

## **“Finance Watch response to the public consultation on stakeholder consultation guidelines**

*Brussels, 30 September 2014*

*Finance Watch is an independent, non-profit public interest association dedicated to making finance work for society. It was created in June 2011 to be a citizen’s counterweight to the lobbying of the financial industry and conducts technical and policy advocacy in favour of financial regulations that will make finance serve society.*

*Its 70+ civil society members from around Europe include consumer groups, trade unions, housing associations, financial experts, foundations, think tanks, environmental and other NGOs. To see a full list of members, please visit [www.finance-watch.org](http://www.finance-watch.org).*

*Finance Watch was founded on the following principles: finance is essential for society and should serve the economy, it should not be conducted to the detriment of society, capital should be brought to productive use, the transfer of credit risk to society is unacceptable, and markets should be fair and transparent.*

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<p>The consultation document, which includes detailed questions and annex, is <a href="#">available for download</a> on the European Commission’s website.</p>
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## **Preliminary remarks**

Stakeholder consultation is a tool that allows the European Commission to make informed policy choices by collecting and considering the opinions and views of citizens and a broad range of interest groups impacted by a given policy. Making informed choices requires that consulted stakeholders provide as broad representation of views as possible.

We appreciate the Commission's commitment to improve the internal guidelines on Stakeholder Consultation, as we believe improving related tools and processes can contribute to better accountability of the Commission and can help address the democratic deficit that the EU institutions are suffering from. We suggest however to improve these guidelines in several aspects with a view to

- better identify the **interests represented** by the different stakeholders,
- increase the **participation of non-financial industry** stakeholders,
- make it clearer how the **results** of a consultation impact the drafting of legislation, and
- overall improve the **visibility** of the stakeholder consultation process.

These should in turn motivate a broader contribution from stakeholders, especially those not directly linked to corporate interests, and as a result improve the accountability of the European Commission and the credibility of its consultation process.

As a stakeholder involved in the financial regulation process, Finance Watch believes that stakeholder consultation is essential to a well-informed policy making process. In the field of financial services, progress still needs to be made. The complexity of the sector and related regulation has indeed led to a situation where the debate was mostly left to experts, primarily representatives of the financial sector itself – whereas the regulation of financial services has a strong public interest dimension. The 2008 financial crisis and its implications for society at large has made a broader range of stakeholders aware of the importance of financial regulation and more and more are willing to get involved in its elaboration. Despite the fact that non-financial industry stakeholders have relevant opinions and views to share on the matter, we however still see little involvement from non-expert stakeholders in the consultations launched by the Commission on related topics. This can be explained by, among other things, information not reaching the right audience, by the complexity of the consultation documents themselves and by the time stakeholders can effectively dedicate to a consultation exercise.

Finance Watch agrees with the need expressed by the Commission to improve the participation in stakeholder consultations of non-financial industry respondents. Our response is aimed at suggesting such improvements, keeping in mind that regulation must be developed to serve the public interest and that even though it remains the responsibility of policy makers, it must include a well-informed, well-balanced and transparent stakeholder consultation exercise.

## Response to the consultation questions

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

Several aspects of the Draft guidelines must be clarified in order to allow for a balanced, well-informed and transparent consultation process. Moreover, the Draft guidelines should include a description of how consultations are drafted.

#### About Stakeholder mapping (Step 2)

The guidelines for stakeholder mapping as described do not contribute to the proper identification of different stakeholder groups and interest groups. Currently, the guidelines focus primarily on the forum or organisation (e.g. company, association, academia, consultancy...) in which stakeholders operate, but do not aid in identifying the actual interests represented.

Elsewhere the guidelines suggest to seek “the whole spectrum of views in order to avoid capture by specific constituencies,” we believe that the proposed categories and groups are insufficient to facilitate this goal adequately.

