



Position Paper

September 2014

Response to the consultation on the Commission's Stakeholder Consultation Guidelines

EUROCHAMBRES welcomes the Commission's intention to improve the dialogue with stakeholders and seek their views on its tools and processes through the present consultation. Ensuring the extensive involvement of stakeholders in the policy process is a precondition to effective policies that are fit for purpose without imposing unnecessary burdens on those affected. EUROCHAMBRES supports the Commission's move towards more frequent open consultations and the stated objective to strengthen the quality, scope and targeting of consultations.

The present response builds on EUROCHAMBRES' extensive experience with the Commission's consultation practices and the Chambers of Commerce and Industry's experience of working with companies and public authorities.

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?

EUROCHAMBRES believes that the draft Stakeholder Consultation Guidelines cover reasonably well the elements of the consultation process. Efforts should be invested right from the start – i.e. when defining the consultation strategy and planning (steps 1-4). If done successfully, the results of the consultation should be of adequate quality. Additionally, it is necessary to ensure that all interests are equally considered given the investment in time and resources it requires to respond to consultations.

However, a number of elements could have received more attention or a more detailed description in order to ensure effective consultations.

- **Definition of consultation**

The Commission's definition of a consultation is too general and does not refer to the core part of the consultation process – i.e. stakeholder identification, notification and participation. According to the Treaty of the European Union, it is the Commission's responsibility to identify the right stakeholders and encourage them to give their views on Commission's proposals in order "to ensure that the Union's actions are coherent and transparent¹". EUROCHAMBRES therefore believes that the definition provided in the guidelines should incorporate this dimension. The stakeholder consultation process should be defined as a complex procedure, which involves the identification, notification and participation of interested parties in public debates launched by the Commission regarding policy proposals.

¹ Article 11 of the Treaty on European Union

- **Subsidiarity principle**

The subsidiarity principle should receive more attention when defining the objectives of a consultation (step 1). The description and assessment of existing national measures are sometimes incomplete and outdated in the Commission's impact assessments. In addition, subsidiarity complaints from national parliaments frequently do not receive any attention.

Example: The consultation on the Framework Regulation Integrating Business Statistics (FRIBS) illustrates a lack of knowledge of national specificities. The time required for the declaration of the country of origin was asked in the questionnaire for data suppliers, although the collection of this information is optional according to the Regulation n° 638/2004 on Community statistics relating to the trading of goods between member states and is mandatory in Austria (and presumably also in other member states). This should have been made clear in a footnote since this question leads to confusion and irritation.

- **Delegated acts and implementing measures**

The draft guidelines envisage stakeholder consultations only for the delegated acts and implementing acts that are subject to an impact assessment. EUROCHAMBRES believes that European and national business organisations should be consulted on all drafts delegated acts and implementing measures with impacts on businesses, especially SMEs. In practice, few impact assessments on delegated acts and implementing measures are carried out, leaving little opportunity for business organisations to give their view on issues that might have major impacts on companies given the technical details they deal with.

- **SME friendly consultation procedures**

EUROCHAMBRES believes that the Commission should provide a stronger focus on SME consultation in the guidelines. SMEs often are the largest group of businesses affected by new policy but the most difficult group to involve in consultations for many reasons such as time, resources and language issues.

The examples of REACH and the CLP regulation² illustrate perfectly the shortcomings of the current consultation process and the need to enhance the voice of SMEs. In the area of chemical legislation, there are about 50 to 70 consultations per year on various chemical substances. Each of these consultations can crucially affect one or more sectors. Sometimes – and especially in the field of harmonised classification under the CLP regulation – the consultations only last 45 days. This period is far too short considering the amount of background information that needs to be examined (i.e. usually dossiers between 150 and 300 pages). For an SME, it is hardly possible to analyse a dossier in such a short time and it becomes unmanageable to process 50 to 70 dossiers. This mass of information does not allow an SME to spot what might be relevant for its individual case. Furthermore, these highly complex and technical documents are usually only available in English. The participation of SMEs in these consultations is theoretically possible but practically a mere illusion.

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

As mentioned in the draft guidelines on page 9, the identification of the right target audiences is one of the most important aspects in the consultation process. The more precisely the identification of the target audience is carried out, the more efficiently consultations can be worked on. EUROCHAMBRES believes that the draft guidelines provide clear indications to define the consultation target groups and seem – at least in theory – to be well-balanced and factual.

² Regulation on classification, labelling and packaging of substances and mixtures (EC) No 1272/2008

Nevertheless in practice, the approach described in the draft guidelines is not always carried out satisfactorily. For example, the employers and workers representatives belonging to the European tripartite social dialogue are regularly consulted on some issues beyond the remit of the social dialogue as part of a "targeted consultation", although other stakeholders' interests are also affected.

