



European Economic and Social Committee

SC/040
Evaluation of European
Commission
stakeholder consultations

Brussels, 2 July 2015

OPINION

of the
European Economic and Social Committee
on the
Evaluation of European Commission stakeholder consultations
(own-initiative opinion)

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On 20 January 2015, the European Economic and Social Committee, acting under Rule 29(2) of its Rules of Procedure, decided to draw up an own-initiative opinion on the

Evaluation of European Commission stakeholder consultations.

The subcommittee on the *Evaluation of European Commission stakeholder consultations*, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 9 June 2015.

At its 509th plenary session, held on 1 and 2 July 2015 (meeting of 2 July 2015), the European Economic and Social Committee adopted the following opinion by 179 votes to 1, with 4 abstentions.

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Preliminary remarks

The aim of this own-initiative opinion is to assess the existing methods of stakeholder consultation carried out by the European Commission in accordance with Article 11(3) TEU. On the basis of this assessment, the opinion sets out proposals that are intended to be constructive and realistic, with a view to structurally enhancing and monitoring the consultation process in the interest of all parties.

1. Conclusions and recommendations

- 1.1 In this opinion, the EESC sets out recommendations on stakeholder consultation, as provided for in the Treaties, with a view to enhancing the quality of these consultations and bridging the gap between the EU and its people. This exercise has also been undertaken by the European Commission by means of a broad consultation of stakeholders on the consultation procedures, and translated into the Better Regulation package put forward by Commission vice-president, Frans Timmermans. At the request of the Commission, the EESC will later issue an opinion on the entire Better Regulation package.
- 1.2 The EESC is concerned about the way in which stakeholder consultations are carried out and therefore also about the quality of the results of such consultations. It is therefore calling for consultations to be consistent and representative and to ensure added value for the organisations and interest groups concerned.
- 1.3 On the basis of a sample of consultations assessed in the first half of 2014, the Committee concluded that there is an uneven qualitative approach across the various DGs concerned, and found an insufficient volume of responses and thus a lack of representativeness, as well as

shortcomings in the use of appropriate language and terminology for the target groups concerned and in the reporting of results and follow-up. Overall, it can therefore be concluded that the existing guidelines here are not being sufficiently implemented.

- 1.4 Conscious of the difficulty entailed in appropriately consulting the diverse range of citizens and organisations in the EU Member States, the EESC has put forward below a number of structural, practical and realistic proposals and asks the European Commission to cooperate constructively in developing and implementing new measures.
- 1.5 The Committee calls on the Commission to make the guidelines and quality standards for stakeholder consultation binding on all of its directorates-general. To ensure that these guidelines are applied, the Committee proposes that a coordination unit be set up at the level of the general secretariat to provide support to the DGs in stakeholder consultation.
- 1.6 A more strategic approach to the consultation process, from preparation to assessment, with systematic involvement of the relevant existing structures (organisations representing the target groups and advisory and consultative bodies) should ensure a greater, high-quality response. Setting out a clear timetable for consultations and explaining their purpose would enable stakeholders to increase their capacity to participate in consultations.
- 1.7 The Committee points out that accurate stakeholder mapping is essential to a quality consultation process. To this end, the EESC recommends that the Commission make use of existing structures, such as the Committee and representative organisations, and draw on the transparency register. New structures are, therefore, not required.
- 1.8 In the Committee's view, a fresh effort needs to be made to streamline the methods and tools used for stakeholder consultation. Initially, there are two possible methods of consultation: written/online or oral/discussion. The methods and tools selected should depend on the stated aim, target group, etc., in the framework of the strategic approach to the consultation process. Furthermore, it would be advisable to make effective use of the new technologies, particularly with a view to better reaching certain target groups, such as young people.
- 1.9 Under this approach, a distinction should be drawn between consultations of civil society organisations and of the general public. The difference between the two is not only a matter of methodology, but also of objective, since for the former group the aim is to ensure representativeness, while for the latter, it is about promoting inclusion and participation.
- 1.10 Where the written questionnaire method is chosen, the Committee feels that such questionnaires should be made available in all official EU languages. In addition, the EESC advocates that the questionnaire be submitted in advance to the organisations representing the target groups concerned in order to prevent overly specialised jargon making the questionnaire difficult for the target groups to understand.

