

## How to Deal Effectively With Information Overload and the Proliferation of Consultations?

Marc Opper, Christine Mahoney & Heike Klüber

In the European Commission's *Minimum Standards on Consultation* (COM (2002) 704), the Commission states that the principal aim of consultations are: (1) to encourage more involvement of interested parties through a more transparent consultation process, which will enhance the Commission's accountability, (2) to provide general principles and standards for consultation that help the Commission to rationalise its consultation procedures, and to carry them out in a meaningful and systematic way, (3) to build a framework for consultation that is coherent, yet flexible enough to take account of the specific requirements of all the diverse interests, and of the need to design appropriate consultation strategies for each policy proposal, and (4) to promote mutual learning and exchange of good practices within the Commission.

Between 2008 and 2010 there were a total of 73 public consultations held by the European Commission.<sup>1</sup> These included consultations on proposals, directives, green books, and white books. The goal of our research was to ascertain the effect of interest groups on public policy outcomes using computer-assisted text analysis of the consultation documents submitted through this process and official EU documents. Initial data collection was carried out using publically-available resources, specifically the website PreLex, the European Commission's database on inter-institutional procedures, and the European Parliament's Legislative Observatory. Documents that were not publicly available were acquired after submitting requests to the relevant Directorates-General. Because our interest was in *written* responses, we could only fully analyze 44 of the 73 consultations. Altogether, we gathered 3,643 documents submitted to Commission consultations, representing a total of 3,967 interest groups; of the documents submitted, we read 1,700 individual documents (English only), or 42.85% of the total.

Even before we began our analysis, we knew that we were going to be confronted with a massive amount of information. It was for that reason we employed a computer-assisted text analysis technique that would group together document using similar language in a given consultation. Theoretically, this tool would be of use to those who simply wish to understand the general lines of debate on a given consultation as well as those that wish to analyze the effect of interest groups on policy outcomes. However, even with the assistance of software, the sheer volume of information submitted to a given consultation was overwhelming. Brief documents that ran three to five pages could contain information on an interest group's position on several issues, some of which may not even be directly relevant to the legislative proposal in question; some submissions ran to well over 100 pages and, as can be imaged, contained even more information about an interest group's policy positions. This brings us to what we believe is a central theme of public consultations: regardless of the structure of consultation (free response format, box-ticking format, a given number of questions, etc.), the sheer amount of information presented is *massive*.

We believe that this tidal wave of information presents two related challenges: (1) aggregation of responses and (2) integration of responses into legislation. When we refer to aggregation of responses, we are referring to the process by which the mass of submissions to a consultation are summarized and presented to policy-makers. Aggregation of responses is most

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<sup>1</sup> In the same period there were a total of 627 proposals for regulations, directives, or Green/White books, meaning that consultations were held on 11.64% of all proposals.

straightforward when the Commission provides social actors with questions that can be answered only from a discrete set of answers (box-ticking). This format allows an observer to see which responses for each given question were most popular amongst respondents. However, this form of consultation was a small minority of the consultations we analyzed and, given the overall objectives of consultations, may not achieve the Commission's aims which is to gather proposals and suggestions that have not yet been proposed.

Free response questions and answers are both the most common and most challenging submissions to consultations. In these cases, the Commission invited social actors to respond to a number of specific questions in its call for a consultation. Actors could respond to the questions posed by the Commission and/or submit a separate document that contained a more thorough explication of its policy position. Where the box-ticking format constrains respondents to a very narrow range of answers, the free response format permits groups to present policy positions in all of their nuance. Aggregating the responses from these forms of consultations is exceedingly difficult. Interest groups may ignore the Commission's questions altogether and submit a response to the Consultation that addresses the issue from a very different perspective; even if interest groups all answer the same questions, they often talk past each other. It is, therefore incredibly challenging for anyone (Commission officials, researchers, interest groups, the general public, etc.) to compile simple descriptive statistics on where interest groups stand on individual aspects of a piece of pending legislation, to say nothing of the proposal as a whole. We found our software to be useful in analyzing these kinds of responses, but with the caveat that it did not always capture the full range of opinions and that it required a significant time investment (almost 2½ years) that may be prohibitive for the Commission.

Comprehending the information submitted to a consultation is one challenge, but so, too, is integrating that information into legislation. Across all of the legislation we analyzed from the consultation stage to the final legislation, at no point was it clear exactly how input from the consultation made its way into the final legislation. As of late 2014, the *Your Voice in Europe* website carries far more consultations than existed when we undertook our data gathering and analysis and the presence of consultation summary documents. These documents generally summarize the results of the consultation by breaking down the total number of consultations by Member State, by sector, etc. Where there are free-response questions, there are, in some cases, brief summaries of responses to questions. Where there are box-ticking questions or multiple choice questions, consultations summaries present bar graphs that indicate the percentage of recipients who chose each option. In our experience, however, this is where the transparency ends. Proposals often state that consultations were held, but fail to actually state what part(s) of the consultation made it into the legislation or if the consultation changed any part of the legislation.

