REFIT Platform Opinion

Date of Adoption: 07/06/2017

REFIT Platform Opinion on the submissions XXII.4.a by the DIHK and XXII.4.b by a citizen on Stakeholder consultation mechanisms

The REFIT Platform has considered the issues raised by the German Chamber of Commerce and Industry (DIHK) and a citizen regarding stakeholder consultation mechanisms.

The Stakeholder group welcomes the efforts made by the European Commission to improve the design and use of consultation tools, most recently through the Guidelines on Stakeholder Consultation as included in the Better regulation guidelines.

Nevertheless, the Stakeholder group has identified major shortcomings regarding the implementation and application of the guidelines and recommends that the Commission addresses these shortcomings via the ongoing revision of the Better Regulation Guidelines and Toolbox.

Members of the Government group consider that consultation mechanisms are a critical component of better regulation as they allow to bridge the gap between citizens and policy makers.

Despite the improvements made, Member States consider that there is still room for improvement in the Commission's consultation approach. While not supporting all of the individual recommendations made by the Stakeholder group (e.g. some Member States are not supportive of extending the consultation period as too lengthy consultation processes could delay legislative process), the Government group calls upon to the Commission to carefully assess them as part of the ongoing revisions of the Better Regulation toolbox.

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Detailed Opinion

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1. Submissions XXII.4.a by the DIHK and XXII.4.b by a citizen (LtL 733)

Submission XXII.4.a

After a discussion in Brussels on 2.12.2015 on problems and improvements in consultation processes from the point of view of the business associations, we received many concrete references from affected associations. They show that there are many possibilities for improvement during consultation. Consultations should also be a concern of the REFIT platform. We encourage the employment of this subject. For further information, please refer to the Annex.


Annex to submission: click on the attachment

Submission XXII.4.b

Is there a way to enforce public consultations at a Member State level? How does the European Commission make sure that people all around Europe participate in a rather equal manner to the decision making process? How do you stimulate this participation in Member States where citizens are not used to stating their views as much as in other Member States.
2. Policy context

The Commission relies on high quality input from stakeholders in the regulatory process. To ensure high quality consultations and ongoing improvement, Commission staff involved in the preparation of consultations is required to follow detailed guidance in the Better Regulation Guidelines and accompanying toolbox.


On submission XXII.4.b:

"The Treaty on European Union specifies that the European Commission shall carry out broad consultations in areas of Union action in order to ensure that Union's actions are coherent and transparent. In order to do so, the Commission organises for its major initiatives and evaluations public web based consultations which can be accessed by all EU citizens via the web portal 'Contribute to EU law-making'.

These public consultations may be accompanied by targeted consultation activities, addressed to specific stakeholders, depending on the scope of the initiative. In order to make sure that all potentially interested stakeholders and citizens are informed about a consultation activity, consultations are announced by means of different communication channels, which may differ depending on the topic and targeted stakeholder groups. These communication activities may be set up in consultation with the Commission representations in Member States in case specific stakeholder groups in particular Member States need to be encouraged to participate in a specific consultation. The Commission has no competence related to the organisation of public consultations on Member State level."
3. Opinion of the REFIT Platform

3.1 Considerations of the REFIT Platform Stakeholder group

Introduction

According to the Better Regulation guidelines\(^2\), the term ‘stakeholder consultation’ as used by the European Commission applies to all consultations with stakeholders in the process of preparation of a policy initiative or the implementation of an existing intervention.

It does not apply to the consultation of social partners (Articles 154-155 TFEU).

The REFIT Platform Stakeholder group welcomes the efforts made by the European Commission to improve the design and use of consultation tools, most recently through the Guidelines on Stakeholder Consultation as included in the Better regulation guidelines\(^3\).

Stakeholder consultation processes which are transparent, open and leave enough time to respond are key to ensure sufficient input of expertise and experience from those affected by the forthcoming policy measures. All stakeholders affected by the possible EU action should have the opportunity to participate in consultations and to contribute with information already at an early stage when policy concepts are being defined.

