



Local & Regional
Europe

EU Stakeholder Consultation Guidelines 2014

CEMR Response

Public consultation on the Commission's Stakeholder Consultation
Guidelines

24-09-2014

CEMR key messages

- Independent Consultation Boards at European and national levels
- Long-term planning of consultations
- In-depth “matrix model” (levels of participation, stages and methods) in order to achieve a structured dialogue with regional and local government through all the stages of the decision-making process
- Consultation at an early stage of the decision-making process on policy options
- Consultation documents in all languages and at least 12 weeks of time to respond before the deadline comes to an end
- Recognition that Local Government representatives are partners in EU policy development, not lobbyists
- Mainstreaming of Multi-Level Governance principle based in a partnership approach
- More in-depth definition of tools and methods of consultation in accordance with the requirements of each stage of the decision-making process
- Better mapping of stakeholders and co-design of consultations with participating stakeholders
- Local and regional associations are also “experts” and their inputs should be always be considered as those coming from “expert groups”
- “Stakeholder weighting mechanism” in order to better assess the representativeness and legitimacy of stakeholders participating in a consultation.
- Adapt the language to each national context, simplify it and disseminate through innovate channels
- Recognition of national and pan-European associations of local and regional authorities as independent interlocutors and networks able to provide technical and concrete inputs

Executive Summary

Consultation Guidelines are very important for those all stakeholders interested in the legislative process of the EU and for those entitled to take an active role in the decision-making process according to the *acquis communautaire*. The Guidelines are crucial to guarantee a proper inclusion of all stakeholders in the decision-making process by European institutions at all levels. In this respect, the preparation process of new legislation, non-legislative initiatives and the design of consultations about themselves, should be more transparent and provide more interaction with the target groups at a very early stage of the process and not when policy options are somehow, already defined.

To do so, a comprehensive “matrix model” needs to be elaborated in order to have a more in-depth manual about the different kind of consultation methods and modalities to pursue depending on the stage of the decision-making in which such a consultation takes place. The “matrix model” is the only way to assure the establishment of a proper structured dialogue throughout all the different stages of the decision-making process and enhance a strengthened and inclusive participation of stakeholders. In addition, a more in-depth definition of the tools and methods to be used, at each stage of the decision-making process, should be further developed in the guidelines.

Furthermore, a more detailed criteria should be developed in order to better define the type of stakeholders to be consulted, while all information on consultations should always reach all potential stakeholders such as member states, local and regional authorities. It should then also be guaranteed that the information always reaches all potential interested audiences in an adapted manner and recognise national and pan-European associations of local and regional authorities as independent interlocutors and networks able to provide technical and concrete in traditional open consultations but also in expert groups.

Stakeholders should also be able to participate in the co-design of consultations to guarantee an inclusive and more effective outcome. Local government representatives should be recognized then, as partners in the EU policy development and not as private lobbyists. To do so, a weighting mechanism should be designed in order to better assess the representativeness and legitimacy of stakeholders participating in consultations as well as to give a more preminent consideration, to those backed with a democratic mandate.

Independent Consultation Boards at European and national levels could be also set up. The Boards will have the aim of monitoring the design of consultations, identify target groups of stakeholders and establish a criteria to select consultation methods. These could also assess how to adapt and simplify and transmit, thought innovative tools, information to concerned stakeholders in each member state.

Finally, the European Commission should guarantee a long-term planning of consultations and provide more details at an early stage in order to give stakeholders more time to prepare them. As language barriers are often one of the biggest problems stakeholders face, all consultation documents should be translated to all languages, while minimum of 12 weeks of time between the last translation and the deadline of the consultation should be given to give more enough time to respond.

All these proposals are the only way of mainstreaming the multi-level governance principle aiming to achieve a partnership approach to consultation.

General Comments

CEMR is the European umbrella organisation of national associations representing local and regional government. With 57 associations from 40 countries, it is the broadest territorial organisation and represents some 100 000 local authorities in the European Union.

