

Joint Response of ‘RegWatchEurope’ to the European Commission’s public consultation on the draft Stakeholder Consultation guidelines

Adviescollege toetsing regelgeving (ACTAL), The Netherlands

Nationaler Normenkontrollrat (NKR), Germany

Regulatory Policy Committee (RPC), United Kingdom

Regelrådet (The Swedish Better Regulation Council), Sweden

Komise RIA / Regulatory Impact Assessment Board (RIAB), Czech Republic

RegWatchEurope

RegWatchEurope is the banner under which Europe's five independent national advisory boards coordinate to address and maximise the benefits of Europe's smart regulation agenda and reduce regulatory burdens. These boards consist of the 'Advisory Board on Regulatory Burden' (ACTAL – The Netherlands), the 'Nationaler Normenkontrollrat' (NKR – Germany), the 'Swedish Better Regulation Council' (Regelrådet – Sweden), the 'Regulatory Policy Committee' (RPC – UK) and the Czech 'Regulatory Impact Assessment Board' (Komise RIA/ RIAB – The Czech Republic).

The five boards are independent bodies that play a significant role in challenging, monitoring and advising our governments on smart regulation and on the overall regulatory burden of legislation within our respective mandates.

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Introduction

We agree with the European Commission that wide and inclusive stakeholder consultation throughout the entire legislative process is essential for effective, transparent, coherent, legitimate EU law making, and helps taking decisions that respect the principles of proportionality and subsidiarity. Continuous consultation and pro-active outreach by the European Commission to secure the views of the public and stakeholders enhances the evidence base that underpins decision making and improves the quality of EU legislation. Our view is that stakeholders play a significant role in providing the European Commission with more reliable data, add value to any consultation process and provide information on the reliability of assumptions used in the evidence base to support the likely impact of policy proposals, fill possible gaps in the evidence – including on the estimates of costs and benefits – and contribute to ensuring alternative options to regulation have been explored. Therefore, all proposals for legislation – directives, regulation delegated and implementing acts – should be subjected to pro-active and targeted consultation, in particular if they affect business, civil society and citizens.

The European Commission has made significant advances in ensuring that stakeholders are better informed of forthcoming proposals for legislation by way of Commission Work Programmes and Roadmaps. However, securing the views of stakeholders based on the public consultation of these documents alone will be of limited value to the policy development process. Roadmaps are often drafted inconsistently, do not provide comprehensive analysis of potential burdens and lack an insight into key milestones or the timeframe for implementation. It is imperative that stakeholders can also provide input on draft legislative proposals and draft impact assessments. Similarly, the European Commission must also provide sufficient feedback on the outcome of every public consultation.

Stakeholders should be consulted in a systematic manner and, in order to make full use of consultation, it is important that stakeholders' advice is provided before all important decision-making stages by the European Commission. The European Commission should therefore consult on the basis of draft impact assessments that accompany draft proposals for legislation to realise the maximum potential from stakeholders, including small and medium sized businesses.

A) Answers to the specific questions:

1. Do you think the Stakeholder Consultation Guidelines cover all essential elements of consultation? Should any of these elements receive more attention or be covered more extensively?

The European Commission has made significant advances in ensuring that stakeholders are better informed of forthcoming proposals for legislation by way of Commission Work Programmes and roadmaps. Draft Stakeholder Consultation Guidelines cover essential elements of consultation.

However, roadmaps are often drafted inconsistently, do not provide comprehensive analysis of potential burdens and lack an insight into key milestones or the timeframe for implementation. Furthermore not all EU proposals actually have a roadmap.

It is imperative that stakeholders can provide input and contribute on draft impact assessments and draft legislative proposals before the proposal is adopted by the European Commission. Similarly, the European Commission must also provide sufficient feedback on the outcome of every public consultation explaining how the views of stakeholders have been incorporated to improve the robustness of impact assessment and legislation.

All proposals for legislation should be subjected to pro-active and targeted consultation, in particular if they affect business and citizens.

- We believe it to be important that clear criteria are set and are made public for which proposals stakeholders should be consulted. We believe that consultation should take place on all proposals for directives, regulations, implementing and delegated acts. Furthermore, stakeholders should be actively involved in ex-post evaluations.
- The Commission's minimum standards for consultation (COM(2002) 704 final) should be incorporated into the guidelines to make them complete. We underline the need for objective criteria on how to apply the minimum standards: i.e. minimum amount of stakeholders that should react to a consultation or an explicit check of the calculations of the costs and benefits to make these standards accountable.
- The same ratio must be applied to a number of Member State / third countries involved in the consultation in order to seek a balance of responses, rather than the bias of a limited number of Member States and / or regions.

2. Do you think the guidelines support the identification of the right target audiences? If not, how would you improve them?

An open, targeted and structured consultation process should enable achieving transparent and balanced results with feasible conclusions. Business associations and trade bodies both at national and European level have a crucial role in this process. However, it is the responsibility of the European Commission to reach out to stakeholders and to encourage quality responses to enhance the policy development process. National social partners and national umbrella business and employers' organizations express their concerns to the

following guidance in the draft Consultation Guidelines that “[T]he same businesses/representative organisations should not always be exclusively consulted, as this would increase the risk (or perception thereof) of listening to only one or a limited number of interests.” (page 11). They point to the fact that one of the basic criteria for consultation should be the broad representation and relevance of all national, regional, sector and local business and employers’ organisations.