In analyzing this question more closely, let us take as an example the format that is most 'legible' to human coders: consultations that present social actors with a question and a number of answers. If a plurality of respondents choose a given option, will that particular option be integrated into pending legislation? Will it be considered in Commission debates on that issue? At this point in time it is unclear. Even if it is possible to systematically determine where a plurality of free response submissions stand, the same question emerges: is it simply that a plurality of perspective is required to sway the Commission on a given point? If not a plurality, is a majority required? If neither a plurality or majority, what is the criteria by which the Commission determines which policy positions to adopt and which to reject?

As researchers attempting to ascertain the impact of these consultations on public policy in the European Union, we would like to venture a number of suggestions that we believe may help address some of these challenges. The first of these relates to the format of consultations. Unlike in the United States where bills can die in many stages of the legislative process, evidence suggests that most proposals in the EU become law. As such, the Commission appears to have determined the overall direction the legislation even prior to its final passage. It should therefore be made clear in consultations that social actors have the ability to change only certain aspects of the legislation and that consultations have the ability to affect outcomes in those areas. For example, if the Commission wishes to draft new legislation concerning carbon emissions and is interested in understanding the level of reduction that different sectors wish to see, the Commission should provide a questionnaire with a number of discrete answers (reduce by  $x$  percent, reduce by  $y$  percent, reduce by  $z$  percent) and ask respondents to tick the box that corresponds to their preference (or most closely to their preference). If the Commission wishes to put entire pieces of legislation up for consultation then it should divide a given piece of legislation into parts, and, yet again, be explicit in which aspects of each section are open to consultation and to change.

We see two changes that can be made to the consultation format that may make the flood of information more manageable. The first method, and the one we prefer, would be a two-stage consultation process. In the first stage, the Commission would provide respondents with a list of discrete options that it will put to a wider consultation. The list can be as long or short as the Commission wishes, but should be in a format that would allow for the ready aggregation of the number of respondents interested in certain points. In the second stage, after the quantitative responses to this consultation are gathered, the Commission would draft another round of questions with a number of discrete answers that would, yet again, be put to social actors and the general public for response. In this manner, answers to consultations can easily be aggregated and understood by the Commission.

The second form of consultation is more in keeping with the current structure. Free response questions would be provided, but examples would be provided for respondents to facilitate their responses conforming to a format more readily understandable and quantifiable. If the Commission's goal is to gather expertise, the format should be adjusted to allow for the submission of technical information, such as academic papers, research reports, etc. (in all of the consultations we analyzed, such technical work often appeared alongside regular position papers). It should be emphasized that this free response format and our more restrictive format are not mutually exclusive. However, it bears emphasizing that while making questions more concise, providing examples, and altering the format slightly, we do not see any way to change what appears to be the fundamental difficulty of interpreting and aggregating free response questions.

A second set of recommendations refers to the integration of responses into proposals and legislation. We suggest that the Commission establish a set of general guidelines regarding how responses to consultations should be integrated into legislation. At an absolute minimum, the legislative proposal (or some other official document) should clearly indicate what changes were made (if any) as a result of the consultation and why. If a particular actor (or group of actors) was especially influential, we believe that fact should be made clear. We understand that each proposal is unique and the needs of the Commission differ across proposals, but believe that there should always be an explicit statement of the Commission's decisions to integrate responses to consultations into legislation (if not prior to the consultation, then most certainly after). If 50% plus 1 of respondents need to be in favor of something for the Commission to

consider it, that should be made clear. If 100% of respondents must request something and actors fell short, that should, likewise, be made clear.

We have a final, more prosaic recommendation to the Commission regarding data management. The *Your Voice in Europe* website is intended to serve as a one-stop-shop for all consultations held by the Commission. While there are far more consultations available now than when we began our research in 2011, there is still room for improvement. Consultation documents (both Commission documents and submissions) are not stored on the *Your Voice in Europe* site, but on the sites of the responsible DG's. This leads two broad issues. The first relates to a lack of standardization in file storage. Some DG's take all interest group submissions and merge them into giant \*.pdf documents, others preserve the original formats and compress them into \*.zip files, others post all of the documents straight onto the website, and finally some take all of the responses and merge them into giant Microsoft Excel spreadsheets. In light of this, we recommend the establishment of a uniform standard on how submissions will be made available to the public.

A second issue relates to the availability of documents, which we found to vary according to the DG responsible for the consultation. Error messages stating that resources are no longer available or links cannot be found are pervasive for consultations held more than a few years ago. In a very cursory browse of the website, there was at least one consultation from 2013 whose consultation documents are unavailable. We believe that submissions from consultations should be made available on one website rather than those of the separate DG's and access to them ensured for a non-negligible period of time. Thereafter, there should be one person/office responsible for making older submissions available to interested parties.