CEMR is particularly committed to the principles of local democracy, local democratic governance and self-government, faithful to the principles and the spirit of our *European Charter of Municipal Liberties* of 1953, which resulted in the adoption of the *European Charter of Local Self-Government* in 1988.

Local and regional governments should be considered equal actors in European governance. They contribute to the implementation of European Union policies in their territories, especially in fields as important as cohesion, social inclusion, environment or climate. The *Treaty of Lisbon* has extended the principle of subsidiarity to local and regional governments but their recognition as key actors of European development needs to be better understood by the institutions of the European Union.

Europe should not be seen solely as a distant, additional institutional level, embodied in the meetings of Heads of State and Government and in technocratic institutions. Above all, it should be an area of respect and freedom for the territories in all their diversity.

Therefore, we believe that the European Union needs to better involve the local and regional government level in the different phases of policy and legislation making. We are convinced that the future of the European Union can only be developed and implemented through our territories and through mobilisation of all actors and that local and regional authorities play a major role.

CEMR believes that the subsidiarity and proportionality principles of the Lisbon Treaty are not sufficiently taken into consideration, and calls the European Commission to develop a systematic, transparent and formal pre-policy and legislative consultation that includes local and regional government on issues that affect them directly and that have administrative and financial impacts on them. This in turn will lead to more support, better implementation and enforcement on the ground. We need to act as one government, where the regional and local level represents the EU legislation closest to its citizens and businesses.

Comments on the context of consultations

We believe that the preparation process of new legislation, non-legislative initiatives and the design of consultations about them, should be more transparent and provide more interaction with the target groups concerned, in particular local and regional government. Such an approach should include an early exchange on existing policies and legislation on (sub) national level. This would provide a better overview and allow a debate on the necessity and different options for a common EU policy as well as the consultation tools and methods to use throughout all the policy cycle.

The outcome of these way of working are proposals which are often disproportional and unfeasible. Member states, including their local and regional levels of government, are faced with unclear definitions, unnecessary details and high friction costs. As politicians, members of the European Parliament do not necessarily have the technical expertise to enter into such detailed technical questions. Negotiations in an EU of 28 are not suitable to correct these flaws, instead focussing on weakening and deleting language from the legislative texts. This in turn reduces the ambition, prevents the EU institutions to focus on a political discussion on its desired role (eg. subsidiarity), desirable policy options and diminishes support in implementation and enforcement of EU laws. Policy is often much more than legislation on the books, but also depends on fitting EU legislation in the broader national, regional and local policy. We strongly invite the European Commission to reconsider this approach.

CEMR welcomes the publication of planned consultations. However, we would appreciate if more details could be provided at an early stage about when the consultations are planned in order to have more time to prepare them, what will be the objective, and how they will be organised throughout all the stages of the policy cycle (e.g. experts groups, open consultations, information meetings, etc.).

We believe that this is the only way to guarantee a complete and rigorous “structured dialogue” throughout all the policy cycle, while it also important to look into the broader picture and to link it with the ‘smart regulation’ question.

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 document outlines the different stages of consultation processes, and describes different types of tools and mechanisms to do so. However, it does not develop the different degrees of participation and interactivity of the stakeholders taking part in a consultation, throughout the different stages of the decision-making process, as well as the differences and appropriateness of the tools used with respect to each of these stages.

The respect to the different phases outlined in the document, does not mean that there is a partnership approach based in “structured dialogues” to consultation processes in general and throughout all the stages of the decision-making process.

The level of participation of stakeholders in the decision-making process can be classified into four different groups. Each of them, implying a progressively higher degree of participation and interactivity of the consulted stakeholder with the legislator:

1. Information;
2. Consultation;
3. Dialogue;
4. Partnership or Alliance

In parallel, the decision-making process can be classified into six different stages:

1. Agenda setting;
2. Drafting;
3. Decision;
4. Implementation;
5. Monitoring and
6. Reformulation

The guidelines should then elaborate more in detail on the requirements for the different types of consultations, depending on the level of participation that a given consultation might imply and the stage of the process in which, such a consultation takes places:

Example ¹:

The Code of Good Practice for civil participation in de decision-making process of the Conference of INGOS of the Council of Europe develops a “matrix model” table, in which, for each of the different levels of participation, the characteristics and types of the consultation are defined, with respect to the different stages of the decision-making process.

