



Civil participation in the decision-making process

Fact finding visit to the United Kingdom

20-21 May 2018 & 16 October 2018

Report

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Introduction

The Conference of INGOs of the Council of Europe visits member States in order to better understand the cooperation between non-governmental organisations (NGOs, foundations and associations) and decision makers. Discussion and exchange during the visits are part of a wider Council of Europe analysis of the effectiveness of various forms of civil society participation in decision-making and the enabling environment for NGOs in the member States.

The NGO definition applied to the activities of the Conference of INGOs is the one used in Recommendation 2007(14) of the Committee of Ministers of the Council of Europe on the legal status of NGOs in Europe. According to this document, “NGOs are voluntary self-governing bodies or organisations established to pursue the essentially non-profit-making objectives of their founders or members. They do not include political parties” (Article I.1).

In this context, the right to participation in public affairs is inherent to the System of the European Convention on Human Rights (ECHR) system, directly associated with the right to freedom of association (Article 11 of the ECHR). The references regarding international standards and best practices used during each fact-finding visit are as follows:

- European Convention for the Protection of Human Rights and Fundamental Freedoms;
- Recommendation CM/Rec (2007)14 of the Committee of Ministers to member states on the legal status of non-governmental organisations in Europe;
- OSCE/ODIHR-Venice Commission Guidelines on Freedom of Association;
- Recommendation Rec (2001)19 of the Committee of Ministers to member States on the participation of citizens in local public life;
- Report on funding of associations, adopted by the Venice Commission at its 118th Plenary Session, (Venice, 15-16 March 2019);
- Guidelines for civil participation in political decision-making, adopted by the Committee of Ministers of the Council of Europe on 27 September 2017;
- Code of Good Practice for Civil Participation in the Decision-Making Process (2009);
- UN International Covenant on Civil and Political Rights, signed on 16 December 1966, entry into force 23 March 1976.

A delegation of the Conference of INGOs composed of Anna Rurka (President), Anne Negre (Vice-President in charge of equality), Katharina Hadzi-Maceva (member of the Expert Council on NGO Law) and Jane Crozier (Civil Society Division of the Council of Europe) visited London on 20 and 21 May 2018. Bond, a UK umbrella network for organisations working in international development, was the partner for the visit and organised the meetings with NGOs active in the field of human rights, democracy, women rights and LGBTIQ persons, service provider NGOs working with people with disabilities, victims of violence and discrimination, as well as grassroots voluntary umbrella organisations specialised in community organising.

The meetings with public authorities were organised with the help of the Permanent Representation of the United Kingdom to the Council of Europe. During the visit in May the delegation met with the Department for Digital, Culture, Media and Sport - Office of Civil

Society, members of the UK Delegation to the Parliamentary Assembly of the Council of Europe (PACE), the Shadow Minister for Civil Society, Department for International Development. The delegation had very short meeting with the Head of the International Programme of the Charity Commission.

The information provided in May related to the regulatory framework, and in particular the one presented by the Charity Commission, was insufficient for a good understanding of the objectives of the measures taken with regard to the NGO Sector. To complete the picture and have a more in-depth discussion, the Permanent Representation of the UK to the Council of Europe organised a follow-up meeting with relevant stakeholders in London in October 2018. During this meeting hosted by the Office of Civil Society of the Department for Digital, Culture, Media and Sport, the President of the Conference of INGOs and the Head of the Civil Society Division met with a representative of the Cabinet Office and of the Ministry of Housing, Communities and Local Government.

This report, as with all other reports of the fact-finding visits, highlights the important issues for the NGOs and representatives of the Ministries or other public agencies at the time of the visit and also takes into account the specific socio-political context in the country the time. The final recommendations that are presented at the end of the report aim to draw attention to the democratic issues related to the exercise of the right to freedom of association and associated rights, and the right to participation.

Considering the time that has passed since the visit, this report includes some factual developments and analyses that are relevant and that have emerged since the visit.

Legal framework

Forms of organised civil society – rights and obligations

“Civil society refers to all individuals and organisations, when they act with the primary purpose of creating social value, independent of state control”¹.

In the governmental Civil Society Strategy, the choice is made not to define civil society in terms of organisational form, but according to the purpose of organisation (what it is for) and the control under which the activities are undertaken (who is in charge). This definition includes the social sector and a small part of the public and private sectors (excluding those whose aim is to deliver profits for owners). “The state is helping public service employees take control of their service through creating mutuals, reforming commissioning to support local and non-profit providers, and localising power. All of this is ‘civil society’ – not a sector, but a range of independent activity aimed at achieving social value... civil society organisations may be charities, public service mutuals, or businesses with a primary social purpose. To describe the

¹ Cabinet Office (August 2018). Civil Society Strategy: building a future that works for everyone. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/732765/Civil_Society_Strategy_-_building_a_future_that_works_for_everyone.pdf p.26

‘core’ of civil society we refer to ‘voluntary, community, and social enterprise organisations’, or simply ‘the social sector’².