The approach outlined in the European Commission’s consultation guidelines is based on the four principles of **Participation, Openness and Accountability, Effectiveness and Coherence** and several minimum standards\(^4\).

Despite the fact that the guidelines are in place since some time now, stakeholders observe a clear lack of compliance and consistency of the application of these guidelines by the European Commission’s services. In addition, in particular regarding the newly introduced “feedback” processes, questions arise as to their functioning, usefulness and impact. The members of the stakeholder platform have wide experience with the participation into consultations on a very broad range of EU policies and are worried that the current situation can result in unsatisfactory consultation results, frustration by participants, and a lack of credibility not only of the services concerned, but the Commission as a whole.

In terms of better quality of consultations and their results, stakeholder involvement and predictability of the process for stakeholders, an improved implementation and best practices


\(^4\) Point 3 in the respective chapter of the Guidelines (footnote 1 and 2 above)
for consultations should be established. In this opinion, which mainly looks at on-line public consultations, the Stakeholder group of the REFIT Platform identifies the major shortcomings regarding the implementation and application of the guidelines and provides for recommendations on how to address these.

A) Shortcomings

(1) Participation:

The stakeholder platform welcome that the European Commission in its guidelines commits to an inclusive approach and aims at consulting as widely as possible. However, the process shows the following problems.

Participation of individuals versus interest representatives:

In many consultations the European Commission now reaches out to individual citizens. While this may help to bridging the gap between on the one side what is perceived as ‘the Brussels bubble’ and on the other side the people living in Europe, it has also led to a situation in which consultation questionnaires include questions which are only directed to individual citizens. Consequently representative stakeholders cannot respond to these questions and do not have an opportunity to provide input on the subject of the question, which might be important to them too.

As illustrated by a study undertaken by ECAS (member of the stakeholder REFIT platform), for the European Parliament, citizens do not know about EU public consultations. As the consultations are often very technical with lengthy questions, they are not attractive for citizens to take part in.

To avoid impediment of important associations’ feedback whilst not achieving the intended reach out to citizens, we consider that two types of consultations and consequently questionnaires should be designed – where relevant – one for stakeholders and a simpler one to receive the general public’s opinion.

In this context it is worth underlining that it is the very purpose of representative associations to provide the input from their respective constituencies. Thus it is important that the weighting of the input that an umbrella organisation can make, given its size and representativeness, is differently taken into account compared to the input of individuals. It is the raison d’être of a representative stakeholder to express the joint concern of all its

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members with a single voice.

The European Commission should ensure that consultations for individual citizens cannot be abused. Verification measures like "captcha" text should be applied according to a coherent policy with clear criteria and in a way that does not deter public interest representatives from encouraging citizens to participate and facilitating their submissions.

Inclusiveness

When defining the target groups in a consultation process, the Commission should ensure that all relevant parties are taken into account, based on a stakeholder mapping as recommended in the guidelines. This mapping should be publicly available.

More consultation opportunities have been introduced recently by the Better Regulation agenda, due to which stakeholders who have the means and resources to engage in an ever more demanding consultation and feedback mechanism can be better heard. On the other hand, stakeholders with limited resources (often those how represent public interests) may find it increasingly difficult to keep path with the European Commission’s multiplied requests for input.

This development may lead to a situation where groups with fewer resources loose out. The European Commission should be aware of this risk and establish a policy to rectify this bias by adapting the target audience accordingly, reaching pro-actively out to stakeholders and allowing for more time to respond.

(2) Openness and Accountability:

Increasing transparency of how decisions are taken is necessary to gain stakeholders and citizens confidence and trust in the policy makers of the European Institutions. This applies to all mechanisms for consultation of stakeholders in particular also for the selection of experts in forums, conferences, workshops etc.

Feedback on results of consultations

We welcome that feedback is now given on the input which the Commission received. This enhances the Commission’s chances of receiving and assessing relevant comments from all sectors and businesses concerned.