We therefore suggest that the identification of stakeholder categories and groups should be adjusted to take better account of differing interests and assure that stakeholder mapping leads to a balanced composition and therefore to a balanced outcome, which in turn will help the European Commission to make well informed policy decisions. These adjustments must make it clear what the goals, activities and funding of the different stakeholders are. See also response to question 2. A requirement for participants to declare any relevant interests may also be useful in this regard, especially for categories of respondent whose interests are not superficially apparent, such as external experts with consulting relationships in the sector affected, or research firms with a high revenue exposure to the sector affected.

#### About Reporting on the results and feedback (Step 9)

The draft guidelines suggest to “explain how the contributions have been taken into account and if not, why” once the consultation exercise is closed - and potentially once the policy proposal drafted.

We believe that this rule needs to be set **explicitly in the consultation documents**. The guidelines should indicate how to handle stakeholder opinions or proposals and which contributions are welcomed. This might depend on what stage of the policy-making process the consultation is taking place.

#### About the drafting of the consultation itself (Missing step)

The guidelines on drafting consultation questions should be clarified. We understand that the Minimum Standards apply, requiring “clear, concise” consultation documents, “including all

necessary information”. This should be made clearer in the Guidelines as overly complex or long questionnaires discourage many stakeholders from participating. Clarifications could include the following:

- Make the **language and format of consultation documents and questionnaires** as simple as possible, in order to allow the participation of non-experts;
- Systematically include an **open question** that would allow for all categories of stakeholders to respond and express views;
- Systematically include a **question calling for an assessment** of the consultation process itself to allow continuous improvement.

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

Well-defined stakeholder categories are essential, as the guidelines recommend them as a basis to:

- identify the **relevant stakeholders** to be consulted
- identify where the **gaps** are (stakeholder group whose opinion has not been expressed but is relevant) and complete the consultation exercise when needed
- **report** on the results of a consultation exercise

We believe though that the identification of stakeholder categories and groups relevant for the policy needs to be improved in order to **better account for the interests represented by each stakeholder group**. As proposed, we believe that the categories do not allow for a proper overview of which interests are represented.

It is especially important to **make it clear and transparent whose interests are represented**, including information on the **goals, activities and funding of the different stakeholders**. It should also be clear if a business has a direct interest in the legislation to help identify potential bias and in order to weight their contribution against those of stakeholders that represent wider interests.

As an illustration, when consulting on financial regulation, a distinction should be made between the financial industry on the one hand and other groups, e.g. non-financial companies (including SMEs), consumers, employees, environmental and development NGOs, etc... All have stakes in financial regulation. Finance supports policies that affect the entire social and economic fabric of society. It is therefore crucial for an informed policy making process to develop an appropriate consultation of a broader range of stakeholders. Consequently stakeholder mapping should allow for consultation with stakeholders other than the usual contributors, which are often linked to the financial industry itself. It should also allow for a broader diversity in terms of geography (stakeholders' country of origin).

For financial sector consultations relevant stakeholder categories can include financial market participants, their employees' representatives, consumers, users of financial services including representatives of SMEs and other non-financial companies, as well as other groups such as NGOs with insights to the wider impact of the legislation on e.g. the financing of development or of the energy transition.

**3. Participation by stakeholders in open public consultations is often disappointingly low. How can the Commission encourage or enable more stakeholders to take part? How can the Commission better reach and engage underrepresented groups of stakeholders and assist them in replying to complex issues?**

The guidelines should be improved to **encourage an outward facing approach in identifying stakeholders and encourage their participation**. It would further legitimate the EU policy making process. Below is a series of proposals to improve the consultation process:

Currently the guidelines encourage seeking stakeholders within a list of predefined actors. This is a sensible starting point; however, we believe the guidelines could go further in order to allow for the consultation to reach relevant stakeholders. The guidelines should suggest explicitly to actively reach out to relevant stakeholders and encourage their participation. Establishing a stakeholder database as suggested by the guidelines<sup>1</sup> would be complimentary to a more proactive outreach.

A proactive and outward facing approach could also include:

- **Contact relevant stakeholders proactively** via existing networks (e.g. networks of civil society organisations) and direct contacts
- Providing stakeholder consultation documents in all **relevant languages** (this would be particularly relevant to improve the participation of stakeholders from new Member States)
- Developing **accessible consultation documents**, in plain language (see also response to question 1).

