

# Chapter 7 – Stakeholder consultation

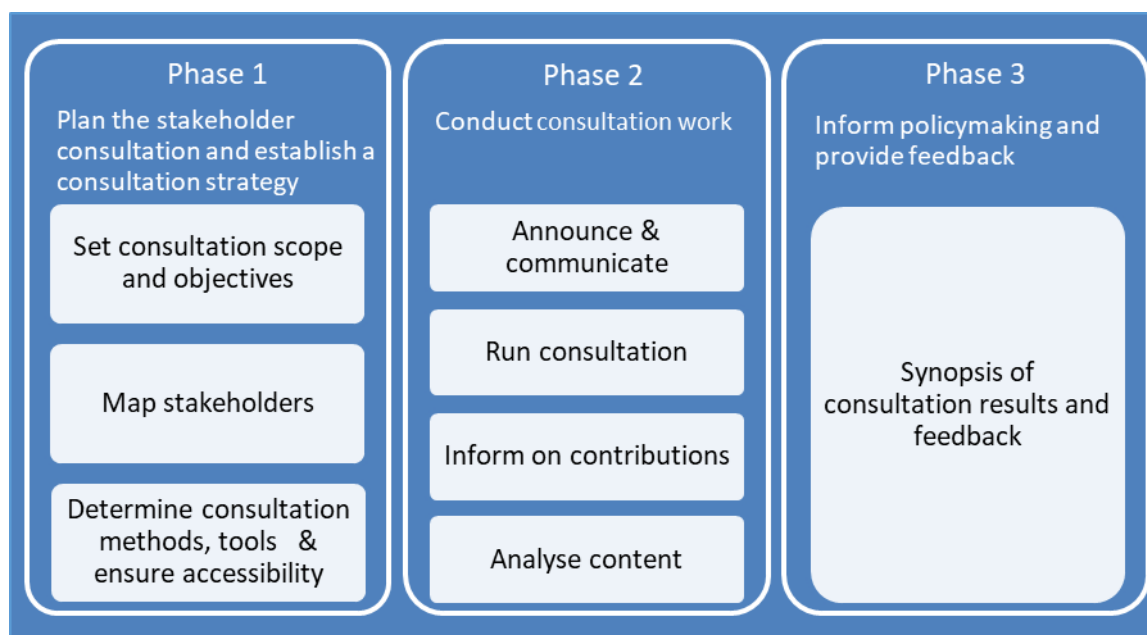
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## TOOL #51. CONSULTING STAKEHOLDERS

### 1. INTRODUCTION

Under the sixth political priority 'A new push for European democracy', the Commission is committed to giving Europeans a stronger role in decision-making. Citizens should play an active part in setting the priorities and the level of ambition. The Commission is committed to promote the participation of Europeans and civil society in the policymaking activities and to ensure the transparency and the legitimacy of the policymaking process.

Consulting stakeholders is an important instrument to collect information for evidence-based policymaking. Their views, practical experience and data will help deliver higher quality and more credible policy initiatives and evaluations.



The Commission's consultation system offers stakeholders many opportunities to contribute to policymaking such as on:

- The Commission's initiatives (policies, legislation, or evaluations of existing policies) through 'calls for evidence'<sup>724</sup>.

The 'call for evidence' is a streamlined, inclusive, and simple system which combines feedback to the 'call for evidence' document and a public consultation, where applicable. It is published on the web portal 'Have Your Say'<sup>725</sup>, the entry point for all contributions to the Commission's legislative proposals, evaluations/fitness checks, communications etc.

The 'call for evidence' document is translated in all EU languages.

- **Legislative proposals** once they have been agreed on by the Commission.

<sup>724</sup> 'Evidence' refers to multiple sources of data, information, and knowledge, including quantitative data such as statistics and measurements, qualitative data such as opinions, stakeholder input, conclusions of evaluations, as well as scientific and expert advice.

<sup>725</sup> 'Have Your Say' is the web portal through which stakeholders, including members of the public, scientific and technical experts, can contribute to initiatives as they take shape before and after adoption by the Commission.

- Draft acts that add or amend aspects of existing laws (**delegated acts**), or set out rules to make sure Member States implement EU legislation in the same way (**implementing acts**) as well as on draft measures subject to regulatory procedure with scrutiny (*RPS/PRAC measures*).
- Suggestions to simplify existing EU laws in '[Have Your Say: Simplify!](#)'

## 2. 'CALL FOR EVIDENCE'

### 2.1. Introduction

The 'call for evidence' consists of a 'call for evidence' document that describes an initiative and, where relevant, a public consultation questionnaire (for the initiatives that need one).

The 'call for evidence' is the Commission's main opportunity to explain to the public and stakeholders why a particular initiative, evaluation, or fitness check is being prepared, what it aims to achieve and to gather their views.

Stakeholders and the public are invited to:

- a) give their feedback on the 'call for evidence' document, which explains the Commission's understanding of the problem and possible solutions, and to
- b) respond to a public consultation questionnaire (for the initiatives that need one) to share their views and any relevant information they may have.

#### **Box 1. Feedback vs. consultation**

In the context of the Commission's 'better regulation' policy, collecting feedback under the feedback mechanisms differs from collecting input under consultation.

- 1) The collection of feedback offers an opportunity for stakeholders to express general views on a specific document (a 'call for evidence' document, draft secondary legislation, legislative proposals and accompanying impact assessments, established legislation), not based on specific questions or consultation background documents.
- 2) Consultation is a formal process for collecting input and views from stakeholders on new initiatives<sup>726</sup>, evaluations / fitness checks, communications, Commission documents launching a consultation process, green papers, etc. It is structured and based on specific questions and/or consultation background documents. When consulting, the Commission proactively seeks evidence (facts, views, opinions) on a specific issue.
- 3) There is a specific formal procedure regarding the EU recognised social partners' consultation under the Treaty (see Tool #10 (*Treaty-based social partner consultations and initiatives*)).

Commission services are required to launch a 'call for evidence' for its legislative proposals, evaluations, and fitness checks. Below are the four distinct types of the 'call for evidence' documents; further details on these distinct 'call for evidence' types are provided in section 2.2.

<sup>726</sup> Including revision of existing legislation

- i. 'call for evidence' for an initiative without an impact assessment
- ii. 'call for evidence' for an impact assessment
- iii. 'call for evidence' for an evaluation/fitness check
- iv. 'call for evidence' for an evaluation/impact assessment run in parallel

The templates for the different types of 'call for evidence' are available in GoPro. 'Calls for evidence' are published in all EU languages.

There are two different situations:

- A) When a public consultation is also carried out;
  - B) When a public consultation is not carried out (for initiatives that do not need one, as specified below).
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- A) When a public consultation is carried out, it is, by default, done simultaneously with the launch of the 'call for evidence'. The overall duration of publication on '[Have Your Say](#)' web portal for feedback and contributions is 12 weeks<sup>727</sup>. It is possible however to publish the public consultation at a later stage if services still want to seek feedback on the 'call for evidence' document. In this case, the 'call for evidence' document is normally published for feedback for 4 weeks. Then, a public consultation is launched, after the related 'call for evidence' document, for 12 weeks. If the public consultation is not ready when the 'call for evidence' is launched it can be uploaded later, provided that 12 weeks of public consultation are preserved.
  - B) When not associated with a public consultation, the 'call for evidence' document is open for feedback for 4 weeks. It is still translated in all EU languages and clearly explains, in the section on 'better regulation' instruments, how stakeholders' input will be sought.

All these steps are detailed below.

## 2.2. Planning a 'call for evidence'

### *Creating the Decide planning entry*

- 1) All initiatives – 'Politically sensitive and/or important', 'Non-politically sensitive and/or important' and 'Evaluations / Fitness Checks' must be encoded in Decide planning. 'Politically sensitive and/or important' initiatives and fitness checks and evaluations must be accompanied by a 'call for evidence'<sup>728</sup> unless an exception is granted<sup>729</sup>.
- 2) For reporting and publication purposes, it is important to use the right 'call for evidence' template when encoding the description of the 'call for evidence' to be published on the '[Have Your Say](#)' web portal in Decide planning. All templates are available on GoPro. The types of 'call for evidence' templates to be used are:
  - i. **'call for evidence' for an initiative (without an impact assessment):** The 'call for evidence' document for politically sensitive and/or important initiatives describes the problem to be tackled and the objectives to be achieved, explains why EU action is needed, its added value and outlines alternative policy options.

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<sup>727</sup> During the summer holidays, this period is usually extended to 14 weeks.

<sup>728</sup> For Agreements concluded by the social partners pursuant to Article 155 TFEU, no 'call for evidence' is necessary.

<sup>729</sup> See Tool #1 (*Principles, procedures and exceptions*)

- ii. **'call for evidence' for an impact assessment:** The 'call for evidence' document for politically sensitive and/or important initiatives describes the problem to be tackled and the objectives to be achieved, explains why EU action is needed and its added value, and outlines alternative policy options. The 'call for evidence' document for an impact assessment sets out in greater detail the description of the problem, issues related to subsidiarity, the policy objectives, the options, as well as the likely impacts of each option, including the identification of the relevant sustainable development goals affected by the initiative<sup>730</sup>. It is mandatory to include a 12-week internet-based public consultation<sup>731</sup>.
- iii. **'call for evidence' for an evaluation/fitness check:** The 'call for evidence' document for evaluations and fitness checks<sup>732</sup> specifies the scope of the evaluation and the issues to be examined in the context of an evaluation. For evaluations of policies and programmes of broad public interest and for fitness checks, a public consultation is highly recommended.

Upon decision of the lead DG, the ISG should be consulted whether a public consultation is needed to support an evaluation 'call for evidence'.

- iv. **'call for evidence' for an evaluation and an impact assessment run in parallel:** Usually evaluations and impact assessments are conducted sequentially so that the results of the evaluation can be fully used in the subsequent impact assessment. However, this requires appropriate advance planning and may not always be possible. When necessary, evaluations and impact assessments may be launched at the same time<sup>733</sup> and consultations are carried out as a single 'call for evidence'. A public consultation, with backward and forward-looking questions, must be associated with the 'call for evidence' for an evaluation and an impact assessment run in parallel, unless a derogation<sup>734</sup> is granted<sup>735</sup>.

### Approval

- 3) A 'call for evidence' should be finalised by the lead DG together with the Secretariat-General. The lead DG should consult with the pertinent DGs prior to submitting the documentation to the Secretariat-General. It is recommended to share the 'call for evidence' with and consult the ISG members (if an ISG is established).
- 4) All documents in a 'call for evidence' should be written in plain language – short and simple sentences with no EU jargon. The DG should ensure that the draft 'call for evidence' documents are edited by the DGT EDIT team, before being submitted to the Secretariat-General via Decide for approval<sup>736</sup>. For politically sensitive and important documents, the DGT EDIT team will edit both the description of the 'call for evidence' as well as the related public consultation.
- 5) The draft 'call for evidence' document and public consultation questionnaire must be submitted to the Secretariat-General via Decide once political validation has been granted

<sup>730</sup> See Tool #19 (*Sustainable development goals*)

<sup>731</sup> Public consultations on very technical issues of little interest for the general public can be avoided, where a targeted consultation of stakeholders is a better means of collecting the necessary evidence.

<sup>732</sup> Including 'call for evidence' for an ex-ante evaluation required by the Financial Regulation.

<sup>733</sup> See Tool #50 (*'Back-to-back' evaluations and impact assessments*)

<sup>734</sup> See Tool #1 (*Principles, procedures & exceptions*)

<sup>735</sup> Draft findings of the evaluation can be used, if available on time, for the public consultation covering the impact assessment and evaluation

<sup>736</sup> The 'call for evidence' should be sent via email to the DGT EDIT functional mailbox.

for the initiative. When submitting the documentation to the Secretariat-General, the lead DG should update the Decide entry with the pertinent information for the initiative<sup>737</sup>. Publication can be done only once per initiative and is irreversible. It is therefore compulsory, before triggering the publication of the 'call for evidence' that the appropriate political approval is given.

*Gathering feedback and views on the 'call for evidence' on the 'Have Your Say' web portal*

- 6) The description of the 'call for evidence' document is published on the '[Have Your Say](#)' web portal with the date of publication indicated. The document can be considered as reflecting the Commission's thinking at the time of publication; it does not need to be reviewed or updated.
- 7) The related public consultation questionnaire consists of a set of questions for citizens as well as a set of more specialised questions, where relevant, for experts in civil society organisations, business, public authorities, academia etc. Position papers, letters, informal text contributions and other types of contributions may also be submitted by respondents. For transparency, all received contributions will be published on the '[Have Your Say](#)' web portal.
- 8) The 'call for evidence' public consultation questionnaire must be developed using the EU Survey template and in line with the guidance provided in Tool #53 (*Conducting consultation activities*)<sup>738</sup>.
- 9) The document describing the 'call for evidence' should not exceed 3-4 DGT pages. When a public consultation is included or launched at a later stage, the public consultation questionnaire should remain at 10 DGT pages maximum. Longer questionnaires do not attract enough attention.
- 10) A 'call for evidence' document is available in all EU languages<sup>739</sup>.
- 11) The public and stakeholders can provide feedback on the 'call for evidence' document and share their views in the related public consultation directly on the '[Have Your Say](#)' web portal. This allows comments to feed usefully into the further preparatory work of the initiative, including the preparation and management of external studies and contracts<sup>740,741</sup>.
- 12) Feedback comments and suggestions to the 'call for evidence' which contradict the [rules in place for providing suitable content](#) must be removed. Such feedback may contain abusive, obscene, vulgar, slanderous, hateful and xenophobic, off-topic language, unrelated to the proposed legislation, or could be linked to illegal or pirated software etc. The lead DG must keep a detailed track of such feedback comments and suggestions as well as of the grounds on which they were removed.
- 13) Data protection requirements must be considered throughout the consultation, analysis, and publication of contribution processes. Refer to Tool #55 (*Horizontal matters –*

<sup>737</sup> Include a 'Go Pro link' with guidance to DGs: "General information" tab in Decide: Include a short title and summary in line with the guidance provided by DGT. Ensure that one of the contact names included on this page is the person responsible for the 'call for evidence'; 'Stakeholder consultation' tab in Decide: Include a link to the EU survey BRP generated public consultation".

<sup>738</sup> Further details on how to draft and develop a public consultation questionnaire are available in GoPro.

<sup>739</sup> Except for very technical initiatives and specialised questionnaires where such an effort would be disproportionate to the expected input. Translations into Irish are available as of 1 January 2022.

<sup>740</sup> See Tools #52, #53, and #55 on stakeholder consultation.

<sup>741</sup> The consultation strategy (in a succinct form, should be included in the 'call for evidence')

publication of responses, data protection, access to documents and transparency register) concerning data protection requirements.

