

Consultation with Stakeholders in the Shaping of National and Regional Policies Affecting Small Business

Best Procedure Project
Final Report of the Expert Group





EUROPEAN COMMISSION
DIRECTORATE-GENERAL ENTERPRISE AND INDUSTRY

Promotion of SMEs' competitiveness
Entrepreneurship

CONSULTATION WITH STAKEHOLDERS
IN THE SHAPING OF NATIONAL AND REGIONAL POLICIES
AFFECTING SMALL BUSINESS

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This project has been conducted with experts in the field of consultation with business stakeholders, nominated by the national authorities under the Multi-annual Programme for Enterprise and Entrepreneurship (2001-2005) coordinated by the Enterprise Directorate-General of the European Commission.

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EXECUTIVE SUMMARY

Better quality regulations and well formulated policies are of a crucial importance for the successful operations of European companies. Since small enterprises constitute approximately 99% of businesses in all European economies, it is therefore essential, that the policy makers carefully **listen** to their opinions, **involve** them in the decision making process **at an early stage** and take their specific situation and their interests into account when developing new legislation and policies.

The situation in the area of consultation has **significantly improved** in recent years but “the level of business **involvement** into the law and policy making **differs** from country to country and in some of them still **remains weak**”, as stated in the Charter implementation reports¹. This statement is particularly relevant to **the small business involvement** in the policy making and the consultation process, therefore Member States were recommended **to provide opportunities** for small businesses **to voice their interests** in legislation and policy making in a more **regular and systematic** way.

On the basis of conclusions of the Charter implementation reports, the Competitiveness Council, held in March 2003, invited the Commission to launch **a project on better involvement of small businesses in the consultation process at national and regional level**. The **Best Procedure** project on consultation with stakeholders in the shaping of national and regional policies affecting small business was approved by the Enterprise Policy Management Committee (EPMC) and launched in autumn 2003, in the framework of the Multi-annual Programme for Enterprise and Entrepreneurship (2001-2005).

The main objective of the project was to find out how the **consultation process is structured and conducted**, what consultation **methods** are used and how small business opinions are **taken into account** by policy makers across European countries (*Chapter 1*). More specifically, the project aimed at providing **an overview of the progress made** in the area of consultation, building **a European reference model of consultation** that provides a framework for the consultation process, proposing **indicators** for monitoring the progress and identifying possible **national targets** to be reached on a voluntary basis, offering further examples of **best practices** and, finally, formulating **recommendations** for future action.

A working group, composed of **national experts** designated by governments of the EU Member States, EEA countries and Candidate Countries, was established in order to bring together the necessary **expertise**, to provide **information** on consultation procedures and **best practices**, and finally, to ensure that national administrations and business organisations from the participating countries are **actively involved** in the project activities.

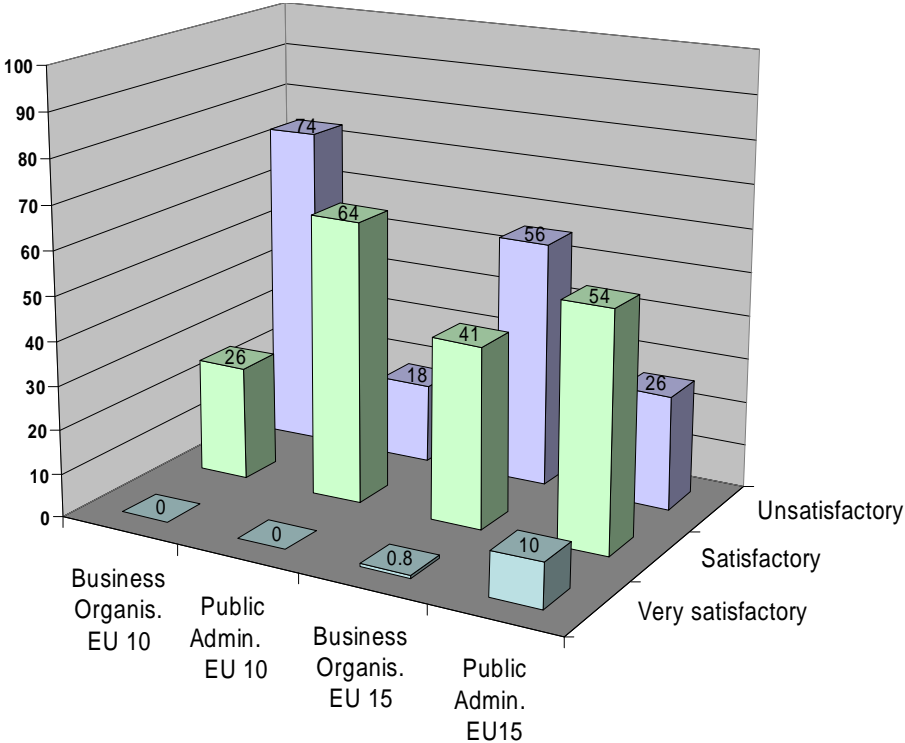
In parallel to the work of the expert group, **an online survey** has been carried out by the Commission via its **Interactive Policy Making consultation tool** (*Chapter 2*). The survey covered **31 European countries** and it was extensively advertised through the Commission

¹ Charter implementation reports (2003 and 2004) are available on:
http://www.europa.eu.int/comm/enterprise/enterprise_policy/charter/reports.htm

communication channels and the **Euro Info Centres’ network** as well as via the European business organisations and among national and regional governments and business organisations from the participating countries.

The two separate **questionnaires** addressed to **public administrations** and **business organisations** were available *on line* for **15 weeks** (June/September 2004) in **16 languages** of the EU Member States² as well as in **Romanian** and **Turkish**. As a result, **268 replies** were received from the representatives of business organisations and public administrations.

According to the survey results, **business organisations’ representatives are less satisfied** with the current consultation process than the public administrations (*Chapter 3*). On average, almost **60% of business representatives** consider the consultation process **unsatisfactory** whilst in the case of **public administrations** this opinion is shared by **30%** of respondents. **Business representatives from new Member States** are **less satisfied** than those **from the EU 15**, respectively **around 74% and 56 %** expressed such opinion.



The **opposite tendency** is observed when looking at the **public administrations’ responses**. In the **EU 15** the ratio of those who are **not satisfied** with the process is **higher** than in the **new Member States**, respectively **25% and 18 %** of replies, however it is worth underling that the answer “very satisfactory” appears only among respondents from the EU 15 and that the overall proportion of those satisfied is similar in both groups of countries.

² Apart from the 11 official languages of the EU 15, the questionnaires were also available in the five languages of new Member States: Czech, Estonian, Lithuanian, Polish and Slovak.

There is **no correlation** between the **availability of legal provisions** for the consultation process and the **level of satisfaction** of those who participate in the process. On the other hand, it seems that there is **not enough information and knowledge** about the consultation provisions, as the high proportion of “I do not know” answers, especially in the EU 15 (14%) was observed, and in many countries³ the responses were **equally split** between “yes” and “no” answers. In the case of some countries it can be explained by the fact that legal provisions or so called “soft” legislation cover only some areas (e.g. social dialogue). The biggest **inconsistency** between business organisations and public administrations answers to this question was observed in Portugal, Germany, Belgium, Greece, Austria and Slovakia.

Clear understanding of the specific **policy issues** and the potential **roles** of different stakeholders is a fundamental prerequisite for a successful decision making process but first of all they need to be properly **identified** at the start of the process and this should be done on the basis of **clear criteria**, so that the risk of listening to only one group with privileged access is eliminated or reduced. The **representativeness** of business organisations seems to be one of the most relevant factors here but it should also be underlined that such **assessment** can create some **difficulties**, especially in the countries where there is **no compulsory membership** to the business organisations, and this was confirmed by the survey results⁴. A **high proportion** of respondents from public administrations and business organisations were inclined to think that there are **no legal criteria** to assess **the representativeness** of business organisations⁵.

The main problems that business organisations face during the consultation process are the following: “**not enough time** for preparing a contribution”, “**not enough human resources**” and **not enough expertise** within the organisation”.

A **large majority** of respondents is convinced that **an impact assessment** needs to be conducted **at an early stage** of the decision making process in order to be **efficient**, and this opinion was shared by both public administrations and business organisations representatives. Interestingly, in countries such as Portugal, France, Sweden and Romania conducting an impact assessment “**after a law is submitted to the Parliament**” or “**shortly before a law is voted**” was considered **most efficient** by a significant number of respondents. The similar opinion was expressed by business organisations from Slovenia, followed by Lithuania, Norway, Greece and Estonia.

In the **majority** of countries, where **Regulatory Impact Assessments (RIA)** are conducted, there are **no specific provisions** for taking into account **interests of small businesses**. However, some **good examples** already exist, e.g. in **Sweden**, the final report of the Committee of Inquiry must contain a regulatory impact assessment that covers mainly **effects on small business**, and if other subordinate regulations introduce some additional provisions likely to affect small enterprises, they are **once again** subject to the

³ This tendency was observed in relation to business organisations replies in countries such as Luxembourg, Latvia and Poland, and in relation to public administrations responses in Slovakia, Spain, the UK and Turkey.

⁴ In Denmark, Luxembourg, France, Germany and Turkey the opinion that the representativeness of business organisations is “not assessed” was ranked first. A very high proportion of “I do not know” replies was observed in Portugal, Ireland and the UK, followed by Estonia and Czech Republic.

