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PARLIAMENTS AND CIVIL SOCIETY

Interaction between Parliaments and Civil Society

REPORT

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Introduction

Today it might sound as a cliché that civil society has an essential role in the democratisation process of societies. Sixty years ago this statement was still a utopia. In fact in the past twenty years – as civil society and its organisations have strengthened – this phenomenon has become reality. It hardly needs proof that the cooperation with civil society has become a keystone of European politics.

When we try to find and identify the main characteristics of relations between the parliament and civil society, we can take as the starting-point those theses that are introduced by the Council of Europe and universally accepted by the European member states¹:

- the interrelations with civil society are taken – by both parties – as part of a learning process,
- these joint relations complement the forums of representation which as a consequence of their selective structure are not able to represent all aspects of social life,
- as well these interactions formed with civil society should also imply participation besides consultation.

The acceptance and application of these arguments ground for the legislative procedure to be more open and transparent, to react sensitively to the changes occurring in society, but mostly it serves to improve the quality of legislation.

Strongly connected to this lies the principle – also declared in the European Union – of (open governance and) open legislation that can only be realised if decisions are taken by involving participants from a wider range, and if in the common decision-making, legislative work and formulation of ideas the actors of economy, politics and civil society participate with firm belief and in exceeding numbers.

It needs to be emphasised that openness and transparency are partly norms and partly means. As it is known the content of the concepts – the openness and the transparency – implies that citizens (and their organisations) have the right to know what happens in (governance), the area of legislation, and (governance) legislation has the obligation to be transparent and open.

We know that when analysing the relations between the parliament and civil society, it is important to identify the roles of the involved parties and the set of rules that control these relations.

In order to have a comprehensive picture, we have conducted a short survey in the member states of the Council of Europe in the past month. Out of the 47 countries questioned 32 have sent back data that could be processed.²

The questionnaire sent out via the ECPRD system aimed at finding answers to the following questions:

¹ These theses are enhanced for example in:

- Committee of Ministers: Resolution Res(2003)8 (19 November 2003) Participatory status for international non-governmental organisations with the Council of Europe
- Parliamentary Assembly: Resolution 1589 (2007) Co-operation between the Parliamentary Assembly and the Conference of INGOs
- Conference of National Parliaments and Regional Assemblies: „Representative democracy, European affairs and active citizenship”, Final Declaration (Strasbourg, 12 September 2007)

² Data collection was closed on 10 April 2008.

- The first set of questions had reference to the regulation of co-operations between parliaments and civil society. Our aim was to examine what the common points are in that diverse legal and regulatory environment that describes the member states.
- In the second set of questions we expected to see what institutionalised forms (formal acts) of co-operation exist between parliaments and civil society. With the help of the responses received to these questions those institutionalised frames can be presented in which European member states realise their interactions with civil society.
- We have also anticipated an answer from the respondents to what expected and received inputs describe the interactions between parliaments and civil society. This question discloses those expectations that determine the interactions between parliaments and civil society.
- Finally we inquired the future oriented programmes of co-operation of the individual member state with civil society, and on the bases of the responses – that helped the formulation of ideas and thinking – we have outlined the new directions for the development of interactions.

1. The kaleidoscope of interaction – the diversity of regulations and institutionalised forms of co-operations between parliaments and civil society

As diverse the member states of the Council of Europe are regarding the parliamentary procedure, their legal and regulatory ways and forms of co-operations with civil society are as diverse as well.

According to comparative international public law studies (Anheier 2001, Archambault 2003)³ several aspects have a decisive role in forming it, the characteristics of the legal procedure and enactment of a country, and as a consequence their ways of parliamentary operation, the positions on the status of civil society in democracies, as well the status that civil society organisations have achieved in the legal procedure.

How are forms of co-operation between the Parliament and civil society regulated?⁴

In the kaleidoscope of the regulation of co-operations the following consolidated forms can be described in the parliamentary practice of some member states:

- Co-operations with the representatives of civil society are most frequently formed stated the respondents of the survey according to the regulations set by the *Standing Orders of the Parliament* or jointly set by *the Standing Orders and the Constitution*.
- Further to these similarities demonstrable in the statistics, there are *country specific characteristics* of the regulation of co-operations with civil society. (i.e.: it is stipulated by the Constitution and/or the general legislation law, and/or the law on the Parliament, but it can also be regulated by several laws or such special cases can also happen like to have individual or community initiatives, referendums (popular votes) or petitions.)