### *Reporting back to stakeholders on feedback and views received*

- 14) A 'factual summary report' summarising the key elements of the public consultation associated with the 'call for evidence' must be published within 8 weeks<sup>742</sup> of the closure of the public consultation<sup>743</sup>, along with the contributions to the public consultation on the '[Have Your Say](#)' web portal.
- 15) DGs should ensure that the feedback comments and views received in a 'call for evidence' are considered in the process of policy preparation or evaluation work. No formal translation of the feedback comments or the contributions is required, and no specific replies are required from the Commission in response to individual feedback and contributions received.
- 16) Feedback and contributions to all consultation activities (public or targeted) should be summarised and referred to in the 'synopsis report'<sup>744</sup>. The report should also explain how and to which extent the stakeholder views have been considered in the final initiative/evaluation. For transparency reasons, the synopsis report<sup>745</sup> should also mention the number of removed feedback comments and suggestions.

### *IT issues*

Any questions or concerns related to IT issues with the launch or follow up to a 'call for evidence' should be addressed to the [EC HELPDESK IT](#) who will assign it to the appropriate IT team.

## **2.3. Considerations when drafting a 'call for evidence' document**

### *Describing the problem*

Defining the problem correctly is probably the single most important step in the preparation of a new initiative because if the problem (and its causes) is poorly understood then it will be difficult to design policies that will be effective on the ground. The tool on how to define problems should be consulted before drafting the 'call for evidence'<sup>746</sup>.

These problems should be quantified where possible and at least in the impact assessment report if it is not yet possible to provide quantitative information in the 'call for evidence'.

In the context of an evaluation briefly describe the expected role and original objectives of the EU intervention(s) being evaluated. Explain why the intervention(s) is (are) being evaluated (e.g. legal requirement). There is no need to provide a fully developed intervention logic at this point, but the non-expert reader should be able to understand in broad terms, what the initiative was expected to achieve (its policy objectives) and how this was expected to happen.

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<sup>742</sup> The 8-week timeframe is indicative for public consultations with large number of responses.

<sup>743</sup> See Tool #54 (*Analysing data and informing policymaking*) and #55 (*Horizontal matters – publication of responses, data protection, access to documents and transparency register*)

<sup>744</sup> See Tool #54 (*Analysing data and informing policymaking*)

<sup>745</sup> The synopsis report is a detailed, qualitative analysis of all consultation activities. For further information see Tool #54 (*Analysing data and informing policymaking*)

<sup>746</sup> See Tool #13 (*How to analyse problems*)



## *Objectives*

As an **impact assessment** supports the preparatory work, the 'call for evidence', including the public consultation, should cover, as appropriate, the four key elements of an impact assessment: the problem to be tackled, subsidiarity and the EU dimension to the problem, the policy options and their likely impacts. In addition, it should also address the scope for regulatory cost reduction and simplification measures not affecting the achievement of objectives as well as environmental and digital aspects when relevant.

If an **evaluation** or **fitness check** is carried out, the 'call for evidence' should contribute to the subsequent analysis of the five evaluation criteria: effectiveness, efficiency, EU added value, relevance, and coherence. Explain what the evaluation will deliver and how its results will be used. The scope should set out clearly what actions, time period and geographical area will be covered by the evaluation and what will not (with any associated justification for excluding e.g. certain articles, covering only a shorter period or not all EU Member States). The 'call for evidence' should not detail all possible EU interventions that could be covered under coherence but should identify key policy areas which will be looked at.

In case of the 'call for evidence for an evaluation and an impact assessment run in parallel'<sup>747</sup> approach (see sub section 2.4 below) the 'call for evidence' should cover to the extent possible the five evaluation criteria and the four key elements of an IA.

For **initiatives** not supported by an IA nor related to an evaluation or fitness check, the 'call for evidence' can focus on any element/issue identified in the consultation strategy on which stakeholders should be consulted.

## *'Better regulation' requirements*

The 'call for evidence' document should be explicit about the 'better regulation' steps of the initiative. The reasons why an impact assessment will not be prepared, or why an evaluation is not necessary, should be clearly explained in the 'call for evidence'. Where no additional consultation activities are planned, a justification should be provided.

## **2.4. Evaluations and impact assessments run in parallel**

Political urgencies or timing constraints may arise so that there is some degree of overlap between the evaluation and the impact assessment while carried out in a 'back-to-back' manner.

The intention to conduct an evaluation and an impact assessment run in parallel should be clearly specified when the initiative is presented for political validation. This should also indicate the expected degree of overlap of the two processes which will define the subsequent steps to be followed. In this case, a combined 'call for evidence' should be published. The appropriate template is available from the GoPro page.

See Tools #52 (*Consultation strategy*) and #53 (*Conducting consultation activities*) for further guidance on drafting and preparing a public consultation.

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<sup>747</sup> See Tool #50 (*'Back-to-back' evaluation and impact assessments*)



## 2.5. Workflow overview

### *Workflow for the 'call for evidence'*

- **Politically sensitive and/or important', 'Non-politically sensitive and/or important' and 'Evaluations/Fitness Checks' must be encoded in Decide planning.**
- When encoding the description of the 'call for evidence' to be published on the '[Have your say](#)' web portal in Decide planning, it is important to use the correct 'call for evidence' template.
- **The 'call for evidence' templates are:**
  - 'call for evidence' for an initiative (without an impact assessment)
  - 'call for evidence' for an impact assessment
  - 'call for evidence' for an evaluation/fitness check
  - 'call for evidence' for an evaluation and an impact assessment run in parallel
- A 'call for evidence' should be finalised by the lead DG together with the Secretariat-General. It is recommended to share the 'call for evidence' with and consult the ISG members (if an ISG is established).
- **All documents in a 'call for evidence' should be written in plain language – short and simple sentences with no EU jargon.**
- **By default, a 'call for evidence' also launches the related public consultation. The 'call for evidence' document is published on '[Have your say](#)' for 12 weeks<sup>748</sup> in all EU languages.** It is possible however to publish the public consultation at a later stage. In this case, the 'call for evidence' document is published for feedback for 4 weeks. Then, a public consultation is published after the related 'call for evidence' document, for 12 weeks.
- **For evaluations of policies and programmes of broad public interest and for fitness checks, a public consultation is highly recommended.**
- For very technical initiatives of little interest for the general public, a targeted consultation of stakeholders is a more suitable means of collecting the necessary evidence.
- The public and stakeholders can provide feedback on the description of the 'call for evidence' and share their views in the related public consultation directly on the '[Have your say](#)' web portal.
- **All feedback on the 'call for evidence' document is published real-time on the '[Have your say](#)' web portal. Contributions to the public consultation questionnaire are published within 8 weeks of the closure of the public consultations on the '[Have your say](#)' web portal.**
- No formal translation of the feedback is required and no specific replies are expected from the Commission in response to individual feedback/contributions.
- Feedback comments and contributions to the 'call for evidence' which contradict the

<sup>748</sup> During the summer holidays, this period is usually extended to 14 weeks.

- [rules in place for providing suitable content](#) must be removed.
- A **'factual summary report'** summarising the key elements of the public consultation associated with the 'call for evidence' must be published within 8 weeks of the closure of the public consultation<sup>749</sup>, along with the contributions to the public consultation on the '[Have your say](#)' web portal.
  - Feedback and contributions to all consultation activities (public or targeted) should be summarised and referred to in the **'synopsis report'**.

### 3. FEEDBACK ON LEGISLATIVE PROPOSALS

#### 3.1. Introduction

After a legislative proposal is adopted by the College, the public and stakeholders can provide feedback on the proposal and, where relevant, on the accompanying IA.

Feedback can be provided for a period of **eight weeks**, in parallel with the period during which national parliaments have the opportunity to provide reasoned opinions on subsidiarity grounds.

According to the Inter-institutional Agreement on Better Law-making "*the three Institutions will keep each other regularly informed throughout the legislative process about their work, about on-going negotiations among them and about any stakeholder feed-back they may receive, via appropriate procedures, including dialogue between them*". Following this agreement, the post-adoption feedback mechanism is a means for the Commission to transparently inform on the views of different stakeholders on its final proposal (and impact assessment).

Therefore, the collected feedback will be summarised by the Commission and presented to the European Parliament and Council, with the aim to feed these views into the legislative debate.

#### 3.2. Workflow overview

- Workflow for feedback on legislative proposals and accompanying impact assessments***
- After adoption by the College, the legislative proposal and, where relevant, the accompanying impact assessment is published automatically on the '[Have your say](#)' web portal.
  - Feedback can be provided **up to 8 weeks after the last language version is published.**
  - All feedback is published on the '[Have your say](#)' web portal. Respondents have the possibility to opt for publication of their contribution with their personal information or anonymous publication of their contribution.
  - No formal translation of the feedback is required, and no specific replies are expected

<sup>749</sup> See Tool #54 (*Analysing data and informing policymaking*) and Tool #55 (*Horizontal matters – publication of responses, data protection, access to documents and transparency register*)

from the Commission in response to individual feedback.

- The **responses must be summarised and sent to the European Parliament and the Council by means of a letter from the Director-General** of the Directorate-General in charge of the file. This letter should be sent as soon as possible after closure of the feedback period to inform the work of the respective Committees and Working Groups in Parliament and Council. **A copy of the letters must be sent to the office of the Secretary-General.** In case no feedback has been received, no letter should be sent to the European Parliament and Council.
- For the **European Parliament**, the letter should be addressed to the **chair(s) of the Committee(s) to which the proposal is attributed**. Normally, by the time the feedback mechanism is closed, the corresponding proposal should have been attributed to one or more Committees. If it is not yet attributed to a lead committee, the letter should be sent to the Chair of the Conference of Committee Chairs.
- For the **Council**, the letter should be addressed to the **Ambassador of the Presidency with copy to the Council Secretariat and the chair of the Council Working Group** in charge of the file. If the file is not yet attributed the letter should only be addressed to the Ambassador of the Presidency, with the Council Secretariat in copy.
- The letter should provide a **factual summary of the feedback received**, without any further qualitative assessment or reference to the Commission's viewpoint on provided views. The letter should also include a **reference to the 'Have Your Say' web portal where all feedback responses are published**. No formal interservice consultation is required, however, where relevant, **associated DGs should be consulted on the draft**.

#### 4. FEEDBACK MECHANISM FOR DRAFT DELEGATED AND IMPLEMENTING ACTS AND DRAFT MEASURES SUBJECT TO REGULATORY PROCEDURE WITH SCRUTINY (RPS/PRAC MEASURES)

##### 4.1. Introduction

Delegated act empowerments allow the Commission to adopt legal acts of general application to supplement or amend certain non-essential elements of a legislative act. Implementing act empowerments are used where uniform conditions for implementing legally binding acts are needed<sup>750</sup>.

Stakeholders have the possibility to provide feedback on the draft texts of delegated and implementing acts and regulatory procedure with scrutiny (RPS) measures, with exceptions (see below). This feedback period lasts for four weeks.

In practice, this means that DGs need to consider, already at the planning stage, whether an upcoming act qualifies for the feedback mechanism and flag this in the Decide planning module. The list of upcoming delegated and implementing acts and RPS measures that will be published for feedback is made available at regular intervals on the '[Have Your Say](#)' webpage on Commission Europa, in order to allow stakeholders to plan ahead and prepare. Also, DGs need to factor in the additional time needed for feedback and for analysis of the

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<sup>750</sup> See Tool #42 (*Delegated acts and implementing acts*) for more information

feedback received. For delegated acts, information on stakeholder input in general, including feedback, should in addition be referred to in the explanatory memorandum<sup>751</sup>.

#### 4.2. Workflow overview for draft delegated acts

##### *Workflow for feedback on draft delegated acts*

- All delegated acts need to be **included in the Decide planning module**, those that will be subject to feedback need to be flagged (Feedback Yes/No).
- The planning of upcoming delegated acts subject to feedback is published at regular intervals on the '[Have Your Say](#)' web portal of the Commission.
- The draft delegated act can only be published **after the interservice consultation** has taken place. When launching the interservice consultation DGs need to indicate whether the feedback is planned and if not, which exception applies.
- **Publication** can be done **only once per draft act and is irreversible**. It is therefore compulsory, before triggering the publication, that the **appropriate hierarchical validation** is given; the required hierarchical level for validation is decided by the Director-General of the responsible DG.
- Feedback can be provided **for a period of 4 weeks** after publication.
- All feedback is published on the '[Have Your Say](#)' web portal. Respondents have the possibility to opt for publication of their contribution with their personal information or anonymous publication of their contribution.
- No formal translation of the feedback is required, and no specific replies are expected from the Commission in response to individual feedback.
- Following the 4 weeks, the lead DG assesses the feedback received and explains how it took it into account in the explanatory memorandum accompanying the delegated act.
- Discussions in the expert group<sup>752</sup> can precede, run in parallel or come after the feedback period, depending on the nature of the act and the amount of technical expertise required for its preparation. In any case, **Member State experts shall be given the opportunity to see the last version of the draft** (i.e. the one incorporating the feedback), prior to the launch of the adoption procedure by the College

#### 4.3. Workflow overview for draft implementing acts and measures subject to regulatory procedure with scrutiny

##### *Workflow for feedback on implementing acts and regulatory procedure with scrutiny measures*

- All **implementing acts** with committee control that are due to be adopted via oral or written procedure need to be **included in the Decide planning tool**; out of those, the ones that will be subject to feedback need to be flagged (Feedback Yes/No).
- All Regulatory procedure with scrutiny (**RPS**) measures need to be **included in**

<sup>751</sup> See also Tool #40 (*Drafting the explanatory memorandum*)

<sup>752</sup> C(2016) 3301 <http://ec.europa.eu/transparency/regexpert/index.cfm>

- planning tool**; out of those, the ones that will be subject to the 4-week feedback period need to be flagged (Feedback Yes/No).
- The planning of upcoming implementing acts and RPS measures that will be subject to the feedback period is published at regular intervals on the '[Have Your Say](#)' web portal.
  - **Publication** can be done **only once per draft act and is irreversible**. It is therefore compulsory, before triggering the publication, that the **appropriate hierarchical validation** is given; the required hierarchical level for validation is decided by the Director-General of the responsible DG.
  - When launching the interservice consultation, DGs need to indicate in the cover note whether the feedback is foreseen and, if not, which exception applies.
  - Feedback can be provided **for a period of 4 weeks** after publication.
  - **All feedback is published** on '[Have Your Say](#)' web portal. Respondents have the possibility to opt for publication of their contribution with their personal information or anonymous publication of their contribution.
  - No formal translation of the feedback is required, and no specific replies are expected from the Commission in response to individual feedback.
  - Following the 4 weeks, the lead DG assesses the feedback received and explains in the committee meeting how it took it into account. This explanation is included in the **summary record of the meeting**, that is then made public in the [Comitology Register](#).
  - The publication for public feedback is done before the vote on the draft implementing acts or RPS measure in the committee.

#### 4.4. Scope of the feedback

Publication of draft acts for stakeholder feedback is a measure aimed at improving transparency of the Commission's work. **The feedback mechanism should aim to capture all such acts.** However, there will be situations where publication of the draft act would bring little added value, duplicate previous consultations or would not be possible. The reasons for not publishing are explained in the table below and these must be interpreted restrictively.