⁵ This opinion was expressed by approximately 46% of public administrations representatives against 35% of those representing business organisations in the EU 15, and respectively 36% against 32% in new Member States.

impact assessment. Since 2003, the **Small Firms Impact Test (SFIT)** has to be carried out in **the UK** when a new policy affecting business is proposed. Government officials need to test their policy assumption through a dialogue with business. The Small Business Service (SBS) has the right to see all RIA's throughout the process and comment upon them. If there is a disagreement between the department and the SBS on the impact the policy will have on business, the SBS's comments have to be recorded in the SFIT section of the RIA. There are also **some provisions** for assessing **an impact on SMEs in Poland**. The impact assessment carried out for each new legislative proposal has to include information about all entities on which the draft legislation is likely to have an effect. The impact on SMEs is assessed in the framework of the internal and external competitiveness of the economy.

Another interesting finding relates to the **consideration of business opinions** by policy makers. According to the respondents' opinions, the contributions of business organisations are **least considered** in **Sweden**, and this opinion was expressed by both business organisations and public administrations representatives.

In many countries, a **significant discrepancy** was observed between opinions of business representatives and public administration about **giving feedback** after consultation. There might be different reasons for that, e.g. **lack of information** on where and when feedback can be found or a different notion of what giving feedback means. Whatever the reason, it is obvious that the current situation is considered **unsatisfactory** by many respondents from different countries. The **similar trend** in opinions was observed with regard to **publishing the consultation results**.

An **overview** of current developments in the area of consultation (*Chapter 4*) can serve as a **source of information** on the existing consultation **procedures** or **new actions** initiated in the EU Member States, Candidate Countries and Norway.

A European **model of consultation** has been developed with the aim to provide national and regional governments with a **practical tool** that can serve as a reference while planning and organising consultations in their own countries (*Chapter 5*). It can help to **identify the main stages** of the consultation process and the **main actions** that might be undertaken in order to make the whole exercise more successful. This model indicates **what could be done** to make the consultation process potentially more effective and efficient but it **does not impose** any concrete solutions or consultation methods to be used. These should be identified and chosen by policy makers in accordance with the country specific structures, priorities and traditions of conducting dialogue. The reference model of consultation relates to the **indicators** proposed for monitoring progress in the area of consultation. The **qualitative and quantitative indicators** can also be used to identify **national or regional targets** and to undertake actions leading to improvements in the area of consultation. Experts have underlined that national targets should be **different** for each country, as the consultation **structures** and **procedures** as well as **national priorities** vary from country to country.

Moreover, the experts identified several **good practices** in the area of consultation at both **national and regional level** (*Chapter 6*). These can be very useful to other countries, after applying the necessary modifications and adjustment to the specific national or regional conditions and structures. They can also be a **source of inspiration** on how to **improve** the existing consultation procedures and contribute to a better and more informed policy making.

One of the good practice examples is the *Code of Practice on Consultation* issued by the Cabinet Office in **the UK**, where an extensive generic guidance on consultations for policy officials is provided. This Code contains **practical suggestions**, step by step, on how the consultation process should be **organised and conducted**, and how results of the consultation should be assessed and communicated. Good examples of how to **secure an effective participation** of relevant stakeholders in the shaping of new policies and legislation or simplifying the existing legislation come from **Austria**, where the efficient consultation with small business was ensured in the process of **harmonisation of regional construction laws**, and from **Norway**, where the **Contact Forum** was established to conduct a systematic dialogue with business at an early stage of the process of simplifying the regulatory framework (**Action Plan for Simplifying Norway**). **Test Panel of Entrepreneurs** established in the **French** region of **Auvergne** is a very good example of **rapid collection** of opinions of entrepreneurs who are nominated or elected on the basis of clearly defined criteria, equipped with the efficient tools and in-depth knowledge about the topics under consultation. In **Italy**, a **common decision making process** (known as *concertazione*) allows for **involving** all institutional entities as well as social and economic partners in the drafting of regional territorial development plans and **maintaining a permanent dialogue** with all partners involved in the process. It takes a form of **general and/or thematic “round table” discussions** focused on **specific sectors**, e.g. fashion related industries in Tuscany. Informal consultations with businesses in **Ireland**, conducted in the framework of the **Round Table for Small Business**, permit ongoing participation and input by the SME sector to policy matters and prove to be an efficient way of exchange of opinions on vital matters for the Irish economy. **Sweden and Poland** are countries where special attention is given to the small business when **assessing the impact** of new legislation or policies. Consultation with business became an integral part of the Regulatory Impact Assessment. The report on the results of the consultation process has to be attached to the impact assessment of each legislative proposal.

Finally, the report includes **twelve recommendations** (*Chapter 7*) addressed to **national and regional governments** on how to **establish** a more efficient dialogue with stakeholders and **improve** the consultation procedures.

The proposed recommendations invite national and regional governments to:

1. Establish **workable** and **transparent** consultation **procedures** (formal/legal or informal) that provide for efficient and effective exchange of information leading to a more informed decision making process,
2. Ensure **inclusion** of **all relevant** business stakeholders in the consultation process,
3. **Secure** business stakeholders **participation** in the consultation process,
4. **Involve** business stakeholders in the consultation process **at an early stage** in order to benefit from their direct experience and their assessment of the potential impact of new legislative and policy initiatives,
5. Allow **enough time** for consultation to reach the objectives of the consultation process,
6. Employ a **variety of consultation methods** in order to achieve comprehensive coverage and a broad diversity of viewpoints,
7. **Conduct Regulatory Impact Assessment** (RIA) for each legislative proposal,
8. Take into account **small business dimension** (where appropriate) in the Regulatory Impact Assessments,
9. Provide **feedback** after consultation to the stakeholders through clear evaluation of their contributions,

10. **Publish results** of consultations and inform all stakeholders involved when and where these results can be found,
11. Consider the **use of the indicators** proposed in the report for monitoring the progress in a country/region,
12. Set up **minimum standards** for consultation.

In addition, national and regional administrations were invited to **follow** some **good practice** examples when planning and organising the consultation process which include:

1. Precisely defining the **scope of consultation** and designing **a framework** for the consultation process.
2. Explaining clearly **who will use the stakeholders' contributions** and for what purpose they are gathered (e.g. data protection issues).
3. Enhancing **cooperation** between different ministries/departments in the public administration that are involved in organising consultations to profit from the previous experience.
4. Identifying the most likely **risks** in consultation process and deciding beforehand how these risks will be **managed** and **controlled**.

1. INTRODUCTION

1.1. Background information

Small enterprises constitute a large majority of businesses operating in all European economies and their success is crucial for the future of Europe. To help them succeed however, the policy makers need to be more responsive to their needs and provide the appropriate support, so they can meet the challenges of the global economy and compete effectively. It is therefore essential that their views are heard and taken into account when developing new policies and legislation.

Following a commitment to the Better Regulation Action Plan of June 2002 to improve stakeholders' participation in consultations, the Commission published a Communication *Towards a reinforced culture of consultation and dialogue - General principles and minimum standards for consultation of interested parties by the Commission*⁶ where general principles and minimum standards for consultation, that should govern the Commission's relations with all interested parties, were identified and described. The main objective of this Communication was to build up a coherent and flexible framework for consultation to permit a more efficient dialogue and exchange of opinions between both partners. The above mentioned Communication underlines that a proper balance between the representatives of large and small organisations or enterprises should be ensured while defining the target groups for a consultation. It also recommends that at least eight weeks should be allowed for written public consultations that can be accessed via the Commission's portal - *Your Voice in Europe*⁷.

This portal is inter-linked with the Enterprise and Industry Directorate-General stakeholder consultation web page⁸ that includes all consultations related to enterprise policy, as well as all regular enterprise dialogues. It also provides a link to a web page listing the major EU events of interest to businesses and professional organisations⁹.

Another multilingual entry page called *Enterprise DG in dialogue*¹⁰ gives a direct access to *Your Voice in Europe* portal. Thanks to these web sites businesses can easily access all consultations related to policy actions that are likely to affect their functioning. This particularly benefits small enterprises that usually have less time and resources to inform themselves of such initiatives than do larger firms.

The designation of an SME Envoy within the Commission's Enterprise Directorate General in 2002 also aimed at better integration of the SME dimension in EU policies and programmes. The SME Envoy plays a proactive interface role between the business world and the Commission services through initiating and maintaining regular contacts with European and national business organisations. Cooperation with other Commission services has been

⁶ *Towards a reinforced culture of consultation and dialogue - General principles and minimum standards for consultation of interested parties by the Commission*, 11 December 2002, COM (2002) 704 final.

⁷ http://europa.eu.int/yourvoice/index_en.htm

⁸ This web page created in July 2001 was upgraded in February 2003.

⁹ <http://www.europa.eu.int/comm/enterprise/consultations/list.htm#open>

¹⁰ <http://europa.eu.int/comm/enterprise/consultations/index.htm>

strengthened through the creation of an SME inter-service network that has proved to be an efficient tool to increase the awareness of SME needs and improve coordination on SME issues inside the Commission. The SME Envoy function has gradually acquired good visibility and is now well known inside the Commission and in the business community.

The European Charter for Small Enterprises¹¹ endorsed in Santa Maria da Feira in June 2000 has brought together many aspects of policy affecting small businesses at European and national level. It also provided the basis for monitoring the progress made in all the ten Charter areas by the participating countries, including the more effective representation of small enterprises' interests at Union and national levels¹². In addition, the Charter significantly contributed to the fact that the attention of the high rank policy makers focuses on the need for continuous improvement.

In March 2003, the Competitiveness Council, after the public debate based on the Charter report and a number of other documents, called in its conclusions on entrepreneurship and small firms¹³, to listen more to small businesses, to speed up the implementation of the Charter and to strongly consider the exchange of good practices.