The “information” level is the one with a least inclusive or participatory character from the stakeholders involved in a given consultation, while the “partnership or alliance” level is the one with a higher degree of interactivity, participation and inclusiveness. This “matrix model” able to shape a rigorous and rational “structured dialogue” throughout all the stages of decision making-process of participation levels should be further developed. As outlined in the example no.1, the “matrix model” should result from the crossing of the level of participation variable and the different steps in the political decision-making process. In addition, the different types of consultation tools developed in Annex 1, should also address in more detail, when they are more appropriate, depending on the stage of the decision-making process.

This will allow to establish a more rigorous criteria when it comes to proceed with “structured dialogues” between the legislator and stakeholders throughout all the policy cycle. Contrastingly, the Guidelines as they are now, elaborate only on three different levels, while assuming a disconnection of the tools (types of consultation), the level of participation to which they should be linked, and the stage of the decision-making process that they better fit into in each case.

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The Guidelines still lack an in-depth assessment of the particularities that each of these tools should meet, in order to follow a proper and “structured dialogue” throughout all the policy cycle. A justification of the selection of certain tool/s or others should be also given to stakeholders when proceeding with a consultation. Even if the document considers that consulting stakeholders at different stages of the decision-making process should be also considered, in the majority of cases, consultations should be designed through a holistic approach and at an early stage always taking into account how to consult stakeholders throughout the phases of the policy cycle.

Accordingly, taking into account the subsidiarity principle (Article 5 TFEU) and the requirement to maintain an open, transparent and regular dialogue with representative associations and civil society (Article 11 TFEU); we ask the Commission to **establish a structured dialogue with local and regional government representatives**, where the annual planning and preparation of new legislation, non-legislative initiatives **and the consultations methods and tools to discuss about them** would be presented and discussed to identify its relevance for the sub-national level. As a inherent part of this dialogue, the Commission should present **at an early stage, the long-term planning of consultations across the whole policy cycle**, including forecasts from individual Directorates General.

In addition, following the approval of the *Charter for Multi-level Governance in Europe* of the Committee of the Regions, a resolution of the European Parliament on Better legislation (2011/2276(INI)) underlined that it is essential for scrutiny of the principle of subsidiarity to extend to the regional and local levels in the Member States.

Finally, the European Commission should be more transparent and provide an annual overview of planned consultations and studies that will be carried out in the context of impact assessments. Such an overview should be structured along the different Directorates General, be constantly updated and have a long-term perspective.

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

The document establishes a clear criteria for the identification of the stakeholders, the matching of each stakeholder category with the types defined in the minimum standards, and each stakeholder category with the consultation objectives.

However, a more detailed criteria should be established in order to define the types of stakeholders to be consulted. With respect to the definition of the stakeholders to be potentially consulted, the minimum standards are vague and do not allow a deep assessment and classification of them, keeping in mind the necessity of developing a more in-depth “matrix model” able to better establish a “structured dialogue”. In line with the lack of a more in-depth “matrix model” of defining “participatory degree” of consultations in each stage of the decision-making process, it should not be the European Commission alone, the institution designing consultations. Accordingly, all stakeholders should be able to participate in the design of consultations at an early stage of taking a decision between the different policy options in a given field.

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?

The European Commission could adapt the communication tools to inform about consultations to each particular country. Language barriers are often one of the biggest problems stakeholders face. The European Commission should always guarantee that all consultations are available in all languages, in order to guarantee that language is not a barrier. In many occasions only the questions of a written consultation are translated, but not the background documents that support them. It is essential then to assure, that both the questionnaires and the background documents are translated into all languages. In addition, while the translation of questionnaires could be published in an ongoing basis, the gap between the last translation and the deadline of the consultation should be at least of 12 weeks in order to have enough time to respond. With regards to the questions themselves, despite multiple-choice questionnaires and closed questions are fine, there should always be an space for general comments, which is not the case in all consultations now.