According to NCVO UK Civil Society Almanac³, there are an estimated 390,000 civil society organisations. In addition, the number of informal organisations and groups, ranging between 600,000 and 900,000, “around a quarter of voluntary organisations receive funding from government, often for delivering vital public services”. The social sector, the voluntary sector, or third sector are the alternative names, widely covering the organisations which, according to the same source, present the following characteristics:

1. Formality: they are formalised and institutionalised to some extent, with a recognisable structure and a constitution or a formal set of rules;
2. Independence: they are separate from the state and private sector;
3. Non-profit distributing: they do not distribute profits to owners or directors but reinvest them in the organisation or use them for the benefit of the community;
4. Self-governance: they are truly independent in determining their own course;
5. Voluntarism: they involve a meaningful degree of voluntary participation through having, for example, a trustee board, volunteers, and donations;
6. Public benefit: they have social objectives and work to benefit the community.

These organisations can adopt different legal forms: a company limited by guarantee, an unincorporated association, a trust, non-charitable social enterprises, a community benefit society, NGOs (organisations which campaign for specific changes in UK law), community benefit societies, non-charitable housing associations, a charitable incorporated organisation. In addition, NGOs may also be established in several other different ways including being incorporated by Royal Charter or by Act of Parliament⁴.

In England and Wales there is a fundamental difference between the legal treatment of non-charitable non-profits and charities (public benefit organisations). The “charities” represent a specific form of organisations with specific regulations (Charities Acts) and control⁵. To be registered as charity, an organisation must have purposes which are charitable (according to the descriptions of purposes included to the Charities Act (2016, 2011)⁶ and acting for the public

² Ibid. p.27

³ NCVO. Definition of the voluntary sector <https://data.ncvo.org.uk/profile/voluntary-sector-definition/>

⁴ Expert Council on NGO Law (December 2015). REGULATING POLITICAL ACTIVITIES OF NON-GOVERNMENTAL ORGANISATIONS. Study

<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680640f2>

⁵ The role of the Charity Commission. The Charity Commission is the registrar and regulator of charities in England and Wales. It is an independent, non-ministerial government department accountable to Parliament. As registrar, the Charity Commission is responsible for maintaining an accurate and up-to-date register of charities. This includes determining whether organisations are charitable and should be registered, as well as removing those that are no longer considered to be charities, have ceased to exist or do not operate. As a regulator, the Commission regulates both registered charities and charities that are not required to be registered (Charity Commission Annual Report 2018-2019). Charities with an income of more than £5,000 need to register. Charities with less income still need to abide by charity law (under the Charities Act 2011) and in almost all cases, the Commission still acts as regulator. <https://www.ncvo.org.uk/about-us/media-centre/briefings/1744-role-of-the-charity-commission>

⁶ The ‘descriptions of purposes’ is a list of broad headings that a purpose must fall under to be a charitable purpose in England and Wales.

- (a) the prevention or relief of poverty
- (b) the advancement of education
- (c) the advancement of religion

benefit. According to the Charity Commission's Annual Report, there are some 168,000 registered charities in England and Wales. Together they attracted an annual income of £76.7 billion in the past year. Charities receive generous tax advantages. They are required to register with Her Majesty's Revenues and Customs (Tax Authority) if they wish to use gift aid (the UK tax effective giving scheme).

More than 11 million people in England and Wales volunteer at least once a month, including around 700,000 trustees of registered charities. In 2018-19, the Charity Commission received 8,074 applications and registered 4,936 organisations as charities (around 61%). The reviewing of the online register led to the removal of 4,812 charities from the register, charities that the Charity Commission considered as having ceased to exist but having failed to inform the Commission⁷.

To understand the context, it is necessary to take into account the UK's long-standing historical tradition regarding charities. The first charitable trust emerged during the medieval period and the first definition of the charitable purpose is dates back to the 17th century, when the Charitable Uses Act of 1601, known as "the Statute of Elizabeth" established a commission to hear complaints about charities and, in its Preamble, set out what purposes were considered to be charitable⁸. The first public register for charities was established in 1960 (Charities Act 1960).