Shortly afterwards, the Brussels European Council¹⁴ once again encouraged Member States to speed up implementation of the Charter and to ensure more effective involvement and consultation of small businesses in the policy making process.

On the basis of discussions held with representatives of small businesses (during the Conference of Ministers responsible for small and medium-sized enterprises that took place under the Greek Presidency in February 2003) it became clear that all initiatives carried out in the name of business need to be assessed by their representatives, as they are able to contribute to the proper judgement on these initiatives' impact in practice. The great interest in the Charter shown by business organisations and their increased involvement in its implementation contributed to the whole process and was highly appreciated by both national administrations and the Commission.

These conclusions were also in line with the Green Paper *Entrepreneurship in Europe* published by the Commission in January 2003¹⁵ with the aim to involve the largest possible audience of stakeholders in setting up the future policy agenda.

The responses received during the public debate following the publication of the *Green Paper* as well as opinions expressed on many other occasions, clearly highlighted the need for the administrative simplification and systematic consultation with SMEs and their representative organisations before introducing new regulations and policies. Many stakeholders underlined the principle *think small first* to ensure sound impact assessment and better regulation at both national and European level.

¹¹ The European Charter for Small Enterprises, Santa Maria da Feira, 19-20 June 2000. Available online at: http://www.europa.eu.int/comm/enterprise/enterprise_policy/charter/index.htm.

¹² The European Charter for Small Enterprises, Line of Actions 10 – “Develop stronger, more effective representation of small enterprises' interests at Union and national level”.

¹³ Competitiveness Council Conclusions on Entrepreneurship and Small Firms, 3 March 2003.

¹⁴ Presidency conclusions of the Brussels European Council, 20-21 March 2003, point 23.

¹⁵ Green Paper *Entrepreneurship in Europe*, European Commission, COM (2003) 27 final, 21.01.2003.

As a follow-up to the *Green Paper*, and on the basis of the public consultation, an *Entrepreneurship Action Plan*¹⁶ was adopted by the Commission in February 2004. Listening to SMEs was identified as a key action.

The Commission continuously works on improving its mechanisms to take stock of SMEs' experiences with new and existing legislation, policies and programmes. Under the Commission's *Interactive Policy Making – Feedback Mechanism* initiative¹⁷, the EIC network records feedback on internal market obstacles experienced by SMEs throughout Europe. More intense promotion, a systematic follow-up on the reported problems and a wider range of areas on which feedback can be given, can significantly increase consideration of SMEs' opinions.

1.2. *Justification of the project and structure of the report*

It is becoming more and more obvious to policy makers at all levels that stakeholder' consultation is crucial to ensure better quality legislation and policies. The situation in the area of consultation has improved significantly in recent years but the level of business involvement into the law and policy making process differs from country to country and in some "still remains weak"¹⁸. This statement was particularly relevant to the small business involvement in the consultation process. Member States were therefore encouraged to provide opportunities for small businesses to voice their interests in legislation and policy making in a more regular and systematic way.

Indeed, in some European countries, still more effort is needed to establish an effective and systematic dialogue with business and their representative organisations so that the impact of the legal proposals and new policy initiatives on SME's can be properly assessed.

On the basis of conclusions of the 2003 Charter implementation report, the Competitiveness Council, held in March 2003, invited the Commission to launch a project on better involvement of small businesses in the consultation process at national and regional level. The Best Procedure project on consultation with stakeholders was approved by the Enterprise Policy Management Committee (EPMC) in July 2003 and launched in autumn 2003 in the framework of the Multiannual Programme for Enterprise and Entrepreneurship (2001-2005).

The remainder of this first chapter presents the objectives of the project, provides definitions and describes the methodology that was used for the project. The second chapter provides the information about the online survey and main characteristics of respondents participating in the survey. The third chapter contains an analysis of opinions concerning the consultation procedures and methods expressed by business organisations and public administrations representatives. Chapter four covers the current developments and new initiatives in the area of consultation in the countries involved in this project. A European reference model of consultation and possible actions to be taken by public administrations and business

¹⁶ Action Plan: *The European Agenda for Entrepreneurship*, European Commission, COM (2004) 70 final, 11.02.2004.

¹⁷ <http://europa.eu.int/yourvoice/ipm/>

¹⁸ The Charter implementation report 2003 available at: http://www.europa.eu.int/comm/enterprise/enterprise_policy/charter/charter2003.htm and the 2004 Charter implementation report available at: http://www.europa.eu.int/comm/enterprise/enterprise_policy/charter/charter2004_base.htm.

organisations at different stages of the consultation process are presented in the chapter five. Also in the chapter five, a set of indicators is provided that can be used by national and regional administrations as well as business organisations for monitoring the progress and improving the consultation procedures. Chapter six contains some examples of good practices. Chapter seven concludes the main part of the report with some policy recommendations for improvements. The annexes provide further details that could not be included in the main part of the report.

1.3. Objectives of the project

The objective of the project on *consultation with stakeholders in the shaping of national and regional policies affecting small business* was to find out how the consultation process is structured and conducted, what consultation methods are used and how small business opinions and interests are taken into account by policy makers across European countries.

More specific objectives of this project can be described as follows:

- Provide an overview of the progress;
- Build a European reference model on consultation by providing a framework for the consultation process;
- Propose indicators for possible national targets to be reached on a voluntary basis;
- Provide the countries participating in the project with further examples of best practices;
- Formulate policy recommendations for future action.

1.4. Definitions

Definition of decision making process

Decision making is the process of choosing between alternative courses of action. It involves weighing the benefits and costs and making trade-offs among a range of considerations. Often, the views of interested parties are represented directly and decisions are made through an incremental process of consultation, negotiation, bargaining and compromise. For major proposals, a number of formal instruments can be used to develop the information necessary for sound decision making.

Definition of stakeholders

Stakeholders are those whose interest are affected by the issue(s) or those whose activities strongly affect the issue, they possess information, resources and expertise required for policy formulation and implementation.

Definition of consultation

As a part of better regulation, consultation with individual businesses and/or their representative organisations in relation to legislative proposals as well as public policy initiatives can be summarised as a commitment by governments or government agencies to actively listen to the views of businesses and their representative organisations on a given set of legislative or public policy proposals and take them into consideration. Consultation implies the use of two-way communication between policy makers and stakeholders based on mutually accepted rules. The main purpose of consultations is to improve the decision making process by ensuring that decisions are based on sound evidence, that they take account of the views and experience of those affected by them, that innovative and creative options are considered and that proposed new arrangements are workable. Effective consultation should also ensure that in so far as possible everyone concerned have had a chance to express their views and that their interests have been taken into account.

A diverse range of interests is usually represented during the consultation process. These interests are often in conflict with each other, and it is the final responsibility of policy makers to make reasonable attempts to resolve conflicts, if they arise, and reach a suitable solution, if possible. Consultation may help reconcile the views and concerns of different groups throughout the policy cycle (e.g. in policy shaping, implementation and evaluation), thereby obtaining wider support and better acceptance for decisions.

Consultation, however, is a mode of involvement that offers no guarantee that the viewpoints of stakeholders consulted will be reflected in documents arising from public consultations. It acknowledges a role for stakeholders in proposing policy options and shaping the policy dialogue but the responsibility for the final decision or policy formulation remains with the government. Consultation is one of the most important means of enhancing the accountability of government for political leadership and decision making.

Definition of small business

Although the project aimed at getting a better picture of the consultation process concerning laws and policies targeted specifically at micro and small enterprises, it was obvious that in most cases legislative initiatives and policies enforceable in the countries are designed for both small and medium-sized enterprises. Therefore, assuming that even if these policies target business in general and not exclusively small enterprises with fewer than fifty employees, the impact remains similar, if not more disproportionate on the small firm to implement.

After the discussion, experts agreed that the term *small business* used in the survey should refer to the micro and small enterprises as defined by the Commission Recommendation of 3 April 1996 and amended by the Commission Recommendation of 6 May 2003¹⁹.

¹⁹ Commission Recommendation of 3 April 1996 concerning the definition of small and medium-sized enterprises (Text with EEA relevance), 30/04/1996, OJ L 107 p. 4. Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises (*notified under C (2003) 1422*), L 124 (2003) p. 36-41.

More information on SME definition available at:

http://www.europa.eu.int/comm/enterprise/enterprise_policy/sme_definition/index_en.htm.

- Within the SME category, a small enterprise is defined as an enterprise which employs fewer than 50 persons and whose annual turnover and/or annual balance sheet total does not exceed EUR 7 million.
- Within the SME category, a micro enterprise is defined as an enterprise which employs fewer than 10 persons and whose annual turnover and/or annual balance sheet total is not specified.

The above definition is consistent with the term “small enterprises” as applied in the European Charter for Small Enterprises.

1.5. Methodology

The fact, that the project has been approved as a Best Procedure project, is reflected in the methodology applied. The Best Procedure was set up (following a mandate from the Lisbon Council) to promote the exchange of best practice and to identify synergies between existing processes in a given area. The common feature of projects under the Best Procedure is conducting the analysis of issues and processes of interest for the Commission and national administrations. The main objective is to achieve a better understanding of the nature of these issues, to identify best practices and to develop indicators that can be used for monitoring progress. The essential feature of this methodology is that projects are carried out jointly by the Commission and by national administrations.

Eventually, the whole process aims at encouraging policy change in the Member States and in the other participating countries.

The working group composed of national experts²⁰ in this field, designated by governments of the EU Member States, EEA countries and Candidate Countries (Bulgaria, Romania and Turkey) was established on the basis of a mandate of the Enterprise Policy Management Committee (EPMC) in accordance with article 4 of the Multi-annual Programme for enterprise and entrepreneurship.