The European Commission in its feedback to consultations should be more transparent about the methodology it uses to weigh the input received, which can be of different nature and representativeness. In this respect, the guidelines do not provide for any orientation or indicators, which should be added.

Regarding accountability, stakeholders should have an interlocutor within the Commission allowing them to flag incidents or disrespect of the guidelines. Even if the guidelines are for
internal purposes of the Commission services, stakeholders should be able to report problematic issues with consultation processes and to do so with a body not in charge of the consultations concerned.

(3) Effectiveness:

The European Commission commits to consult at a time where stakeholder views can still make a difference, but the Commission would surely win more stakeholders to participate in consultations if it would foresee more time for the reply.

General consultation timelines

The reference period for the consultation period in the guidelines is 12 weeks. We underline that this should always be considered a minimum period. In particular for big and complex topics, the deadline should be extended. It should also be clarified where applicable that the period starts upon translation of the consultation document into the last language. Consultations are often launched in July-August, which typically are holiday periods and thus additional time should be added in case these periods are used for consultations.

More advanced planning and announcement of time-frames for consultations would also be useful.

“Feedback consultations”

Regarding the newly introduced consultation modules, namely the so-called “feedback” consultations, which are applicable to Roadmaps for Evaluations and Fitness Checks, Roadmap and Inception Impact Assessments as well as Draft Delegated Acts and Implementing Acts, the 4 weeks consultation time is simply too short. In order to make these feedback consultations a meaningful instrument, the ordinary consultation timelines should apply.

In this respect, the newly introduced “Roadmaps” have proven to be very useful and informative, but may often remain uncommented by stakeholders due to the lack of time. Additionally, sometimes the European Commission seems to have determined their approach already before having received the feedback from stakeholders which raises questions as to the credibility of this early consultation opportunity.

On the other hand, regarding the new feedback process for legislative proposals (post-adoption comments) which have already been adopted by the College (including feedback on the accompanying impact assessments), its legitimacy and usefulness are questioned. After adoption of a legislative proposal by the European Commission, the European Commission asks for stakeholder comments which it intends to forward the European Parliament and the Council by way of a synthesis. It seemingly wants to take on the role of an intermediary between stakeholders and the EU legislators. This is a role which is foreseen neither in the legislative procedures nor in the inter-institutional agreement on Better Law Making.\(^6\)

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\(^6\) Interinstitutional agreement on Better Law-making, 13 April 2016, accessible at http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32016Q0512(01)
Stakeholders might prefer to communicate directly to the legislators, in particular when it comes to the European Parliament, which is tasked to represent European people.

Additionally, no agreed practices seem to exist across the Commission’s services of how the European Commission will present the results to the legislators nor what the consequences will be if a stakeholder doesn’t provide input to the Commission but directly to the legislators. The 8 weeks provided for feedback is too short.

We have also noticed that often the services in charge of a legislative proposal are not aware of this new feedback mechanism and do not draw stakeholders attention to the fact that they can use this opportunity.

Regarding feedback on draft implementing or delegated acts, while we welcome this new opportunity, the time allowed for responses, 4 weeks, is simply too short.

Format, clarity and content of consultation documents

Consultations are often not very well designed and conceptualised for the participation of associations, who have to gather input from many members and distribute the respective material within their membership. Sometimes questionnaires are not available in word format at all depending on the DG responsible for the consultation. There should be an easier solution, e.g. with a download link not only for PDFs but also for Word files.

In the context of REFIT consultations, the respective questionnaires are often unbalanced by giving priority and major space to only assessing the burden and costs of regulation. They fail to ask in an equivalent manner about the benefits of the regulation for all citizens.

These types of questionnaires often do not address the issue at hand in an impartial manner, leading to an evaluation which doesn’t sufficiently take into account the benefits that the regulatory framework has created for society in general, or specific citizen groups in particular. A balancing should be made in particular for REFIT consultations with questions regarding the positive impact that the framework has had in meeting the objectives of the legislation.