The Charity Law seems to be a living legal instrument whose evolution depends on the corporate dialogue between the sector and public authorities, as well on the case law (Charities Acts 1960, 1992, 1993, 2006, 2011). The Charities Act 2006 among other things, codified 300 years of case law on charitable purposes and established the Charity Commission. The most recent piece of legislation is the Charities (Protection and Social Investment) Act 2016, which further expands the powers of the Charity Commission⁹. On the base of this document, the Charity Commission can "remove and disqualify trustees in certain circumstances, as well as powers to direct winding up, to apply property to another charity, or to specify that certain actions not be taken. The Act also granted charities a general power to make social

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- (d) the advancement of health or the saving of lives
 - (e) the advancement of citizenship or community development
 - (f) the advancement of the arts, culture, heritage or science
 - (g) the advancement of amateur sport
 - (h) the advancement of human rights, conflict resolution or reconciliation or the promotion of religious or racial harmony or equality and diversity
 - (i) the advancement of environmental protection or improvement
 - (j) the relief of those in need, by reason of youth, age, ill-health, disability, financial hardship or other disadvantage
 - (k) the advancement of animal welfare
 - (l) the promotion of the efficiency of the armed forces of the Crown, or of the efficiency of the police, fire and rescue services or ambulance services
 - (m) any other purposes currently recognised as charitable or which can be recognised as charitable by analogy to, or within the spirit of, purposes falling within (a) to (l) or any other purpose recognised as charitable under the law of England and Wales

⁷ Charity Commission, Annual Report 2018-2019

⁸ Charitable organisations in the UK (England and Wales): overview by Anne-Marie Piper, Philip Reed and Emma James, Farrer & Co [https://uk.practicallaw.thomsonreuters.com/8-633-4989?transitionType=Default&contextData=\(sc.Default\)&firstPage=true&bhcp=1](https://uk.practicallaw.thomsonreuters.com/8-633-4989?transitionType=Default&contextData=(sc.Default)&firstPage=true&bhcp=1)

⁹ Idem

investments”¹⁰. Charities are also the subject of other laws applicable to their particular structures (for example, company or trust law) and to the law on matters such as tax, employment, contract, tort, intellectual property, data protection and competition¹¹.

The legal framework regulating charities' functioning, as well as all voluntary sector has become more technical over the centuries. The conditions to meet under several laws and regulations are complex and can be a bureaucratic obstacle for small and medium size charities.

Transparency, political activities and campaigning: where is the balance between control and freedom?

All registered charities must send an annual return to the Charity Commission. In addition to the usual questions, in 2018, the Charity Commission requested information from charities regarding:

- the salaries and benefits in charities;
- overseas expenditure;
- income coming from outside the UK.

Concerning the first item, the CSOs denounced the fact that providing information about salaries and benefits without the context of the work done by the charities could give a false image to the public and lead to misunderstanding.

Regarding income coming from outside the UK, information on the following sources should be indicated;

- overseas governments or quasi government bodies;
- overseas charities, non-governmental organisations or non-profit organisations (NGOs/NPOs);
- other overseas institutions (for example private company donations);
- individual donors resident overseas;
- unknown.

Even if the aim is for more transparency, this new set of questions, optional in 2018 and mandatory in 2019, was a cause for serious concern within the sector, especially as the Charity Commission failed to explain how this information would be subsequently used and by whom. For some charities, these changes imply a modification of their financial systems. The explanation given regarding the new question on salaries and overseas expenditures was the risk linked to money transfer processes and the public trust in charities. From 2015 to 2017, around three hundred UK charities were “cut off from the financial system because banks have been alarmed by billion-dollar fines meted out for breaching sanctions, anti-terror financing and anti-money laundering rules”. To answer that, the government set up a panel of charity

¹⁰ UK Parliament. Select Committee on Charities. Stronger charities for a stronger society Report of Session 2016-17 - published 26 March 2017

¹¹ Charitable organisations in the UK (England and Wales): overview by Anne-Marie Piper, Philip Reed and Emma James, Farrer & Co [https://uk.practicallaw.thomsonreuters.com/8-633-4989?transitionType=Default&contextData=\(sc.Default\)&firstPage=true&bhcp=1](https://uk.practicallaw.thomsonreuters.com/8-633-4989?transitionType=Default&contextData=(sc.Default)&firstPage=true&bhcp=1)

executives, bankers and officials to “drive new policy thinking” to allow legitimate charities to operate unhindered¹². In 2018, international NGOs were still affected and had difficulty accessing mainstream financial services¹³.

