



EUROPEAN RISK FORUM - POLICY NOTE 11

CONSULTATION

2009

European Risk Forum

The European Risk Forum (ERF) is an expert-led and not-for-profit think tank with the aim of promoting high quality risk assessment and risk management decisions by the EU institutions, and raising the awareness of the risk management issues at EU-level.

In order to achieve this, the Forum applies the expertise of a well-established network of experts to 'horizontal', cross-sectoral issues. In particular, it addresses regulatory decision-making structures, tools and processes, as well as the risks and benefits of new and emerging technologies, of climate change, and of lifestyle choices.

The Forum believes that:

- High quality risk management decisions should take place within a structured framework that emphasises a rigorous and comprehensive understanding of the need for public policy action (risk assessment), and a transparent assessment of the workability, effectiveness, cost, benefits, and legitimacy of different policy options (risk management).
- Risk management decision-making processes should ensure that outcomes are capable of meeting agreed social objectives in a proportionate manner;
- Risk management decisions should minimise negative, unintended consequences (such as new, unintended risks, economic losses, reduced personal freedoms, or restrictions on consumer choice);
- The way in which risk management decisions are made should be structured, consistent, non-discriminatory, predictable, open, transparent, evidence-based, legitimate, accountable, and, over time, subject to review.

Achieving these goals is, the Forum believes, likely to require extensive use of evidence (especially science); rigorous definition of policy objectives; clear and comprehensive description and assessment of problems and their underlying causes; realistic understanding of the costs and benefits of policy options; and, extensive consultation.

The Forum works with all of the EU's institutions to promote ideas and debate. Original research is produced and is made widely available to opinion-formers and policy-makers at EU-level. As an expert group, the Forum brings together multiple sources of evidence (such as the experience of practitioners and policy-makers; non-EU good practices; and academic research) to assess issues and to identify new ideas. Indeed, direct engagement with opinion-formers and policy-makers, using an extensive programme of conferences, lunches, and roundtables, is a feature of the Forum's work.

The ERF is supported principally by the private sector. The ERF does not seek to promote any specific set of values, ideologies, or interests. Instead it considers high quality risk assessment and risk management decisions as being in the public interest. An advisory group of leading academics supports the ERF's work.

EXECUTIVE SUMMARY

Consultation is a two-way process. It involves dialogue and feedback between governments and citizens. Used well, it lies at the heart of better regulation and is an essential pre-condition for high quality regulatory decision-making. Consultation with citizens throughout the legislative cycle helps governments to enhance the quality, credibility and legitimacy of public policy.

Effective consultation requires governments to consult with all significantly affected and potentially interested parties, whether domestic or foreign. Consultation should take place at the earliest possible stage, and should be based on a transparent and, as far as possible, standardised, process. The scope of consultation processes should be clearly understood.

Since 2002, the European Commission has taken major steps to improve its consultation practices, through the implementation of minimum process standards. This has contributed to an improvement in transparency and predictability within EU-level policy-making processes. Although the Commission's minimum standards meet many of the good practices for effective consultation identified by the OECD and others, there are important gaps in a number of areas. Specific ideas for improvement include:

- Make the Commission's minimum standards for consultation legally binding;
- Widen and tailor the scope of the Commission's minimum standards to include all major technical regulatory decisions taken by the Commission and its agencies;
- Develop and publish a set of peer-reviewed guidelines for the application of the Commission's minimum standards for consultation;
- Make greater use of formal public hearings, as a mechanism for enhancing the transparency and effectiveness of consultation by all EU institutions;
- Improve compliance with minimum standards by requiring each Commissioner to report publicly on the issue each year;
- Expand the minimum standards to require consultations to take place as early in the decision-making process as possible.
- Adopt a longer minimum consultation period;
- Publish all written submissions received during consultation processes; and,
- Ensure that officials account publicly and specifically for the use they have made of inputs received through consultation processes

1. DEFINITION AND BENEFITS

Consultation is a two-way process. It involves dialogue and feedback between governments and citizens. Used well, it lies at the heart of better regulation and is an essential pre-condition for high quality regulatory decision-making. Consultation with citizens and stakeholders throughout the legislative cycle helps governments to enhance the quality, credibility and legitimacy of public policy.

Specifically, high quality consultation processes enable policy-makers and regulators to:

- Tap new sources of policy-relevant ideas, information, and resources, improving the evidential base for decisions;
- Integrate public input into policy-making, giving citizens, economic operators, and organised interests more of a stake in decision-making;
- Strengthen public trust, building confidence in the quality and openness of policy-making processes;
- Ensure greater acceptance of legislative and regulatory decisions, improving compliance and legitimacy;
- Respond to calls from citizens for greater transparency, predictability and accountability

2. SUCCESS FACTORS

Work by the OECD has identified a number of guiding principles for effective consultation¹. Governments should, the OECD recommends, consult with all significantly affected and potentially interested parties, whether domestic or foreign. Consultation should take place at the earliest possible stage, and should be based on a transparent process. Early consultation provides stakeholders with an opportunity to inform policy debates before costly mistakes are made. Finally, the OECD recommends that the scope of consultation processes should be clearly understood.

These goals are most likely to be achieved, other research suggests², when a number of conditions are met:

- There is a strong political commitment to the widespread use of consultation at all levels of government and for all policy decisions that have a significant potential impact on citizens.
- Minimum standards for consultation are firmly grounded in law or policy, and should include binding obligations for policy-makers to account for the use they make of citizen's inputs.