Questionnaires also can include leading questions or questions that are not sufficiently clear so the intended meaning behind the question can be misunderstood and answers become potentially misleading.

In terms of methodology of consultation documents and in particular in the field of REFIT evaluations, we recently observe – even for very complex subjects – a trend to use closed or multiple choice questions, which do not sufficiently allow for a nuanced expression of opinions of stakeholders. This gives the impressions of using a consultation to support a pre-determined idea of the European Commission.

In addition, the text fields for open answers often do not allow for sufficient in-depth and detailed explanation, even though the reality is often complex. It would be preferable to allow
for longer answers by raising the number of signs allowed for in the text fields and to allow the uploading of annexes, explanatory opinions etc.

It should always be possible to upload position papers. Regarding consultation and availability of data and evidence, consultations can create an in-built bias towards those stakeholders which hold most of the relevant data, potentially discouraging or excluding other stakeholders. National authorities or agencies that for example could provide for more neutral input do often not have the relevant data neither. The European Commission must by default include measures to balance such input already in the respective consultation strategies.

(4) Coherence:

The principle of the guidelines that consistency of consultation processes across all services should be ensured is obvious, but currently not the case.

The quality control system that the Commission has put in place to monitor consistent implementation of stakeholder consultation is insufficient. The impression is that the design and management including compliance with the guidelines on public consultation depends to a big degree on the respective services that are in the lead of carrying it out.

The European Commission’s inter-service groups are in charge of agreeing upon the respective consultation strategies and the consultation documents. They should follow more closely and coherently the guidelines under the lead of the respective Directorate General. More quality and consistency checks should be included into the higher level management of the consultation process and the inter-service work on the process and content of consultations.

B. Recommendations

- Consultations should take account of the needs of membership-based stakeholders who need time to co-ordinate their responses and of organisations with limited resources, which is often the case for civil society organisations.
- Too many feedback and consultation stages lead to an overload both of stakeholders and the European Commission, with a negative impact on the quality of the results. The European Commission should focus its efforts on the main broad consultation undertaken in the context of/before an impact assessment for a legislative procedure or for an evaluation of the legislation or a REFIT exercise.
- The other consultations should in particular reach out to affected stakeholders, which is only possible if they are adequately publicised. Yet, currently only the main consultation and the roadmaps are being notified to stakeholders through the transparency register notification system. Particularly the feedback opportunities on implementing and delegated acts remain unknown because they are not sufficiently publicised.
- As a general rule, all ongoing consultations by EU-institutions, agencies and downstream bodies, including consultations/feedback mechanisms on delegated and
implementing acts should be presented in a clear and uniform way on the central Commission website for consultations.

- Questionnaires should not be too technical, their length should be limited to what is strictly necessary, and questions should be clear and precise. If the questionnaire is longer and more complex, then the period to respond to it should be longer too. It should always be possible to upload position papers.

- Consultations should not include different sets of questions for different stakeholder groups, which a stakeholder who doesn’t belong to that group is not allowed to answer.

- Where relevant, two different consultations and consequently questionnaires should be designed in case the European Commission would seek input from the general public: a more technical one for stakeholders and a simpler one to receive the general public’s opinion.

- Questions that require providing one of the pre-defined answers (Yes/No, or a value-ranking) should always also allow explanations and the text response area should not be limited in length. Multiple-choice questions should be applied only in restricted cases.

- The European Commission in its consultation strategy should include measures to complement the data and evidence received from the regulated sectors ensuring that data about costs, about societal impact and potential benefits of regulation are included;

- Regarding REFIT consultations, questions about administrative and regulatory costs should always be balanced with questions regarding the positive outcome that the framework has had in meeting the objectives of the legislation and benefit for the entire society.

- Guidance should be available also on methodologies and drafting of consultation documents, to advice services how to avoid technical barriers to responses, ensure the openness of questions to all stakeholders who want to respond, not only to certain categories, and how to use less technical and better comprehensible language, etc.