The DG makes a first assessment, at the planning and at the interservice consultation stage. This is then scrutinised during the interservice consultation. In case of doubt whether to subject a draft act to feedback, the Secretariat-General is ready to provide guidance (SG COMITOLOGIE). It is, however, the responsibility of the DGs to apply the rules on publication so as not to undermine the objective of improving transparency.

	Type	Reason	Examples
1	No (or limited) margin of discretion	Lack of policy alternatives	Acts implementing international standards into EU law without any (or limited) discretion.  Corrigenda
2	Drafts have been prepared by an EU agency or other EU body	Extensive consultation on the draft text has already taken place in a	Acts based on regulatory technical standards submitted by the European Banking Authority

	and have been subject to full public consultation before being submitted to the Commission and for which the Commission does not have the intention to significantly modify them	dedicated framework	(EBA) or by European Securities and Markets Authority (ESMA)
3	Urgency / emergency measures	Time limitations do not allow additional consultation period	Acts under the urgency procedure or other urgent acts, e.g. temporary exceptional support measures in the agricultural field, urgent/emergency measures addressing threats to public, animal or plant health.
4	Budgetary procedures and measures, programme management decisions	Lack of policy alternatives / implementation of agreements already decided on	Decisions on work programmes, selection and award decisions
5	Individual authorisation decisions / acts / decisions based on the assessment of compliance with legal requirements	Lack of significant impact, routine acts	Marketing authorisations in the pharmaceutical field or comparable authorisations, inclusions
6	Temporary risk management decisions	Lack of policy alternatives / no significant direct impacts / no deviation from the advice of risk assessors	Temporary food safety measures
7	Based on scientific opinions from an agency or scientific committee on which a public consultation has already taken place where the Commission follows the agency/scientific committee findings	Extensive consultation on the substance has already taken place in a dedicated framework	Areas in which EU decentralised agencies such as the European Food Safety Agency (EFSA) have given a scientific advice
8	Other duly justified reasons, e.g.: <ul style="list-style-type: none"> <li>Involving business secrets or security</li> </ul>	Public consultation not possible or not appropriate, e.g. due to legal restrictions or	Acts with confidential content (such as in the aviation safety or space area, Galileo) Acts relating to the common

	threats <ul style="list-style-type: none"> <li>Influence on markets</li> </ul>	practical constraints.	organisation of the markets in agricultural products, measures relating to aid to certain Member States  Authorisations to Member States relating to own resource calculations
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#### 4.5. General principles governing publication of draft acts for feedback

- Feedback is the default approach**

The default is that draft delegated and implementing acts and RPS measures are published for the 4-week feedback. Exceptions to this rule must be applied in a restrictive manner.

- Targeted or public stakeholder consultation does not replace the feedback**

Many DGs carry out extensive targeted stakeholder consultations in the preparatory phase, both for implementing and delegated acts. Such early targeted consultations do not replace the feedback, which gives the public at large the possibility to react to and comment on the actual draft act. In some cases, e.g. when an impact assessment is required, a public consultation is carried out in the preparatory stages, which, similarly to targeted consultations, does not replace the feedback mechanisms (given that the purpose of the latter is to allow stakeholders to comment on the actual draft text).

- Urgency cannot be the result of insufficient planning**

Urgency is justified in those cases in which strict deadlines are provided for in the legal basis. It cannot be used to make good for insufficient planning in the earlier stages but may be used in truly exceptional circumstances of political urgency.

- Feedback also applies to very technical acts**

The majority of delegated and implementing acts are very technical and may in reality only trigger comments from a specialised group of stakeholders. The feedback applies nevertheless and gives the public at large the possibility to react on the actual draft act.

- Feedback can also be sought if exceptions would apply**

DGs may still decide to use the feedback mechanism even though it may be justified not to publish the draft act.

- Limited margin to act**

This is meant to cover cases in which the Commission's margin is limited due to prior commitments, notably in the context of international agreements or existing legislation. Obviously, discretion in relation to delegated and implementing acts is always circumscribed and limited by the empowerment itself but this is not enough to justify relying on the exception.



- **Procedures with set deadlines**

In some cases, the basic act includes a specific procedure for the Commission with set deadlines. Here it may not be possible to add a four-week public feedback period.

- **Technical Barriers to Trade (TBT) notification**

The TBT notification does not replace the need for feedback. In practice, the two processes can go in parallel, with the 4-week feedback running together with the 60-to-90-day TBT notification.

- **Risk management measures**

Depending on the legal framework risk management measures can be **individual measures** (e.g. a decision addressed to a company allowing it to place a specific substance on the market, as is the case for example for medicinal products and GMOs) or **general measures** (e.g. an amendment of an annex or a list allowing for the use of a substance up to a certain concentration limit, e.g. cosmetics). **All individual authorisation decisions are exempted** from the feedback mechanism.

Risk management **measures of general application can also be exempted from the feedback** under exception 7, provided that they are:

- (1) based on a scientific opinion from an agency or scientific committee (not a consultant);
- (2) subject to a prior public consultation that has taken place on the scientific opinion, (not on the draft measure) and the recommendations concerning the risk management are clearly spelled out); and
- (3) drafted following the agency / scientific committee findings (i.e. the recommendation is essentially translated into legal text and all that is added is the entry into force / applicability / transitional measures for products on the market, without adding new elements).

## 5. PROVIDING INPUT ON SIMPLIFICATION THROUGH '*HAVE YOUR SAY: SIMPLIFY!*'

The Commission has set up the Fit for Future Platform (F4F)<sup>753</sup> to support the work on simplification of EU laws and reducing unnecessary costs. F4F also examines whether EU laws are future-proof.

F4F will gather evidence on topics identified in an [annual work programme](#). This includes seeking input from stakeholders and citizens on simplification possibilities through '[Have Your Say: Simplify!](#)'

The input received and any accompanying document are published on the '[Have Your Say: Simplify!](#)' webpage as well as the Fit for Future Platform's website.

The Platform will consider this input and may use it when preparing opinions to the Commissions with suggestions on how to simplify and reduce costs linked to EU laws.

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<sup>753</sup> See Tool #2 (*The regulatory fitness programme (REFIT) and the Fit for Future Platform*)

If a suggestion is not considered (for instance, because it does not concern simplification and unnecessary costs reduction, or because it has to do with national legislation rather than EU laws), an explanation will be sent to the person or organisation who submitted it.

The EU helpdesk Europe Direct provides an explanation to anyone who has submitted a suggestion that falls outside the mandate of the Platform.

## **6. FREQUENTLY ASKED QUESTIONS**

The list of FAQ is regularly updated and published on [GoPro](#).

## **7. FURTHER READING AND REFERENCES**

- [GoPro pages](#);
- Updated [Guidelines on Delegated](#) and [Implementing Acts](#).

## TOOL #52. CONSULTATION STRATEGY

Consulting stakeholders is an important means to collect information for evidence-based policymaking. Their views based on insights from practical experience as well as quantitative data at their disposal can help deliver higher quality and more credible policy initiatives, by feeding into impact assessments, evaluations, and fitness checks. Stakeholder consultation also ensures transparency and legitimacy of the policy development process and contributes to a more successful policy implementation.

For all Commission initiatives, whether or not a public consultation is carried out<sup>754</sup>, a consultation strategy is necessary, and the ‘better regulation’ procedural and methodological requirements apply.

Stand-alone public consultations, i.e. those that are not linked to the preparation of an initiative, an impact assessment, an evaluation or a fitness check, are not covered by this tool. However, if they are published on the ‘[Have Your Say](#)’ web portal, they need to follow all the relevant procedural steps covered in this tool.

### **Box 1. The consultation strategy – key elements**

- A consultation strategy is a key requirement for Commission initiatives that involve consulting stakeholders, including those accompanied by an impact assessment (IA), a major evaluation and fitness check, and should build on the overall mapping of available evidence and identified gaps.
- The consultation strategy should cover the following key elements: consultation scope and objectives, identification of stakeholders, envisaged consultation activities, their timing, language regime, and the communication plan to promote the consultation (communication actions in function of the identified consultation objectives, targeted stakeholders and consultation activities, e.g. on social media, web, face-to-face, press, publications).
- The consultation strategy should be finalised and discussed by the interservice group (ISG). If no interservice group is established, the consultation strategy should be endorsed by the Secretariat-General and, where relevant, associated DGs.
- The consultation strategy should be outlined in the ‘call for evidence’<sup>755</sup>, in particular in the section on ‘better regulation instruments – consultation strategy’, to inform all stakeholders and to invite them to provide their feedback.
- In the case of a ‘back-to-back’<sup>756</sup> approach, a single consultation strategy is sufficient.

### 1. INTRODUCTION

The purpose of the consultation strategy is to design an effective and efficient consultation approach. It should build on the overall mapping of *available* and *needed* information<sup>757</sup> for a specific initiative, major evaluation or fitness check and be fed by a thorough and structured

<sup>754</sup> See Tool #51 (*Consulting stakeholders*) for the specific cases when a public consultation needs to be carried out.

<sup>755</sup> See Tool #51 (*Consulting stakeholders*).

<sup>756</sup> See Tool #50 (*‘Back-to-back’ evaluation and impact assessment*).

<sup>757</sup> This information includes views, practical experience, and data.

desk review of relevant sources<sup>758</sup>. The consultation strategy should aim to ensure that all relevant evidence and expertise is collected, including data about costs, societal impacts, and the potential benefits of the initiative. It should explicitly cover environmental impacts (see Tool #36) and digital aspects (see Tool #28), when relevant. Evidence and expertise collected from stakeholders should complement evidence obtained from other sources (e.g. from the work of the external contractors/consultants).

Designing a consultation strategy is a key requirement for each initiative accompanied by an impact assessment, and by a major evaluation and fitness check. When requesting political validation<sup>759</sup>, the political level should be informed of which ‘better regulation’ instruments are intended to be used, including planned data collection and consultation activities.

The key elements to cover in the consultation strategy are: the consultation scope and objectives; the stakeholder groups; the envisaged consultation activities and their timing, as well as the languages in which the consultation activities will be published (language regime). The DG and SG ‘better regulation’ and communication units are available to support DGs in the drafting of the consultation strategy and outreach plans.

## 2. SETTING THE CONSULTATION SCOPE AND OBJECTIVES

### **Box 2. Consultation scope and objectives – key elements<sup>760</sup>**

- Be clear from the outset what is ‘in-scope’ and ‘off-scope’ due to legal or political limits.
- Map the available sources and information in a concrete and topic-related way. This also includes a check of past, but still valid stakeholder consultation work.
- Identify information gaps that can be filled in via consultation activities and the type of information needed for each topic: quantitative data or qualitative data.
- The consultation strategy should also include a phase where the received consultation results are assessed for their completeness. If needed, other tools can then be used to fill any remaining gaps.
- Define the concrete and topic-related scope of stakeholder involvement.
- Include sensitive, controversial, or highly uncertain issues.
- Be aware of potential blind spots that consultation work should detect.
- Specify which of the consultation activities (public consultation, consultations with social partners, experts, EU decentralised agencies and other EU bodies, lobbyists, Eurobarometer surveys, focus groups, randomly selected samples of citizens, public hearings, ‘citizen dialogues’, or others) will be used and how the selected activities will complement each other.
- Be clear on the specific purpose of public consultations, their intended use and the official EU languages into which the questionnaires and other consultation documents (e.g. background information, the ‘call for evidence’ document, reports with the results) will be translated.

<sup>758</sup> See Tool #4 (*Evidence-informed policymaking*)

<sup>759</sup> See Tool #6 (*Planning and validation of initiatives*)

<sup>760</sup> Practical examples for systematic scoping is available on [GoPro](#).

There is no single approach to consultation. In practice, a consultation strategy will include a combination of consultation methods (i.e. public/targeted) and tools (i.e. the 'call for evidence', questionnaire, document, meeting, hearing, interview, workshop).

Below are considerations to keep in mind when defining the consultation scope for major evaluations and fitness checks as well as impact assessments and other policy initiatives.

### *Evaluations and fitness checks*

Consultation activities in the context of evaluations or fitness checks should contribute to the subsequent analysis of the five evaluation criteria: effectiveness, efficiency, EU added value, relevance, and coherence. These consultation activities are usually based on consultation documents which may include background information and existing evidence related to the evaluation criteria and a questionnaire aiming to collect views, expertise, and information of stakeholders or to test/validate already existing analysis. This does not mean that each consultation activity needs to address all evaluation criteria; always consider the right scope of planned consultation activities keeping in mind stakeholders that they target. The stakeholder contributions feed into the evaluation report.

As indicated in the Tool #51 (*Consulting stakeholders*), for evaluations of policies and programmes of broad public interest and for fitness checks, a public consultation is highly recommended. Upon decision of the lead DG, the ISG should be consulted whether a public consultation is needed to support an evaluation. Targeted or specialised consultations of specific stakeholder groups or experts can be more relevant to gather specific technical input in relation to the questions on the evaluation criteria.

### *Initiatives accompanied by impact assessments*

Consultation activities in the context of an impact assessment (including public consultation) should cover its key elements to be addressed: the problem definition, the subsidiarity and the EU dimension to the problem, possible policy options and their likely impacts. Like for evaluations and fitness checks, this does not mean that each consultation activity needs to address all these aspects; always consider the right scope of planned consultation activities keeping in mind stakeholders that they target. When modifying existing interventions, the scope for efficiency improvement (regulatory cost reduction) and simplification measures not affecting the achievement of objectives should also be covered.

The consultation is usually based on consultation documents rather than the draft legal text, which comes only later in the policy preparation process. These consultation documents may include background information, existing evidence and ideas related to the key elements to be addressed in the impact assessment and a questionnaire aiming to collect views, expertise, and information of stakeholders on these key elements or to test/validate already existing analysis. The stakeholder contributions feed into the impact assessment and help shape the draft legal text.

Given the variety of Commission initiatives accompanied by an impact assessment, there is no one-size-fits-all solution on how to consult. The consultation strategy must envisage a public consultation included in the 'call for evidence'<sup>761</sup> published on '[Have Your Say](#)' web

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<sup>761</sup> In some cases, DGs might opt for publishing first the 'call for evidence' and launch the public consultation later. See Tool #51 (*Consulting stakeholders*) for further details.

portal. The public consultation should be complemented with more targeted or specialised consultations of specific stakeholder groups, experts or EU decentralised agencies and other EU bodies, which can be more relevant to gather specific technical input and expertise in relation to the impact assessment questions.

*Political and/or sensitive initiatives not accompanied by an impact assessment*

A public consultation is not always necessary for political and/or sensitive initiatives not accompanied by an impact assessment. In these cases, it is at the discretion of a DG whether a public consultation is needed. For such initiatives, the 'call for evidence' can be complemented with targeted or specialised consultations of specific stakeholder groups, experts or EU decentralised agencies and other EU bodies, which can be more relevant to gather specific technical input.