The European Commission must consult on the basis of draft impact assessments that accompany proposals for legislation to achieve an outcome that imposes the least costs on business.

Consultation should include checks and balances to ensure that appropriate groups of stakeholders will be targeted. Guidelines should explicitly require that action is taken to identify relevant stakeholders to be affected by proposed legislation, and that the pool of stakeholders is validated. Researching relevant groups must focus on ensuring that groups that are at risk of being overlooked are considered, such as small and medium sized businesses, civil society organisations such as charities.

3. Participation by stakeholders in open public consultations is often disappointingly low. How can the Commission encourage or enable more stakeholders to take part? How can the Commission better reach and engage underrepresented groups of stakeholders and assist them in replying to complex issues?

Stakeholders need to be able to assess quickly and at minimum effort whether the content of a specific consultation affects them or not. Each consultation should set out clearly in accompanying information notes, cover notes, introductory text on websites and other announcements or notifications the key affected groups that will face the costs and also the benefits of proposals for legislation.

Notifications to stakeholders, by e-mail for example, should not only indicate the general policy area, but also specify the specific content of the consultation, impacts, relevance to particular groups of stakeholders and sectors – simply identifying as a consultation being relevant to the ‘internal market’ is too broad an area for stakeholders to reach an early conclusion as to whether the consultation is of relevance to them. In other words, the consultation should be presented from the perspective of the interest of businesses and other stakeholders, not from the perspective of the responsible DG within the European Commission as is the case now.

Early planning is an important principle that should underpin the Commission’s approach to policy development. A “rolling” review table on the Commission website could alert stakeholders about forthcoming evaluations and upcoming consultations in particular sectors. We welcome the Commission’s proposal for a 5 year indicative rolling evaluation programme for each individual Directorate General, and available on the central website.

Stakeholders need to be informed better of consultations. Information on consultations needs to be more widely announced to encourage transparency, inclusion and responses from the broadest spectrum of interested parties. We believe the following steps would help to encourage participation:

- Make consultation documents, including online questionnaires, available in Word (*.doc) format. This simple step will make it easier for stakeholders to access, complete and return responses efficiently.
- The objectives of consultations should be explained clearly using simple language. Stakeholders should be provided with transparent information about the consultation process, including the length of consultation, and clear justification for a shortened consultation period.
- To provide for stakeholders' accounts gathering their inputs into all consultations in which they participated.
- Provide stakeholders with feedback on how their responses were processed by the European Commission.
- Online questionnaires should be made accessible easily. Stakeholders should be able to save their 'work in progress', returning to it to update their contribution, save it and check before submitting to the Commission.
- Draft consultation documents in plain language, avoiding jargon or technical language where possible. Documents must be translated into all relevant languages. For the most significant proposals, pilots should be conducted to translate consultation documentation into all EU languages.
- To provide stakeholders with all the relevant data.
- To make sure that consultation does not take place during holiday periods, particularly in December or during the summer.

In the case of targeted consultations – stakeholders should be given longer than 20 days' notice to respond to and accept invitations to meetings, conferences, workshops, seminars etc., to allow them to sufficient time to prepare.

4. Is there a risk of 'over consultation', making it difficult for you as a stakeholder to distinguish between important and less important consultations?

RegWatchEurope believes that it is important the European Commission consults stakeholders in an open and transparent manner. While there may be a certain level of risk of over consultation, planning for the whole legislative cycle by DGs and more information in Commission Work Programmes, transparent and expansive roadmaps taking account of the whole legislative process can mitigate that risk. Identifying key stakeholders in a well-structured, targeted consultation as early as possible in the legislative process may also reduce such risk and further enhance the quality of responses. The Commission should also use all available information it has, including information stakeholders have provided from previous consultations. We welcome the Commission's intentions in this area.

Stakeholder databases established and maintained by the European Commission should be coordinated and include information across the whole of the Commission, rather than an individual, isolated database for each consultation. A coordinated database should be used

to monitor stakeholder engagement, and avoid bombarding the same stakeholders with requests to respond to all and every consultations, especially if earlier analysis shows that that the specific consultation is not relevant to that business or trade body.

5. Do you see a need to explain the limits of consultations in this guidance document?

Yes. Following on from the need for transparent and inclusive consultations, it is important that policy officials within the Commission assess the risks and / or need to consult. The Guidelines should provide relevant information to assist officials with the tools to reach a robust conclusion when consultation may be disproportionate relevant to the Commission proposal. The guidelines should also be clear on how to take the views of stakeholders on the needs or extent of consultation into consideration, recognising that a balanced view must be reached.

6. Do you think the guidelines provide enough guidance on how to analyse the results and assess the representativeness of respondents and how to provide feedback to stakeholders participating in a consultation? If not, how could this process be improved?

Elements of the guidelines should be strengthened in this area to provide clearer guidance (please refer to the examples we set out under question 7). However, it is important that data and facts provided from respondents to consultations are distinguished from stakeholder opinions.