The collection of information regarding foreign funding remains a very sensitive practice, negatively connoted with the restrictive laws implemented in some other Council of Europe member States and which do not meet human rights and CoE standards. Despite serious criticism, “the charities with an annual income of more than £25,000 are obliged to give the total value of donations received from individuals and other institutional donors outside the UK, which are more than £25,000. Charities with an annual income of less than £25,000 will be asked to report these donations if they amount to more than 80% of the charity’s gross annual income”¹⁴. According to Charity Commission statistics dated from 31 March 2018, 73% of registered charities in England and Wales had an annual income of below £100,000.

Political activities

“An organisation with a political purpose¹⁵, such as promoting a change in law, legally cannot be a charity. This applies even if the organisation has other purposes which are charitable”. A political activity can only be a means of supporting or contributing to the achievement of its charitable purposes. A charity cannot have a political activity as any of its charitable purposes.

In 2014, the Charity Commission updated its guidance (CCG) regarding political activities and campaigning (CC9)¹⁶. The Commission defines as political, the activities which are “aimed at securing, or opposing, any change in the law or in the policy or decisions of central government, local authorities or other public bodies, whether in this country or abroad”. This definition includes influencing political parties or independent candidates, decision makers, politicians or public servants on the charity’s position in various ways in support of the desired change and also includes responding to consultations. Any activity aimed at ensuring that an existing law is upheld is included in the Commission’s definition of Campaigning.

According to this document campaigning and political activity can be legitimate and be valuable activities for charities to undertake in the context of supporting the delivery of its charitable purposes, but a charity must maintain its independence.

Charities must never be a political party or give its support (also financial one) to a political party but they can give support publicly to a specific policy advocated by political parties and engage in interactions with politicians if it helps them to realise their statutory

¹² Lawrence White Three hundred UK charities hit by global crackdown on illegal funds, Reuters, July 2017

¹³ CFG (2018). Impact of money laundering and counterterrorism regulations on charities. Updated assessment of bank de-risking impact on the UK charity sector. <https://www.charityandsecurity.org/node/1604>

¹⁴ <https://www.bond.org.uk/news/2018/01/charity-commission-introduces-overseas-funding-declaration-for-uk-charities>

¹⁵ “A ‘political purpose’ means any purpose aiming to further the interests of a particular political party, secure or opposing any change in the law, whether in the UK or overseas, secure or opposing a change in the policy or decisions of central government or local authorities or other public bodies, whether in the UK or overseas” (CC9)

¹⁶ Charity Commission (2014). Campaigning and political activity guidance for charities (CC9).

purposes. In doing so, they must remain politically neutral and should consider working with other parties to help ensure public perceptions of neutrality.

The Charity Commission established in October 2018 a new Strategic Intent for 2019-2023. The public trust in charities is at the centre of this new strategy And the Charity Commission¹⁷ wishes to increase the accountability of the sector. However, the Report¹⁸ published in July 2018, shows that the public trust in charities remains at a similar level to that of 2016, with the respective score of 5.5 and 5.7 /10. In 2015 some isolated cases of “unethical fundraising methods”¹⁹ and the Oxfam scandal in 2014 decreased the score. Before this period, the score was a little higher and represented 6.7/10.

A specific regulation is applied in the context of elections. The electoral law applies to charities and all non-profit organisations in the same way. Unregistered individuals and organisations can only spend up to £20,000 in England, and £10,000 in Scotland, Wales or Northern Ireland, on regulated campaign activity during a regulated period. If more than £20,000 is spent by an NGO on regulated campaign activity during a regulated period, then the NGO must register with the Electoral Commission as a non-party campaigner. The activities become a “regulated campaign activity” “if they can reasonably be regarded as intended to influence voters to vote for or against political parties or categories of candidates, including political parties or categories of candidates who support or do not support particular policies or issues. The Electoral Commission call this “the ‘purpose test’”²⁰. The key question is what constitutes a regulated campaign activity and whether this includes the regular campaigning activities of NGOs. “There are two tests for regulated campaign activity: firstly, the purpose test which is whether the activity can reasonably be regarded as intended to influence voters to vote for or against political parties or candidates. Secondly, the activities must meet the public test that is, if the activity is aimed at the public or a section of the public.

Another piece of legislation which restricts the political activities of NGOs is the Communications Act 2003. Under this Act there is a prohibition on political parties and third parties seeking electoral influence, from placing any broadcast advertisement which seeks to influence law reform, the legislative process or a government policy. It also prohibits any advertisement, however non-political, by a body wholly or mainly having those objectives. It goes on to ban any advertisement directed towards “influencing public opinion on a matter which in the UK is a matter of public controversy”²¹.