Example: Social partners are automatically associated to the technical working groups organised by DG EAC in the framework of the Open Method of Coordination. Having complained, EUROCHAMBRES was allowed to join two of the technical working groups.

EUROCHAMBRES - which is not a member of the European tripartite social dialogue - is excluded from the discussions even though Chambers of Commerce and Industry have extensive experience in growth and jobs related issues. EUROCHAMBRES is therefore pleased that the draft guidelines specify that targeted consultations are to be used only in exceptional circumstances and substantiated cases (draft guidelines on page 12).

However, EUROCHAMBRES regrets that the draft guidelines do not describe the strategies to reach all relevant target groups. It is stressed that the reach of all stakeholder groups should be ensured, but it is not evident how exactly this can or will be done. In this respect, EUROCHAMBRES believes that particular attention should be given to SMEs considering the difficulty of engaging them in consultations. This requires a proactive and dynamic approach through specific tools such as field trips, interviews, meetings with SME organisations, etc... Consulting the SME representative organisations such as the Chambers of Commerce and Industry is essential too as they are in direct contact with businesses and can relay their needs and concerns.

EUROCHAMBRES observes a difficulty as regards the coverage of relevant stakeholders at national level. This could be partly solved by making available to the Commission the integrated databases with representative organisations at national level. National authorities and Commission representations should also be used as disseminators of information to relevant national stakeholders.

Additionally, EUROCHAMBRES would welcome a clearer definition of the target audience in the preamble of the consultation.

Question 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?

Too often, open public consultations give the impression that they have been launched with the intention to tick a box and not to gather input. Public consultations would certainly attract more attention if the questions were built without prejudging the outcome or in such a way as not to influence the respondent and to maximize the value of the response given. Consultation should rotate around a policy objective, not pre-defined solutions.

EUROCHAMBRES also believes that the consultation process should be more SME-friendly, while ensuring a stricter approach regarding the enforcement of the five minimum consultation standards:

- **Standard A: Consultation documents are clear, concise and include the necessary information**

In order to receive concrete input from SMEs, the background documents and questionnaires must be formulated in a practical and intelligible manner (i.e. avoiding EU jargon), while being as precise as possible. When the issues are complex, EUROCHAMBRES recommends breaking them into simplified parts.

Example: the Austrian Federal Economic Chamber had to simplify the FRIBS questionnaire for data suppliers as it was far too long and contained complex political questions that could not be expected to be answered by a company. They sent a shorter version to their member companies.

The participation of SMEs can only be guaranteed if consultation papers are available in all EU languages and the consultation starts when all translations of the document have been published. It is nowadays not common practice, notably for the draft regulations and communications. Consultations solely in English increase the workload of the business organisations, which must translate the documents internally in order to get input. However, translation is not always possible within the time limits of the consultations.

Example 1: The translation of the online questionnaire on Investment Protection in the Transatlantic Trade and Investment Partnership (TTIP) took two weeks. The consultation was published in English on 27 March 2014 and the German version was available on 10 April 2014.

Example 2: Modernisation of state aid law (SAM). The consultation on the draft General Block Exemption Regulation (GBER) on state aid measures lasted eight weeks, while the minimum consultation period is 12 weeks. The German version was published five weeks after the launch of the consultation, even though the text is 80 pages long and the GBER is the most important EU regulation for state aid. Similarly, in the framework of the consultations on the guidelines on state aid for environmental protection and energy as well as on the framework for state aid for research, development and innovation, the German versions were published much later than the English texts. Additionally, the consultation periods were much too short.

- **Standard B: All relevant parties have an opportunity to express their opinion**

EUROCHAMBRES SME test benchmark³ shows that specific consultation with SME organisations is not common practice across the Commission's services. General stakeholder consultation tools, such as online public consultations or stakeholder conferences, are considered as sufficient to gather the views of the SME representatives and often used as an excuse for not going further. The Commission should be more proactive and seek input from the SME community through specific tools such as field trips, interviews, meetings with SME organisations, etc... Direct consultation methods of SMEs should, however, always be used to complement the responses provided by the representative SME organisations.

- **Standard C: Adequate awareness-raising publicity is ensured and communication channels are adapted to meet the needs of all target audiences**

The instruments and communication channels used by the Commission to disseminate the launch of a public consultation are useful, yet accessible only to those stakeholders who usually participate in consultations (i.e. via newsletters, notifications via the Transparency Register, Your Voice in Europe, etc.). EUROCHAMBRES suggests enlarging the spectrum by using the social media or targeting publications related to the issue. The Commission should also work more closely with member states and regions to spread the information to the relevant stakeholders.