- 1.11 When the results are being processed, the Committee would stress the importance of giving a quantitative and qualitative weighting to the various responses, depending on whether they come from individuals or civil society representative organisations, or depending on the representativeness and involvement of that organisation. The response submitted by a representative organisation would then receive a greater weighting.
- 1.12 In order to increase participation in consultations, the EESC emphasises the importance of a summary report of the responses received being drawn up for each consultation, and of explanations being given as to why certain responses were, or were not, taken into account in the further stages of drafting the proposal.
- 1.13 In view of its role set out in the Treaties, the Committee would like to act as facilitator to ensure the success of stakeholder consultations. It can participate and cooperate in all of the key phases of the process (identifying the stakeholders, drafting the questionnaires, summarising and following up the results). In order to bring structure, stability and representativeness to the process, the Committee could, as in the past, hold hearings and conferences and establish platforms and forums for dialogue.
- 1.14 When it comes to stakeholder consultation, the European Commission should make more use of the potential offered by closer cooperation with the Committee, as recommended in the protocol on cooperation between the Committee and the Commission signed on 22 February 2012¹. In the interests of optimising resources, and taking the approach of inter-institutional cooperation, this would enable maximum benefit to be derived from both the specific skills and knowledge of the stakeholders and the expertise, experience and competence of the Committee in consultation practices.
- 1.15 With regard to interactive meetings, the EESC could act as organiser, in conjunction with the Commission, as it already does regularly in the framework of structured dialogue platforms (for example on immigration, on consumption, etc.).
- 1.16 Finally, the EESC calls for a sustained campaign to raise awareness of the consultation process and the individual consultations. The Committee would like to take an active part in this through the organisations represented within it.
- 1.17 Furthermore, the EESC, as a promoter of structured civil dialogue and an essential instrument of participatory democracy, encourages the Commission to step up its use of structured dialogue platforms. This would not only enable stakeholders to play a continuous part in all stages of the policy process, but would also have a positive impact in terms of cost and time.

¹ <http://www.eesc.europa.eu/?i=portal.en.eu-cooperation.22469>.

2. The state of play in stakeholder consultation

2.1 Provisions

- 2.1.1 In accordance with Article 11(3) of the Treaty on European Union, "the European Commission shall carry out broad consultations with parties concerned in order to ensure that the Union's actions are coherent and transparent".

Such consultations are aimed at ensuring the active involvement of stakeholders from organised civil society and the general public, so that the general European interest can be sought when framing policies, to ensure their democratic relevance and the broadest possible public support.

- 2.1.2 "Consultation" is a process whereby the Commission gathers the opinions and views of the public and stakeholders. This complementary process takes place without prejudice to the structured civil dialogue (Article 11(2) TFEU) and consultations carried out within specific frameworks, such as consultation of the social partners as part of social dialogue (employers' organisations and trade unions) (Article 154 TFEU) or of advisory bodies, such as the European Economic and Social Committee (Article 304 TFEU)², which it may on no account replace.
- 2.1.3 In addition to their involvement in consultations under Article 154 TFEU, the social partners, employers' organisations and trade unions participate fully in the consultation mentioned in points 2.1.1 and 2.1.2, in the fields of consumer law, environmental law, trade policy, etc.

The European Economic and Social Committee has been assigned an advisory role by the Treaties vis-a-vis the European Parliament, the Council and the Commission. Furthermore, a cooperation protocol³ specifies the practical arrangements for cooperation between the Committee and the Commission.

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Article 304 of the Treaty on the Functioning of the European Union.

The Committee shall be consulted by the European Parliament, by the Council or by the Commission where the Treaties so provide. The Committee may be consulted by these institutions in all cases in which they consider it appropriate. It may issue an opinion on its own initiative in cases in which it considers such action appropriate.

The European Parliament, the Council or the Commission shall, if it considers it necessary, set the Committee, for the submission of its opinion, a time limit which may not be less than one month from the date on which the chairman receives notification to this effect. Upon expiry of the time limit, the absence of an opinion shall not prevent further action.

The opinion of the Committee, together with a record of the proceedings, shall be forwarded to the European Parliament, to the Council and to the Commission.

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<http://www.eesc.europa.eu/?i=portal.en.eu-cooperation.22469>.