Even if the advocacy action for a charities’ purpose is a legitimate and valuable activity, the government came in for a lot of criticism in 2016 with regard to the “advocacy clause”. In April

¹⁷ Charity Commission Statement of Strategic Intent 2018 – 2023 Published 4 October 2018

¹⁸ Populus and Charity Commission. “Trust in Charities, 2018. How the public views charities, what this means for the sector, and how trust can be increased” report
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/723566/Charity_Commission_-_Trust_in_Charities_2018_-_Report.pdf

¹⁹ UK Parliament. Select Committee on Charities. Stronger charities for a stronger society Report of Session 2016-17 - published 26 March 2017

²⁰ Electoral Commission. Overview of non-party campaigners
https://www.electoralcommission.org.uk/sites/default/files/pdf_file/Overview-of-NPC-activity-Gen.pdf

²¹ Expert Council on NGO Law (December 2015). REGULATING POLITICAL ACTIVITIES OF NON-GOVERNMENTAL ORGANISATIONS.

2016, the Cabinet Office underlined the government's commitment "to ensuring that taxpayer funds are spent on improving people's lives and good causes, rather than improper lobbying for new regulation or for more government funding"²². The Department for Communities and Local Government (DCLG) piloted this rule in 2015 and the measure was extended to all central government bodies and the grants that they provide. The Secretary of State for each department has the power to give an exemption but should report on each exemption to the Cabinet Office. If there is an allegation of improper use of public grants, organisations need to provide proof if indeed they used other financial resources. In the clause there is no right of appeal but the public authority's decision may be subject to a Judicial Review.

Charities cannot use public money for advocacy work (lobbying or influencing activity) but they can use their own privately raised funds to campaign. However, this provision gives room to different interpretations and the line separating advocacy action and participation in public consultations seems to be very blurred. In 2016, NCVO published the government's answer related to this issue. "Giving evidence to parliament at parliament's request would not be seen as lobbying – but submitting written evidence proactively may be, if such activities were not in the original grant agreement".

The representatives of the civil society sector met during the visit expressed a lot of scepticism and a lot of them consider this measure counter-productive. The additional negative elements of the "advocacy clause" are: no right of appeal, longer administrative processes related to decision-making about the grants, the chilling effect on charities regarding their participation in public affairs, lack of evidence which motivates such a government measure and the lack of impact assessment before the implementation of such a measure.

In general terms, the risk-based approach adopted by public authorities regarding the regulation of the third sector is a visible trend. However, it is accompanied by efforts to increase the capacity of the sector to regulate itself and to answer to the challenges of the political, societal and bio-technological developments. The challenge is to maintain the balance between the respect of fundamental rights inherent in the democratic role played by civil society organizations and their accountability to the citizens and the need for transparency in public life. The implementation of restrictive measures that impact the entire sector without sufficient evidence to back them up can be considered as unbalanced. Isolated cases of abuse should be the subject of specific treatment and respect the principle of proportionality.

From Advocacy to Campaigning: Lobbying Act 2014

Both advocacy and campaigning aim to influence. They are also sometimes categorised as lobbying activities. However, these terms present more of a difference than a similarity. Advocacy is a more direct action, addressed to a specific target person or institutions. Campaigning is a more indirect and planned action which can use direct channels to address the information to a wider public.

²² Update on a new clause to be inserted into grant agreements <https://www.gov.uk/government/news/update-on-a-new-clause-to-be-inserted-into-grant-agreements>

Charities can campaign for a change in law, policy or decision if such a change would support the charity's purposes. They can also exercise their watchdog function by ensuring that existing laws are observed. When campaigning, charities must comply not only with charity law, but other civil and criminal laws and if applicable with the Code of the Advertising Standards Authority.

In 2014, the UK adopted legislation called the Lobbying Act (Transparency of Lobbying, Non-party Campaigning and Trade Union Administration Act 2014). This Act introduced a statutory register of consultant lobbyists and establishes a Registrar to enforce registration requirements and regulates more closely election campaign spending by those not standing for election or registered as political parties. Specifically, individuals and organisations, including charities, that spend more than £20,000 (£10,000 in Wales) in the 12 months prior to a general election must register with the Electoral Commission. The sanction used towards Greenpeace in 2016 which refused to register, led to a high-level debate and, in 2016, to the report entitled "Third Party Campaigning Review on how third-party campaigning rules operated during the 2015 general election", carried out by Lord Hodgson²³. The report proposed around 30 changes in order to make a Lobbying Act more "friendly" and more balanced for non-party campaigners. Some voices in Parliament were also in favour of changes but the government does not seem to want to revise its "copy".