Stakeholders must be encouraged to provide as much data and information as possible to ensure a complete consultation process. Stakeholders should also receive feedback from the Commission explaining what aspects of the responses to consultation have been adopted or taken into account when developing its policy proposals, and what has not. The Commission should explain and justify when it has not taken on board comments from stakeholders that appear frequently or thematically in consultation responses.

With regard to the analysis of steps 8-10, we are concerned with the guidelines on how to proceed with a proposal if consultation does not secure the views of stakeholders representing all 28 Member States. Consultations that do not secure a balance of responses from across the EU, or the interpretation of these results do not consider such bias. Problems may present themselves later in the legislative process if the differing business environments and market conditions in individual Member States are not taken into consideration.

7. Do you agree with the presentation of the different consultation steps (1-10)? Or, do you see additional steps?

RegWatchEurope broadly welcomes the steps proposed to produce a robust consultation outcome. In the spirit of openness and transparency, consultation should not lose sight of the potential outcome when having followed all 10 steps of the consultation procedure, is that the problem needs to be reframed and redefined. This needs to be made more explicit in the guidelines, by possibly inserting a feedback loop from step 10 back to step 1.

The main criteria mentioned on p. 9 in Step 2 should be to distinguish between nation-wide and EU-wide umbrella organisations representing the broad interests of its members, and

single stakeholders representing a specific or limited view. These views may include social group like example employees for example, and focuses mainly on business and non-profit organisations.

There is a difference between the input that would be provided by European social partners and business umbrella federations e.g. BUSINESSEUROPE, national social partners and business umbrella federations and small associations and individual companies. Emphasis should be placed on the qualitative assessment of responses, less on the relevance of the content of contributions and on the source of the stakeholder. The breakdown of responses should be elaborated on and stated clearly in “Analysing the results: steps”.

It is imperative that stakeholders can comment on draft legislative proposals and draft impact assessments. Similarly, the Commission must also provide sufficient feedback on the outcome of every public consultation and explain why the preferred option was selected over others. This is particularly important when more highly favoured options were disregarded.

Step 1: Stakeholder database – most effectively achieved if an EU-wide database is established and used to target stakeholders in a smart way rather than by all DGs simultaneously. An EC-wide database will also reduce the risk that stakeholders are approached indiscriminately and asked to respond on consultations that are not relevant to them, and increase its quality.

Step 2: Stakeholders – Stakeholders need to be differentiated to better understand the consultation responses they provide i.e. is the stakeholder providing data or information from a local, regional, national or EU-wide perspective. Such mapping of stakeholders should clearly identify and consider whether the respondent is a small or medium sized business.

Step 3: Language regime – the guidelines do not make clear how the mapping of stakeholders reflects the languages that consultations documents are translated into. The relationship between target stakeholders and the relevant language will be a key factor in ensuring quality responses and achieve an effective consultation. When proposals affect specific Member States, documentation should be translated into the language of that Member State.

Step 6: The goal written out in step 6 is very broad. Minimum standards need to be worked out in order to achieve targeted consultations, ensuring that all relevant stakeholders are aware of the consultation and made aware that they will be affected by proposals.

8. Do you think these consultation "tools" are adequate or do you see other tools which should be referred to in the guidelines?

In our opinion, stakeholders add value to any consultation process with data and information on the reliability of assumptions used in the evidence base to support the likely impact of policy proposals. More importantly, stakeholders play a key role in filling gaps in the evidence – including on the estimates of costs and benefits – and provide feedback on potential alternative options to regulation to be explored. The proposed tools appear useful for collecting relevant information. However, there must be flexibility to identify and exploit other tools that may be relevant to ensure an effective consultation and secure quality responses from stakeholders on the robustness of impact assessments and draft legislation e.g. such as crowd sourcing.

9. Do you have any other comments or suggestions, which could help make these Guidelines as comprehensive and clear as possible?

We call for a more pro-active and targeted consultation approach, sufficient feedback provided in a timely manner on the outcome of every public consultation. The outcome of consultation should explain how responses have been used, and if disregarded, explain why in the context of the selected policy option.

Consultation documents should be drafted in clear and simple language avoiding jargon and technical speak where possible. We believe it is imperative to make consultation document accessible and easy to understand for small and medium sized businesses, and smaller stakeholders. The mapping of stakeholders is important to ensure effective consultation, and new categories developed to include responses from stakeholders such as social enterprises, innovation structures, industry clusters etc. Consultation documents should include also a summary of the content of the issues to be consulted on, estimates of costs and benefits, who is affected by the proposals (who will face burdens, who will benefit), and the questions. This is particularly important for consultations documents that exceed ten pages.

Quality control mechanisms should be introduced into the consultation process to ensure effective consultation, and high quality responses from stakeholders. Consultation documentation – including impact assessments – should be cleared through a gateway to maintain quality.



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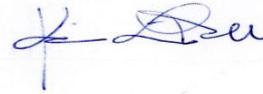
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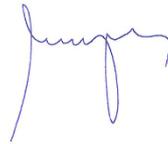
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