In this context it is also necessary to address the perceived lack of democratic legitimacy by

- Consulting **at an earlier stage** of the policy making process, e.g. based on Green papers (see also response to question 4)
- Establishing **clarity about the role of stakeholders** in the policy-making process and the impact their contributions may or may not have in order to prevent misconceptions and expectation mismatch about the purpose and scope of stakeholder consultations.

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<sup>1</sup> Inter-Service or Impact Assessment Steering Group (IASG) members could suggest new contacts. Services should build up knowledge on who has an interest in the policy and identify the persons and groups with expertise or technical knowledge in a given field. Establishing a stakeholder database could be a useful approach." (Stakeholder Consultation Guidelines p.9)

- Making it mandatory for the Commission to **provide feedback** to stakeholders at the end of the consultation exercise, as suggested by the guidelines

Also, as many stakeholders (in particular non-industry stakeholders / civil society representatives) have limited financial and human resources, they must often give priority to their core activities vs a long and resource-intensive consultation process on which their impact is uncertain and where their contribution could potentially fall out of the scope of consideration. This means that, despite the proposed improvements, business representatives – which can dedicate enough resources to stakeholder consultations and are motivated to do so because of their specific interest in a given policy – will remain favoured and over-represented compared to other interest groups. This must be explicitly acknowledged in the Guidelines.

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

The risk of over-consultation exists if we consider the resources available: participating in a stakeholder consultation requires resources, which a lot of organisations (especially civil society organisations) do not have. The issue is therefore less about which consultations are important or not and more about the trade-offs involved in allocating resources among a number of important consultations.

As far as Finance Watch is concerned, we would like to share the two following remarks based on our experience:

- **Consultations on regulatory proposals** are particularly resource intensive (long and technical consultation documents requiring in-depth analysis), and do not allow to share views on policy choices – but rather on how a pre-determined policy choice should be formulated. There is therefore little space left for the Commission to take into account views that would diverge from the chosen political approach;
- **Preliminary public consultation procedures via Green papers** on the other hand, leave more space to share opinion and views on policy choices. (see response to question 5).

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

Yes. In order to address the perceived lack of democratic legitimacy, **the guidelines should establish clarity about the role of stakeholders in the policy-making process and the impact their contributions may or may not have** along with mandatory feedback as suggested by the Guidelines. As a minimum, the Guidelines should make it clear that the

Commission has a duty to inform stakeholders prior to the consultation on the impact their views and opinions may or may not have on a given policy option.

Stakeholder consultations can take place at a relatively late stage of the policy-making process (after the overall political goals have been defined), which can lead to an expectation mismatch when stakeholders hope to change the political goals of the policy. As mentioned above (see response to question 4), preliminary public consultation procedures via Green papers leaves more space to share opinion and views on policy choices. We would encourage the Commission to conduct more stakeholder consultations at this stage of the policy-making process in order to allow stakeholder to express their voice on policy choices rather than on technical aspects of a policy once formulated.

**6. Do you think the guidelines provide enough guidance on how to analyse the results and assess the representativeness of respondents and how to provide feedback to stakeholders participating in a consultation? If not, how could this process be improved?**

No. The Guidelines should be clearer and more explicit when it comes to analysing the **results of a consultation**: the Guidelines should define how different interests are taken into account and weighted. This is especially important because – as rightfully stated in the Guidelines – the responses are not always statistically relevant. In the financial sector for example the voice of the financial industry is often overrepresented. This needs to be counter balanced by an appropriate assessment of the consultation by the Commission.

