

**ETUC reply to the public consultation on the stakeholder consultation guidelines
2014**

General remarks

In order for the consultation to be a key tool for informed policy making it is of great importance that the questions asked are objective and without bias. Consultations should not be constructed in such a way as to only legitimise a policy choice which has already been decided upon before conducting the consultation process.

It is essential that the questions are open, unbiased and do not favour certain answers. One example of a biased consultation was the Top Ten consultation (http://ec.europa.eu/enterprise/policies/sme/public-consultation-new/index_en.htm), in which SMEs were encouraged to complain about the ten most burdensome legislative acts. The consultation guidelines themselves highlight the disadvantage that the design of the questionnaire may push respondents in a certain direction, and therefore some potential answers might be excluded in the first place.

If consultation is supposed to support taking decisions based on evidence, experiences and views, it is crucial to have consultation questions obliging the respondent to explain their point of view; only ticking boxes is insufficient and does not inform the legislature about the reasons and arguments behind a given answer. It is impossible to argue a certain policy choice on the basis of such consultations.

Answers to specific questions

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

Under Article 154 TFEU the Commission has the obligation to consult social partners in the field of social policy, the ETUC is of the opinion that all legislative acts having social implications fall under Article 154 TFEU.

Social partner consultations must not be replaced with public stakeholder consultations. The Commission has repeatedly neglected its duty. For example with the public consultation on Quality Framework for Traineeships and the public consultation on Green Paper: Restructuring and anticipation of change: what lessons from recent experience? This affects the quality of the proposed legislation and makes it more difficult for the Commission to successfully pass the legislation.

It is crucial that the consultation guidelines add specific “fiches” on the consultation of European social partners.

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

As pointed out under question 1 social partners are not even mentioned in the stakeholder mapping. The identification of the right target audience can be improved if Article 154 TFEU is respected.

The process of targeting the audience at the outset of public consultations, especially if it is a restricted audience, often excludes the possibility of having a holistic view of the subject under consultation. It is of great importance to identify possible opposing interests on the subject under consultation and identify the audience accordingly. This allows basing policy choices on an informed view.

The consultation guidelines mention the possibility of having stakeholder events, which can be narrowed down to one particular group. It is not clear what the aim of such an exercise could be, as the disadvantages mentioned in the guidelines themselves are substantial: “risk of privileged access and risk of complaints of those not invited; prevents some groups from participating; risk of hidden agendas of some groups or individuals passing undetected”.

Furthermore the possibility of SME Panels is mentioned. Why should a certain group get specific consultation panels, while others do not? This is a privileged access for one social partner outside Article 154 TFEU.

Another consultation tool mentioned is the use of Commission expert groups and other similar entities. The ETUC has strong objections to this tool, as those groups have a very unbalanced representation of interests by giving privileged access to corporate interests, which continue to dominate expert groups, particularly economically and politically important ones. Moreover, many experts are appointed to a group in their personal capacity implying that this would automatically mean that they are independent. But often they either have a clear conflict of interest such as ongoing financial links to an organisation directly affected by the remit of the group, or they are even paid lobbyists of an industry concerned.

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?

According to the Commission, the aim of consultation of external parties is to increase the legitimacy, and therefore the quality and credibility of Commission proposals. Legitimacy of a policy proposal can on the contrary not be increased if participation is very low or very one sided.

One reason for the problem of low participation is lack of information. Information about the Transparency Register should be enhanced and distributed to possible stakeholders. This is a simple tool for stakeholders to receive information about current consultations.

To better reach and engage underrepresented groups the language used is of importance. Consultations should to a larger extent be translated to the official languages of the Union.

A key tool to enhance the participation is to apply article 154 TFEU in accordance with the Treaty.

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

To enable stakeholders to participate, the issue of forward planning is of importance. It is useful to identify upcoming consultations within specific areas. This will enable stakeholders to identify key consultations and improve the participation of stakeholders. Transparency is the key for success in this respect.

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

In order for the Commission to make consultations documents clear and concise it is important to point out possible pitfalls and problems. Consultations which are unclear and biased undermine the credibility of the Commission.

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?

When analysing a reply to a public consultation each individual stakeholder's response should be taken into account. Nevertheless, answers from organisations representing millions of members cannot be put on equal footing with the answer of an individual or a company.

The consultation guidelines look into the question of duplicate responses: "*Duplicate responses should be identified as otherwise the data will be skewed in favour of multiple identical responses.*" This should be treated very carefully. It cannot be ignored if European citizens organise themselves in order to give the same message to the Commission. This should be seen as a strong signal and should not be counted as one voice.

The guidelines see possible lobbying campaigns (leading to multiple identical replies) as a disadvantage, but it should be taken into consideration that this is not necessarily a disadvantage but a signal which a group of people wishes to convey.

The importance of feedback could be further stressed. Better feedback will probably enhance the participation of stakeholders in consultations. The feedback should be sent directly to the participating stakeholders and not only be published online.

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 guidelines should be accompanied by practical examples of formulating questions and the specific problems with formulating questions which do not favour a certain answer.

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

All consultations should also include questions about the quality of the consultation. This would allow the Commission to improve future consultations.