2.2 *Guidelines for stakeholder consultations*

- 2.2.1 In 2002, the European Commission established minimum standards⁴ for stakeholder consultations, which apply on a mandatory basis to stakeholder consultations on any proposal, legislative or non-legislative. Under REFIT, the Commission has also announced that consultations are to be carried out for evaluations, fitness checks and the drafting of implementing measures and delegated acts⁵.
- 2.2.2 In its 2002 guidelines for DGs on carrying out stakeholder consultations, the European Commission provides for, inter alia, publication of the explanatory memorandum on the topic in question, its content and the purpose of the consultation. Afterwards, the number of responses, the nature of the respondents and a summary of the findings should be published.
- 2.2.3 As regards multilingualism, there are currently no formal rules in force.
- 2.2.4 The 2002 guidelines with minimum standards for stakeholder consultation lay down 10 steps in the consultation process, divided into 3 phases: define strategy⁶, run consultation⁷, analyse results⁸.
- 2.2.5 The European Commission has had 12 different methods for its policy-preparation consultations depending on the objectives and the target group. The 12 methods are as follows: open on-line public consultation; studies; Eurobarometer; conferences; public hearings, meetings with stakeholders; meetings, workshops, seminars with those directly involved; focus groups; personal interviews; European Commission expert groups; SME panels; consultation of local or regional authorities; questionnaires; and online discussion forums.

2.3 *Implementation of the guidelines in practice*

- 2.3.1 Despite these guidelines and the large number of methods and tools available, many stakeholders are critical of the effectiveness of the current consultation system. Specific obstacles include difficulties in being informed of consultations (information being easy to find on the EU websites and publicising the consultations), the language and terminology, information on the results and, finally, the follow-up.

⁴ COM(2002) 704 as supplemented and amended by COM(2012) 746 and SWD(2012) 422.

⁵ COM(2014) 368.

⁶ 1. define the objectives of the consultation; 2. stakeholder mapping; 3. select methods and tools; 4. define the timing of the consultation and its duration.

⁷ 1. prepare consultation webpage; 2. advertise consultation; 3. acknowledge receipt of contributions.

⁸ 1. analyse the responses; 2. report on the results and provide feedback; 3. evaluate the consultation exercise.

2.3.2 In addition, the quality and the approach of consultations vary significantly depending on the DG concerned and they lack coordination and a uniform methodological approach.

2.3.3 Based on a sample, the EESC has carried out a check of the application of the guidelines in the first 25 consultations held in 2014. On the basis of this sample, the following comments can be made:

- **participation in the online consultations** varies hugely⁹;
- where there are few respondents, **representativeness** is de facto poor, both geographically and in terms of the category of respondents. With a higher number of answers, geographical representativeness is better but is often unbalanced with regard to the quality of the responses. However, a clear trend emerges towards a predominance of respondents from large Member States. Also, the replies from organisations based in Brussels are classified as input from Belgium, while in many cases they are European federations or organisations that have no link to Belgium as a Member State;
- as regards **transparency and feedback of the results**, in only six of the sample of 25 consultations was a summary of the results published, which is less than a quarter. In less than half of the consultations were the responses also published. In none of the consultations was further information provided on the follow-up to the issue.

In conclusion, there is generally a lack of representativeness and quality, and scant information is provided on the outcome and follow-up.

3. **The current Commission: new working methods and prospects**

3.1 In the political guidelines of the new European Commission, a more democratic European Union is one of the 10 priorities. The objective of creating a mandatory register of all organisations and individuals that lobby the European Commission and the European Parliament is at the heart of that priority.

3.2 On 19 May 2015, the Commission published a package of measures aimed at better regulation, the Better Regulation package¹⁰, on which the Committee will issue an opinion, at the request of the Commission. The measures envisaged are structured around 4 strands: more transparency and consultation, keeping existing laws under review, better impact assessment and quality control, and a new inter-institutional agreement.

⁹ In only 13 consultations out of 25 is the number of participants stated. The number of respondents ranges from 14 to 1 114. Half of them had fewer than 100 responses.

¹⁰ http://ec.europa.eu/smart-regulation/index_en.htm.

3.3 As part of this, revised guidelines for stakeholder consultations have also been proposed. In preparation for these, a consultation¹¹ on the "Stakeholder consultation guidelines" was organised. The findings¹² from this consultation have been taken into account in this opinion.