Each country was invited to nominate two experts for this project. The experts represented various working environments: ministries, national agencies, business organisations (chambers of commerce, employers’ federations, small business associations, business support organisations). Representatives of some European business organisations and business support organisations were also invited to participate in the work of the expert group. This has proved to be a valuable asset, as it allowed for a broader range of expertise and gave them the opportunity to present different points of view and exchange their opinions.

The overall task of the expert group was to bring together the necessary expertise, to provide information on consultation procedures and best practices, and finally, to ensure that national administrations and business organisations from the participating countries are actively involved in the project activities.

²⁰ Consult the List of Experts, p. 121.

In parallel to the work of the expert group, an online survey²¹ has been carried out by the Commission via its *Interactive Policy Making* consultation tool. The survey was addressed to both partners involved in the consultation process and it aimed at assessing how the consultation procedures are applied in different countries; what methods of consultation are used; and how opinions of small business are taken into account by legislators and policy makers.

Information concerning the consultation process, good practice examples as well as conclusions and recommendations formulated in the Charter implementation reports, also contributed to the content of this report.

²¹ The aggregated results of the survey are available at DG Enterprise and Industry web page at: <http://www.europa.eu.int/comm/enterprise/entrepreneurship/consultation/index.htm>.

2. THE ONLINE SURVEY ON CONSULTATION WITH STAKEHOLDERS

2.1. General information about the online survey

The online survey was an integral part of the work undertaken within this project. Representatives of all national and regional governmental institutions involved in law and policy making, as well as representatives of small business organisations were invited to take part in the survey. The survey covered 31 countries (EU Member States, EEA and Candidate Countries).

Two mirror questionnaires approved by the experts were available *on line* for fifteen weeks (June/September 2004) in sixteen languages of the EU Member States²² as well as in Romanian and Turkish²³.

The questionnaires were accompanied by three additional documents:

- *Introduction to the questionnaires*, where the main objectives of the survey were explained,
- *Privacy Statement* informing respondents about the data protection policy applied to the personal information,
- *Key to business categories* providing potential respondents from business organisations with the uniform categories of type of economic activity²⁴.

These documents were also available in all the national languages used for conducting the survey²⁵.

2.2. How stakeholders have been informed about the survey

One of the experts' tasks was to inform all potential stakeholders about the online survey on consultation to be carried out by the Commission, to supply them with direct web links to the survey, to encourage their participation and to provide them with the additional information about the survey objectives, if requested.

Experts were also asked to send personalised e-mail messages containing all the necessary information about the survey to all potential respondents in their countries. Obviously, the stakeholders from countries that did not nominate experts for this project, had less chance to be well informed about the survey and its objectives.

In parallel to that, the online survey has been widely advertised via the Commission communication channels. A press release was published on the day of launch and an e-mail

²² Apart from the 11 official languages of the EU 15, the questionnaires were also available in the five languages of new Member States: Czech, Estonian, Lithuanian, Polish and Slovak.

²³ Responses for the two latter languages could only be submitted in one of the 16 EU Member States languages.

²⁴ This document was based on the European Classification of Economic Activity elaborated on the basis of the project of publication created by Statistical Office of the European Communities EUROSTAT : "Nomenclatures des Activités de Communauté Européenne – NACE.

²⁵ Special thanks to the experts from the new Member States and Candidate Countries who provided the translation of the questionnaires and other related documents into their national languages.

alert message containing direct links to the survey was sent to approximately eight thousands organisations/institutions who are subscribers of *DG Enterprise and Industry News*.

Additionally, the e-mail messages about the survey were sent to all Euro Info Centres (EICs) across Europe²⁶ with the request to inform their clients (public authorities and business organisations) about the online survey and to assist those respondents who would need some additional information or access to the Internet.

Moreover, the e-mail messages containing information about the survey had been sent by the Commission to all national business organisations who are members of European business organisations (UEAPME, Eurochambres, UNICE)²⁷. These messages were sent to them in their national languages.

Finally, approximately 1500 personalised e-mail messages, explaining the survey objectives, were sent by the Commission to all potential respondents identified by the experts²⁸. These messages were sent in all the national languages in which the survey was conducted (16 official languages of the EU plus Romanian and Turkish) with the aim to make it more accessible and user friendly thus increasing the number of responses.

2.3. Characteristic of the respondents participating in the survey

After the consultation closed, the Commission had received 199 replies from the representatives of business organisations and 69 replies from public administrations.

Business organisations from the following countries did not respond to the survey: Iceland, Liechtenstein and Bulgaria.

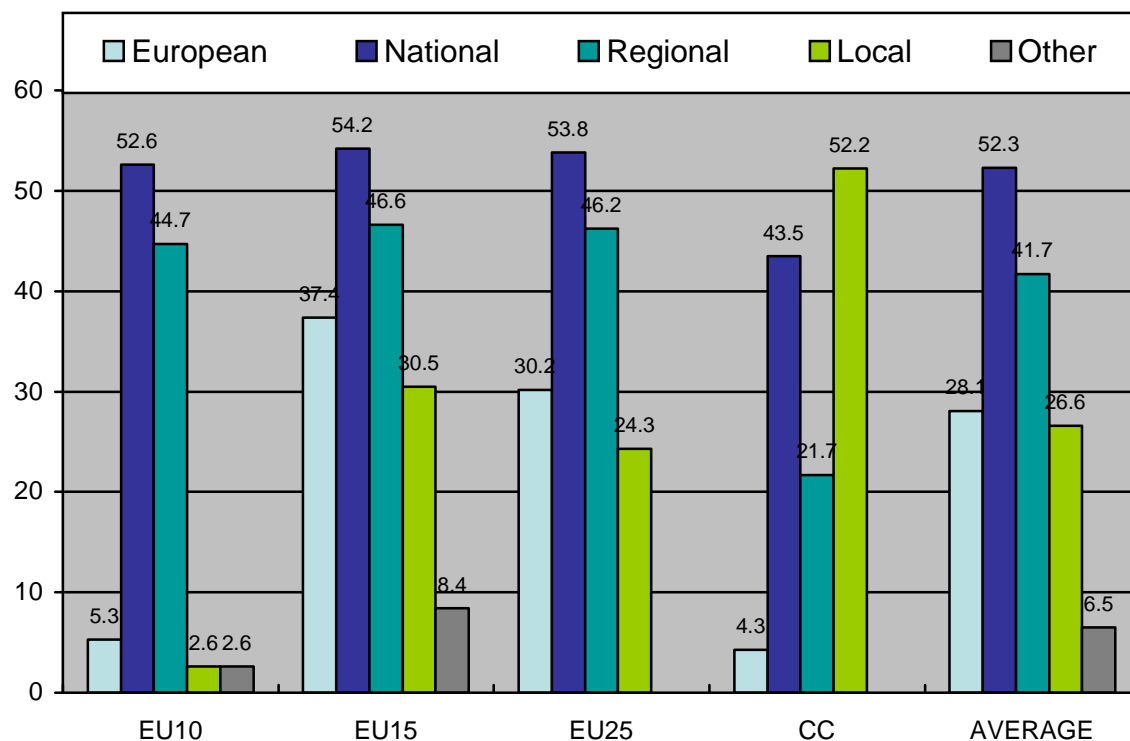
Replies from public administrations were not received from Estonia Luxembourg, the Netherlands, Hungary, Malta, Poland, Slovenia, Iceland and Liechtenstein.

When looking at business organisations that responded to the survey, we observed that the majority of them considered themselves as national business organisations (52.3%). Many of them indicated that they also have regional (41.7%) or local branches (26.6%) and that they are represented at the EU level (28.1%). Only in the candidate countries the majority of replies did come from the business organisations who considered themselves as local (52.2%). Local business organisations were least represented in the replies of new Member States (2.6%).

²⁶ 320 Euro Info Centres are currently operational in Europe.

²⁷ The information about the survey has also been distributed by these organisations themselves using their internal communication channels with members. Members of EURADA have also been informed about the survey.

²⁸ Experts provided the Commission with the e-mail addresses of the governmental institutions and business organisations from their countries.



Graph 1: Business organisations - level of activity. Source: Online survey: responses from business organisations (please note that more than one answer was possible to this question so percentage do not add up to 100).