From 2014 to 2018, the government was called on several times by the civil society sector to put forward legislative changes. The sector has demonstrated after the general election in 2015 and 2017, that this document that was intended to tackle corporate lobbying had had a disproportionate negative impact on British charities²⁴. However, during the meeting of the delegation with the representatives of the government, they maintained their position according to which the Lobbying Act does not restrict the fundamental rights of organisations (freedom of expression, participation, right to information). As David Brindle, public services editor of the Guardian newspaper, underlines "this reform would require primary legislation and Brexit leaves little room for much else in the parliamentary timetable"²⁵.

In 2018 recent research conducted within the civil society sector published by the Sheila McKechnie Foundation²⁶ gave new evidence on the chilling effect of the Lobbying Act. In addition to several critical elements contained in this Act, the NGOs underlined during the meeting that as human rights organisations they do not like to be perceived as "partisan". However, the registration required under the Electoral Law gave them this "status". Furthermore, registration is very technical and bureaucratic, and organisations do not all have the same capacity and time to do it. Some organisations remain worried about saying the wrong

²³ The Lord Hodgson of Astley Abbotts CBE (March 2016). Third Party Election Campaigning – Getting the Balance Right Review of the operation of the third-party campaigning rules at the 2015 General Election. Report Presented to Parliament by the Chancellor of the Duchy of Lancaster by Command of Her Majesty. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/507954/29049_69_Cm_9205_Accessible_v0.4.pdf

²⁴ To read more

https://www.bond.org.uk/sites/default/files/24_08_2017_bond_lobbying_act_media_briefing_.pdf

²⁵ David Brindle "The Lobbying Act is stifling charities. But the Tories don't seem to care". The Guardian, 19 September 2017. <https://www.theguardian.com/society/commentisfree/2017/sep/19/lobbying-act-stifling-charities-tories-gagging-law>

²⁶ <https://smk.org.uk/the-lobbying-act/>

thing and being sanctioned. In addition, some service provider NGOs may have doubts about how to deal with lobbying and service providing activities and for that reason, some charities choose to associate their work with non-charitable campaigning organisations. In general, civil society organizations have also observed that the public narrative about civil society is shifting and the Lobbying Act is a symptom of this.

Participation in decision-making and interaction with public authorities

Policymakers in the UK appear to be open to a direct, informal and pragmatic exchange with civil society organizations. The CSOs that the delegation met with had considerable experience of interaction with public authorities and public authorities appeared to benefit from their input. CSOs regularly consult their members, staff, service users, through surveys and focus groups, so that policy positions reflect reality. Examples of CSOs' participation in policy-making processes are:

- preparing shadow reports in the framework of monitoring mechanisms;
- replying to Government consultations;
- Submitting written and oral evidence to select Committees in the Parliament;
- meeting MPs and Ministers and inviting them to visit their operations;
- producing reports and policy papers;
- meeting with civil servants and governmental departments;
- attending roundtables and All Party Parliamentary Groups;
- contributing to research.

Public consultation is a pre-requisite to bringing about a genuine policy change. In general, CSOs underlined the need for more effective and regular consultation at the different stages of the decision-making process. In particular, they mentioned the need to receive the right questions, to ensure that the format of the consultation process is accessible to everyone and to allow a sufficient amount of time to respond. The accessibility of information published on a public authority's website guarantees the implementation of the right to information. Certain Select Committees in the UK are making their reports more accessible through videos, infographics and access services, such as British Sign Language and Audio Description. For the first time, the House of Commons Petitions Committee recently launched a public consultation on their draft recommendations as part of their inquiry into online abuse of disabled persons. This initiative was very much welcomed as it gave those who had experienced such abuse the possibility to comment, and further shape, the draft recommendations.

In certain domains CSOs are government allies, for example when it comes to supporting the UK position in international fora, supporting the UK leadership at EU or G8 level, securing meaningful government commitments on extractive industries transparency initiatives – and supporting advocacy for related commitments, such as a public beneficial ownership register - via the Open Government Partnership. This has involved dialogue and monitoring to maintain political commitment and effective implementation.

Civil society is a real pressing force for change, as shown by the debate on gender recognition. In 2018 there was a very animated public debate²⁷ about the need to reform the process of changing one's legal gender under Gender Recognition Act (2004). The Government Equalities Office wanted to ensure that the legal gender recognition process was working well for the people concerned and organised a public consultation from July to October 2018.

During the first visit of the delegation, the Department for Digital, Culture, Media & Sport, Office for Civil Society launched a public consultation on the Civil Society Strategy: building a future that works for everyone. This policy document which sets out how government wishes to work with and for civil society in the long-term perspective was published in August 2018.