On the European level, as a result of the different historical and social nature of the member states, the legal regulations and their applications in regards to civil society are as varied as civil society itself.

³ Anheier, Helmut 2001. Foundations in Europe: A Comparative perspective. Civil Society Working Paper No.18. Center for Civil Society; LSE; Archambault, Edith 2002 Nonprofit Sector Models in Western Europe. Paper Presented at the CEDAG Conference "Towards stronger partnerships in an enlarged Europe" Warsaw.

⁴ In the questionnaire: Q2 *How and since when are forms of co-operation between the Parliament and the civil society regulated?*

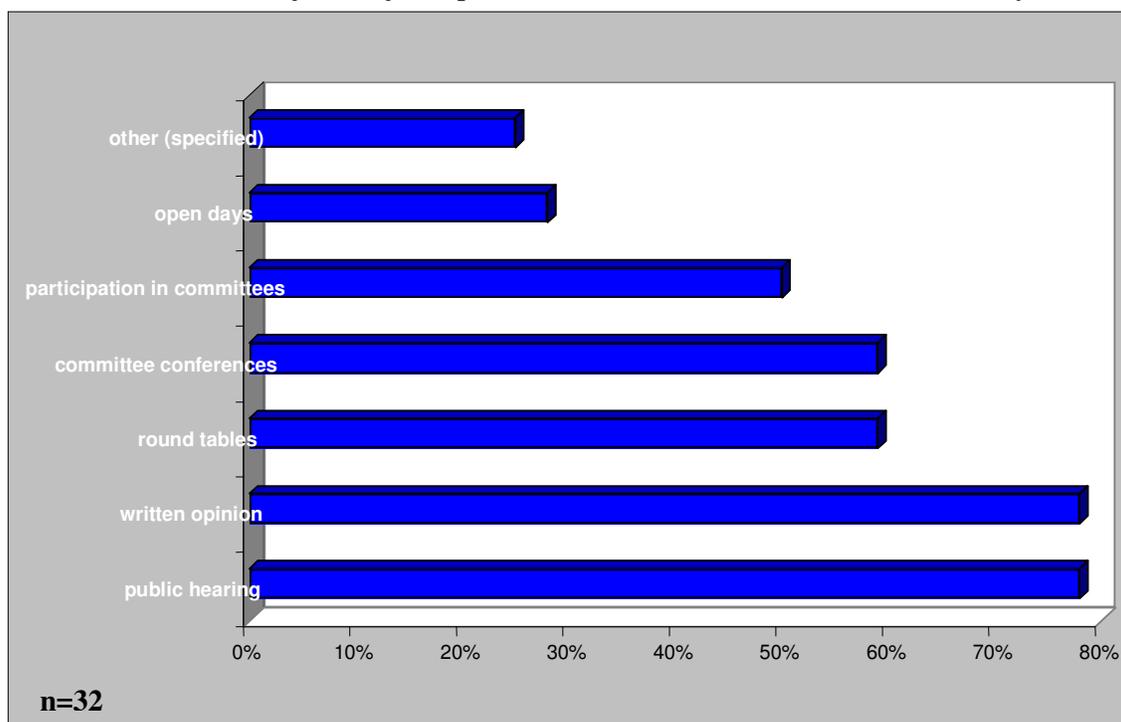
What institutionalised forms (formal acts) of co-operations with civil society are practised in the parliamentary process of some member states?

Due to the variety of legal and organisational structures the definition of the institutionalised forms causes conceptual difficulties as some respondents have also indicated. In spite of this a trend of institutionalisation can be noted, indicating that the dialogues between the parliaments and civil society are becoming more formalised and are taking specific organisational forms.

It is shown on the diagram below that according to general practice the parliaments of the member states use two or three institutionalised forms in the dialogue with civil society and its representatives.

The most frequently applied acts of the bi- or multilateral dialogue are *public hearings* and the *presentation of written opinions*. These practices are followed by *round tables*, by *participation of civil organisations at committee conferences, events*. The *participation in committees* is less common, and the organisation of *open days* is not wide-spread in the practice of some parliaments. In some member states there are also other “specialities”, such like the above mentioned opportunities to introduce *individual or community initiatives, referendums (popular votes) or petitions*.

Institutionalised forms of co-operation between Parliaments and civil society⁵



These forms and practices of interrelations raise several important questions:

- There is rare opportunity for civil society to have interaction without mediation in the legislation procedure. This can be argued by economical and efficiency reasons, but the possibilities lying in direct interaction should not be neglected either.