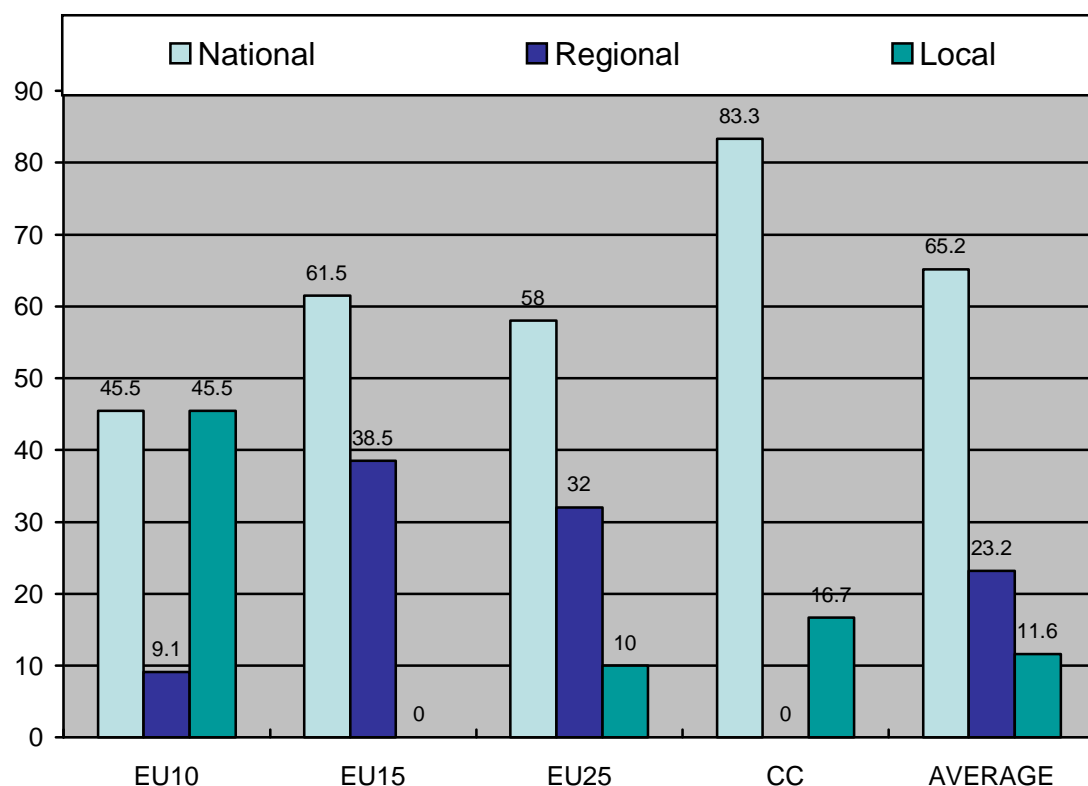
In countries such as Germany, Spain, Estonia, Lithuania and Poland most of the respondents were representing regional business organisations while in Italy and Turkey, locally based business organisations were predominant.

A similar structure of replies could also be observed in the case of public administrations. The majority of responses came from national governments (65.5%). Replies from countries where regional authorities are more prevalent mostly came from Austria, Germany, Sweden and Latvia. The highest proportion of replies from local public administrations was observed in Lithuania and Romania²⁹.

When looking at responses by business sector, almost half of the replies (47.7%) came from the business organisations whose members represent different sectors of the economy. These organisations considered themselves as horizontal ones. The Services were the second most represented sector that responded to the survey (12.6%).

As regards the size of business organisations, the majority of them are small business organisations having less than 5000 members (55 %) with 22.1% of them representing a membership of 100 to 1000 members.

²⁹ For more details, please consult Graphs 1.1 and 2.1 in the Annex II.



Graph 2: Public administrations – level of activity. Source: the online survey. Replies of public administrations.

To the question: *How many employees do members of your organisation employ on average?* - 39.7 % of respondents answered: *Fewer than 10*. Almost one third of them employ less than 50 people, which means that the majority of responses came from the business organisations representing micro and small enterprises.

The survey results show clearly, that the governments usually consult with enterprises indirectly, using business organisations as intermediaries. This opinion is shared by both business organisations (84.9%) and public administrations’ representatives (62.3%). Public administrations more often admit that they also consult enterprises directly (20.3%) against 2% of business organisations being of the same opinion³⁰. The same tendency was observed for both groups, the EU 15 and new Member States.

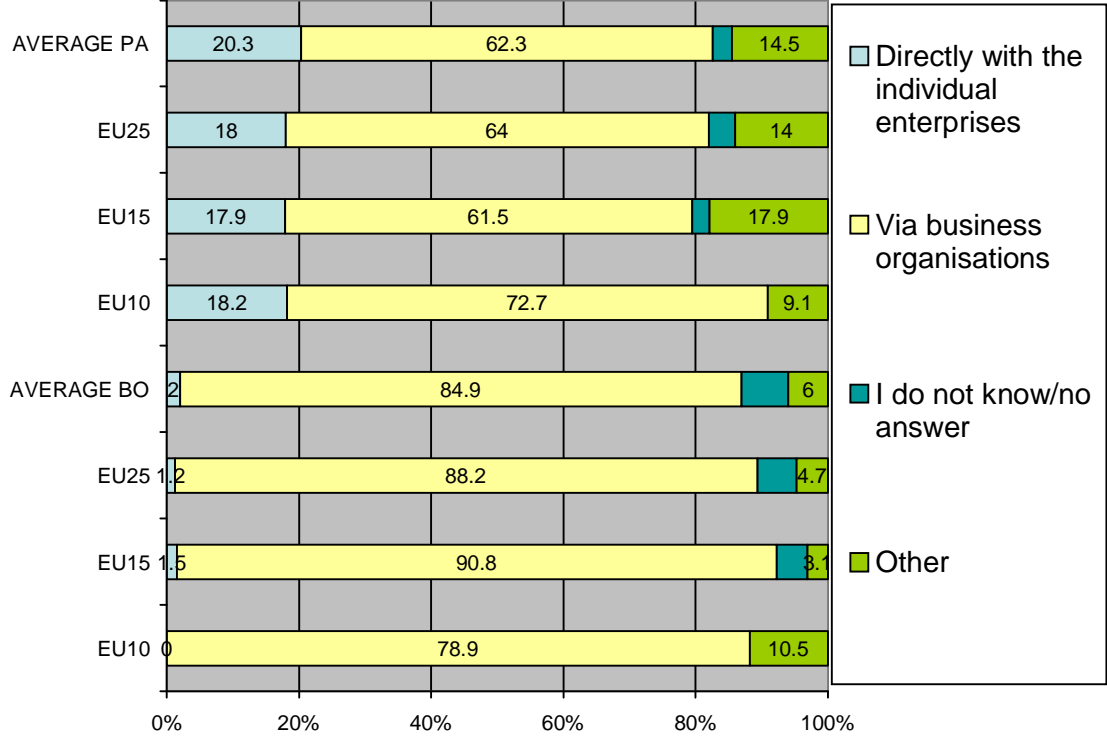
Those respondents who have chosen the answer “other” were referring to the different methods of consulting business, e.g. business council or meetings with social partners.

Public administrations stand out together with business organisations with respectively 80% and 56% of respondents indicating that proactive consultation is taking place in their countries³¹.

³⁰ For more details, please consult Graph 3.1 and 3.2 in the Annex II.

³¹ These results are made from summing up two answers: “almost always” and “frequently”. For more details, please consult Graphs 4.1 and 4.2 in the Annex II.

Business representatives from Finland, the Netherlands, Austria, Luxembourg, Denmark, Italy and Turkey stated that proactive consultation is undertaken in their countries “always/almost always”. In Portugal, Hungary, Slovakia, Ireland, Germany, Belgium, Czech Republic, Lithuania and Poland the answer “frequently” was predominant.



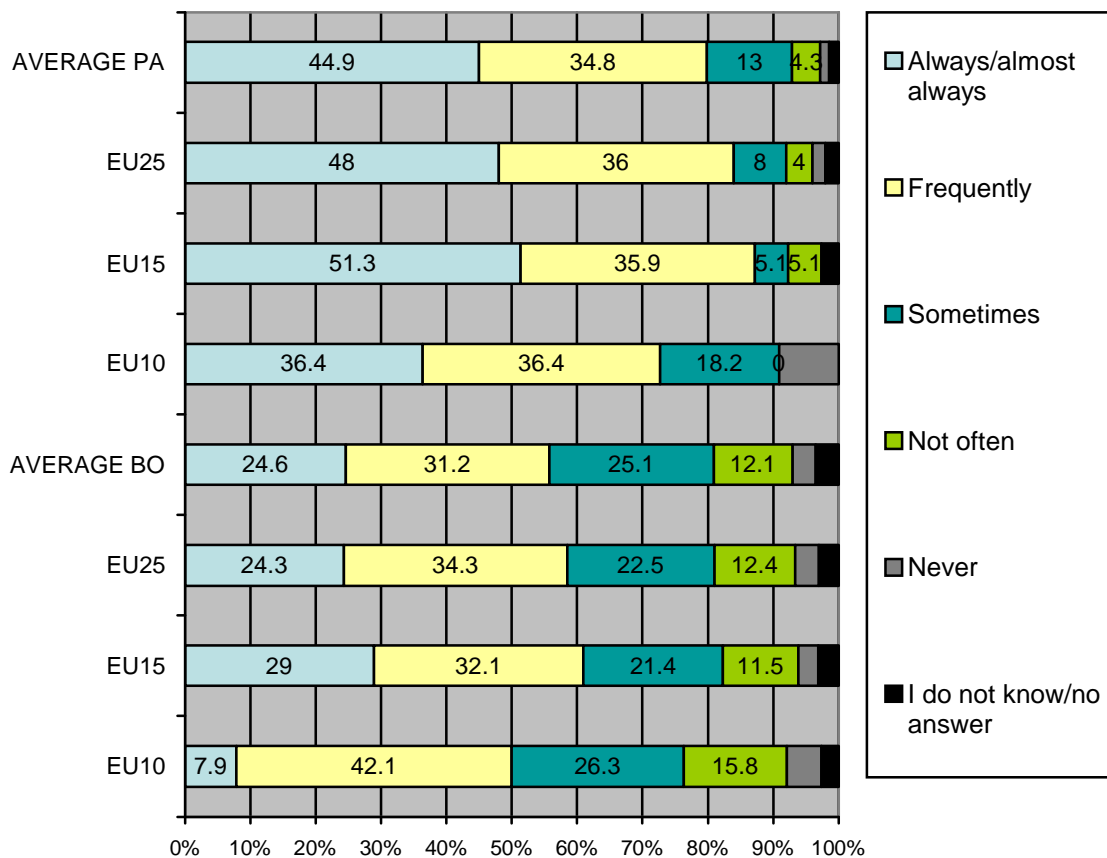
Graph 3: How business is consulted. Source: the online survey. Replies of business organisations and public administrations.