The Strategy announces a new Innovation in Democracy Programme (iDP), jointly delivered by the Department for Digital, Culture, Media and Sport and the Ministry of Housing, Communities, and Local Government which aims at involving citizens in decision-making at local government level through innovative models of deliberative democracy. It also announces, in chapter 2, the government's will to renew its commitment to the principles of the Compact²⁸. During the visit the need for renewed commitment was underlined, as despite the richness of the Compact, it was under-used. This was the case in some sectors of public policy, such as gender equality, where according to the NGOs, the voice of women in policy making was missing.

The second announcement made in the Strategy can be linked to the discussion on the Lobbying Act. Chapter 3 which is related to the social sector reads: "We will also work with civil society, the Electoral Commission, and the Charity Commission to explore what non-legislative steps could strengthen civil society's confidence in speaking out".

Since 2011, the UK as co-founder, remains committed to the Open Government Partnership. Among the important accomplishments are citizen participation in policy and decision-making, adoption of international open standards for publication, and the opening of data to the public. However, civil society is pushing for further development in these fields. The government's National Data Strategy (NDS) was published on 9 July 2019²⁹ and on 15 July, the CSOs published a joint open letter to the Secretary of State for Digital, Culture, Media and Sport. "The group warned that failure to invest in better data means it is currently unable to properly understand its own operations and the quality of public services"³⁰. However, an interesting mandate is given by the government to the Centre for Data Ethics and Innovation (CDEI) under the Department for Digital, Culture, Media & Sport. Its role is to connect policymakers, industry, civil society, and the public to develop the right governance regime for data-driven technologies³¹. In the National Action Plan for Open Government 2019-2021, one of the

²⁷ The Guardian view on the Gender Recognition Act: where rights collide. Editorial, 17 October 2018
<https://www.theguardian.com/commentisfree/2018/oct/17/the-guardian-view-on-the-gender-recognition-act-where-rights-collide>

²⁸ The Compact is a voluntary agreement between the public and third sector in England, based on a series of principles and commitments. Compact between the UK Government and TSOs was renewed in December 2010.
<http://www.compactvoice.org.uk/>

²⁹ Government National Data Strategy <https://www.gov.uk/guidance/national-data-strategy>

³⁰ <https://www.threesixtygiving.org/2019/07/15/joint-letter-from-civil-society-groups-urges-uk-government-to-take-urgent-action-to-overhaul-its-use-of-data/>

³¹ <https://www.gov.uk/government/organisations/centre-for-data-ethics-and-innovation>

commitments on public participation focuses on digital participation (social networks, crowdfunding, digital platforms as a tool for society to organise itself and make its voice heard....). The CDEI is viewed as a main actor for the implementation of this objective. The Open Policy Making³² approach is a means of civil participation. It is implemented by a Policy Lab³³, a small team composed of designers, researchers and policy-makers, set up in 2014 as part of the Civil Service Reform plan to make policy making more open.

UK civil society has its own experience of a Citizens' Assembly. The first time such an initiative was commissioned and run by the UK Parliament was in spring 2018. There was also a consensus regarding the urgent need for social care reform. However, no action was undertaken and there was a lack of consensus on the way in which the reform should be achieved. In this context, the Health and Social Care Select Committee and the Housing, Communities and Local Government Select Committee commissioned the Citizens' Assembly as part of their joint inquiry into the long-term funding of adult social care. They wanted to gather a range of evidence on the options for long term sustainable funding for social care (beyond 2020). The Assembly was organised by Involve – the UK's leading public participation charity, with the help of two charitable foundations – the Esmée Fairbairn Foundation and The Omidyar Network. "The Citizens' Assembly on Social Care was made up of 47 English citizens eligible to vote in UK general elections. The members were recruited with the help of a polling company to be representative of the English population in terms of age, gender, ethnicity, socio-economic group and place of residence. They included people with direct experience of social care for working age adults and older people"³⁴. The Assembly worked with the help of academic experts and met over two weekends in central Birmingham. Participants held approximately 28 hours of deliberation, which equates to 1,316 'people hours'. The recommendations were transmitted to Parliament and published³⁵.

There was also a very interesting citizen's assembly on Brexit organised in September 2017 "by an independent group of academics and civil society organisations and funded by the Economic and Social Research Council as part of its UK in a Changing Europe programme"³⁶. It is a very encouraging model which reinforces representative democracy by deliberation and makes for a more informed and nuanced public opinion. The impact of such a method is stronger when the Parliament itself is involved in the process and takes forward for further deliberation and decision, the recommendation formulated by the citizens, as shown by the Irish example of the Citizen's Assembly regarding the Eighth Amendment of the Constitution, ageing, climate changes and the way to conduct referenda³⁷.