**3. STAKEHOLDER MAPPING**

**Box 3. Stakeholder mapping – key elements**

- Identify all stakeholder categories relevant for or interested in the policy area concerned.
- Sort stakeholder groups according to the level of interest, influence, and expertise on the initiative to which the consultation refers.
- Identify if there is a sectoral social dialogue or other sectoral committee that would be relevant to consult regarding the scope of the policy area concerned.
- Do not limit mapping to the 'obvious' stakeholders, identify target groups that run the risk of being excluded – underserved groups. ISG members should contribute to identify these target groups.
- Keep in mind data protection considerations when making use of existing stakeholder lists gathered during previous consultations or in the context of networks, expert groups or stakeholders listed in the Transparency Register – stakeholders should have previously indicated that they wish to be contacted again concerning a consultation with the same purpose.

**3.1. Identification of stakeholder groups**

The identification of the concrete stakeholders to be consulted can be done in an unstructured and/or structured way<sup>762</sup>. The table in box 4 gives an overview of the main stakeholder categories identified by the Commission services.

**Box 4. Stakeholder categories<sup>763</sup> (non-exhaustive list):**

<b>Citizens</b>	<ul style="list-style-type: none"> <li>• The general public: individual non-expert citizens</li> <li>• Individual expert citizens responding on their own behalf</li> </ul>
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<sup>762</sup> The [JRC Policy LAB](#) can provide support

<sup>763</sup> Organisations and businesses eligible to register in the Transparency Register that choose not to register should be considered as a separate category 'non-registered organisations/businesses' unless they are recognised as representative stakeholders via relevant Treaty provisions.

<b>Businesses</b> <sup>764</sup>	<ul style="list-style-type: none"> <li>• Large-sized enterprises</li> <li>• SMEs</li> <li>• Microenterprises</li> <li>• Self-employed</li> </ul>
<b>Social partners and representatives of professions and crafts</b>	<ul style="list-style-type: none"> <li>• Chambers of commerce</li> <li>• Employers' organisations</li> <li>• Business organisations</li> <li>• Trade union organisations</li> <li>• Representatives of professions or crafts</li> </ul>
<b>Non-governmental organisations</b>	<ul style="list-style-type: none"> <li>• Non-governmental organisations</li> <li>• Platforms</li> <li>• Networks</li> <li>• Similar associations</li> </ul>
<b>Consultancy</b>	<ul style="list-style-type: none"> <li>• Professional consultancies</li> <li>• Law firms</li> <li>• Self-employed consultants</li> </ul>
<b>Research and academia</b>	<ul style="list-style-type: none"> <li>• Think-tanks</li> <li>• Research institutions</li> <li>• Academic institutions</li> </ul>
<b>Organisations representing regional, local, and municipal authorities, other public or mixed sub-national entities</b>	<ul style="list-style-type: none"> <li>• Regional, local, or municipal structures</li> <li>• Other sub-national public authorities</li> <li>• Transnational associations and networks of public sub-national authorities</li> <li>• Other public or mixed entities, created by law whose purpose is to act in the public interest</li> </ul>
<b>National public authorities, EU decentralised agencies and other bodies (EU agencies) and international public authorities.</b>	<ul style="list-style-type: none"> <li>• National and regional/local governments</li> <li>• National and regional/local Parliaments</li> <li>• National and regional/local public authorities or agencies</li> <li>• EU institutions, EU decentralised agencies and other bodies (EU agencies)</li> <li>• <a href="#">Intergovernmental organisations</a></li> </ul>

It might be useful to start with a brainstorming: just list those people, businesses or organizations, social partners, representatives of professions and crafts who may be affected by the policy, who have influence on or an interest in its conclusion or revision. Discuss who has relevant information and expertise and who is responsible for implementation or application of a policy.

### 3.2. The 'six tests for stakeholder identification'

This stakeholder identification tool consists of six questions with a set of sub-questions, which can be used for a structured approach to identify stakeholders (see box 5).

<sup>764</sup> For the identification of the business size please consult the [User guide to SME identification](#).



It helps to list those that are impacted, needed for implementation, and having expertise and/or interest in the subject.

<b>Box 5. The six tests for stakeholder identification<sup>765</sup></b>
<b>Test 1. Who is directly impacted?</b>
<ul style="list-style-type: none"> <li>• Whose daily/weekly lives will change because of this policy?</li> <li>• Who cannot easily take steps to avoid being affected by this policy?</li> <li>• Who will have to change their behaviour because of this policy?</li> </ul>
<b>Test 2. Who is indirectly impacted?</b>
<ul style="list-style-type: none"> <li>• Whose daily lives will change because others have been directly impacted by the policy?</li> <li>• Who will gain or lose because of changes resulting from this policy?</li> </ul>
<b>Test 3. Who is potentially impacted?</b>
<ul style="list-style-type: none"> <li>• In particular circumstances, who will have a different experience as a result of this decision?</li> <li>• Are there individuals or groups who will have to adjust their behaviour if specific conditions apply?</li> </ul>
<b>Test 4. Whose help is needed to make it work?</b>
<ul style="list-style-type: none"> <li>• Are there vital individuals or groups in the delivery chain?</li> <li>• Who will have the ability to obstruct implementation unless co-operating?</li> <li>• Who understands the likely impact of this decision on other stakeholders?</li> </ul>
<b>Test 5. Who thinks they know about the subject?</b>
<ul style="list-style-type: none"> <li>• Who has studied the subject and published views on it?</li> <li>• Who has detailed know-how and expertise that those implementing the policy should also understand?</li> <li>• Are there individuals or groups that will be perceived as knowledgeable on the subject?</li> </ul>
<b>Test 6. Who will show an interest in the subject?</b>
<ul style="list-style-type: none"> <li>• Are there organisations, authorities, bodies, or individuals who think they have an interest?</li> <li>• Has anyone been campaigning about the issue?</li> <li>• Is there anyone publishing or broadcasting views on this subject?</li> </ul>

<sup>765</sup> Source: The Consultation Institute, London (Bedfordshire)

#### 4. DETERMINING THE APPROPRIATE CONSULTATION METHOD AND TOOLS

##### **Box 6. Consultation method and tools – key elements**

- The most appropriate consultation activities depend on the nature of the initiative, the scope of the consultation, the identified stakeholders, as well as on time and resources required and available.
- If you prepare an impact assessment, it is mandatory to include a 12-week internet-based public consultation in your consultation strategy as it ensures transparency and accountability and gives any stakeholder the possibility to contribute. For evaluations of policies and programmes of broad public interest and for fitness checks, a public consultation is highly recommended. The ISG, upon decision of the lead DG, should be consulted whether a public consultation needs to be conducted.
- The public consultation should be complemented, where appropriate, by other consultation activities to engage all relevant stakeholders and to target potential information gaps.
- In case of a 'back-to-back'<sup>766</sup> approach to evaluation and impact assessment, a single 12-week internet based public consultation is sufficient. It should be complemented by other targeted consultation activities.
- Plan early and consider the timing and sequencing of the proposed consultation work and operational arrangements (i.e. internal and external resources, translations<sup>767</sup>).
- All consultation work, including any activity outsourced to contractors, should follow the Commission's 'better regulation' guidelines.
- Ensure that persons with disabilities can participate in consultations on an equal basis.

Based on the scoping and stakeholder mapping for the concrete policy initiative, evaluation or fitness check the most appropriate consultation activities should be identified.

There is no one-size-fits-all solution regarding the type of consultation activities. In addition, not all identified stakeholders need to be addressed in every consultation activity, but all stakeholders should have the opportunity to contribute somehow.

However, following the scoping and stakeholder mapping steps, information should be available which allows identifying the most appropriate:

- mix of public and targeted consultations,
- sequence of consultation activities,
- degree of interactivity for the various stakeholder groups,
- level of effort needed to stimulate contribution of stakeholders; this includes considerations like language regime and accessibility participation of persons with disabilities.

If an external service provider or a facilitator<sup>768</sup> (who should comply with the minimum standards for stakeholder consultation and follow the 'better regulation' guidelines) is

<sup>766</sup> See Tool #50 on ('Back-to-back' evaluation and impact assessment)

<sup>767</sup> DGT should be contacted as early as possible so that language needs of the target audience(s), length of documents, timing and available translation resources can be properly assessed and considered.

considered for certain consultation work, it should be ensured that the contractors involved have no interest in the policy area which is subject to consultation and can operate in an independent way on behalf of the Commission.

The 'call for evidence'<sup>769</sup> and the section on 'better regulation instruments – consultation strategy' in particular, will summarise all the consultation activities to be carried out.

#### 4.1. Overview of key consultation methods – public, targeted, and exploratory consultations

The key elements of public, targeted, and exploratory consultations are described below:

- **Public consultations:** A public consultation allows the public as well as stakeholders to contribute freely. The objective is to gather input and views from a broad range of stakeholders. The most common tool used is a web-based consultation (questionnaire) published on the '[Have your say](#)' web portal<sup>770</sup>. Respondents can contribute by logging into the EU Survey questionnaire using their EU or social media login.
- **Targeted consultation:** A targeted consultation activity addresses specific well-defined stakeholder groups and invites them to participate. In a restricted targeted consultation activity, stakeholders are pre-selected and only the explicitly invited stakeholder groups or individuals can participate in the consultation activity (e.g. focus group, workshop, targeted survey). In the case of a restricted targeted consultation, the criteria used to select the stakeholders as well as information on who has been selected and to what stakeholder group they belong should be indicated on the consultation page. A DG takes full responsibility for the preparation, organisation, and follow-up of the consultation activity. This includes its announcement on the policy website, the publication of contributions or a narrative of them, and information on the way forward and next steps. Wherever applicable, targeted consultation of social partners should be defined in the consultation strategy. These consultations may take various forms such as:
  - Dedicated hearings on initiatives with significant social or employment implications
  - Consultation in the relevant Sectoral Social Dialogue Committees on specific initiatives with social and employment implications
- **Exploratory consultations:** Exploratory consultations are preliminary in nature, do not yet address the broad public, but are targeted to those that 'have the information'. They may provide insights to determine if any problem exists and could be addressed by EU action or sketch the potential scope of a genuinely new policy. It thus may contribute to the agenda setting of the Commission. They can help identifying how far the Commission should invest in further studies and consultation work on a specific topic and are carried out before validation for a concrete new initiative is sought and before stakeholder consultation linked to a concrete initiative takes place – e.g. they may feed the design of a green paper.

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<sup>768</sup> The JRC.I.2 Policy lab and the 'Community of participatory management' is available to facilitate participatory stakeholder consultation activities like workshops, conferences, policy labs.

<sup>769</sup> See Tool #51 (*Consulting stakeholders*)

<sup>770</sup> For detailed information, see Tool #51 (*Consulting stakeholders*)

Exploratory consultations need to be part of the DG work plan and validated at DG level. As with a targeted consultation, a DG takes full responsibility for the preparation, organisation, and follow-up of the consultation activity. This includes its announcement on the policy website, the publication of contributions or a narrative on them, and information on the next steps. Where relevant, associated DGs should be informed or consulted on consultation documents (background papers, questionnaires, etc.) and be kept informed on the outcome of the consultation.

Exploratory consultations do not waive formal consultation requirements in case they trigger the preparation of a concrete Commission initiative. Information on the exploratory consultation should be incorporated in the scoping part of the consultation strategy of the new initiative.

#### 4.2. Other, frequently used consultation methods

Table 1 presents other frequently used consultation methods and their use.

**Table 1: Use of consultation methods (in alphabetical order)**

Method	Used for
Conferences, public hearings & events	Gathering input from a larger number of targeted stakeholders through direct interaction.
Eurobarometer surveys	Gathering views of European citizens through representative samples of targeted populations. Can also target professional stakeholders (e.g. in-depth studies).
Expert groups of the Commission	Gathering inputs and advice from experts on a well-defined mandate.
EU decentralised agencies and other EU bodies	Gathering inputs and expertise in relation with their mandates
Focus groups	Gathering information through group discussion of citizens/stakeholders with similar features.
Interviews	Collecting information via in-depth, more or less structured conversations with individuals.
Public consultations	Gathering inputs from a broad range of stakeholders through different instruments. Mandatory for impact assessments, major evaluations, fitness checks, Commission Communications launching a consultation process and green papers.
Consultations targeting SMEs – the SME panel	Gathering information directly from SMEs via the Enterprise Europe Network, managed by DG GROW (see Tool #23).
Social partners' consultations	For social policies and labour markets, gathering joint positions by employers and workers organisations at cross-industry or sectoral level; or individual contributions by the relevant organisations (see Tool #10).
Workshops, meetings, and seminars	Collecting specific information from targeted stakeholders through direct interaction.

## TOOL #53. CONDUCTING CONSULTATION ACTIVITIES

### Box 1. Conducting and analysing consultation activities – key elements

- Consultation activities should be conducted in line with the stakeholder consultation strategy. The latter should be described in the ‘call for evidence’<sup>771</sup>.
- Ensure that consultation documents are explicit, clear, and understandable, including for non-experts. Avoid the use of technical and/or EU jargon.
- Questions in consultation questionnaires should be relevant, short and simple, and be designed in a neutral manner. The right balance between open and closed questions should be struck.
- Contributions to consultations, both public and targeted, must be published, either with personal information or anonymously, according to the option chosen by the respondent.
- Reflect well on the questionnaire design: it determines the type of analysis that can be performed on contributions.
- Proper reference needs to be made to data protection rules<sup>772</sup>.
- Organisations should be urged to register in the Transparency Register. Contributions received from organisations that choose not to register will be processed as a separate category ‘non-registered organisations/businesses’<sup>773</sup> unless they are recognised as representative stakeholders via relevant Treaty provisions<sup>774</sup>.
- Consider the target audience when deciding on type of graphs and output resulting from the analysis.
- A basic analysis should go beyond the collective results (for example, “78% of all respondents agreed that (...)”) and should consider the responses by stakeholder group, country, area of activity etc.
- A factual summary report must be published within 8 weeks after closing the public consultation. This report should remain factual and neutral and therefore not contain a qualitative interpretative assessment of contributions, which should be done in the synopsis report later in the process<sup>775</sup>.
- Consider sufficient resources for analysing the contributions received.

### 1. ANNOUNCING CONSULTATION ACTIVITIES

Consultation activities should be prepared as early as possible, and the public – especially the targeted stakeholders – should be adequately informed about the planned launch of a consultation activity:

<sup>771</sup> See Tool #51 (*Consulting stakeholders*)

<sup>772</sup> See Tool #55 (*Horizontal matters – publication of responses, data protection, access to documents and transparency register*)

<sup>773</sup> See section on stakeholder categories in Tool #52 (*Consultation strategy*)

<sup>774</sup> European Social Dialogue, Articles 154-155 TFEU.

<sup>775</sup> For further information on the factual summary and the synopsis report, see Tool #54 (*Analysing data and informing policymaking*)

- Update the information on the specific upcoming consultation activity on the policy consultation website<sup>776</sup>. Add concrete dates, agenda, and other relevant information.
- In case of a targeted consultation activity, ensure balanced stakeholder participation, use clear and transparent criteria for selecting participants and provide information about these criteria on the policy website.
- Reach out to and invite relevant stakeholder groups to participate in the most effective way. Announce the upcoming event through various communication channels (e.g. press releases, social media<sup>777</sup>), and use networks and other multipliers<sup>778</sup>.
- For both feedback mechanisms launched on the ‘[Have your say](#)’ web portal and public consultations using EU Survey and launched on the ‘[Have your say](#)’ web portal, a privacy statement is published on ‘[Have your say](#)’. However, for targeted consultation activities, a distinct privacy statement will be needed.