The channels that the European Commission uses to inform about its consultations should be also strengthened. To do so, besides Brussels-based organisations, all information on consultations should reach members states, local and regional authorities of the EU, as well as civil society organisations at the national, regional or local levels. In many EU member states, there are platforms (pan-European Networks and platforms) that group civil society organisations, private companies, etc. It will be then important to assure that the information always reaches, in an adapted manner, all the potential interested audiences.

The language used for these consultations needs to be simple and comprehensive for all kind of stakeholders, while the design of consultations also needs to be co-decided by the European Commission and those stakeholders being affected by a given policy or interested in it.

An independent Consultation Board at the EU level and National Consultation Boards, composed by EU representations at the national level, representatives of private companies, local, regional and national authorities as well as civil society representatives. These new structures will be in charge of monitoring the design of consultations, targeted groups of stakeholders, criteria to select tools and contributions, as well as to assess how to adapt and transmit the information to concerned stakeholders in each member state. The Board members, both at the European and national levels, could design mechanisms of engagement and contribution so that underrepresented groups can easily participate in consultations and in the decision-making process of the EU. This will also facilitate the engagement of those not being based in Brussels, with small structures or located in less developed areas.

At the EU level, a deepened mapping of pan-European representative associations grouped by sectors (private companies, local and regional authorities, civil society) could also help to better engage and reach the national, regional and local levels. In this respect, we recall our contribution to the European Ombudsman public consultation on the composition of Expert Groups in the framework of the investigation opened to assess the composition and transparency of them². We believe that it is of utmost importance for these groups to be balanced and to work as transparently as possible so that the public can trust and scrutinise their work.

Finally, the low participation is also due to a lack of a “partnership culture” in many policy areas. Open consultations are often very general and do not target, in an institutionalised manner, each potential group of stakeholders at an early stage of the policy cycle and in a structured manner.

² <http://www.ombudsman.europa.eu/cases/correspondence.faces/en/55509/html.bookmark>

The establishment of working groups or committees, strategic partnerships or joint decisions-making procedures in the different stages of the decision-making process could guarantee a deeper sense of ownership by stakeholders not used to participate in EU affairs.

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

There is a risk of over consultation if there are only open consultations, if feedback mechanisms are not properly designed and if consultations are not designed as only part of a continuum throughout all the policy cycle. In addition, the objectives of each consultation need to be better and clearly defined. The more focused and interactive consultations are, more useful they can be, and less risk of over consultation exists. The development of a comprehensive “matrix model” determining with each type of consultation tool to be used, the “level of participation” belonging to, and the stage of the decision-making process in which the consultation will take place, could facilitate a “structured dialogue”. This will also help to avoid over consultation, duplications or inefficiency in a given consultative process.

An assessment and explanation of the implications and impact of a given policy will also help to distinguish between important or less important consultations. Impact assessment consultations are crucial then to analyse the particular impact of a given policy at the local and regional levels. In consequence, policy options need to be discussed at an early stage, before impact assessment consultations, as policy options are already determined when these impact assessments and consultations on content are designed. The assessment of national and subnational contexts in a given policy field are crucial before launching any legislative or non-legislative process. This way, the consultations can be better designed in all the stages, with the aim of allowing stakeholders to select between important and less important consultations.

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

The document should outline more clearly, the criteria used when it comes to take into account or not, contributions from stakeholders participating in consultations.

The distinction made in the document between “collection of expertise and data” through expert groups with respect to other types of consultation groups could be interpreted as a way of giving more importance to expert groups in front of other types of stakeholder consultations. The text literally refers to those who are not experts, as those able to simply “express their views”. Accordingly and recalling again the contribution to the European Ombudsman public consultation on the composition of Expert Groups, the experience of local and regional authorities who take part in a given traditional consultation, should always be considered as the one provided by expert groups.