In addition, EUROCHAMBRES recommends systematically approaching SME organisations, notably the Chambers of Commerce and Industry, when a consultation affecting businesses is being carried out. In this respect, the Commission's services should always seek advice from DG Enterprise on the best consultation methods to be used to ensure a strong participation of SME representatives.

Furthermore, EUROCHAMBRES would welcome the systematic development of a communication plan, which would serve as a guide to the communication efforts throughout the duration of the consultation.

³ EUROCHAMBRES SME Test Benchmark 2013, http://www.eurochambres.eu/objects/3/Files/SME_Test_Benchmark_2013-2013-00787-01.pdf

- **Standard D: Participants are given sufficient time for responses**

EUROCHAMBRES considers the consultation period of 12 weeks to be adequate in most of the cases. However, longer periods are often necessary in the cases of strategic topics, evaluations and reviews of legislation. Furthermore, EUROCHAMBRES believes that it should be compulsory (and not a possibility) to extend deadlines when the consultation runs over a holiday period, such as Easter and Christmas, and during the summer time. This option is currently often not implemented – thus making it difficult for organisations such as the Chambers of Commerce and Industry to gather the views of their member companies.

Example: both the present consultation and the consultation on the revision of the Commission's Impact Assessment Guidelines coincide with the main summer holiday period – i.e. from 1 July to 30 September 2014.

For important new aspects and far-reaching changes, follow-up consultations could be envisaged. This would allow stakeholders to provide higher quality inputs.

- **Standard E: Acknowledgement and adequate feedback is provided**

It is often not clear to stakeholders to what extent the results of the consultation will be taken into account in the drafting of laws and other policies. EUROCHAMBRES therefore welcomes the obligation to provide summary reports of input received, while stressing the necessity to include detailed justification of why some suggestions were taken up and others not. Omitting to report why certain options, which were widely supported by the respondents were discarded, gives the impression that the decision had already been made internally before the launch of the consultation. This practice discourages the stakeholders to take part in further consultations and jeopardises the acceptance of the future law or policy. A closer monitoring of the feedback provided by the Commission services is essential to encourage stakeholders to get involved in future consultations. Additionally, it is important to regularly update the Commission websites with up-to-date information regarding the consultation and the following steps.

Example 1: No feedback was given regarding the consultation on the modernisation of the state aid law. It is however unclear why certain rules remained unchanged despite strong criticism from those involved in the implementation of state aid law.

Example 2: Consultation on Investment Protection in TTIP - the suggestions and criticisms made by the German Chamber of Commerce & Industry as regards the Comprehensive Economic and Trade (CETA) agreement were not taken up, without reasons being given.

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

While it is the responsibility of the stakeholders to assess the consultations that are important and relevant to them, EUROCHAMBRES points out the emphasis put over the past years on quantity to the detriment of the quality. The capacity of the stakeholders varies and this element needs to be taken into consideration somehow in the consultation process.

The following elements are crucial to ensure regular involvement of interested parties:

- **Targeting:** the more precisely target audiences are defined, the more efficiently consultations can be carried out.
- **Research:** the use of pre-existing results would avoid double investigation of data and ensure that national/regional conclusions, reflecting territorial specificities, are taken into account.

- **Better coordination between consultations carried out at the EU and national level:** this would avoid that stakeholders are consulted twice, maybe even at the same time by the Commission and national/regional administrations. For instance, EU evaluations should link, whenever possible, into national simplification initiatives that the majority of the member states have in place, starting with the ABR-Plus programme.
- **Time:** when there are several consultations in the same area or sector, it should be ensured that the consultation periods do not overlap and are longer.

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

A separate chapter on the limits of consultations would be unnecessary as they are to an extent evident when reading the guidelines.

Question 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?

The draft guidelines do not include much reflection on the weight of different responses. EUROCHAMBRES believes that the Commission should take into account the “business representativity” of stakeholders participating in consultations: stakeholders’ contributions must be weighted according to the number of businesses or enterprises they represent. It is not appropriate that a contribution of a single person or company is given the same weight as the contribution of an organisation representing millions of enterprises. To do so, the Commission should require each respondent to clarify its representativeness. Expertise, legitimacy and the number of companies represented should be considered in the formation of expert groups, organisation of stakeholder workshops as well as selection of stakeholders for targeted consultations.

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

The ten consultation steps enounced by the Commission cover all aspects of the consultation process and should be respected each and every time a consultation is launched. In this respect, EUROCHAMBRES encourages a stricter monitoring of the correct application of the Commission’s consultation standards (i.e. application of the minimum consultation period, clear content, etc...).