## 2. RUNNING A CONSULTATION ACTIVITY

When consulting stakeholders, it is essential to ensure that the documents and questionnaires used in the consultation activities are of the highest quality. They should be written in plain language – short and simple sentences with no EU jargon. Acronyms should be spelled out and explained.

There are different conceptual approaches to consulting stakeholders:

- using a **clearly defined and structured list of questions**. This can for example take the form of an (online) questionnaire or questions to be asked in person / over the phone.
- using a **more generic approaches**, either by simply requesting general views on a topic or by having stakeholders comment on a specific document such as a Commission Communication launching a consultation process or a green paper.
- **combining both approaches**, e.g. a generic green paper open for general input including embedded structured questions.

While more generic approaches most often use open questions, structured approaches (from now on ‘questionnaires’) should feature an appropriate mix of both open and closed questions.

### 2.1. Methodological and practical guidance on questionnaires

There is no ‘right’ answer on how to design a questionnaire. Whether a questionnaire is suitable – meaning likely to deliver the information needed – depends on a range of factors. After having decided to use a questionnaire, this implies choosing an appropriate structure for

<sup>776</sup> See Tool #52 (*Consultation strategy*). The ‘[Have your say](#)’ web portal features a timeline for each initiative which announces all next steps in the policymaking cycle. In parallel, DG’s websites should be updated with further information on upcoming consultation activities.

<sup>777</sup> Advert e.g. on Twitter or Facebook account of the DG; teaser question to wake interest and link directly to a consultation activity.

<sup>778</sup> Contact e.g. the 500 Europe Direct Centres in the Member States, Representations of the EU in Member States, umbrella organisations of stakeholder groups, SME-Panel or Network of local SMEs.

it, designing the questions as clearly and simply as possible, and finding the most appropriate means to run the questionnaire.

Developing a good questionnaire takes time and preparations should therefore start as early as possible. A good questionnaire increases the quality of answers and, in turn, leads to more impactful input to policymaking.

For questionnaires for public consultations, the 'better regulation' coordination desks in the Directorates-General as well as in the Secretariat-General provide methodological support and procedural information. Questionnaires are discussed and reviewed by the interservice groups set up to follow the work on new initiatives and/or evaluations / fitness checks.

### 2.1.1. When to use a questionnaire?

Given the many consultation activities they can be used for, questionnaires can almost always be helpful when consulting stakeholders. Much depends on *how* they are used: if little prior knowledge is available, a questionnaire consisting of mostly open questions can help to get a better understanding of the issue. If the existing body of knowledge is substantial, closed questions can be used to rank potential solutions and open questions can be used to collect good practices or detailed information. Furthermore, the use of a clearly structured questionnaire often makes it easier to subsequently analyse the answers received.

<b>Box 2. Strengths and limitations of questionnaires</b>	
Strengths	<ul style="list-style-type: none"> <li>• Allow collecting information in a structured manner.</li> <li>• Facilitate the analysis of responses (e. g. descriptive statistics provided by EU Survey tool).</li> <li>• May be perceived as less time consuming for respondents, resulting in a high(er) number of contributions.</li> <li>• Allow for a broad outreach to stakeholders.</li> </ul>
Limitations	<ul style="list-style-type: none"> <li>• Do not allow for more detailed input from respondents, as replies to most of the questions are pre-defined.</li> <li>• Risk of bias in the way questions are drafted and various options are presented;</li> <li>• For open questions – the number of open questions and the length of free text for replies is usually limited.</li> <li>• Depending on the design of the questionnaire, response choices are limited, and some answers might be excluded in the first place (especially if limited range of responses is offered).</li> <li>• While the results from consultations are not statistically representative, there is a risk that they are perceived as such.</li> </ul>

### 2.1.2. Questionnaire design

When designing a questionnaire, start with the **scope** of the questionnaire, as identified in the consultation strategy<sup>779</sup>. What is it that you really need to know from the public and/or the

<sup>779</sup> For further information, see Tool #52 (*Consultation strategy*)



stakeholders? Only ask those questions that are likely to provide you with the necessary information. Otherwise, try to reformulate or remove the question.

Consider how to meaningfully structure the questionnaire. Only use **sections** that are clear from the perspective of the public and/or the stakeholders. For example, a division into sub-themes is much more meaningful than a division into questions for an evaluation and questions for an impact assessment (in the case of a back-to-back consultation). Such a themed section could, for example, consist of several closed questions and an associated text box for further thoughts and explanations.

As both expert and non-expert stakeholders are targeted, it is recommended that the questionnaire is divided in two parts:

- the first part would consist of general questions that can be answered by a non-specialist public,
- whereas the second, more detailed part would be addressed predominantly to experts. However, even if parts of the questionnaire or specific questions are particularly relevant for certain stakeholder groups, other stakeholders might have relevant input. All questions in public consultations should be open to all stakeholders – also for transparency reasons.

In case an initiative is targeted particularly at national, regional, and local authorities, or has a strong impact in certain areas, some questions can directly target these authorities.

Every questionnaire should contain an **introduction** which explains – in simple terms – the background and context: What is the initiative about? What is the aim of the initiative? What is the aim and scope of this consultation? In addition, consider beginning each section with a brief explanatory paragraph, especially when the questionnaire is addressed to non-experts.

As the Commission does not accept anonymous contributions, all questionnaires need to include a **stakeholder identification section**. This section asks for relevant information about the respondent (e.g. which stakeholder category he or she belongs to; contact details for follow-up questions). As many of these questions are used invariably for all public consultation questionnaires, the Secretariat-General has prepared a template (Better Regulation Portal-BRP Public Consultation) that can be accessed directly in [EU Survey](#).

A questionnaire is usually a **combination of closed questions** (with pre-defined answers from which the respondent must choose) **and open-ended questions** (leaving the possibility to the respondent to formulate his/her own answer). A right balance between closed and open questions should be struck. This depends also on the aim of the respective questionnaire.

**Closed questions** are easier to answer and analyse. They should be mainly used to gather quantitative data. When used to collect opinions, the questions and range of answers should be carefully reflected upon to avoid bias.

**Open questions** should mainly be used to gather qualitative data. They offer stakeholders the possibility to explain their views, to add individual information/concerns, and to refer to issues not yet addressed in the questionnaire. Open questions thus help to get a broader and potentially deeper picture, to refine the substantiation of responses. They will improve the qualitative assessment of the contributions. A good compromise could consist of using open

questions when particularly interested in the views of stakeholders on a particular issue and to cap the length of replies (character limit).

<b>Box 3. Closed versus open questions</b>		
	<b>Strengths</b>	<b>Limitations</b>
Closed questions	<ul style="list-style-type: none"> <li>• Suitable to collect quantitative data</li> <li>• Quick to answer &amp; analyse</li> <li>• Data can be reported statistically, and answers to various questions cross-tabulated</li> </ul>	<ul style="list-style-type: none"> <li>• Force respondents to choose pre-set answer options (usually tick/circle answers) → can exclude useful points</li> </ul>
Open Questions	<ul style="list-style-type: none"> <li>• Suitable to collect qualitative data</li> <li>• Allow respondents to give the answers they want in the way they want (open space).</li> <li>• Useful for obtaining insights into the reasons behind the responses to closed questions</li> </ul>	<ul style="list-style-type: none"> <li>• Less suitable to collect quantitative data</li> <li>• Difficult to carry out statistical analysis.</li> <li>• Can be time consuming to code and interpret, particularly if there are many responses in numerous languages.</li> </ul>

It is usually **recommended to start a questionnaire with simpler, more general questions, aimed at a non-specialist public**. These often take the form of closed questions. They can then be followed up with more detailed or complex questions that often take the form of open questions or tables containing a series of closed questions.

It is recommended to **always offer respondents the possibility to submit separate documents** (position papers, background documents) to accompany the responses to the questionnaire or to add free text to some more complex questions. The EU Survey Better Regulation Portal (BRP) template for public consultations, includes as standard the possibility for respondents to submit additional documents.

It is also recommended to provide **an indication of the estimated time required to fill in the questionnaire**. It may also be useful to measure the actual time it takes to reply to the questionnaire. The longer it takes, the less likely are contributions from non-experts. In that case, try to reduce the number of questions, simplify the questionnaire or reserve one part of the questionnaire for experts.

It is equally recommended to **pilot** draft questionnaires, i.e. 'test' them with selected respondents. For example, asking a few colleagues to reply to the draft questionnaire and to identify problems – either technical or methodological – can help improving the quality and thus usefulness of the questionnaire.

### 2.1.3. Question design

In addition to focusing on the design of the overall questionnaire, it is important to ensure that its building blocks – the individual questions – are equally well chosen and designed.

Questions and their answer options should be **relevant, non-biased, short, and simple**. Note that short questions and answer options will also make it easier to present the results in tables and figures in the subsequent analysis.

The **language used should be adequate and adapted** to the stakeholders:

- abbreviations should not be used, and jargon should be avoided or, at least, explained
- ambiguous words or questions (e.g. double negatives) should be avoided
- language should be consistent throughout the questionnaire<sup>780</sup>.

**Questions need to be designed in a neutral manner**, meaning that they should not 'push' respondents to answer in any way. This includes using a balanced answer scale, such as a five-point scale with two positive answer options, two negative answer options and a neutral option.

**Answer scales** need not only to be balanced, but they also need to reply to the question at hand and need to ensure that respondents can always appropriately answer the question. The latter point is particularly important for mandatory questions as it might otherwise result in a misleading answer. If not all possible answer choices can be envisaged, it is recommended that respondents be given the possibility to select 'other'. In addition, it is also recommended to allow for an 'I do not know' and/or 'Not applicable' option as well as providing respondents the possibility to add further comments or explain their answers in a text box.

#### 2.1.4. *Online questionnaire tools*

While questionnaires can be used for a variety of consultation activities, many are used for public consultations. The Commission has therefore developed a free, open source and easy-to-use tool, [EU Survey](#). The functionalities of this tool are constantly being improved and an up-to-date overview is available [online](#).

EU Survey has been developed with the needs of the Commission in mind (e.g. its interface is available in all official EU languages; it fulfils high standards of data protection; it complies with European accessibility requirements<sup>781</sup> and standards). Given its technical compatibility with the europa.eu portal, Commission services must use this tool for all public consultations to be published to '[Have Your Say](#)' web portal. A specific template for the public consultations launched by the Commission has been developed to this purpose. The EU Survey team can be [contacted](#) to prevent or solve any technical problems related to the questionnaire.

## 2.2. **Methodological and practical guidance on generic consultation approaches**

### 2.2.1. *When to use generic approaches?*

In some situations, relying on questionnaires might not produce the necessary results. More general approaches can – sometimes in combination with a short list of guiding questions – be useful alternatives. Requesting general comments from stakeholders or having

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<sup>780</sup> For example, if several questions relate to 'the period 2016-2018', all questions should use the same formulation. Deviating from this formulation by referring to 'the last four years' would, at best, unnecessarily confuse the respondents and might even have a different meaning, thus resulting in different answers.

<sup>781</sup> See annex I of Directive 2019/882

stakeholders comment on a policy document such as a green paper or a communication launching a consultation process might help to avoid the bias inherent in questionnaires. They can also be useful for starting a comprehensive debate in a policy area.

### 2.2.2. *Green papers*

Green papers are documents published by the European Commission to stimulate discussion on given topics at European level. They invite all stakeholders to participate in a consultation process and debate based on the ideas and suggestions they put forward. They are published on the '[Have Your Say](#)' web portal and open for stakeholder input for at least 12 weeks. [Example: Demographic change in Europe: green paper on ageing](#)<sup>782</sup>.

### 2.2.3. *Commission communications launching a consultation process*

A communication launching a consultation process is a consultation document in the form of a communication adopted by the College. The same rules apply as to green papers. When they are published on the '[Have Your Say](#)' web portal, **these consultative communications should follow the process and rules in place applicable to public consultations.**

Examples of such communications include the [Communication from the Commission to the EP and Council concerning a consultation on fishing opportunities for 2016 under the Common Fisheries Policy](#) or the [Commission Communication to the Council, EP, CoR and EESC launching a public consultation on the EU Urban Agenda](#).

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<sup>782</sup> [https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12722-Demographic-change-in-Europe-green-paper-on-ageing/public-consultation\\_en](https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12722-Demographic-change-in-Europe-green-paper-on-ageing/public-consultation_en)

## TOOL #54. ANALYSING DATA AND INFORMING POLICYMAKING

At the end of the consultation process, it is essential to analyse all the input received from stakeholders and the public and present an overview and the conclusions of the consultation work carried out in the context of a policy initiative under preparation, an evaluation, or a fitness check.

Within 8 weeks from the closure of the public consultation, a short **factual summary report** must be published. Section 2.1 of this tool provides further guidance on this.

Furthermore, the outcome of all consultation activities must be presented in a more thorough analysis either in an annex to the impact assessment report, the evaluation report, or the fitness check, or in a self-standing **synopsis report** where none of these is prepared. Section 2.2 of this tool provides further guidance on this.

Consultation activities should also be reported in the explanatory memorandum of Commission proposals and delegated acts, where relevant.

### 1. ANALYSIS OF CONTRIBUTIONS TO CONSULTATION QUESTIONNAIRES

#### 1.1. Overview<sup>783</sup>

There is no ‘right’ answer to the question how to best analyse data input for questionnaires, which often consists of a mix between ‘open’ and ‘closed’ questions<sup>784</sup>. Rather, there is a wide range of factors to consider in order to ensure that a reasonably robust analysis can be performed within the constraints of available time and resources, and considering that the number of responses may be higher than expected.

An efficient method is to structure the data associated to the replies in a data-analysis exploitable way (e.g. involve transferring the data to a ‘master’ Excel spreadsheet containing responses to both ‘closed’ and ‘open’ text questions). With this in mind, it becomes obvious that a consultation which allows for broad ranging submissions (including position papers in different formats like Word and pdf) requires a structured process of the information received via different sources.

There are primarily two levels of consultation data/results analysis:

- **Basic analysis**, which can be undertaken by those with a reasonably proficient data literacy.
- **Advanced analysis**, which can be undertaken by those with specific skills to use specialised software aimed at assisting with the analysis of data (e.g. campaign detection<sup>785</sup>, entity recognition, computer-aided analysis of open text responses, correlations, cluster analysis etc).

In certain cases, in particular where a large number of contributions have been received, it may be desirable to outsource the analysis and reporting to a professional contractor (polling or market research company).

<sup>783</sup> For further detail see also Commission study ‘[Consultation Support and Development of Advice](#)’

<sup>784</sup> See section on ‘Methodological and practical guidance on questionnaires’ of the Tool #53 (*Conducting consultation activities*)

<sup>785</sup> Commission’s data analytics tool [CODA](#) can be used to identify potential campaigns.

Note that when reporting on the outcome of the consultation, the methodologies and tools should be explained for transparency reasons.