- The European Commission should ensure that all relevant parties to a consultation are taken into account, based on a stakeholder mapping which should be published and concrete efforts to reach out directly to specific stakeholders.

- The European Commission should be more transparent about the methodology it uses to weigh the input received, according to the respective different nature and representativeness.

- Regarding accountability, stakeholders should have an interlocutor within the Commission allowing them to flag incidents or disrespect of the guidelines, to be able to report problematic issues with consultation processes with a body not in charge of the consultations concerned.

- The consultation period of 12 weeks should always be considered a minimum period and should be longer in case of complex areas and whenever possible. In order to allow for better planning, the European Commission should in its annual work programme already indicate potential consultation periods.

- The time periods for responses to the so-called new “feedback” consultations are all too short and lead to a situation where only the most resourced stakeholders can provide input. These timelines should be expanded to allow for the ordinary 12 weeks
period. A potential exception could be the feedback to the roadmaps, which could be 8 weeks (instead of currently 4 weeks).

- Regarding the feedback consultation on already adopted legislative proposals (“post adoption comments”), stakeholders do not see the added value of this new mechanism. The European commission should clarify how it intends to present the received feedback to the legislators and what the consequences of non-participation would be.
- More quality and consistency checks should be included into the management of the consultation process and the inter-service groups in charge should be better coordinated by the higher level management of consultations. The Regulatory Scrutiny Board when assessing the preparatory work for legislative or evaluation initiatives should assess whether affected stakeholders have been duly consulted.
- We recommend that the European Commission pays attention to the principles set out by the OECD in 2012 in its “Recommendation of the Council on regulatory policy and governance”, in particular regarding the OECD’s best practice principles of stakeholder engagement.

3.2 Considerations of the REFIT Platform Government group

11 Member States have contributed to this opinion.

Members of the Government group welcome the opinion on Stakeholder consultation prepared by the REFIT Platform Stakeholder group and agree that, despite the improvements made, there is still a lack of uniformity in the Commission's consultation approach.

Member States consider that consultation mechanisms are a critical component of better regulation as they allow to bridge the gap between citizens and policy makers.

While not supporting all of the individual recommendations made by the Stakeholder group (e.g. some Member States are not supportive of extending the consultation period as too lengthy consultation processes could delay legislative process), the Government group calls upon to the Commission to carefully assess them as part of the ongoing revisions of the Better Regulation toolbox.

Individual contributions from Member States

Member State 1 makes the following observations with regards to submission XXII.4.b:

- Current Commission guidelines already cover this suggestion.
- The guidelines recommend targeted communications to encourage stakeholders in specific MSs to participate in consultations. However “The Commission has no competence related to the organisation of public consultations on Member State level”.
- Therefore no change to guidelines is needed but we would commend more consistent enforcement of guidelines.
On submission XXII.4.a MS1 welcomes the efforts in the 2015 Better Regulation Guidelines to improve the design and use of consultation tools. Consultation acts as a significant bridge between policy-makers and citizens and is therefore a critical component of a democratic system of governance.

MS1 recognises that enforcement of Commission guidelines remains inconsistent across DGs, therefore MS1 strongly supports the general principle of the Stakeholder group opinion that the “Commission follows its guidelines on public consultation in a coherent and complete way”.

MS1 broadly supports the recommendations to improve the inclusiveness, quality and impartiality of consultations as well as the methodology and format used for questionnaires. Member State 1 would however want to ensure that the consultation process remains proportionate and balanced (i.e. too lengthy consultation processes would delay legislative process). Therefore MS1 disagrees with some of their specific recommendations, including:

- MS1 recognises that the Commission does sometimes design separate questionnaires for experts and non-experts and would encourage the Commission to continue to make progress in this area.
- MS1 disagrees that contributions from umbrella organisations should be weighted more strongly: a consultation is not a survey to count the strength of support or otherwise for a policy. Responses are de facto weighted based on the quality and evidence base of the input: generally umbrella organisations have more data to draw on so are able to provide more accurate and representative analysis than individuals and thus their input is given greater consideration.
- 12 weeks is a good amount of time for consultation responses. Rather than extending the deadline, greater effort should be focussed on communicating and disseminating the consultation as widely as possible.
- MS1 would also encourage further adherence to the commitment to quality control.
  - It is always valuable to assess the effectiveness of the consultation strategy at the end of the process, to gauge the depth of stakeholder satisfaction, identify best practice and learn from past experiences. We would encourage greater progress in this area.
  - The guidelines should include a robust quality control mechanism, particularly for consultations which are outsourced to external bodies.