⁵ In the questionnaire: Q3 What formal acts of dialogue and cooperation between Parliament and civil society are practised in your country?

- The spread of indirect forms can mean for civil society organisations the decrease of political influence and shrinkage of the possibility of interest articulation, whereas from the point of view of the legislator a valuable and often priceless representative of the source of information can be lost.
- In the pluralistic democracies of Europe the political and social importance of civil society, as well its potential to contribute to the legislation procedure has been increasing. Therefore more resources are needed to be expended on maintaining more direct and intensive relations with civil society. This direct relation encourages that each legislative body would advance as close as its possibilities allow to the social initiatives represented by civil organisations and to the citizens.
- It derives from the above stated – also based on economical and efficiency reasons – that interactions between parliaments and (civil) umbrella organisations have become more wide-spread. In the meantime in several cases it can mean the decrease of relations with grass-roots organisations. The indirect nature can become problematic for the citizens represented by civil organisations, as in the relation with the umbrella organisations the role of the member – also as a citizen – of the civil organisation is less defined or determinant.
- Therefore it needs to be taken into account that these values embodied by the civil advocacy aspect can be damaged. One of the essential assumptions of researches on the transnational representation of civil/non-profit organisations (Rondo-Brovetto 2002)⁶ is that only organisations of high professionalism and of high income have more possibilities to have efficient interest articulation and representation. The relevant problems of organisations with weak organisational and financial resources often stay hidden, or are not precisely articulated in the legislation either on national or on European level.
- As a consequence of this “forced selection”, a certain parallel representativity can appear that is noted not only in case of member states that joined after 1990, in countries where civil society was re-born from partially institutionalised forms at the time of democratisation, and where civil society and its organisations are quite heterogeneous regarding its resources (financial, intellectual, social capital, time). But it can be also noted in those countries where co-operations and interactions between parliaments and civil society have a history of decades.

2. The input of civil society into the parliamentary legislative procedure

Both every day experiences and professional analysis dealing with civil society (i.e. Wright 1985)⁷ have listed the characteristics of civil society and its organisations that practically designate their roles and tasks in the democratic process, for example:

Civil society plays an important intermediate role between state and society.

- Civil society changes the balance of power between state and society, to the advantage of the latter.
- It controls and supervises the state by publicly forming an opinion on morals of public life, on the well-foundedness of political decisions.
- Civil society itself can multiply those processes and the number of institutions that can contribute so that the democratic institutions and processes respond in a legitimate and calculable way to the new social challenges.

⁶ *Rondo-Brovetto, Paolo* 2002. Nonprofit Organisationen und die Europäische Union. In Badelt Ch. (Hrsg.) *Handbuch der Nonprofit Organisation. Strukturen und Management*. 3. überarb. und erw. Aufl. Stuttgart: Schaeffer-Poeschel 633-658.

⁷ *Wright, Daniel* 1985. *Civil Society: Democratization and Development: Clearing the Analytical Ground*. Democratization, 3. 375-390.

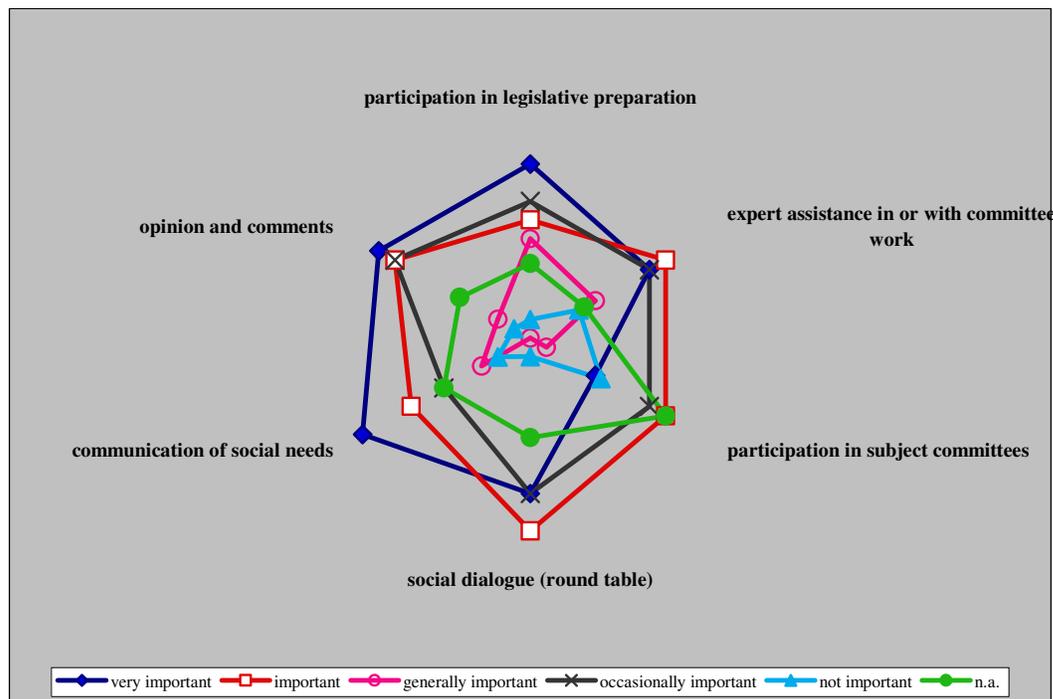
What are those functions and roles that civil society and its organisations can take in the parliamentary – mainly legislative – procedures? To what extent do these functions and roles appear in the legislative procedure?