Representatives of public administrations were even more positive about it, as the answer “always/almost always” was ranked first in Belgium, Germany, Denmark, Ireland, Norway, Bulgaria, Austria, Italy, the UK, Cyprus and Czech Republic while the answer “frequently” was ranked first in Finland, Greece, France, Sweden, Spain and Lithuania.

The proportion of the regrouped answers “sometimes” and “not often” is higher for business organisations (37.2%) than public administrations (17.3%). Only 3.5% of respondents from business organisations³² and 1.4% from public administrations³³ stated that their governments do not consult proactively with business.

³² The highest proportion of the “never” answers was noted in Estonia, Czech Republic and Romania, followed by Belgium and Germany.

³³ In Lithuania 16.7% of public administration representatives stated that there is no proactive consultation with business.

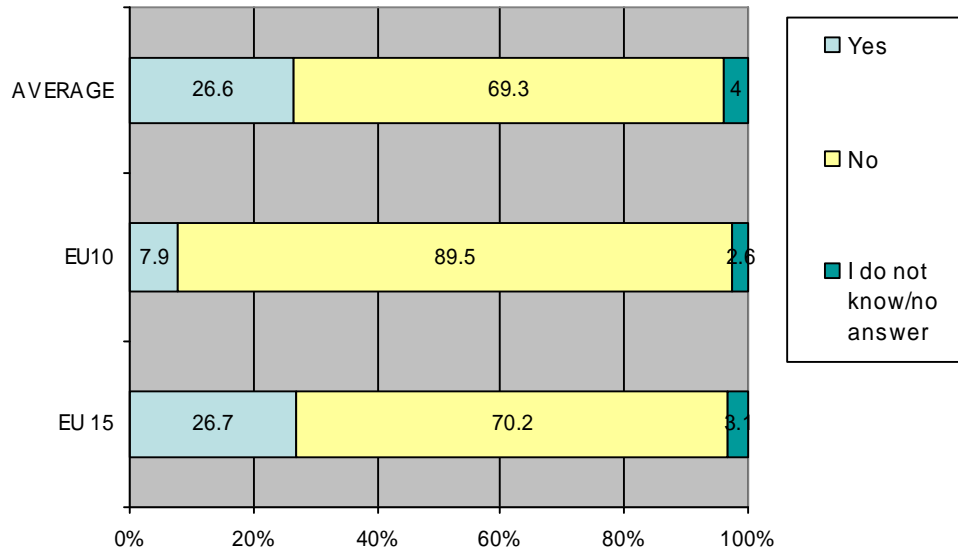


Graph 4: Proactively consulting with business. Source: the online survey. Replies of business organisations and public administrations.

It is worth noting the difference in replies between the EU 15 and the new Member States. More than 9% respondents representing public administrations from the new Member States admit that they never proactively consult with business organisations when proposing new legislation or policies while in the case of the EU 15 there was no such reply.

The results show that proactive consultation is clearly taking place in all countries participating in the survey, and this opinion is shared by both business organisations and public administrations representatives. There is still room for further improvements and in some countries better communication channels with business should be established.

Business organisations representatives have been asked whether the membership to their organisations is compulsory. Survey results prove, that in majority of countries there is no compulsory membership to business organisations. This is particularly true for all new Member States (except Slovenia), where almost 90% of business representatives say that membership to business organisations is not compulsory in their country. In the EU 15 this opinion was shared by approximately 70% of respondents.



Graph 5: Compulsory membership to business organisations. Source: the online survey. Replies of business organisations.

Business representatives from Portugal, Austria, Slovenia and Turkey confirmed, that membership to business organisations is compulsory in their countries while in Germany, France and Luxembourg replies were split equally between “yes” and “no” answers. This can be explained by the fact that in these countries membership to some business organisations is compulsory (e.g. chambers of commerce), while in the case of other business organisations the membership is voluntary³⁴.

³⁴ For more details, please consult Graph 5.1 in the Annex II.

3. OVERVIEW OF THE CONSULTATION PROCESS BASED ON THE SURVEY RESULTS

The analysis and information presented in this chapter is based on the results of the online survey. The structure of the chapter reflects the structure of the survey and its aim is to present a current overview of the consultation process in the participating countries, along with areas considered important for an efficient consultation process.

3.1. Provisions for consultations

In countries where there is a legal requirement to consult stakeholders, usually more guarantee is provided that stakeholders are consulted. This is particularly important for small and micro enterprises which belong to the group of stakeholders that are difficult to reach and solicit opinions from. Where there is no such requirement, governments could be tempted not to hold full consultation. This does not mean however, that the informal ways of consulting business have to be less efficient. It very much depends on current conventions in each country and their traditions of conducting dialogue with stakeholders.

According to the survey results, only business organisation representatives from Portugal, Hungary and Austria were of the opinion that the consultation process is required by law. Responses from business organisation representatives in countries such as Luxembourg, Romania, Latvia and Poland were almost equally split between “yes” and “no” options. The high proportion of the “I do not know” answers, especially in the EU 15 (14.5%) but also in the new Member States (7.9%), should also be underlined³⁵.

The replies that came from the public administrations showed a slightly different picture. According to majority of respondents from this group, legal provisions for the consultation process are available in Germany, Latvia, Belgium and Austria³⁶. The answers “yes” and “no” were equally split in Slovakia. In Spain, the UK and Turkey the same trend was observed but these two answers were not split equally³⁷.

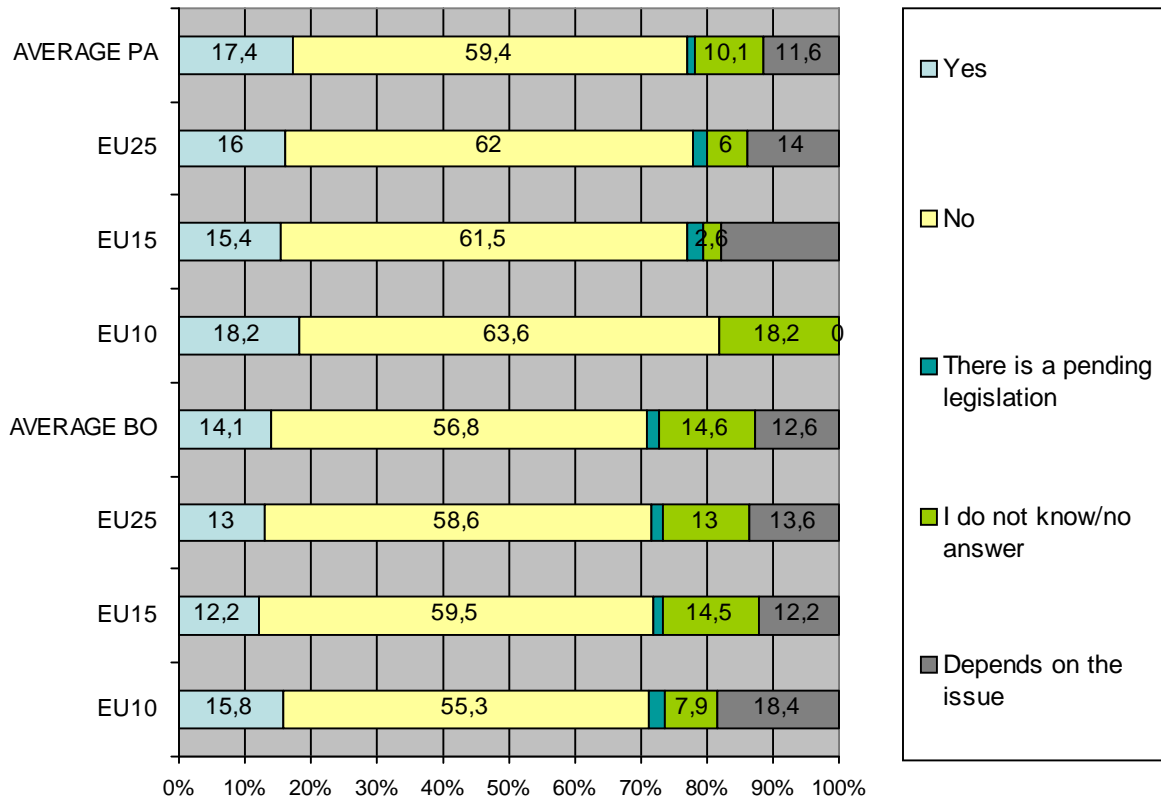
Business representatives from Latvia, Italy and Romania, and government representatives from Greece were of the opinion that there is a pending legislation concerning the consultation process in their country. Others did not share this opinion.

The biggest inconsistency between business organisations and public administrations answers to this question was observed in Portugal, Germany, Belgium Greece, Austria, Slovakia and Romania.

³⁵ The highest proportion of the “I do not know” answers was observed in Norway and Malta (33%).

³⁶ In Austria the answer “depends on the issue” was predominant.

³⁷ For more details, please consult Graphs 6.1 and 6.2 in the Annex II.



Graph 6: Legal provisions for the consultation process. Source: the online survey. Replies of business organisations and public administrations.

The survey results suggest that there is a certain level of confusion and not enough knowledge about the existing provisions for the consultation process. In the case of some countries it can be explained by the fact that legal provisions or so called “soft” legislation cover only some areas (e.g. social dialogue). Whatever the reason, more effort is required from both partners involved in the consultation process to get sufficient knowledge about the legal and informal frameworks existing in their countries so that they can be more effectively involved in the decision making process.