³² <https://openpolicy.blog.gov.uk/what-is-open-policy-making/>

³³ <https://openpolicy.blog.gov.uk/about/>

³⁴ <https://www.parliament.uk/business/committees/committees-a-z/commons-select/housing-communities-and-local-government-committee/citizens-assembly-faq-17-19/>

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³⁶ RENWICK A., ALLAN S., JENNINGS W., MCKEE R., RUSSELL M. (2017). GRAHAM SMITH THE REPORT OF THE CITIZENS' ASSEMBLY ON BREXIT. Published by the Constitution Unit School of Public Policy University College London.

³⁷ <https://www.citizensassembly.ie/en/>

Brexit and its impact on the civil society sector

Brexit and its political agenda are a serious concern within the third sector. As some CSO representatives underlined: Brexit is “consuming” this government. At the same time, there is a clear lack of information from public authorities to the CSO sector and a lack of predictability regarding the process and potential consequences of the exit from the EU. The charity sector is an important employer in the UK, so the future immigration policy can have a significant impact on the workforce and volunteers mobilised in the UK. Third Sector’s Charity Pulse survey showed that almost 50% of charity workers say they are already seeing the effects of Brexit on their charities³⁸. The economic uncertainty was and remains a big issue for the third sector, including the possibility of access to EU funds³⁹. According to the Charity Commission report from 2017 which found that over 70% of charities were pessimistic about the government support, a clear and accessible government strategy on how to replace EU funding was needed. In parallel to the negotiations on leaving the EU, the social infrastructure should be given equal priority.

Conclusion

Public consultation on the Civil Society Strategy which was taking place during the first visit of the Conference of INGO delegation, and its publication during the second visit, constitute an important political step for civil society, presenting a structured vision on how the government wishes to work with the CSO sector. As CSOs underlined, the government had not published a CSO Strategy for 15 years. The elaboration of the Strategy is seen as the “beginning of the conversation”. To be really valuable, it needs to be followed by action. Its implementation and its monitoring are of primary importance for the accountability of the public authorities toward CSOs.

We would like to thank BOND our hosting organisation for great collaboration, guidance and substantial contribution to the debates. We thank all the public officials who made themselves available for discussion. Our special thanks go to the Permanent Representation of the United Kingdom to the Council of Europe for the preparatory work. Even if we had hoped for a more in depth exchange with the representative(s) of the Charity Commission during these two meetings in London, we hope that the latter, as well as other entities concerned by this report, will be able to contribute to this discussion by presenting their comments to this report and take the recommendations presented below into account.

³⁸ The study, carried out annually by Third Sector and Birdsong Charity Consulting since 2007, <https://www.thirdsector.co.uk/nearly-half-charity-workers-already-seeing-effects-brexit/management/article/1437967>

³⁹ For more info look at the report published by NCVO (October 2019). BREXIT AND THE VOLUNTARY SECTOR PREPARING FOR CHANGE. https://www.ncvo.org.uk/images/documents/policy_and_research/europe/NCVO-Brexit-factsheet.pdf

Recommendations

For the government:

- To focus on the implementation of the Civil Society Strategy and use collaborative tools for its monitoring, involving NGO sector;
- To constantly keep the needs of the NGO sector in mind despite the changing political context in the UK;
- To keep the voice of youth and youth participation at the forefront in decision-making;
- To revise the Lobbying Act 2014, and reduce to four months the regulated period prior to an election and provide a better definition of the term “regulated activities”;
- To revise the Compact and make it more binding for public administrations across all departments;
- To increase the dialogue between the not-for-profit sector, financial and public sector in order to outset the problems encountered by civil society organisations in banking transactions, be it the closing down of accounts or the exclusion of smaller community-based organisations;
- To promote Citizens’ Assemblies as a deliberative method in the decision-making process;
- To implement and promote the Council of Europe Guidelines on civil participation in the decision-making process and made a specific reference to this legal instrument;
- To ensure and secure the funding of NGOs (all types) during and after Brexit;
- To promote more grants and make less use of public procurements which would allow NGOs to focus on the social value of their daily work;
- To simplify administrative procedures and obstacles to facilitate the conformity of NGOs and charities’ activities with the legal framework;
- To reinforce the campaigning capacity of smaller NGOs and charities.

For NGOs:

- To monitor the implementation of the Civil Society Strategy
- To take accountability and transparency more into account and communicate to the public information such as expenditure, strategies, impact and ethics in order to increase public understanding and trust.

For the Conference of INGOs:

- To present the report during the Conference of INGOs session;
- To follow the development of the NGO sector in the UK and develop collaboration with NGOs in the UK on specific topics.

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