

# Feedback about the use of public consultations by the European Commission; a first assessment

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## Background (I)

- Stakeholder consultation by the European Commission has become a common feature in EU policy-making
- Part of Better Regulation program => more systematic approach / reduce red tape
- Existing literature on the EU consultation regime:
  - Historical development
  - Selection of different forms of consultation
  - Participation of stakeholders
  - Impact on the position of EU institutions in the policy making process

What happens with consultation contributions?

## Background (II)

- It remains unclear what is taken into consideration and on what grounds in the Commission's policy formulation:
  - Kröger (2008): "The Commission is far from consistent or clear in how it uses the contributions it gets from stakeholders to a consultation."
  - "Consultation participants" (2014): "there is a need to set up clearer guidelines to indicate which, how and to what extent stakeholders' feedback informs policy choices."

## Background (III)

- We need to *systematically* uncover to what extent contributions are taken into consideration, and on what grounds, by the Commission in its policy formulation!
  - Is the Commission's claim to be heard (in the policy formulation process) justified?
  - Is the Commission responsive?; and
  - What does this mean for participation in consultations?

## Background (IV)

- Importance of use, but also on feedback about use and non-use...
  - E.g. Lowndes et al. (2001) “one of the biggest deterrents for participation is actor’s perception or experience of a lack of feedback.”

=>

- Stakeholders to consultations must receive feedback, explaining why their input was or was not taken into account!

## Research question

To what extent does the Commission provides feedback about which consultation contributions have and have not been taken into account?;

AND

What arguments are provided by the Commission when contributions are not used?

## Better Regulation Guidelines

- (European Commission, 2017): “It is critical for those participating in stakeholder consultations to know how, and to what extent, their input has been taken into account and to understand why certain suggestions could not be taken up in the policy formulation.”

# Analytical framework

- Better Regulation Guidelines & Toolbox standards, a.o.:

Legislative Proposals	Impact Assessment
Explanatory Memorandum	Main text
Outline the main contributions of consultations “by stating briefly the main sectors and/or institutional bodies that responded, giving an objective and balanced summary of their answers;	Stakeholder views should be integrated throughout the text of the IA report. You should include a description of the views of the different stakeholder groups and highlight whether the views differ across or within these groups.
Summarise how the results of the consultation were taken into account in the proposal;	Be clear which options are supported by the various stakeholder groups and about the reasons where stakeholder preferences or opinions have not been followed.
Explain where the Commission's views diverge and why.”	

# Method

- To what extent does the Commission meet these standards?
- Assessment of all Commission's proposals for *new directives* in 2016 and 2017 that had a *public (open) consultation*:
  - 15 Explanatory Memoranda
  - 13 Impact Assessments
- Content analysis (atlas.ti)

# Assessment (I)

Criteria Explanatory Memorandum	Assessment
Outline the main contributions of consultations “by stating briefly the main sectors and/or institutional bodies that responded, giving an objective and balanced summary of their answers;	Contributions are discussed (13/15): “need for action” (13/15) “expertise” (6/15)  Stakeholders are specified (10/15) Divergent views (8/15)  Objective answers (6/15) Framed as support for proposal (10/15)
Summarise how the results of the consultation were taken into account in the proposal;	General remark (4/15) Implicit use / support (8/15)
Explain where the Commission's views diverge and why.”	Not discussed!

# Assessment (II)

Criteria Impact Assessment	Assessment
<p>Stakeholder views should be integrated throughout the text of the IA report. You should include a description of the views of the different stakeholder groups and highlight whether the views differ across or within these groups.</p>	<p>Views are discussed (13/13) Divergent views (9/13)</p>
<p>Be clear which options are supported by the various stakeholder groups and about the reasons where stakeholder preferences or opinions have not been followed.</p>	<p>Reference to specific explicit support for policy option(s) (10/13).</p> <p>General reference that policy options meet the expectations of stakeholders (8/13)</p> <p>Reference to “policy options developed based on consultation results” (2/13)</p> <p>Reference to explicit non-use (3/13)</p>

## First conclusion

- To what extent does the Commission provide feedback about which consultation contributions have and have not been taken into account?  
=> to what extent does the Commission meet its own standards?
- Some improvements can be made...
  - Explanatory Memoranda can be (i) more specific about divergence in views; (ii) more objective in their reporting and (iii) more specific about the actual use of input (this remains very general).
  - Impact Assessment are more explicit in this regard (because of RSB?)
  - In both cases little attention for the non-use

# Analytical framework

- What arguments are provided by the Commission when contributions are not used?
- Arguments put forward for non-use (based on literature / Better Regulation guidelines)
- Assuming Commission wants to keep its (technocratic / neutral) reputation:

<b>Most likely</b>		<b>Least likely</b>
Problems with evidence; Problems with representiveness	Legal or technical feasibility of a policy measure; Its effectiveness and efficiency; The relevance or proportionality	Previous policy choices; Lack of coherence with other EU policy objectives; Political feasibility

# Arguments for non-use

- In most instances, several reasons are invoked at the same time:
  - the quality of the consultation contribution (i.e. in most cases, the lack of large support for a specific measure);
  - the technical or legal feasibility and proportionality of a supported option; or the
  - anticipated resistance by the Member States

# Conclusion

- Analysis of Commission's feedback about use and non-use, not of the actual use and non-use.
- Room for improvement...
  - Within the dataset there are best practices
- Next steps:
  - Include new regulations tabled in period 2016 and 2017
  - Refine coding schemes / coding itself
  - Explaining differences in feedback!