3.2. Identifying and involving stakeholders in the consultation

Clear understanding of the specific policy issues and the potential roles of different stakeholders is a fundamental prerequisite for a successful decision making process but first and foremost these issues and potential stakeholders need to be properly identified at the start of the process. It is a role of policy makers to identify the relevant businesses and business organisations who have significant and legitimate interests in the legislative proposals or policy initiatives that are to be consulted upon.

Stakeholders need to be identified on the basis of clear criteria so that the risk of listening to only one group with privileged access is eliminated. These criteria should be public and well

explained. Everyone participating in the consultation should be treated equally during the whole process.

However, identifying potentially relevant stakeholders does not necessarily mean that all of them will become active and meaningful participants. This depends, among other things, on the level of commitment, availability of resources and expertise.

There are different opinions on how to identify stakeholders who should be consulted and how this process should be organised. Should all affected stakeholders be consulted or only those who are representative bodies? This question has been analysed in the Commission Communication on minimum standards³⁸. An inclusive approach has been maintained in this document while underlining the importance of input from representative organisations as they have contact with a large number of members and are usually cost-effective channels for providing information and gathering opinions.

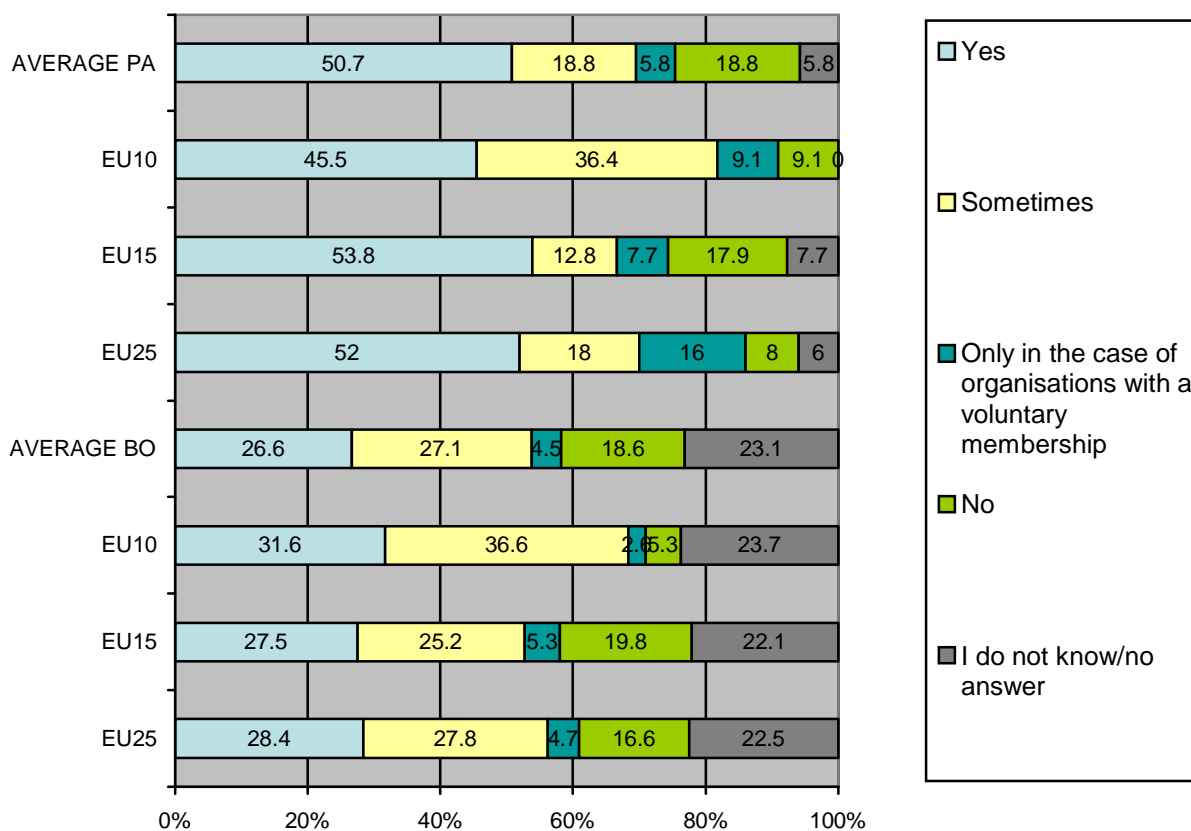
It should also be emphasised that the assessment of representativeness can create some difficulties, especially in those countries where there is no compulsory membership to the business organisations. The results of the online survey (see the graph 7) indicated that there are no clearly defined criteria to assess the representativeness of business organisations and in some countries such assessment does not take place or is done occasionally.

According to the survey results, public administration representatives are more inclined to think that the assessment of representativeness is carried out. Almost 54% of the respondents from the EU 15 and 45.5% from the new Member States were positive about it while in the case of business organisations respectively only 27.5% and 31.6% shared the same opinion. With regard to the EU 15, discrepancies on this issue appear to be relatively high.

In the case of public administrations, regrouped answers “yes” and “sometimes” constitute almost 82% of replies from the new Member States and 67% from the EU 15 while for business organisations, the respective statistics were 68% and approximately 53%.

The percentage of “no” answers was again much higher in the EU 15 than in the new Member States and this tendency was observed in the case of both public administrations and business organisations. All these statistics suggest that in the new Member States both public administration and business organisation representatives are more convinced than those from the EU 15 that the assessment of representativeness takes place in their countries. In general, a relatively high proportion of “I do not know” replies were noted in the case of business organisations (approximately 22%).

³⁸ *Towards a reinforced culture of consultation and dialogue - General principles and minimum standards for consultation of interested parties by the Commission*, 11 December 2002, COM (2002) 704 final, p. 11.



Graph 7: Assessment of representativeness. Source: the online survey. Replies of business organisations and public administrations.

The majority of respondents representing business organisations from Finland, the Netherlands, Hungary, Lithuania, Luxembourg, followed by Italy, Spain and Austria, stated that representativeness of business organisations is assessed, while in Slovakia, Belgium, Malta, Sweden, Poland, Romania and Turkey respondents were of the opinion that the representativeness is assessed “sometimes”. Slovenia, followed by Greece, Austria and Sweden, stands out with the highest proportion of replies stating that representativeness “is assessed” only in the case of organisations with a voluntary membership. In countries such as Denmark, Luxembourg, France, Cyprus, Germany, Norway and Turkey the option that the representativeness is “not assessed” was ranked first. A very high proportion of “I do not know” replies were observed in Portugal, Ireland and the UK, followed by Estonia and Czech Republic³⁹.

Public administrations’ representatives from Ireland, Portugal, Czech Republic, Spain, Italy, Sweden, Lithuania, Belgium, Denmark, Slovakia, and Turkey were of the opinion that the assessment of representativeness is carried out in their countries. The highest proportion of “no” answers was observed in countries such as Germany and Bulgaria, followed by Belgium and Denmark, where replies were equally split between “yes” and “no” answers. Romania, followed by Italy and the UK stands out with a relatively high proportion of “I don’t know” replies.

³⁹ For more details, please consult Graphs 7.1 and 7.2 in the Annex II.

A positive response to the question on the representativeness assessment generated another question concerning the indicators used for this purpose. According to public administration representatives, “number of enterprises” (42%), “number of direct members” (31.9%) and “well developed regional or local structures” (28.2%) were mostly used by the governments to assess the representativeness of business organisations. As regards business organisations’ representatives, “number of enterprises” was also ranked first (30.2%) but the second position has been taken up by “lobbying power” (28.2%) while “number of direct members” was ranked third (22.1%).

Interestingly, “number of enterprises in relation to the total number of enterprises registered” was mentioned least often by business representatives (9%) and “total number of employees represented” was least supported by public administrations (11.6%).

A very high proportion of “I do not know” answers in the case of both public administrations and business organisations (respectively 30.4% and 41.2%) clearly suggest that some of those who are convinced that the representativeness assessment is carried out, do not know which indicators are used to make such assessment.