¹ OECD 'Guiding Principles for Regulatory Quality and Performance' (2005)

² See for example, OECD 'Engaging Citizens in Policy-making: Information, Consultation, and Public Participation' (PUMA Policy Brief Number 10, 2001); UK Government Better Regulation Task Force 'Get Connected – Effective Engagement in the EU' (2005); and Caddy J. 'Why citizens are central to good governance' (OECD Observer, November 2001)

- Initiatives to consult with citizens are co-ordinated across government to ensure policy coherence.
- Information provided by governments during the policy-making process is objective, complete, relevant, easy-to-find, and easy to understand.
- Adequate resources are made available to ensure that government officials have access to adequate skills, guidance, and training. Resources include finance, expertise, and technical guidance documents.
- Consultation processes are open, highly standardised, transparent and accountable, including the use of independent oversight bodies to monitor and enforce minimum consultation standards.
- Independent, ex post evaluation is undertaken regularly to monitor the performance of governments in conducting consultation and to adapt to new requirements and changing conditions for policy-making

3. EU INSTITUTIONS AND CONSULTATION

The European Commission has a long tradition of consultation. Whilst in the past, each Directorate-General developed its own approach, in 2002 minimum process standards for all parts of the Commission were put in place³. This is a flexible framework and implementation is monitored by the Secretariat-General.

Minimum standards for consultation form a key part of the Commission's Better Lawmaking programme, designed to improve the quality of EU legislation. The standards aim to ensure that consultation processes used by the Commission are wide, inclusive, open, accountable, effective, and coherent. To ensure this, all interested parties should be identified, given an opportunity to participate, and provided with clear, concise, and necessary information. Moreover, consultation exercises should allow a minimum period for response (eight weeks for written submissions), and should provide contributors with collective feedback.

To ensure effective implementation of the standards, the Secretariat-General seeks to build a positive consultation culture within the Commission, using networks, training and encouragement. It seeks to promote cultural change and to ensure that the standards are deeply rooted in the operating practices of all directorates. This is a 'soft' approach and reflects the Commission's decentralised regulatory tradition and culture.

Public reporting of compliance with minimum process standards is undertaken by the Secretariat-General. It is based on a Commission-wide assessment of compliance rather than assessment of the performance of individual directorates and agencies. The assessment is published in the Commission's annual Better Lawmaking report.

³ European Commission 'Towards a reinforced culture of consultation and dialogue – General Principles and Minimum Standards for Consultation of Interested Parties by the Commission' (Communication by the Commission, COM(2002) final)

Standards are, however, not legally binding, and their use is limited in scope. They cover items included in the Commission's Work and Legislative Programme, but the standards do not apply to technical regulation decision-making processes, such as comitology, used to implement risk management laws. Hence comitology decisions have not been subject, on a systematic basis, to consultation.

After 3 years of use, the Commission identified a series of shortcomings in the application of the standards, and launched a review, as part of the European Transparency Initiative. (One problem was that, in practice, some consultation periods lasted less than the minimum required, reducing the access of smaller and less well-organised groups to decision-making.) In response, a new Commission Communication was adopted in 2007. This focused on reinforcing the application of the original standards, emphasising the importance of more feedback and greater co-ordination between Commission services. A number of specific improvements were also identified, including more staff training, increased sharing of best practice within the Commission, and a new, standard template for consultation processes.

4. RECOMMENDATIONS

Since 2002, the Commission has taken major steps to improve its consultation practices, through the implementation of minimum process standards. This has contributed to an improvement in transparency within EU-level policy-making processes.

Although the Commission's minimum standards meet many of the good practices for effective consultation identified by the OECD and others, there are important gaps in a number of areas. These gaps limit the effectiveness, impact, and consistency of the implementation of the minimum standards.

There are a number of areas where improvements could be made. Specific ideas for improvement include:

- **Make the Commission's minimum standards for consultation legally binding**, creating enforceable rights for affected parties and creating powerful incentives for regulators to comply with agreed requirements.
- **Widen and tailor the scope of the Commission's minimum standards for consultation to include all major technical regulatory decisions taken by the Commission and its agencies.** Technical regulatory decisions subject to consultation should include guidelines drawn up by EU agencies; major decisions by EU agencies that embed risk management assumptions; comitology decisions that affect multiple products, substances, or processes, and comitology decisions subject to detailed and regular scrutiny by the EP.
- **Develop and publish a set of guidelines for the application of the Commission's minimum standards for consultation.** These should be produced by the Secretary-General and should be subject to external peer review.

- **Make greater use of formal public hearings, as a mechanism for enhancing the transparency and effectiveness of consultation by all EU institutions.**
- **Improve compliance with minimum standards by requiring each Commissioner to report publicly on the issue.** Moreover, the Secretariat-General should monitor, using key performance indicators, how well each directorate and agency complies with the Commission's minimum standards for consultation. The results should be reported annually in the Commission's Better Lawmaking report.
- **Undertake a formal, independent evaluation of the effectiveness and application of the Commission's minimum standards.** Results of the evaluation should be published.
- **Expand the minimum standards to require consultations to take place as early in the policy process as possible.**
- **Widen the minimum standards to require objectives for consultations to be well defined from the outset.** Moreover, the standards should make clear the respective roles of citizens (providing inputs) and governments (making decisions and protecting the public interest).
- **Adopt a longer minimum consultation period,** increasing 'buy-in' amongst stakeholders; and raising the effectiveness implementation and enforcement.
- **Require all written submissions received during consultation processes to be published.** Exceptions should be made, however, for issues of significant commercial confidentiality.
- **Ensure that officials account publicly and specifically for the use they have made of inputs received through consultation processes,** including explaining why relevant recommendations provided by citizens and stakeholders have been rejected.

2008

This policy brief was written by Richard Meads, the European Risk Forum's rapporteur, with help from members of the Forum. However, the views and opinions expressed in this paper do not necessarily state or reflect those of the European Risk Forum.