4. **Making consultations more effective: recommendations**

The Committee sees consultations as one of the means of bridging the gap with the European citizen, provided that the procedures are structured, continuous, and ensure good stakeholder representativeness. Only then will consultations help to effectively involve the public and civil society in the European project.

The Committee has already made specific proposals here, inter alia in its opinions on consultation under the Better Regulation programme, Article 11 TEU and REFIT¹³.

4.1 *Key elements of the consultation process*

4.1.1 The Committee asks the European Commission to impose the existing internal guidelines as binding on DGs and to penalise non-compliance (for example, where there is no transparency regarding the responses or no assessment report), just as the quality of impact assessment is subject to sanctions by the Impact Assessment Board.

4.1.2 The Committee thus calls for a coordinating unit within the Commission's general secretariat, under the direct management of the relevant Commission vice-president. This unit would also provide support to all DGs as regards the overall approach and strategy of consultations, the drawing up and implementation of quality requirements and procedures, quality guidance, information and follow-up.

4.1.3 The coordination unit would be assisted by an expert group, supplemented by representatives of the target groups at which the consultation is aimed. The EESC calls on the Commission to harness the Committee's expertise here, particularly when it comes to selecting the target groups, validating the questionnaires, and summarising and following up the results.

4.1.4 A more systematic approach to consultations, with clear timetables and advance notice, should make it easier for stakeholders to prepare for their participation. In this regard, a reliable and regularly-updated provisional timetable of consultations is essential. More

11 Consultation on the Commission's stakeholder consultation guidelines from 30.6.2014 to 30.9.2014: http://ec.europa.eu/smart-regulation/guidelines/consultation_2014/stakeholder-consultation/index_en.htm.

12 http://ec.europa.eu/smart-regulation/impact/docs/contributions/summary_responses_stakeholder_consultation_guidelines_public_consultation_en.pdf.

13 EESC opinion on *Better Regulation*, OJ C 48, 15.02.2011, p. 107.
EESC Opinion *Principles, procedures and action for the implementation of Articles 11(1) and 11(2) of the Lisbon Treaty* OJ C 11, 15.01.2013, p. 8
EESC Opinion *The Regulatory Fitness and Performance programme (REFIT): state of play and outlook.*, OJ C 230, 14.07.2015, p. 66.

generally, the Committee proposes that the Commission put these consultations on a more structured institutional and representative foundation by taking advantage of the resources of the consultative bodies or their equivalents at national, regional and local levels.

- 4.1.5 The EESC asks the Commission to publish an annual evaluation of its approach to consultations and the results thereof.

The Committee advises the Commission to draw up an inventory of best practices in the Member States, as a source of inspiration. The OECD studies on this topic may be very useful here¹⁴. The Committee also recommends encouraging any other form of civic engagement and participation. The Council of Europe's *Code of good practice on civil participation in the decision-making process* could serve as a good model here¹⁵.

4.2 Stakeholder mapping

- 4.2.1 Properly determining the target group of a consultation is essential to obtaining the necessary information. Professional tools of proven reliability are needed here. Effective cooperation with the existing structures, the Committee and legitimate and representative civil society organisations is also vital in this regard. Within the limits of its remit and by cooperating effectively with the organisations concerned and the Commission, the EESC could help identify representative organisations within certain target groups.
- 4.2.2 The work carried out by the EESC¹⁶ on establishing criteria for the representativeness of civil society organisations could be used as a basis for the aforementioned process of identifying representative organisations. The EESC would thus like to further bolster the impact of and cooperation with such organisations in the consultation process.
- 4.2.3 A good geographical and target-group distribution should systematically be a particular focus. It must also be ensured that particular attention is given to under-represented and less-resourced groups in "stakeholder mapping".
- 4.2.4 The EESC stresses the importance of introducing a substantiated weighting system in the analysis of consultation responses, giving priority to organisations that are representative and directly concerned.
- 4.2.5 With a view to increasing the participation of stakeholders in consultations, the content of feedback after consultations is very important. Stakeholders should see results from their

14 <http://www.oecd.org/gov/regulatory-policy/governance-regulators.htm>.

15 http://www.coe.int/t/ngo/code_good_prac_en.asp.