In contrast, we believe that those participating in broad classical consultations are also experts in many occasions, and they do not attend consultations simply “*to provide their view in a given topic*” as it can be interpreted now from the document, but also to be taken into account. In addition, local and regional authorities are recognised constitutionally in the Treaties of the European Union, so they always need to be consulted through expert groups or consultations, particularly targeting, national and European associations of local and regional government.

In order to make the system more accountable, transparent and clear, a clarification should be made between consultations and the framework established for collection of expertise through experts groups in the COM(2010) 7649, SEC(2010) 1360 document. The criteria used in order to keep on board or not contributions of these two different kind of groups (expert groups and other types of consultations) should be clarified, while a summary of the feedback provided by the European Commission, and why certain contribution have been selected or not, should be always sent to legislators and participating stakeholders.

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?

Despite it seems that a mechanism has been established in order to fight against the lack of participation of underrepresented groups of stakeholders in a given consultation, the issue of “weighting responses” in terms of legitimacy and representativeness remains unclear. Accordingly, we call on for the establishment of weighting mechanism in order to better the representativeness and legitimacy of stakeholders participating in a consultation.

The document should then also include a more detailed criteria about how to take into account stakeholder contributions depending on the legitimacy and representativeness (number of people indirectly represented, public or private stakeholder, etc.).

Pan-European associations of local and regional authorities, should not be considered as contributions coming from representatives of private companies, even if grouped by sector.

We would like to address the issue of the Transparency Register in this context, as local authorities may be excluded from meeting with Commission officials or participating in consultations and impact assessment exercises if they are not registered.

CEMR and its member associations from EU countries are very worried about the impact of the recent and unexpected changes to the Inter-Institutional Agreement (IIA) on the Transparency Register that has resulted in Local Government being asked to join the same registry as private and commercial lobbyists to contribute to EU policy discussions.

Indeed we are in the nonsensical position of local authorities now having to comply with the register (sections 16 and 17 of the IIA) if they want to continue to engage in EU policy development, whereas regions remain exempt from this requirement, as they rightly are recognised as public authorities and not as private or voluntary sector lobbyists.

It is furthermore worrying that the Guidelines on the IIA as they are currently drafted foresee that those local government organisations not willing or able to register would face penalties in terms of meeting EU officials to discuss forthcoming EU legislation or participate in consultation or impact assessment exercises.

Ignoring the local democratic mandate and treating local government elected members and their officials as private lobbyists, would rightly be seen as a significant and unacceptable change of tone between the different spheres of government. The European Union institutions will be perceived as acting in a centralising manner, treating local people and their communities in a remote and high handed way. Were we to choose not to co-operate with the European institutions, the EU policy processes will be deprived of much needed information, accountability and acceptance.

This is why, while we are calling that these unfair provisions are removed from the IIA, we are urging the Commission to ensure that the IIA Guidelines as well as the Impact Assessment Guidelines and the Standard for Consultation Guidelines contain provisions that effectively enable local authorities or their representative organisations to continue to be able to participate in consultation and impact assessments without being to register as lobbyist and without any penalty provided they meet the following criteria:

- It is a **public authority** as defined in domestic law of failing that it is recognised by the government as exercising political representation functions akin to a local authority. This would apply also to its employees;
- Does **not carry out for profit** activities nor its engagement with the EU institutions is destined to any direct material gain to its member local authorities or to itself;
- It is explicitly **recognised** by national government as a key partner in EU policy development;
- It has a **national or regional representativeness** and political mandate;

- It is recognised as the **nominating body** of the Committee of the Regions and its officers support CoR members work as described in the respective Internal Rules of their CoR national delegation;
- It is **registered at the Committee of the Regions own register** for the carrying out of its institutional functions CoR own register of organisations supporting its members that any member of the public can access to, thus making the need to also feature in the Transparency register redundant. If only the Commission just could put a link in the Transparency Register website to the one of the CoR register.

