of the “committee” of the initiative has to be defined.

- The European Parliament and the Council should have no further role in the ECI before the Commission initiates the legal process, after which they take their legal role as specified in the institutional balance of the Constitution.