More specifically, we would encourage the Commission to improve and clarify the Guidelines on the following:

*About the way to deal with “Strong diverging views from the main stream”*

The guidelines should make it clear **what is meant by “main stream”**, i.e. does this represent the views expressed by a majority of respondents (in this case, it must be made clear which interests they are representing) or is it the views expressed by a broad range of different stakeholders, assuming that all targeted stakeholders have managed to express their views? As an illustration, the public consultations on financial regulation are dominated by contributions from the financial industry itself. The “mainstream view” – if understood as ‘the majority of respondents’ only represents the narrow interests of a small group of stakeholders, and is often not at all representative of the ‘mainstream view’ of all stakeholders or the wider public. A similar remark would apply to the reference made in the Guidelines to ‘**widely supported options**’.

*About the way to deal with individual (campaign-driven) contributions from citizens*

The guidelines should not discard the message behind such a campaign; instead it should be treated as an opportunity for the European Commission to address the democratic deficit. When

citizens get organised to express their opinion to the Commission in this way, it is a strong message in itself, which it cannot ignore. See suggestion, question 9, about the use of the Eurobarometer as a complementary consultation tool.

When it comes to the **assessment of the representativeness of respondents**, we believe that the comparison between target group and effective origin of responses is important in order to further consult those groups which remain unheard by the Commission. This requires a thorough mapping of stakeholders and adequate categorization and identification of stakeholders based on the interests they represent (see response to question 2). In the field of financial services, we believe that a broad consultation exercise, involving not only market participants and users, but also employees, consumers, NGOs involved in development, environment, independent think tanks and economists (independent in the sense that they have no ties to the financial sector in terms of funding and governance) is crucial to provide the Commission with a relevant understanding of the issues at stake and the breadth of opinions and views on the regulation of the financial sector.

Speaking of open consultations in the field of financial services, they tend to attract mostly responses from the financial sector and other expert opinions, which are often linked to the financial industry. It is not an issue per se (we would however like to suggest ideas for improvement – see response to question 3), as long as the necessary precautions are taken when interpreting the results, and the narrow scope of interests represented is acknowledged and correctly balanced by other consultation routes.

With regard to the **feedback that is provided** post-consultation: an important feature that would improve the stakeholder consultation process and acknowledge the importance to improving democratic accountability of EU institutions, is to provide adequate feedback. This should be done in a constructive manner that will encourage future responses and broad participation in stakeholder consultations. In this respect, publication of consultation results and mention in the Impact Assessment are not enough: all identified / relevant stakeholders should be kept informed on the outcome of the consultation. The feedback should make a clear mention to the process itself, and more specifically to the potential gaps between stakeholder mapping and effective contribution to the consultation.

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

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

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

The European Commission could take the revision of these guidelines (together with those related to Impact Assessments) as an opportunity to tackle the democratic deficit that European institutions currently suffer from. This would require more clarity in the objectives, use and influence of the stakeholder consultation exercise compared to what is being proposed in the Draft Stakeholder Consultation Guidelines 2014.

In addition to the improvements suggested in our responses above, we would like to make the following two suggestions:

- Some policy debates and proposals trigger more public interest than others – as evidenced by unusual citizens’ contributions to open consultations. In the field of financial services we saw it happen in several cases (e.g. MIFID, Structural reform of banks) due to a vivid political debate post-crisis and the formation of a public opinion on crucial issues in relation to financial services. In order to avoid an expectation mismatch between groups of citizens using the consultation process to express views and a policy proposal that would not take their voice into account, the European Commission could consider a more systematic use of the Eurobarometer Surveys to complement open consultations. The results would be included in the Impact Assessment and would inform the elaboration of a policy proposal.
- Stakeholder consultation can come quite late in the policy making process (e.g. consultation on a legislative proposal) hence leading to mostly very technical questions, which give a perception of unclear and biased consultation and acts as a barrier to participation for many stakeholders. It is particularly true in the field of financial services regulation. This issue should be mitigated via the systematic inclusion of an open question, calling for (1) general comments and (2) an assessment of the consultation process. The answers would be useful to the Commission, in particular the evaluation of the consultation exercise and the objective to look for “a continuous improvement” of the stakeholder consultation process (step 10) would benefit from direct feedback from stakeholders. It could also encourage a broader participation of stakeholders.