There was nearly general consensus among the respondents that the *most important function* of civil society in the parliamentary legislative procedure is *the communication of social needs*. This function is in the nature of civil society.

In the opinion of the respondents – similarly to the above – civil society organisations play a *very important role in legislative preparation*. This can mean social dialogue and dispute, or expert work and assistance.

As the diagram shows respondents have well differentiated the different roles of civil society in the legislative procedure by placing them in the categories of *very important, important, generally important, occasionally important and not important*.

The importance of civil society input in the legislative procedure⁸



Respondents classified *social dialogue, participation in subject committees and expert assistance in committee work* as *important* roles in the legislative procedure. It is notable that inputs of civil society of *occasionally importance* are focused on three areas: *participation in legislative preparation, expert assistance in committee work, and participation in subject committees*.

It can be summarized that for legislation the most important inputs of civil society are considered to be:

⁸ In the questionnaire: *Q1 Please grade the importance of civil society input at various stages of the parliamentary legislative procedure.*

- participation in legislation preparation,
- communication of social needs,
- opinion and comments on bills.

It is proper to ask to what extent these inputs are linked to the social-economic functions of civil society. It is also a question how “special”, more modified and more differentiated these inputs become in that situation that they need to be enforced in the legislative procedure.

According to the theoretical literature on civil society (Evers 1995, Walcher 1997)⁹ the most important role for civil/non-profit sector is to convey resources gained in its external relations formed with the state, the market actors and households (citizens). Among other things this resource mediator role makes civil society an intermediate area between the other (state, market and informal) sectors, and it becomes a complex area of relations by linking the other sectors together.

In this intermediary role that two main functions of civil society is the allocation of resources, namely the supplement of the shortages of the state and the market sectors, and the integrations of the resources, accordingly the stabilisation of civil society, its social and political activation.

Analysing the responses it is perceptible that in the parliamentary interactions primarily the allocative functions of civil society prevail, such like the communication of social needs, the opinion and comments on bills. In both cases resources (relations, opinions, information, socially rooted representativity) enjoyed by civil society are distributed towards the parliament in the various processes of interaction.

Out of the most valued inputs of civil society – in the social dialogue – the integrative function comes to the front, namely through the activity performed by civil society and its organisations.

It can be stated that in the interaction with the parliament both resource-mobilising functions of civil society, – the allocation and the integration – even if to different extent, but take effect.