Contributions received represent the views of those that responded. Respondents to public consultations are self-selecting and are not a statistical sample of the EU population<sup>786</sup>.

However, in some cases, the respondents may represent a very high percentage of the population of specific stakeholder groups that are directly impacted by the subject of the consultation. For example, potential changes affecting particular industry groups may trigger responses from all the relevant manufacturers.

## 1.2. Data preparation in view of the analysis

There are three main considerations in the analysis of contributions:

- time and resources for analysis of **closed questions** depend less on the number of responses but more on the complexity of questions and possible replies;
- time and resources for analysis of **open questions** depend significantly on the number of responses and, to a lesser extent, to the diversity of languages in which they were submitted;
- time and resources to complement the analysis of the responses with other information associated to the consultation (e.g. geographical identification, personal information collected, distribution in time of responses).

### 1.2.1. Data cleansing

The collected data in contributions to the questionnaires may be incomplete, contain duplicates or errors. The need for data cleansing will arise from problems in the way that data is entered and stored.

Data cleansing is the process of preventing, identifying, addressing and, eventually, correcting these errors. Common tasks include record matching, identifying inaccuracy of data, overall quality of existing data, deduplication, and column segmentation. Such data problems can also be identified through a variety of analytical techniques. For example, with financial information, the totals for specific variables may be compared against separately published numbers believed to be reliable. Unusual amounts above or below pre-determined thresholds may also be reviewed. Quantitative data methods for, e.g. outlier detection can be used to identify and possibly get rid of likely incorrectly entered data. Textual data spellcheckers can be used to lessen the number of mistyped words, but it is harder to tell if the words themselves are correct.

The first step of the data analysis is to simply check the admissibility/eligibility of the data/contributions. For example, contributions received before the consultation started should be deleted – as these will most likely be associated with final testing and checking of the questionnaire. Contributions received a few hours after the formal closure time must be subject to a validation screening and could be accepted if there may have been valid reasons for the delay. Contributions received long after the closure of the consultation, should be subject to an assessment by the lead DG on whether they can be considered in the public consultation results (depending on the reasons of the delay), discarded or considered

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<sup>786</sup> See also section 1.3 on analysis of data.

separately in the synopsis report. Contributions received outside the dedicated timing or tool (EU Survey) subject to the assessment of the lead DG can still be considered and should be reported as such in the synopsis report.

Mischievous (or mistaken) entries can be checked and validated if considered necessary (for example, individuals claiming to represent a national government).

Duplicates are identical entries across all the questions (including, or not, name and location). Such entries may be entered deliberately or accidentally. The first step is to identify duplicates and assess their numerical relevance.

In case Excel is used, the 'remove duplicates' data tool should be used. CODA tool developed by and available to Commission services can also do this 'cleaning'.

A more advanced approach is to use statistical software (for example [STATA](#)) to readily group the duplicates allowing the user to determine quickly whether duplicate entries may be a range of common names or whether it is an obvious deliberate multiple entry.

**Box 1. Summary procedure for considering duplicates**

- Identify the level of duplicate responses (anything over 1% is probably indicative of duplicates).
- Assess if the duplicates are genuine input (for example related to a campaign promoted by an organisation) and take a business decision on how to handle duplicates (e.g. remove them, consider them as appropriate input).
- Assess the overall impact of duplicates on the outcomes of the consultation (e.g. if the duplicates count for 90% of the responses, removing them will have consequences on the interpretation of the results).
- Remove 'obvious' duplicates.
- Review and possibly remove remaining duplicates.
- If in doubt, leave duplicate entries in place (as their overall impact on the results will be low).

1.2.2. Campaigns

*Overview*

Where respondents have responded to a public consultation with the same answers this may be a coincidence, or it may be part of a co-ordinated campaign. **Campaigns are very effective to generate interest amongst stakeholders and to highlight key messages for policy makers. At the same time, they present a challenge for those analysing the responses to a public consultation.** It is therefore essential to identify campaigns, analyse them separately and present results adequately.

*Presence of campaigns*

Once a public consultation is launched, it should be continuously monitored. As such, occasional searches on the internet and social media may reveal the presence of organised



campaigns which are suggesting answers to the questionnaire.

Once the consultation has finished, identifying campaigns through this method will become less effective as the information is changed/removed or simply overtaken by new events.

#### *Identifying campaigns – basic analysis*

Where there is a limited number of responses (e.g. 100 or less) to a public consultation, it is possible to 'manually' assess them and check whether these are the **same across all closed questions or the same or almost the same across open questions**. This suggests a campaign – particularly if the respondents represent a particular sub-group of stakeholders (by activity and/or interest and/or location).

As a rule of thumb, the minimum threshold should be 10 or more identical responses (across all the closed questions) to count as a 'campaign'. On the other hand, if there were 10 identical responses from very diverse groups of respondents to a short questionnaire with a total of 10 000 responses, this would rather be a coincidence.

#### *Identifying campaigns – advanced analysis for closed questions*

Although common data tools such as Excel can be used to assist with the manual identification of campaigns, it is more efficient to use professional statistical software as offered by the Commission (advanced analytics) or available on the market (e.g. [STATA](#)<sup>787</sup>). Some tools are quite intuitive and may efficiently serve the campaign detection purposes for services. Professional software is more complex, compared to common data analytical tools as offered, by example, by Excel, and may require someone with training or prior knowledge of the programme in order to use it.

#### *Identifying campaigns – advanced analysis for open questions*

While some campaigns suggest a series of responses to closed questions, other campaigns may recommend that their supporters should adopt some standard text in their open text responses. As such, the responses may not be exactly the same, but some key messages will be repeated.

The most efficient way to identify the presence of campaigns in responses to open questions is to use software designed for qualitative data analysis such as the Commission tool 'CODA' or the commercial tool [NVivo](#), but there are also other [similar tools available](#).

#### *Identifying campaigns – advanced analysis for all questions*

Although professional software may be used to look for duplicates across all fields, this may not be efficient. For instance, analysis across closed questions may yield a campaign supported by a particular stakeholder. However, the wording used in the supporting comment boxes may vary slightly due to differences in use of capital letters, mistyping, etc. As such, if the search for campaigns would extend across both closed and open questions, many campaign responses may be missed.

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<sup>787</sup> There are various other well-known statistical packages which can provide additional functionality beyond that provided by Excel, including: R, MiniTab, SAS, SPSS, etc.

### *Segregating campaigns and reporting*

It is recommended to look for campaigns in both 'closed' and 'open' questions. Once campaigns have been identified, the associated responses should be segregated and analysed separately from the non-campaign responses.

**If campaigns are identified, they should be referred to in the factual summary report as well as in the synopsis report.** Reporting on campaigns should include the number of respondents supporting the campaign as well as a summary of their points of view – either in text or tabular form.

#### *1.2.3. Data moderation*

Feedback comments and suggestions which contradict the [rules in place for providing suitable content](#) to Commission's consultation must be removed. Feedback or suggestions containing abusive, obscene, vulgar, slanderous, hateful, and xenophobic, off-topic language, unrelated to the proposed legislation, or could be linked to illegal or pirated software etc. are considered unsuitable content and must be removed from the '[Have Your Say](#)' web portal.

In case such feedback or contribution is accompanied by a position paper, DGs could also discard the latter as being related to a contribution not observing the rules for feedback and suggestions. However, it is ultimately at the discretion of the lead DG to assess if the uploaded document is to be taken into consideration.

The lead DG must keep a detailed track of such feedback comments and suggestions as well as of the reasons based on which they were discarded. For transparency reasons, DGs must also mention the number of the responses they discarded in the factual summary report as well as in the synopsis report.

### **1.3. Analysis of data**

#### *1.3.1. Analysis of closed questions*

##### *Basic analysis*

Basic analysis of closed questions generates information such as: *'67% of respondents considered that the legislative framework was delivering benefits.'* Such information is not so helpful to policy makers unless qualified by the perspective of the stakeholder, for example: *'Although 74% of industry respondents considered that the legislative framework was delivering benefits, only 32% of citizens agreed with this view.'*; or *'Less than 30% of Danish respondents considered that the legislative framework was delivering benefits, while 67% of Estonian respondents agreed with this view.'* Even this information is of limited value if there were only 6 respondents from Estonia while there were 240 from Denmark. For an accurate analysis of contributions, the number of respondents should always be mentioned when putting forward the percentages, which used individually could be misleading.

Basic statistical terms include:

- mean: the total of a distribution of values divided by the number of values;
- median: the mid-point in a distribution of values;
- mode: the value that occurs most frequently in a distribution;

- standard deviation: a measure of dispersion around the mean;
- percentages: a rate, number, or amount in each hundred to express any proportion or share in relation to a whole:
  - when to report percentages – when values are high enough for them to mean something. It is generally bad practice to report percentages if the total number of values is lower than 100, as a percentage point bigger than > 1;
  - when reporting changes over time, the difference between percent and percentage points (p.p.):
    - *percent* is used for a measure of changes in values;
    - *percentage point* is used for a measure of change in percentages;
    - e.g.:
      - Last year, in a workforce of 300, 30 people (10%) were smokers.
      - This year, in the same workforce of 300, 15 people (5%) are smokers.
      - The number of smokers has fallen by 50% or the percentage of smokers has fallen by 5 percentage points;
  - It is **good practice to calculate and report percentages and valid percentages** (percentages of those who answered the question) so that readers can see response rate on questions.
  - **Avoid using only percentages in the presentation of results**, make always the link with the amount of responses they correspond to.
    - Example: Q: Do you receive a disability benefit of any kind? Yes: 83  
No : 256; => out of a total of 460 who returned a questionnaire (=N)

(N=460)	N	%	Valid
Yes	83	18.04	24.50
No	256	55.65	75.50
Not answered	121	26.31	-

*More advanced analysis*

Respondents to a **public consultation** are self-selected, which means that **the responses are not drawn from a representative sample**. While it is accepted that advanced statistical analysis has an important role for some types of analysis, such statistics provide limited added value to results from a self-selecting (i.e. non-randomly selected) sample and can potentially be misleading. In other words, statistics provide little additional information (of use to the policy maker) beyond that obtained by the analysis presented here.

However, this should not suggest that further analysis beyond the 'basic' analysis cannot be undertaken.

*Interpretation of data – weighting and representativeness of respondents and replies*

There is a fundamental difference between a survey, such as Eurobarometer<sup>788</sup>, and public consultation (see the previous paragraph).

Data gathered through public consultation does not provide a representative view of the EU population.

**Weighting** of data is a statistical technique of making answers count for more or less to ensure they are representative of the population. You can only use this technique if you have a good understanding of the demographic make-up of the population and returns.

It is generally very difficult to get this understanding and therefore **it is not recommended** to apply weighting techniques **for the analysis of data from public consultations**. If you need to have representative views, other tools, such as Eurobarometer, should be considered.

Note that when reporting back on the outcome of the consultation the methodologies and tools should be explained for transparency reasons, including if weighting techniques have been applied.

### Box 2. Interpretation of data – key aspects

Consultations aim to gather evidence, which is used as input for policy preparation and contributes to informed decision-making. It is therefore **essential to provide the right context of the consultation when presenting the outcome**, including information on who participated and whom respondents represent:

- when analysing<sup>789</sup> and presenting the results, **distinction should be made between the different stakeholder categories** that contributed to the consultation. A short description should be provided about the different stakeholders (background, whom they represent, etc.);
- do, preferably, the **‘stakeholder credibility test’** and consider its outcome in the analysis:
  - *longevity*: Has the stakeholder organisation been established long enough to acquire the wisdom in the policy field?
  - *expertise*: How well does it know the subject matter?
  - *representativeness*: Who exactly does it represent and how well does it do so?
  - *track record*: How useful/credible has its contribution been in the past?
  - *reputation*: How seriously do other people take this organisation?
- contributions from **citizens** should be analysed as a separate stakeholder category;
- **campaigns should be identified** and the relevant responses should be segregated, analysed and presented separately from the non-campaign responses (see para 1.2.2);
- **avoid using only percentages** when presenting results; they should be linked to the corresponding amount of responses (see para 1.3.1).

<sup>788</sup> <http://ec.europa.eu/COMMFfrontOffice/publicopinion/index.cfm>

<sup>789</sup> See also ‘better regulation’ guidelines, chapter II

### 1.3.2. Analysis of open questions

#### Overview

Textual input to open questions is considered as qualitative data, which is, compared to quantitative data, richer and more complex and therefore it cannot be treated statistically. However, this does not mean that systematic and rigorous analysis techniques cannot be applied. Qualitative data, more than quantitative, is extremely prone to bias, and systematic analysis helps prevent this. Under the approach to basic analysis, responses would most commonly be grouped into broad stakeholder groups (typically citizens/NGOs, international, national, local and/or regional authorities, industry, others). Under the simplest approach, responses from a particular group for a particular question could then be quickly read to get an overview of the two or three most recurrent points being made.

## 2. INFORMING POLICYMAKING

### 2.1. Factual summary report

For each consultation activity, it is good practice to publish factual information on the input received from stakeholders to ensure transparency. Apart from the publication of consultation documents and any written contribution, this also includes a factual summary report on the issues raised.

Following the closure of a public consultation published on the '[Have Your Say](#)' web portal, it is mandatory to publish a factual summary report within 8 weeks<sup>790</sup>. The factual summary report should not go beyond 5 DGT pages. It is published on the '[Have Your Say](#)' web portal.

The factual summary report should not be confused with the synopsis report, to be drafted at the end of *all* consultation activities (see section 2.2 below).

The purpose of factual summary report on the stakeholders' input is to give a first, succinct overview on 'what has been said'. It should be neutral, as it precedes the in-depth analysis and interpretation of consultation results. As these factual summaries may contain views and positions from stakeholders not necessarily shared by the Commission or may refer to issues on which a decision has not yet been taken, an appropriate disclaimer<sup>791</sup> should be added. Basic statistics on the number of the participants to the consultation activities, their country of origin, their stakeholder type and other relevant basic figures should be provided. The Commission services can draw the necessary statistical information from the '[Have Your Say](#)' internal interface. When referring to percentages in the presentation of results, the link with the number of responses they correspond to, out of the total of the replies, should always be made (i.e. 75% of the respondents – 150 out of 200).

The factual summary following a public consultation should contain the following main elements:

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<sup>790</sup> The 8-week timeframe is indicative for public consultations with a large number of responses.

<sup>791</sup> Disclaimer: "This document should be regarded solely as a summary of the contributions made by stakeholders [add consultation activity] on the [add title of policy initiative or evaluation or fitness check]. It cannot in any circumstances be regarded as the official position of the Commission or its services. Responses to the consultation activities cannot be considered as a representative sample of the views of the EU population."