Member State 2 sees one of the inherent challenges in the development of public policy is the assessment of potential impacts on various social groups. It is incumbent on policy analysts, policy makers as well as decision makers to avoid proposing and implementing policies and regulations which infringe upon the rights and/or well-being of groups such as women, the disabled, seniors and those living in poverty, as well as sub-populations and cross-sections of these groups. In much the same way, inclusive public policy considerations on specific impact areas (such as the environment, natural resources management, employment, SME’s etc.) are of vital importance.

In this context, public consultation procedures contribute to the strengthening of participatory democracy, of transparency, access to relevant information and participation by all interested
parties. Moreover, the use of ICT in public consultation procedures guarantees broad dissemination of content regarding the EU legislative or other initiatives to stakeholders and European citizens.

On submission XXII.4.b MS2 considers that despite the fact that the Commission does not have the competency to intervene directly in the process and the ways by which Member States hold public consultations on EU draft legislation or simplification of existing EU laws, other means could be pursued in cooperation with the Member States, so that the broadest possible publicity can be achieved, and every citizen is directly and instantly informed in detail about all EU policies.

On submission XXII.4.a and the REFIT Platform Stakeholder group considerations MS2 observes that following the set-up of the REFIT Platform, two main digital platforms operate on the Commission’s website for open public consultation purposes. The first platform (https://ec.europa.eu/info/consultations_en) hosts – inter alia – consultations of EU draft legislation and ex-post evaluations. On the second platform (“lighten the load” - http://ec.europa.eu/smart-regulation/refit/simplification/consultation/contributions_en.htm) proposals and opinions by stakeholders and citizens are submitted, aiming at the simplification of the EU legal framework, and processed within the REFIT Program. This resulted in the fragmentation of the information concerning different types of consultation. The structuring of a new unified web portal dedicated to public consultation (http://ec.europa.eu/info/law/contribute-law-making_en) has been a vital step in the right direction.

With a view to improving the usability and user-friendliness of this new web portal, it is proposed that it should be redesigned with a dedicated consultation search tool. In specific, the search engine should provide filtered results for the web portal’s content allowing the user to choose between:

a. the categorization already available on the portal’s homepage (“The initial idea”, “Potential impacts” etc.) and
b. a thematic categorization based on the EU policy areas. This will facilitate all interested parties’ targeted access to the whole of the related consultation content regarding the policy area(s) of their interest.

In addition, in order to ensure the widest possible dissemination of all relevant content, it is proposed that the citizens/interested parties should be informed by various information alert mechanisms such as e-mail, social networks, banners, press releases etc.

Regarding the Stakeholder’s group proposal on public consultation timelines, MS2 proposes that minimum timelines remain as they stand. Nevertheless, ad hoc differentiations of timelines should be possible (i.e. in case of emergencies or complex and big topics).

In principle, the use of technical or other difficult terms should be avoided, and the language must be simple, understandable, in order to ensure the maximum inclusion and participation of all interested parties. Regarding the terminology issue posed by the Stakeholder group on targeted questionnaires, MS2 considers that it should be assessed on a case-by-case basis depending on the special characteristics of the proposed legislation. In any case, all difficult
terms should be adequately explained.

In addition, with regard to the opinion posed by the Stakeholder group on the type of questions in the aforementioned questionnaires, we consider that they should be enriched with more open-ended questions. This will allow consultation participants to communicate their views freely, adding qualitative value to the Commission’s proposals processing (instead of mere quantitative processing). In the same context, depending on their importance or complexity, multiple choice questions should also be given the additional option of a free-text-reply-box for short comments.