16 EESC Opinion, [OJ C 88, 11.04.2006, p. 41](#).

input and thus feel that they have had a real influence on the policy proposals, or receive an explanation as to why certain elements were not taken into account.

4.3 *Methods and tools*

4.3.1 The EESC could act as a "network of networks" in order to disseminate the written (online) consultation to the various stakeholders (just as the Committee of the Regions does as regards local authorities). With regard to interactive meetings, the EESC could act as organiser, given its contacts and expertise in this area.

4.3.2 Questionnaires used in (online) consultations should be submitted for comments to civil society organisations representing the target group(s) concerned and in the language of the target audience. Furthermore, questionnaires should be tested in advance by a sample group of stakeholders. To this end, preliminary stakeholder mapping and the transparency register could be used as tools to target these organisations (see point 4.2). The EESC should act as facilitator here.

4.4 *Establishing the timing of the consultation and its duration*

4.4.1 Under the guidelines, a time limit of at least 12 weeks should be set for responses to online consultations, and for interactive meetings 20 working days' notice should be given. The Committee advises against launching consultations during the summer. Furthermore, the provisional timetable (advocated in point 4.1.4) should be adhered to as far as possible.

To give stakeholders an opportunity to prepare for their participation in consultations, the EESC deems it appropriate to provide them with sufficient information on the entire preparation process and the schedule of the (various) consultations. All effective means of encouraging stakeholders to participate should be deployed.

4.5 *Publicising the consultation: accessibility and visibility*

4.5.1 The EESC calls on the Commission, including its delegations in the Member States, to put in place an effective and sustained information campaign to publicise the consultations and encourage stakeholders to participate. The Committee could definitely also play a role here, and ask its members to disseminate information within their own networks.

4.5.2 Each consultation should be announced in a clear, appropriate and timely manner in the media of the Commission and the Member States and to the relevant civil society organisations. The representatives of the Commission in the Member States should also be involved in this overall approach.

4.6 *Analysing the results*

- 4.6.1 The Committee deems it very important that the Commission take account of the points of view expressed during consultations and justify the extent to which it has done so.
- 4.6.2 In the substantiated weighting system used in processing the results (see point 4.2.3), organised civil society stakeholders should proportionately be the most represented.

4.7 *Reporting on the results and providing feedback*

- 4.7.1 The Committee is in favour of the publication of a summary report, accompanied by an overview of all the responses received. This will foster transparency.
- 4.7.2 In addition, the EESC advocates providing information – not least to the respondents – on the follow-up to the issue, such as amendments to the proposal and the next steps in the decision-making process.

5. **The role of the European Economic and Social Committee**

5.1 *In the consultation process*

- 5.1.1 In the interests of optimising resources, and taking the approach of inter-institutional cooperation, the Committee could thus make available to the decision-making process both its knowledge of stakeholders active in the various EU policy areas, and also its expertise, experience and competence in consultation practices.
- 5.1.2 In accordance with its work priorities and with the cooperation of the Commission, the Committee wishes to monitor and assess certain consultations, draw up an opinion on this matter, and if appropriate, organise a public hearing.
- 5.1.3 In close cooperation with the organisations concerned, the Committee would like to provide input and expertise to the Commission during the key stages of the consultation process, in particular the selection of the target group, the questionnaire, the summary and the follow-up.
- 5.1.4 Moreover, the EESC could act as a "network of networks" and a facilitator in order to disseminate the written (online) consultation to the various stakeholders (just as the Committee of the Regions does as regards local authorities).
- 5.1.5 With regard to interactive meetings, the EESC could act as organiser, in conjunction with the Commission, as it already does regularly in the framework of structured dialogue platforms (for example on immigration, on consumption, etc.).

5.1.6 As part of an effective and sustained information campaign, the Committee could contribute by calling on its members to disseminate information within their own networks.

5.2 *Under the cooperation protocol between the European Commission and the EESC*

5.2.1 At different stages in the preparation, implementation and follow-up of a consultation, the EESC could act as an information channel between the European Commission and organised civil society.

5.2.2 For certain activities, such as interactive meetings, joint initiatives of the Commission and the Committee could be organised.

Brussels, 2 July 2015

The President
of the
European Economic and Social Committee

Henri Malosse