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

- **Consultation questionnaires**

The draft guidelines provide no advice on how to construct an efficient questionnaire and on the use of different types of questions. EUROCHAMBRES believes that such guidance is necessary given the uneven quality of the past questionnaires. Closed questions are sometimes used excessively with the nuance of the respondents’ views remaining hidden. Closed questions can also be an issue when questions are ambiguous and thus interpreted in different ways.

The Commission should avoid biased questions and biased multiple-choice options. Providing three response options (“yes”, “no” and “I don’t know”) is, in many cases, no sufficient. Further response options such as “It depends” or “other” should be added including a text box for an open response. Moreover a “yes-no” question should not address two or more different issues, as the response to the first part of the question can differ from the responses to other parts.

Example: Consultation on Emission Trading System (ETS) post-2020 carbon leakage provisions. Question 1: "Do you think that EU industry is able to further reduce greenhouse gas emissions towards 2020 and beyond, without reducing industrial production in the EU?" (Response options: Yes; No; I don't know). EUROCHAMBRES' answer to the first part of the question would be "yes" and to the second part "it depends" on the carbon leakage protection measures in place. It is difficult to answer such a question by simply stating "yes" or "no".

Although a certain level of standardisation is necessary, online consultations should not focus too much on multiple choice questions. The consultation on the Green Action Plan for SMEs provides an example for such an "over-standardisation".

Furthermore, the online questionnaires are not user-friendly. It is often necessary to insert bullet-points, numeration or line breaks in order to illustrate a position. The text boxes do not allow for that. Consultation questionnaires should be uploaded in word format, which is not always the case. This would make it much easier for European and national organisations to gather input from their members.

- **Stakeholder meetings, workshops, seminars**

EUROCHAMBRES welcomes that written consultations are often combined with a number of stakeholder meetings. However, these meetings should not take place too early in the process. For umbrella organisations such as EUROCHAMBRES, it usually takes several weeks to gather input from all members. It is thus difficult to present a position at an early stage of a consultation period and discuss very detailed and technical questions in those meetings. Stakeholder meetings should be organised towards the end of formal consultation periods. However, this does not of course preclude the Commission from also holding meetings with stakeholders well before the public consultation in order to shape the initial thinking on a potential policy proposal, something that EUROCHAMBRES actively encourages.

Workshops and seminars are usually disguised conferences, while they should be focused on specific issues. There is often not much discussion between the participants and the Commission. The participants provide their input and the Commission listens. Workshops and seminars should be concrete and interactive. Information on the next steps should always be provided.

- **Expert groups**

It would be useful to describe in more detail the situations in which expert groups should be used for consultation or expertise through examples for instance. In general, there is a lack of transparency as regards these groups despite the specific framework governing their creation and operation – i.e. the calls for expression of interest are not well advertised and the selection of the experts is not always clear. EUROCHAMBRES takes the view that more emphasis should be placed on transparency as regards the composition of the expert groups so as to guarantee a balanced representation of the main interested parties.

- **Stakeholder conferences**

Stakeholder conferences is a useful tool as the exchange with representatives from other member states is stimulating and fruitful. The composition of the panels should however be based on transparent criteria. It is currently unclear to what extent the panellists are representatives of various groups of stakeholders. Opinion-forming must not be influenced by the composition of the panels. EUROCHAMBRES suggests holding regularly a stakeholder conference after an important consultation and selecting the speakers according to the stakeholder groups having participated in the consultation. Similarly, more public hearings should be organised in order to stimulate the direct exchange between the stakeholders and the Commission.

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

- The use of examples (as done in the case of the consultation tools and methods fiches) throughout the document could certainly help as far as guidance is concerned as well as training of those involved in stakeholder consultations.
- Separation of opinions and facts: the guidelines make a distinction between "subjective" opinions and "objective" facts and data (draft guidelines on page 8). It seems questionable to EUROCHAMBRES whether such a sharp distinction is possible. Statements in which the needs, problems and concerns of the companies are expressed must not be considered as purely subjective opinions and put on an equal footing with expressions of opinion of individuals or particular interests. Moreover, data per se is often not sufficient to assess a situation. It also requires evaluation, explanation and integration into the context.
- The Commission should encourage the other EU institutions to adopt the present stakeholder consultation guidelines.

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EUROCHAMBRES – The Association of European Chambers of Commerce and Industry represents over 20 million enterprises in Europe – 98% of which are SMEs – through members in 43 countries and a European network of 1700 regional and local Chambers.

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