It is crucial that the results of public consultation be presented in a report published on the above-mentioned public consultation portal, detailing the results of each consultation. For the purpose of strengthening transparency, the provisions of the legislative proposal which have been changed due to the comments submitted should also be highlighted in the report. This practice was introduced in MS2 with the relevant provisions of Law 4048/2012.

**Member State 3** finds the points made by the Stakeholder group constructive and exhaustive both in terms of the identification of the major shortcomings regarding the implementation and application of the guidelines and regarding the recommendations on how to address these shortcomings. MS3 agrees that a better quality of consultations with improved quality of results stemming from more effective stakeholder involvement (enhanced by process predictability among other things) could be achieved. To this end it seems necessary that an improved implementation and best practices for consultations should be established. Without in any way suggesting the complete overhaul of the existing procedure, but more as a way to increase awareness of alternative.

**Member State 4** is of the opinion that the concerns raised by the Stakeholder group are important and should be carefully looked into by the Commission services. In order to get high quality input from all relevant stakeholders, the entire consultation process should be as functional as possible. As to the Stakeholder group’s recommendations, they should be carefully considered by the Commission even though some of them may be difficult to accomplish.

**Member State 5** considers that despite the improvements, there is still a lack of uniformity in the Commission's consultation approach. The recommendations, endorsed and supplemented by the MS5, are aimed at improving the systematics and transparency of the consultation approach, with a view to greater willingness to participate.

- The recommendation to work with two separate questionnaires in consultation: on the one hand a specialized questionnaire with technical questions for the stakeholders concerned and a general questionnaire aimed at (creating support for) European citizens and the general public. Currently, some consultations already provide the opportunity to answer a specialized technical questionnaire. It would be an added value if offered by default.

- The recommendation to use a more impartial question, among other things, by making more frequent use of open questions instead of multiple choice questions. The
European Commission can sometimes give a certain vision to the hand of the question she uses in public consultation. MS5 is sometimes confronted with consultations where the question is very focused on one particular solution, which makes it difficult to make an input from other perspectives.

- The recommendation for each consultation to offer a position paper or additional input (policy strategy ...).

- The recommendation to open public consultations longer. A response time of twelve weeks should be the absolute minimum instead of the default. The REFIT Platform Stakeholders group also rightly points out that the European Commission has a tendency to launch a lot of consultations just before the holiday period (late June-early July). However, it is not evident to respond in a timely manner to greater coordination, from which input from different entities is delivered.

- Recommendation to the Commission departments concerned to make a more proactive reach out to the target audience that they wish to consult. The Commission must be able to ensure that all consultations are published via one and the same website. In addition, the Commission should also provide an automatic mail notification if it publishes a new consultation, including a subscription option.

- The recommendation to get more feedback and transparency about what is happening to public consultation and how to "weigh" these responses, including the criteria used.

- Recommendation to designate an independent contact within the European Commission for consultations, which can be contacted if any problems arise or if there are any concerns / comments regarding the questionnaire. It is our experience that there are currently no or only limited contact possibilities in many online consultations.

- Recommendation to increase reaction time in the 'newer' forms of consultations. It is positive that the European Commission develops new forms of consultation, such as the ability to provide feedback on roadmaps and impact assessments (in this context, the Flemish administration calls for more analysis of regional or territorial effects through Territorial Impact Assessments). However, the response time with such feedback capabilities is often limited to four weeks. The short deadline makes for a complete and timely response, especially if a coordinated response is to be drawn up.

- Recommendation to make the questionnaire available in Microsoft Word and / or other word processing programs. Currently, consultations are only made available via PDF, which makes it impossible to compile and compare inputs from different entities from a practical point of view.