3. Expected and received inputs

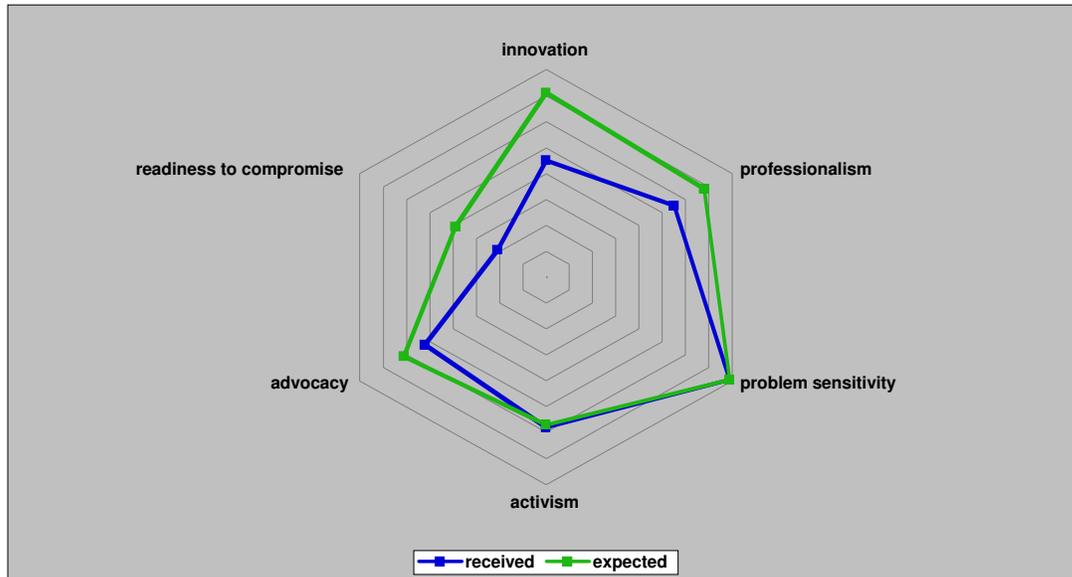
It is the precondition of each optimal relation, of each interaction, that the expected and the received inputs correspond to each other. Relations, interactions are less optimal if there is a discrepancy between the expected and received inputs.

When examining the interactions between parliaments and civil society it is essential to see what inputs are expected from civil society in the legislative procedure, and what inputs are received by the parliaments.

On the diagram below it is distinctly visible that in the legislative procedure according to the respondents of the survey the expected and received inputs of civil society in regards to *problem sensitivity* and *activism* correspond.

⁹ Evers, Adalbert 1995. Part of the Welfare Mix: The Third Sector as an Intermediate Area. *Voluntas* 2. 159-182.; Walcher, Gesa 1997. Funktionsbestimmungen des Dritten Sektors. In *Arbeitspapiere des Osteuropa-Institutes*, Heft 14. Berlin: Freie Universität 1-33.

Expected and received inputs from civil society in the legislative procedure¹⁰



This shows that these are the two most important attributes of civil society that optimally take effect in the parliamentary legislative procedure.

Besides the flexibility, the reactivity of civil society among its most characteristic attributes is innovation. One of the most striking results of the survey is that the *innovation* of civil society during the parliamentary legislative procedure is put at a much lower scale than expected. The evaluation of this result relates to the extent of *expertise*, professionalism, which also shows – although to a smaller scale – a difference between the expected and received input.

When analysing the results we cannot neglect two aspects:

- It is evident – based on the results stated above – that civil society and its organisations have a strongly formalised and mediated opportunity to partake in the parliamentary legislative work – this allows small scope to that kind of organisational, operational and activity-based innovation that is otherwise one characteristic of civil organisations.
- According to non-profit researches (Salamon 1987)¹¹ one typical inadequacy of the operation of civil organisations is the philanthropic amateurism. Though in the past twenty years civil society organisations have improved the most in the area of professionalism, for the work in the legislative procedures they still do not have enough experts in number and in quality.

As the detailed results show the most important contribution of civil society to the parliamentary work is considered to be the *advocacy of social aspects*. It is noteworthy that the difference between the expected and the received inputs was the smallest here.

¹⁰ In the questionnaire: Q5 What is the dominant form of input you receive from civil society during the parliamentary legislative procedure? Q6 What is the dominant form of input you expect from civil society during the parliamentary legislative procedure?

¹¹ Salamon, Lester 1987. Partners in Public Service: The Scope and Theory of Government- Nonprofit Relations. In Powell, W.W. (ed): The Nonprofit Sector: A Research Handbook. New Haven: Yale University Press. 99-117.

It is worthy mentioning that albeit respondents would expect a bit more *readiness to compromise* from the representatives of civil society, their majority have appreciated that conflict-filled cooperation (Evers 1995) that is the characteristic of relations formed with civil society organisations.

The results show that the interactions between parliaments and civil society can be revealed optimal in the fields of problem sensitivity and activism. In spite of this the expected and received inputs regarding innovation show a discrepancy that could mean an important and thematic area to be improved in the interactions between parliaments and civil society.

4. Future plans, programmes

Regarding the interactions between the parliament and civil society the future programmes of respondents are focused on three key-areas:

1. e-Parliament: introduction of new information communication technologies into the interactions with civil society

The cluster of proposals would “modernise” the interactions by using the options offered by modern communication technologies. On the one hand these proposals would broaden the relations between the parliament and civil society, on the other hand they would give opportunity – as already uttered above as a problem– to more direct and effective interactions with grass-roots organisations and citizens.