<b>Box 3. Factual summary report (max. 5 pages)</b>	
Give a concise and balanced overview of contributions received during a specific consultation activity	
Give factual information on input received	<ul style="list-style-type: none"> <li>• Who contributed?</li> <li>• Whom are they representing? Reference should be made to EU decentralised agencies and other bodies (EU agencies), to the national Parliaments as well as to national, local and regional authorities (national, regional or local) having contributed, if any, and to the issues they put forward.</li> <li>• What aspects are addressed?</li> <li>• What are their views and concerns?</li> <li>• Which communication channels were used for contributions?</li> </ul>
Stay neutral	<ul style="list-style-type: none"> <li>• Document the input as received</li> <li>• Avoid qualifying it, taking position or giving feedback</li> </ul>
Aggregate at an appropriate level	<ul style="list-style-type: none"> <li>• Cluster information</li> </ul>
Inform on the process	<ul style="list-style-type: none"> <li>• Inform on what was done so far in terms of consultation activities and on the next steps</li> </ul>
Inform on results/data processing and security	<ul style="list-style-type: none"> <li>• Systematically check whether the contributions submitted are unique and not artificially created and report on such checks</li> <li>• Information on the number of discarded responses, if any, for not observing the rules for feedback and suggestions<sup>792</sup></li> <li>• Information on identified campaigns for public consultations (where organisations call their members to participate in the consultation with suggested responses)</li> </ul>
Add disclaimer	<ul style="list-style-type: none"> <li>• Emphasise that the contributions received cannot be regarded as the official position of the Commission and its services and thus does not bind the Commission. Contributions to public consultations cannot be considered as a representative sample of the views of the EU population.</li> </ul>

<sup>792</sup> <https://ec.europa.eu/info/law/better-regulation/rules-feedback-and-suggestions>

<p>Publish on '<a href="#">Have Your Say</a>'</p>	<ul style="list-style-type: none"> <li>• The factual summary should be published on the '<a href="#">Have Your Say</a>' web portal, within 8 weeks after the closure of the public consultation.</li> <li>• The factual summary report should not exceed 5 DGT pages.</li> </ul>
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## 2.2. Synopsis report

The synopsis report covers *all* consultation activities (the 'call for evidence', the public and targeted consultations, conferences, workshops or focus groups, etc.), ad hoc contributions directly linked to the preparation of the policy, evaluation or fitness check and information on the input received through the 'call for evidence'<sup>793</sup>.

The synopsis report is usually annexed to the impact assessment report, evaluation report, fitness check, or can be self-standing. It is published in English on the '[Have Your Say](#)' web portal once the proposal is adopted by the College or the evaluation / fitness check is finalised.

It summarises the results of all consultation activities in relation to a particular initiative and gives both a qualitative and a quantitative analytical overview of these results. Its aim is twofold:

- to inform policymaking on the outcome of all consultation activities (public, targeted, exploratory consultations, workshops, focus groups, interviews etc.), while differentiating the views of the different categories of stakeholders.
- to inform stakeholders on how their input has been considered and to explain why certain suggestions could not be taken up.

The synopsis report should be prepared as soon as possible after the last consultation activity has taken place and be discussed and endorsed by the interservice group (ISG) or if an ISG is not established, with the Secretariat-General. The report<sup>794</sup> accompanies the initiative through interservice consultation up until adoption and is published on the consultation webpage of the initiative once this has been adopted by the College or the evaluation / fitness check has been finalised.

### 2.2.1. Content of the synopsis report

Whether in a self-standing report or integrated into the impact assessment, evaluation, or fitness check, the synopsis must comprise the following general elements:

- a key outline of the consultation strategy, referring to the consultation objectives as defined therein, identified stakeholders and selected consultation methods and tools;
- documentation of each consultation activity;

<sup>793</sup> See Tool #51 (*Consulting stakeholders*)

<sup>794</sup> See paragraph 2.2.2 'Format of the synopsis report'



- information on which stakeholder groups participated, which interests they represented and whether all identified stakeholder groups have been reached;
- reference to quantitative data on the number of the participants to the consultation activities, their country of origin, their stakeholder type, the potential number of moderated contributions (not in accordance with the feedback rules<sup>795</sup>), should also be made, using some visual aids like tables and graphs;
- when referring to percentages in the presentation of results, a link with the number of responses they correspond to, out of the total of the replies, should always be made (e.g. 75% of the respondents (150 out of 200));
- short description of the methodology and tools used to process the data;
- description of the results of each consultation activity, including qualitative and interpretative analysis; if different consultation activities have been undertaken in the context of the same consultation scope, a comparison of their results including interdependencies, consistencies or contradictions in relation to contributions and main stakeholder categories;
- information on identified campaigns for public consultations (where organisations call their members to participate in the consultation with suggested responses). The information should include the share of contributions and their viewpoint in a separate paragraph. Commission services should systematically check whether the contributions submitted are unique and not artificially created and report on such checks;
- for ad hoc contributions received outside the formal consultation context, a separate paragraph should be added describing the origin of the contributions received including identification of the type of stakeholder and their represented interests;
- a paragraph summarising the feedback<sup>796</sup> received on the 'call for evidence' document describing the initiative should be included;
- explanation on how the input gathered in the context of the consultation work, including feedback received on the 'call for evidence' document has been considered in the further work on the initiative, evaluation, or fitness check. Where relevant, this should include explanation on why certain widely supported views were not or not entirely considered. Information on the number of discarded feedback comments/responses to the 'call for evidence', if any, in line with the rules for feedback and suggestions<sup>797</sup>;
- if EU decentralised agencies and other bodies (EU agencies) have contributed, it is mandatory to inform in a separate section which EU agencies or bodies contributed and what are the main issues they addressed. Particular reference should be made to whether the points raised by these EU agencies and bodies were taken on board; alternatively, the synopsis should explain why these views could not be integrated in the initiative;

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<sup>795</sup> <https://ec.europa.eu/info/law/better-regulation/rules-feedback-and-suggestions>

<sup>796</sup> See Tool #51 (Consulting stakeholders)

<sup>797</sup> <https://ec.europa.eu/info/law/better-regulation/rules-feedback-and-suggestions>

- If national Parliaments, local and regional authorities have contributed, it is also mandatory to inform in a separate section which national Parliaments and authorities contributed (Member State, chamber, level of local and regional authorities, agencies) and what are the main issues they addressed. Particular reference should be made to whether the points raised by the national Parliaments and the local and regional authorities were taken on board; alternatively, the synopsis should explain why these views could not be integrated in the initiative.

The presentation of the stakeholder views in all consultation activities (whether public and/or targeted) should be clear, complete, neutral, unbiased, and balanced across all groups. For public consultation, it should be reminded that views are not statistically representative.

### 2.2.2. *Format of the synopsis report*

The synopsis report should take the **form of a staff working document (SWD)**.

In case the report refers to an initiative accompanied by an impact assessment, an evaluation or fitness check, the report should be part of the annex of the impact assessment or evaluation report. Note that the synopsis report as part of the annex of an impact assessment or evaluation report should contain the elements set out in the former paragraph. The main part of the impact assessment or evaluation report should make extensive reference to the conclusions of the synopsis where relevant. In other cases, the synopsis report should be published as a linked SWD or integrated in a SWD (other than an impact assessment or evaluation report) accompanying the initiative.

The synopsis report should not exceed ten to fifteen pages.

#### ***Box 4. Synopsis report (max. 10-15 pages)***

Give a qualitative and quantitative analytical overview of the results of *all* consultation activities: 'call for evidence', public consultation, targeted consultations and other consultation activities.

Give brief and concise information on input received

- Who contributed?
- Whom are they representing? Reference should be made to the EU decentralised agencies and other bodies (EU agencies) as well as to national Parliaments and to national, local and regional authorities (national, regional or local) having contributed, if any, and to the issues they put forward.
- What aspects are addressed?
- What are their views and concerns?
- Which communication channels were used for contributions?

<p>Discuss the results</p>	<ul style="list-style-type: none"> <li>• Give an in-depth analysis and interpretation of the results of all consultation results (public, targeted, exploratory consultations, workshops, focus groups, interviews, 'call for evidence', feedback, etc.).</li> </ul>
<p>Aggregate at an appropriate level</p>	<ul style="list-style-type: none"> <li>• Cluster information.</li> </ul>
<p>Inform on the process</p>	<ul style="list-style-type: none"> <li>• Inform on what was done in terms of consultation activities (public, targeted, exploratory consultations, workshops, focus groups, interviews, 'call for evidence', feedback, etc.).</li> </ul>
<p>Inform on data processing and security</p>	<ul style="list-style-type: none"> <li>• Systematically check whether the contributions submitted are unique and not artificially created and report on such checks.</li> <li>• Information on the number of discarded responses, if any, for not observing the rules for feedback and suggestions<sup>798</sup>.</li> <li>• Information on identified campaigns for public consultations (where organisations call their members to participate in the consultation with suggested responses).</li> </ul>
<p>Add disclaimer</p>	<ul style="list-style-type: none"> <li>• Emphasise that the contributions received in the context of the public consultation published on the '<a href="#">Have Your Say</a>' web portal cannot be regarded as the official position of the Commission and its services and thus does not bind the Commission nor that the contributions can be considered as a representative sample of the EU population.</li> </ul>
<p>Publish on '<a href="#">Have Your Say</a>' web portal</p>	<ul style="list-style-type: none"> <li>• The synopsis report should not exceed 10 to 15 pages.</li> <li>• It should be endorsed by the ISG (where applicable) and published on the '<a href="#">Have Your Say</a>', once the initiative is adopted by the College or once the evaluation / fitness check is finalised. It can be published as an annex to the impact assessment or to the evaluation report. If self-standing, the synopsis report takes the form of a staff working document.</li> <li>• The synopsis report is published only in English.</li> </ul>

<sup>798</sup> <https://ec.europa.eu/info/law/better-regulation/rules-feedback-and-suggestions>

### **3. EXPLANATORY MEMORANDUM**

For legislative proposals, the explanatory memorandum should explain how far the main contributions have been considered in the draft policy initiative, or why they could not (all) be considered.

- Explain the overall consultation strategy and add reference to the factual summary and synopsis report (if relevant).
- Highlight the link between respondents'/participants' input and the impact assessment or any other element that justifies and explains the options proposed by the Commission.
- Report why certain options were discarded (in particular when those were widely supported by respondents) and be transparent about minority and dissenting views.

## **TOOL #55. HORIZONTAL MATTERS – PUBLICATION OF RESPONSES, DATA PROTECTION, ACCESS TO DOCUMENTS AND TRANSPARENCY REGISTER**

### **1. INTRODUCTION**

Several cross-cutting elements are fundamental to consulting with stakeholders in a careful and transparent manner. These horizontal matters, including the publication of responses, data protection, access to documents and transparency register, are described in further detail below.

### **2. PUBLICATION OF RESPONSES**

The Commission is committed to being open and transparent throughout the policy cycle, including in the way it consults with its stakeholders. Therefore, stakeholders' input<sup>799</sup> submitted in the context of the various consultation and feedback mechanisms must be published on the relevant webpage of the '[Have Your Say](#)' web portal<sup>800</sup>.

Respondents are informed in the [privacy statement](#) published on the '[Have Your Say](#)' web portal that:

- Responses to and contributions received for a consultation and/or feedback mechanism will be published on the internet. For transparency, the type of respondent, country of origin, organisation name and size, and its transparency register number, are also always published. The publication of further information depends on the respondent's privacy choice;
- Documents submitted in the context of a consultation or feedback mechanism, such as position papers or background documents, will be published as received. If a respondent chooses anonymous publication, they should not include personal data within their response to a public consultation or contribution to a feedback mechanism, including within documents that they may submit, as they will be published as received;
- Regardless of whether a respondent chooses to have their personal data published or not, to avoid misuse they are required to identify themselves and, if applicable the organisation on whose behalf they are responding. Anonymous contributions to consultations and feedback mechanisms are not accepted. However, it is at the discretion of a DG whether a contribution made by dubious respondents, is accepted or not.

In the framework of a 'call for evidence', feedback is published immediately on the webpage of the initiative on the '[Have Your Say](#)' web portal<sup>801</sup>.

As long as the feedback period is open, a respondent may delete their feedback by logging in to the feedback mechanism on the '[Have Your Say](#)' portal. Once the feedback period is closed, it is not possible to remove contributions. However, a respondent may choose to have their personal details removed and their published contribution made anonymous by logging

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<sup>799</sup> Contributions include responses to questionnaires, position papers, background material, etc.

<sup>800</sup> See Tool #52 (*Consultation strategy*).

<sup>801</sup> See Tool #54 (*Analysing data and informing policymaking*), section 1.2.1 on Data cleansing and section 1.2.4 on Data moderation

in to the feedback mechanism on the '[Have Your Say](#)' portal and amending their selected privacy settings. By selecting to remain anonymous, it means that the respondent withdraws their consent to the publication of their personal data as indicated in the privacy option that they originally selected. The withdrawal of the respondent's consent does not affect the lawfulness of the processing carried out before they withdrew their consent.

Contributions to the public consultation are published collectively and only after the consultation has closed. They are published on the webpage of the initiative within the '[Have Your Say](#)' web portal. While a public consultation is still open a respondent may contact the 'operational controller'<sup>802</sup> to request the deletion of their contribution.

Contributions to a public consultation are published by the pertinent DG through the internal tool known as '[the BRP backend](#)'.

### 3. DATA PROTECTION

The internal data protection [Regulation \(EU\) 2018/1725](#) governs the protection of personal data collected when the Commission gathers feedback on its initiatives or launches a public consultation. Personal data can only be gathered under strict conditions and for a legitimate purpose. People or organisations, including EU institutions, which collect and process personal data must protect them from misuse, ensure the security of processing, and must respect certain rights of the data subjects, guaranteed by EU law.

#### 3.1. Harmonised approach to data protection

To limit the administrative burden of Commission services having to provide individual records of processing and/or privacy notice for each feedback opportunity and consultation, the Data Protection Officer of the Commission agreed with a harmonised approach for the following stakeholder engagement tools:

- feedback opportunities on 'call for evidence' documents, delegated and implementing acts, and legislative proposals on the '[Have Your Say](#)' web portal;
- public consultations launched using EU Survey on the '[Have Your Say](#)' web portal.

A corporate centralised data protection record and privacy statement for all public consultations and feedback mechanisms, which is published on the '[Have Your Say](#)' web portal, were approved by the [Commission Data Protection officer \(DPO\)](#) in August 2020. The corporate privacy statement is published on the '[Have Your Say](#)' web portal. The related data protection record is published in the Register of the Data Protection Officer (DPO). Therefore, DGs do not need to draft a specific privacy statement for a public consultation published on the '[Have Your Say](#)' web portal as long as their processing observes the provisions of the record of processing and privacy statement and the questionnaire of the consultation provides, in a clear and transparent manner, the contact of the organisational entity responsible for the specific consultation or feedback mechanism.

The unit responsible for 'evaluation and impact assessment' in the Commission's Secretariat-General, as well as the Directorate-General / unit launching the feedback mechanism or public consultation are considered respectively as '*horizontal controller*' and '*operational*

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<sup>802</sup> See 3a below for further details

*controller*' on behalf of the European Commission in the [data protection record for feedback mechanisms and public consultations](#). Operational controllers are responsible and accountable for the processing of personal data conducted.