Thus, we believe that bodies meeting the above criteria should continue to have unhindered access to Impact Assessment and Consultations and thus the individual Commission guidelines should fully reflect the above criteria.

It should be mentioned, that there is a special category for consultation contributions of public authorities. However, in this category should not only be listed the contributions of public authorities themselves but also those of their associations and representative offices in Brussels – irrespectively if they chose to register or not.

The number of citizens indirectly represented by stakeholders taking part in consultations at the EU level is crucial in order to decide on the representativeness and the resulting legitimacy, when taking into account (and into which degree) the contributions from different stakeholders.

Feedback should be provided exclusively in a separate communication after the consultation and not in the impact assessment document. It also necessary to stress that consultations and feedback should be provided in all languages of the European Union. This is a crucial guarantee a successful participation and adaptation of consultations to national, regional and local contexts.

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

The establishment of a pre-design consultation phase; at an early stage of the decision-making process in order to guarantee stakeholders to opportunity to co-design together with the European Commission consultations, and co-decide on the policy options before the launch of a proposal.

Each consultation should be always followed by a physical meeting in order to discuss the different issues all together in a transparent manner. This will guarantee a closer cooperation between the European Commission and external stakeholders, while enhancing the sense of ownership. In the “stakeholder mapping phase”, a criteria of stakeholder ponderation should be established in addition to the minimum standards already established, with the aim of classifying them in terms of legitimacy and representativeness as explained in the answer to question no.6.

With regards to the timing of the consultation and the duration, a clearer criteria on the different types and consultation mechanisms should be established for each of the stages of the decision-making process:

1. Agenda setting; 2. Drafting; 3. Decision; 4. Implementation; 5. Monitoring; 6. Reformulation

The Guidelines should establish a more concrete timeline and duration of the consultation in each of the stages of the decision-making process. In case the European Commission decides to avoid consultation in one of these stages, an explanation should be envisaged. In general though, it should be the objective of the European Commission to achieve the highest level of participation of external stakeholders, specially, of those recognized by the Treaties, in each of the stages of the process. This means to truly establish a “governing in partnership” approach to decision-making in all the stages of the decision-making process in order to consolidate structured dialogues in all policy fields.

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

The *Consultation of local and regional authorities through the networks of the Committee of the Regions* tool included in the text, should not include national associations of local and regional authorities as "its networks". This means that consultations of local and regional authorities should not be done only through the Committee of the Regions and that national associations of local and regional authorities should not be considered as networks of the Committee of the Regions. As an added value to the institutional role of the Committee of the Regions, national and European networks of local and regional authorities are the one able to reach municipalities and provide the technical and concrete expertise to the legislative process of the EU from a bottom-up perspective.

Accordingly, local and regional authorities should always be consulted directly through its national or its European umbrella organisations. And in this particular case, it should never imply to consult them only through the Committee of the Regions, as their membership is very vast and representative.

The fact that a particular consultation for local and regional authorities has been established in the document, should not imply that local authorities don't need to be always included and recognized as legitimate partner when using other kind of meetings, consultation methods or tools. The consultation to local and regional authorities should be then transversal to all kinds of consultation, despite the existence of a concrete tool to consult them in particular policy areas.

Contact

Carlos Mascarell Vilar

Policy Officer on Governance and Citizenship

Conseil des Communes et Régions d'Europe
Council of European Municipalities and Regions

Carlos.MascarellVilar@ccre-cemr.org

+ 32 2 500 05 44

About CEMR

The Council of European Municipalities and Regions (CEMR) is the broadest organisation of local and regional authorities in Europe. Its members are over 50 national associations of municipalities and regions from 41 European countries. Together these associations represent some 150 000 local and regional authorities.

CEMR's objectives are twofold: to influence European legislation on behalf of local and regional authorities and to provide a platform for exchange between its member associations and their elected officials and experts.

Moreover, CEMR is the European section of United Cities and Local Governments (UCLG), the worldwide organisation of local government.

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