2. Expansion and differentiation of existing relations

These proposals partially plan the improvement of already existing relations, a wider involvement of civil organisations in legislative preparation. Its specific forms are improvement of dialogue, participation in legislative preparation at an early stage. The proposal to involve civil organisations more frequently and at a wider scale in the monitoring and the assessment of legislation deserves attention.

3. Quality improvement of interaction with civil society, as well the more direct legislation of these forms

When examining this set of proposals it can be noted that in those member states where civil society and legislation does not have long history and a well-functioning practice of interactions, several criticism are expressed towards civil society.

In this group some proposals can be put from member states where interactions with civil society functions well for decades. Certain proposals discuss a more transparent way and legislation of a specific form of interest representation of civil society, namely the lobbying.

On the whole it can be stated that the responding countries primarily seek new forms, more direct approaches of interactions between parliaments and civil society. These show those intentions that try to “divert” the above described trend of institutionalisation. The further aim of member states in the future – besides the existing organisational framework – to improve and broaden relations with civil society, to extend the quality and legislation of relations.

Proposals in detail:

a) Development of new forms of interactions with civil society:

- *More effective use of information technologies to enhance transparency and to ease relations with civil society.*
- *Use of internet and other communication technologies in maintaining relations.*
- *To strengthen the relation of parliament and civil society by developing more programmes, by enhancing the use of information technologies*
- *To establish further more and even more direct relations between the Members of the Parliaments and citizens: e-Parliament.*

b) Expansion and differentiation of existing relations

- *A wider involvement of civil organisations in legislative preparation and in expert assistance in the legislative procedure.*
- *Establishing closer relation, new forms in the relations with civil society.*
- *Improvement of dialogue.*
- *At an early stage of legislation communication of opinion and comments of civil society towards the parliament and committees*
- *Wider involvement of civil organisations in legislative preparation.*
- *Involvement of civil society in monitoring and assessment of legislation.*

c) Quality improvement and legislation of interactions

- *The actors of civil society and legislation should consider each other as partners, not as opposite sides.*
- *Establishment of mutually beneficial relation.*
- *Making it even more transparent how civil society lobbyists influence the Members of Parliament.*
- *Legal regulation of (lobby) relations.*
- *Development of channelled relations, encouragement of civil society to concretely articulate its opinions, to make comprehensive proposals instead of just reacting to single events.*
- *Stimulation of citizens' initiatives.*
- *Support to people's initiatives.*

5. Main conclusions of the study

As a result of the different historical and social nature of the member states, the legal regulations and their applications in regards to civil society are as varied as European civil society itself.

In the parliamentary practices of member states co-operations with the representatives of civil society are most frequently formed according to the regulations set by the Standing Orders of the Parliament or jointly set by the Standing Orders and the Constitution, or to the country specific characteristics. These practices are followed by round tables, by participation of civil organisations at committee conferences, events.

For legislation the most important inputs of civil society are considered to be: participation in legislation preparation, communication of social needs, opinion and comments on bills.

In the interactions with the parliament the two, most important resource-mobilising functions of civil society, – the allocation and the integration – even if to different extent, but take effect.

In legislation expected and received inputs from civil organisations correspond in the fields of problem sensitivity and activism. Contrary to this the discrepancy shown in innovation could mean an important area to be improved in the interactions between parliaments and civil society.

The responding countries seek mostly the new forms of co-operations between parliaments and civil organisations, the opportunities of establishing more direct relations.

Issues for discussion raised in the study:

- For civil society there is rare opportunity to have interaction without mediation in the legislative practice, so possibilities lying in direct interactions can be lost.
- The institutionalised forms of relations risk that these relations with civil society may become impersonalised, automated and over-formalised.
- Parliaments principally tend to establish close relations with umbrella organisations, however, to realise co-operations with grass-roots organisations is also important, as these organisations can be the direct channels to citizens.
- The problems of civil society organisations that have weak organisational and financial capacities are often hidden or not efficiently represented in legislation.
- The “forced selection” between civil organisations can produce certain parallel representativity.
- It is important to clarify what innovation is expected from civil society by parliaments in the legislative procedures.
- It is also a question, to what extent professionalism can be expected from civil society organisations when they are in the legislative procedure.
- Finally it is also to be debated that how deep and expanded the co-operations with civil society should be in the future.