#### *Operational (or de facto) controller*

The DG/unit launching a feedback mechanism or public consultation, acting as 'operational (or de facto) controller', is responsible for:

- ensuring that their public consultation respects the rules and conditions set out in the record of processing and of Regulation 2018/1725;
- ensuring that their entity and e-mail contact are visible on the consultation webpage on '[Have Your Say](#)'. This allows respondents to contact the unit directly in case of queries or data subject requests.
- handling requests from data subjects (inform the 'horizontal controller');
- managing personal data breaches, including mitigating measures, risk assessment, documentation of breach, and, if necessary, EDPS notification and communication with data subjects (inform the 'horizontal controller' of the incident and consult the 'horizontal controller' on the risk assessment).

The 'operational controller' may decide to involve an external company to manage the feedback mechanism and/or public consultation as well as treat and analyse the contributions received. In case that external company conducts any processing of personal data for the purpose of public consultation or other feedback mechanism it is a 'processor' pursuant to Article 3(12) of Regulation 2018/1725. Therefore, it is the responsibility of the DG/unit launching the feedback mechanism or public consultation to ensure compliance with Article 29 of Regulation 2018/1725, including to ensure that appropriate data protection clauses are in place.

#### *Horizontal controller*

The unit responsible for 'evaluation and impact assessment' in the Commission's Secretariat-General, acting on behalf of the Secretariat-General as 'horizontal controller' is responsible to:

- provide a data protection record of processing operations on personal data and a corporate privacy statement;
- provide corporate oversight of data protection. The 'horizontal controller' needs to be consulted on risk assessments and informed of data subject requests. The 'horizontal controller' can ask the 'operational controller' to seek the opinion of the DPO;
- manage the 'SG consultation data controller' functional mailbox and forward any incoming data subject requests to the operational controller concerned;
- provide data protection training and guidance to the 'better regulation' network.

Further information and guidance concerning the role and responsibilities of the unit launching a feedback mechanism or public consultation are included in GoPro.



### *Targeted consultations*

Targeted consultation activities – including surveys, interviews and focus groups – seek the views of (well-defined) stakeholders and individuals concerned by the specific consultation subject. For targeted consultations and/or exploratory consultations – not linked to any initiative or evaluation – a data processing 'record' must be drafted by each unit/DG, according to their requirements.

The responsibility for the processing of personal data collected in the context of a targeted consultation remains exclusively with the unit that conducts the targeted consultation. This unit oversees the targeted consultation; the SG has no corporate role under this processing operation. The unit carrying out the targeted consultation acts on behalf of their Directorate-General or service that is ultimately responsible and accountable for the processing of personal data conducted (the so-called 'delegated controller' as defined in the Commission's [data protection implementing rules](#)).

The unit carrying out the targeted consultation:

- assumes all obligations of a data controller of Regulation 2018/1725 (with the exception of record keeping) (on behalf of their Directorate-General or service);
- conducts a risk assessment before starting the collection of personal data (go ahead if no high risks for the data subjects are identified or conduct a DPIA if necessary) and [documents the risk assessment](#);
- ensures that special categories of personal data can only be processed (Art. 10(1)) if one of the conditions of Art. 10(2) is met; (see point b below);
- drafts a specific privacy statement and informs data subjects thereof at the outset of the processing of their data;
- is responsible for lawfully using and recording consent as a legal basis / condition for engaging a processor (Art. 29), for handling requests from data subjects, for managing personal data breaches, liaising with the DPO, etc.

A targeted consultation privacy statement template has been approved by the DPO and is available from the DG data protection coordinator and on GoPro.

### **3.2. Special categories of personal data**

The corporate privacy statement published on '[Have Your Say](#)' does not cover 'special categories of personal data'. These categories are:

- racial or ethnic origin;
- political opinions;
- religious or philosophical beliefs;
- trade union membership;
- genetic data;
- biometric data for the purpose of uniquely identifying a natural person;
- data concerning health or data concerning a natural person's sex life or sexual orientation.

If a public consultation questionnaire includes questions on these special categories and the responses to these questions will refer to (the life of) an identified (for example, the respondent) or identifiable individual, the questions must not be included in the

questionnaire. Instead, neutral questions whose answers will not lead to the identification of an individual, or a targeted consultation based on a specific risk assessment should be used.

Contact your DG data protection coordinator if you plan to ask questions related to special categories of personal data.

### 3.3. Data retention and archiving

Personal data, received in the context of a public consultation and/or feedback mechanism, is kept only for the time necessary to fulfil the purpose of collection or further processing of the information, namely 5 years after the closure of the administrative file to which the consultation or feedback mechanism relates. A file is closed at the latest once there has been a final outcome in relation to the initiative to which the consultation or feedback mechanism contributed.

In accordance with the common Commission-level retention list, after the administrative retention period mentioned above, files (and the personal data contained in them) will be transferred to the Historical Archives of the Commission for historical and archiving purposes<sup>803</sup>.

The common Commission-level retention list is a regulatory document in the form of a retention schedule that establishes the retention periods and transfers to the Historical Archives for different types of Commission files. That list was notified to the European Data Protection Supervisor.

For further information on data retention see GoPro.

## 4. ACCESS TO PERSONAL DATA

Respondents to a public consultation or feedback mechanism have the right to request access to or edit the personal data they submitted by emailing the [functional mailbox](#) managed by unit SG.A.2. Respondents can equally contact the unit responsible for the public consultation or feedback mechanism who shall liaise with the horizontal controller, if necessary, for the handling of the request.

## 5. ACCESS TO DOCUMENTS

Contributions, including personal data provided, may be subject to a request for access to documents under Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents ('[Regulation 1049/2001](#)'). Regulation 1049/2001 provides any EU citizen and any natural or legal person residing or having its registered office in a Member State the right of access to documents of the EU institutions, subject to principles, conditions and limits defined in the Regulation. If access is requested, the request is subject to a case-by-case analysis based on Regulation 1049/2001 in order to assess the applicability of the exceptions defined in its Article 4, considering the legitimate interests and the justifications of non-disclosure in case provided by the author of the contribution. Where disclosure of the contribution, or parts thereof, would undermine the

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<sup>803</sup> For further information regarding the processing operation concerning the Historical Archives, please see record of processing 'Management and long-term preservation of the European Commission's Archives', registered under reference number [DPR-EC-00837](#).

protection of commercial interests of a natural or legal person, the institutions shall refuse access in accordance with Article 4(2), first indent of Regulation 1049/2001.

## 6. TRANSPARENCY REGISTER

Organisations and self-employed consultants<sup>804</sup> that wish to participate in consultation activities are asked to provide the Commission and the public at large with information about which interests they represent when seeking to influence EU legislation and policy-making (representativeness is not a factor for all interlocutors, e.g. consultancies, companies, academic institutions), by joining the [Transparency Register](#). Contributions from interlocutors that choose not to register will be treated as a separate category 'non-registered organisations' unless they are recognised as representative stakeholders via relevant Treaty provisions<sup>805</sup>.

Publishing a public consultation on the '[Have Your Say](#)' web portal or a 'call for evidence' document on the [dedicated webpage](#) will trigger an e-mail alert to registered organisations.

## 7. ACCESSIBILITY OF CONSULTATIONS AND THE LANGUAGE REGIME

Consultations should be planned and conducted in such a way that all stakeholder groups can participate easily and effectively. A key aspect for accessibility relates to the language regime of consultation activities. **It is essential to ensure adequate language coverage of the consultation activity.** The table below provides information on linguistic accessibility, accessibility of activities and consultation channels, and timing and consultation periods.

<b>Box 1. Accessibility of consultations</b>	
<b>1. Linguistic accessibility</b>	
<b>Language regime</b>	<ul style="list-style-type: none"> <li>• In general, ensure that <b>consultation documents are translated into as many languages as feasible and appropriate in accordance with the scope and outreach of a consultation.</b> While highly technical consultations could be conducted in English or a few languages only, consultations reaching out to non-expert stakeholders or citizens in general should be translated into all EU languages. Equally, ensure that consultation events are interpreted, whenever necessary.</li> <li>• The 'call for evidence' document is published in all EU languages.</li> <li>• The <b>language regime</b> for consultation activities <b>should be explained and justified in the 'call for evidence'</b>, to be endorsed by the interservice group (ISG) or Secretariat-General (SG) and interested DGs in case no ISG is established. The language regime should <b>be referred to in the consultation section of the 'call for evidence'</b>. Whenever the lead DG deems the topic of the initiative might raise a <b>high public interest</b>, the questionnaire of the consultation should be translated into all EU official languages.</li> <li>• <b>Consultation documents related to public consultations for</b></li> </ul>

<sup>804</sup> For the purposes of the Transparency Register 'businesses' are organisations broadly speaking, whereas self-employed individuals are mentioned separately.

<sup>805</sup> For example, European Social Dialogue, Art. 154-155 TFEU

	<p><b>initiatives included in the Commission Work Programme – Annex I need to be translated into all official EU languages</b><sup>806</sup>. The consultation web page on the '<a href="#">Have Your Say</a>' web portal is translated into all official EU languages.</p> <ul style="list-style-type: none"> <li>• The questionnaires and any accompanying documents of <b>all other public consultations</b> need to be made available in at least <b>English, French, and German</b>. Whenever the lead DG deems the topic of the initiative might raise a <b>high public interest</b>, the questionnaire of the consultation should be made available in all EU languages.</li> <li>• Exceptions to language requirements, to be duly justified, should be requested to the Secretariat-General<sup>807</sup>.</li> <li>• <b>All language versions of the consultation documents should be available at the launch of the consultation</b>. If that is <u>exceptionally</u> not possible, stakeholders should be informed when the missing translations will be made available.</li> <li>• The Secretariat-General can help in identifying the appropriate language coverage. The Commission translation service (DGT) can advise on timelines for translation of consultation documents. Please <a href="#">contact DGT</a> as early as possible when planning a consultation so that length of documents, timing and available translation resources can be properly assessed and considered<sup>808</sup>.</li> <li>• Stakeholders should be informed that they <b>can always reply to a consultation in any official EU language</b> regardless of the translation of the consultation documents.</li> </ul>
<p><b>Stakeholder-friendly language</b></p>	<ul style="list-style-type: none"> <li>• Communicate in a manner that is easily understood by diverse audiences including persons of limited linguistic proficiency.</li> <li>• Ensure that consultation documents ('call for evidence', questionnaire, background documents) are explicit, clear, and understandable. It is recommended to have them proof-read by non-experts.</li> <li>• Avoid bureaucratic or too technical language. Abbreviations should be avoided too. Necessary specialist terms should be explained.</li> <li>• Make use of plain language guidance when drafting consultation documents. The Commission has issued a guide called '<a href="#">How to write clearly</a>',<sup>809</sup> available in all official EU languages, and also offers trainings on clear writing. The European Court of Auditors' list of '<a href="#">Misused English words and Expressions in EU publications</a>' can also</li> </ul>

<sup>806</sup> Until the capacity to translate into Irish has been fully built up, translation of public consultations into Irish should be assessed on a case-by-case basis.

<sup>807</sup> In accordance with the procedure for exceptions set out in Tool #1 (*Principles, procedures & exceptions*)

<sup>808</sup> DGT can provide translations of consultation documents of up to 10 pages into all requested EU official languages. Details and information about other services offered by DGT in the context of translations of consultations is provided in the internal note Ares (2013)2752242. More info is available on [GoPro](#).

<sup>809</sup> DGT-EDIT can help to transform technical language to plain and accessible language.

	<p>help improve clarity.</p> <ul style="list-style-type: none"> <li>• Involve your DG's communication units in the questionnaire creation design process to ensure readability and accessibility.</li> <li>• Consider modular structure, opened for contributors with different level of expertise.</li> </ul>
<p><b>Participation of persons with disabilities</b></p>	<ul style="list-style-type: none"> <li>• Ensure that persons with disabilities can participate in 'calls for evidence' on an equal basis with others and in line with the <a href="#">UN Convention on the Rights of Persons with Disabilities</a> and the <a href="#">European Disability Strategy 2010-2020</a>.</li> <li>• Use a variety of communication means and accessible formats. The Commission has, for example, already used a sign-language video for a consultation and made simplified, easy-to-read questionnaires available.</li> <li>• Ensure that the consultation page complies with the international <a href="#">Web content accessibility guidelines</a> (WCAG) (version 2.0), level AA. This means that texts, images, forms, sounds, etc. should be accessible and understandable by as many people as possible without discrimination.</li> <li>• As of May 2016, the EU Survey tool allows respondents to switch to a WCAG-compliant view. It is not anymore necessary to manually activate this option when designing the questionnaire. <a href="#">Contact the EU Survey team</a> should there be any problems with the tool.</li> <li>• Keep the language of the 'calls for evidence' as simple as possible, using simple question types like free text, single/multiple-choice, and matrixes. Try to avoid tables and file uploads. For questionnaires, try to avoid 'visual' elements and try not to use formulations like 'in the question below' or 'in the next section'. Refer to the name of the section or question instead. When adding images to your questionnaire make sure to provide a meaningful descriptive text.</li> </ul>
<p><b>2. Ensuring participation to consultation activities</b></p>	
<p><b>Selection of activities and communication channels</b></p>	<ul style="list-style-type: none"> <li>• Include a comprehensive communication plan that will raise awareness about your consultation activities in a timely way and will encourage all identified stakeholders to participate. Involve your DG's communication units in the development of this plan.</li> <li>• Ensure that relevant target groups are reached and invited to participate in the most effective way. Usually, a combination of different communication channels (e.g. press release, networks, multipliers, events, social media, Commission delegations and representations in Member States) works best. Public consultations should also be included in the <a href="#">planning calendar</a> well in advance.</li> <li>• Target groups in remote and rural areas with more difficult access to internet may need to be addressed by other consultation tools and communication channels than target groups in more densely</li> </ul>

	<p>populated areas with higher access rates to internet. EC Representations and Europe Direct centres could be engaged in identifying appropriate tools and channels. The Committee of the Regions and the Economic and Social Committee channels can be mobilised to reach out.</p>
<p><b>3. Timing and consultation period</b></p>	
<p><b>Timely consultation</b></p>	<ul style="list-style-type: none"> <li>• Identify the stages of policy preparation where stakeholder input will be needed and define the appropriate moment for each consultation activity as well as their sequence accordingly.</li> <li>• Spread information early and widely.</li> </ul>
<p><b>Timeframe for contributions</b></p>	<ul style="list-style-type: none"> <li>• Allow sufficient time for replying to consultations to increase participation.</li> <li>• The consultation period should strike a reasonable balance between the need for adequate input and the need for swift decision-making.</li> <li>• The minimum period for replies to the 'call for evidence' without an associated public consultation is 4 weeks. In case the 'call for evidence' is accompanied by a public consultation, the period for replies is 12 weeks. It is strongly recommended to prolong this period by 2 weeks if it overlaps with holiday periods.</li> <li>• For meetings, hearings, conferences or other consultation events, relevant documents should be disseminated 20-working-days ahead of the meeting<sup>810</sup>.</li> </ul>

<sup>810</sup> See the [2002 General principles and minimum standards for consultation of interested parties by the Commission](#).