- MS5 advocates clear and coherent use of all EU languages at consultations. It is established that most public consultations are available in some languages, but some do not. What criteria are used for this is unclear. If it is also intended to involve the
citizens, it is advisable that they can always answer in their own language. Sometimes the non EN versions are published a little later than the English, but then the 12-week consultation period is already ongoing.

**Member State 6** appreciates the effort of Stakeholder group as far as drafting the opinion on public consultation is concerned. The recommendations are very concrete and in MS6's view their application will improve the public consultations quality and facilitate more active participation of ordinary citizens in the consultations process and better engagement of organisations. Proposed recommendations can be used in the national consultations processes as well.

The proposal of establishing an interlocutor in the Commission who will be able to take complains about irregularities in the consultations process deserves special attention. We are of the opinion that the proposed interlocutor would contribute to constant improvement of the consultations process.

**Member State 7** supports the submission.

**Member State 8** makes the following observations:

- It is useful to ask different questions for specific stakeholders but preferably in one integral questionnaire.
- It is important to consult laws and other regulations, but this requires clear presentation of the proposals/drafts and good communication about the consultations.
- Open questions are better than yes/no-questions. This generates more information and it avoids the impression of a referendum.
- Feedback on consultation-reactions should be well motivated in the explanatory memorandum: what is done with the reactions and why.
- A minimum-period of 12 weeks for consultations is long and can cause unnecessary delay in the law-making-process. In MS8 we have a minimum-period of 4 weeks. However in practice most of our consultations have a longer consultation-period.
- The RSB can check whether an adequate motivation is given for changing a proposal due to a consultation-reaction or not. It seems that they already check this (see annual report RSB 2016).

**Member State 9** recognizes that Stakeholder group recommendations as they represent the views of those who participate in consultations reflect on some problematic points.

MS9 supports enhancement of the inclusivity of the consultations and supports the recommendations of the Stakeholders group that the Regulatory Scrutiny Board when assessing the preparatory work for legislative or evaluation initiatives should assess whether affected stakeholders have been duly consulted.

As regards two proposed types of questionnaires – one for stakeholders and one for citizens (general public’s opinion), MS9 questions possible effects of such an approach. Inputs sent by interest representatives and opinions of individual citizens should be assessed separately by the European Commission. However, there should not be any barriers to send feedback on
various aspects of the proposals (even technical) with regard to the nature of a stakeholder (interest representative / individual citizen).

MS9 supports designation of an interlocutor for stakeholders within the Commission to be able to report problematic issues with consultation processes, but s/he should be available for all participants of the consultation process, not only for interest representatives.

Timeframes for various types of consultations should take into account coordination needs of stakeholders. At the same time, the timeframes should not be disproportionately extended resulting in a prolongation of the legislative process.

MS9 defends public consultations of the European Commission in the pre-legislative phase, but has reservations as regards feedback consultation on already adopted legislative proposals ("post adoption comments"). MS9, in accordance with the view of the Stakeholder group does not see the added value of this new mechanism. The European Commission should clarify the purpose and significance of these consultations.

**Member State 10** supports the Stakeholder group in calling on the Commission to improve its public consultations. In particular, we share the Stakeholder group’s critic with regards to the Commission's consultations on already adopted legislative proposals. The Commission should rather consult stakeholders on the final draft of the legislative proposal and its accompanying impact assessment before the proposal is adopted by the college. Furthermore, we also think that the methodology used to handle the manifold stakeholder input should always be transparent. Finally, MS10 also agrees that the benefits of regulation should be stronger assessed in public consultations.

**Member State 11** generally supports the proposal and agrees with the recommendations to better diversify the European Commission public consultations by choosing tools, methods and questionnaires with regard to different target audiences (individuals, expert, representative associations), objects and relevance of the initiatives. A better design of questionnaires could help the European Commission to take advantage of each target’s knowledge and experiences, with the aim to maximize the value of results. The different target positions emerging from public consultations could be highlighted in reports on results.

On the other hand, the recommendation to weigh the input received according to the different nature of respondents and the recommendation to expand the consultation period of the “feedback consultations” seem to be less feasible in practice.