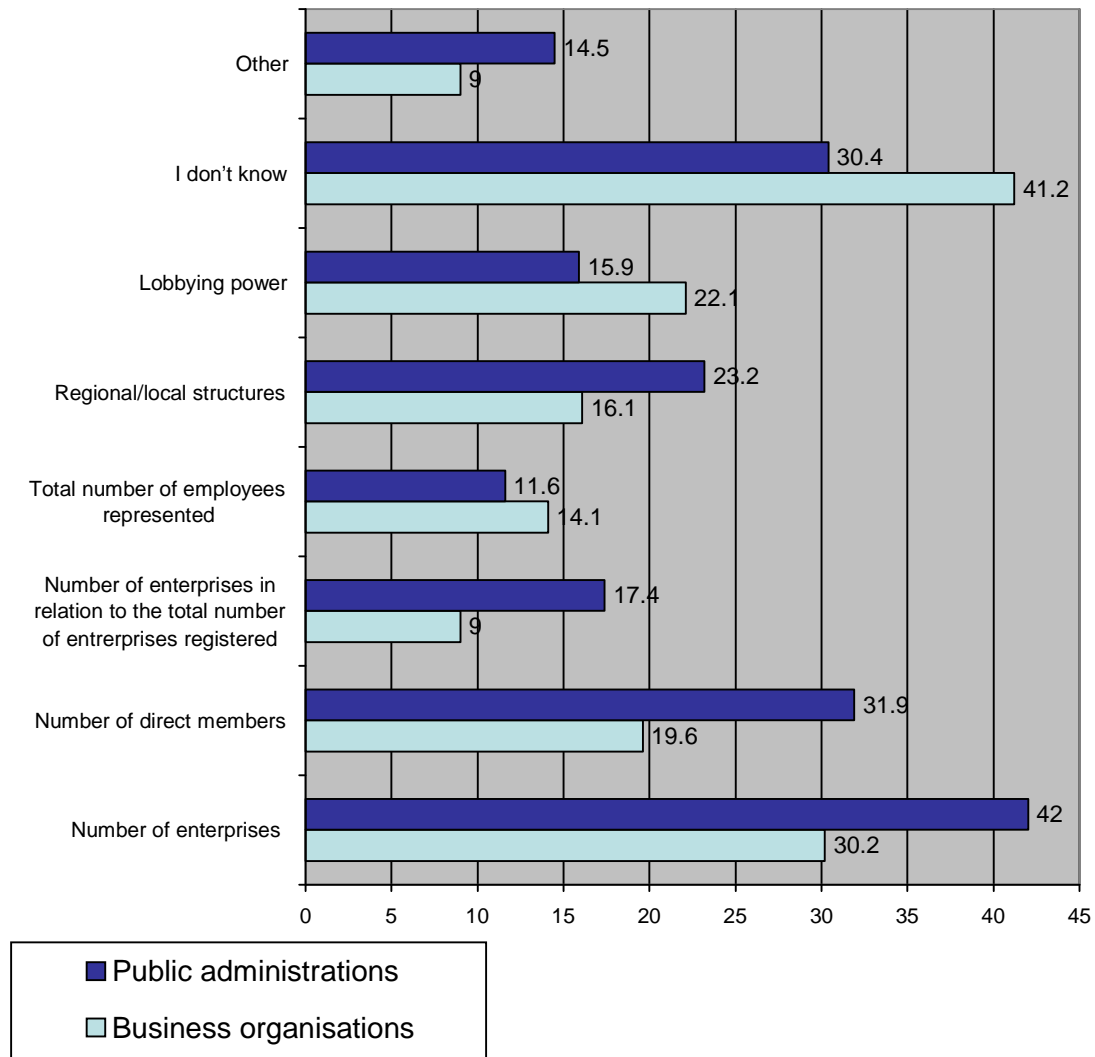
There were no significant discrepancies in opinions between national and regional business organisations and public administrations representatives when we looked at the type of indicators used to assess the representativeness of business organisations. The difference in opinions was much more striking when we looked at replies from local authorities and locally based business organisations. This is particularly visible in the case of two indicators: “total number of employees represented” and “number of enterprises compared to the total number of enterprises”. These two indicators were more often mentioned by local authorities than local business organisations, respectively 37.5% and 3.8% in the case of the first indicator, and 25% versus 38% in the case of the second one⁴⁰.

Finally, respondents were requested to answer a question, whether there is a form of legal criteria to assess the representativeness of business organisations in their country or not.

A high proportion of respondents from public administrations and business organisations were inclined to think that there are no legal criteria to assess the representativeness of business organisations. This opinion was expressed by approximately 46% of public administrations’ representatives against 35% of those representing business organisations in the EU 15, and respectively 36% against 32% in the new Member States⁴¹. Once again, the proportion of those who say that there are no legal criteria to assess representativeness is higher in the EU 15 than in the new Member States.

⁴⁰ For more details, please consult Graphs 8.1 and 8.2 as well as Graphs 8.3 and 8.4 in the Annex II.

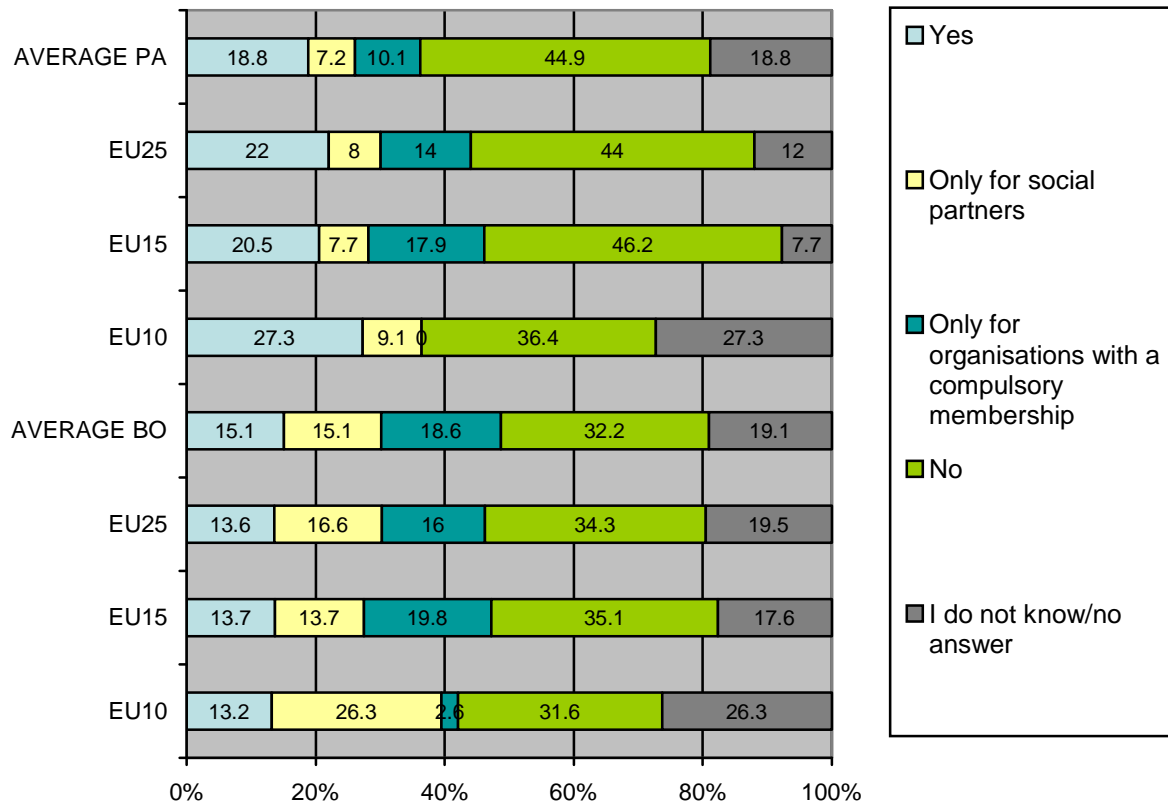
⁴¹ Public administrations representatives from Germany, Ireland, Finland, Portugal, Cyprus and Czech Republic were convinced that there are no legal criteria to assess the representativeness of business organisations (100% of replies). In Sweden 80% of respondents and approximately 60% in the UK and Italy supported this opinion. In the case of business organisations 100% of respondents from Ireland, Finland, Portugal, the Netherlands, Sweden and Cyprus shared this opinion while in Denmark, Greece, Luxembourg, Estonia and Lithuania approximately 50%. Representatives of business organisations from Hungary Slovakia stand out with the highest proportion of replies that such criteria exist only for social partners, with Belgium ranked third.



Graph 8: Indicators to assess the representativeness of business organisations. Source: the online survey. Replies of business organisations and public administrations (please note that more than one answer to this question was possible so percentage do not add up to 100.)

A high proportion of business organisations’ representatives from countries such as Hungary, Slovakia, Belgium, Czech Republic, Spain, Latvia and Poland say that the legal criteria of representativeness exist only for social partners. This opinion was shared by public administrations only in Slovakia, Romania, Sweden and Spain. However, the level of support seemed to be much lower⁴².

⁴² Comparative analysis was not conducted in the case of countries where only replies from one group of respondents were available.



Graph 9: Legal criteria of representativeness. Source: the online survey. Replies of business organisations and public administrations.

Public administrations representatives from Austria and Greece were convinced that the legal criteria of representativeness apply only to the business organisations with the compulsory membership. Business organisations from these countries were however less inclined to share this opinion (44.4 % from Austria and 25% from Greece).

It is worth mentioning, that in many countries replies were split between different options so no conclusion could be made on this issue⁴³.

3.3. Time provided for consultation

Not enough time foreseen for consultations was considered by a large number of respondents as one the most common deficiencies of the consultation process in their countries. This opinion was shared by 49.2% of business organisations’ representatives and 24.6% of those representing public administrations.

Ideally, each individual policy or legislative proposal that is undergoing the consultation procedure should have the appropriate timescales to ensure that those responding will be given adequate time to prepare their written contributions or to respond to the survey.

⁴³ For more details, please consult Graphs 9.1 and 9.2 in the Annex II.

In some countries, e.g. in the UK, a set of twelve week timescale has been established⁴⁴ as the standard period allowed for a consultation, with eight weeks being the minimum.

Similar standards concerning the consultation period were proposed by the Commission in its Communication *Towards reinforced culture of consultation and dialogue*, where it is stated that the Commission “should strive to allow at least eight weeks for reception of responses to written public consultations and 20 working days notice for meetings”⁴⁵. However, there are some particular circumstances where the minimum time might not apply (it could be longer or shorter). The most important statement was the one underlining that “consultation periods should strike a reasonable balance between the need for adequate input and the need for swift decision making”⁴⁶.

When planning the timescale for the consultation process, enough time should be build into the process for the results of consultation to be collated, carefully analysed and considered, so that they can inform the decision making process.

In the survey, respondents were asked whether there is a compulsory time for consultation foreseen in their country. A large majority of respondents from business organisations (62.8%) and public administrations (52.2%) stated that a compulsory time for consultations is not established in their countries. Only in Denmark, Portugal, Hungary, Latvia and Slovakia did the majority of respondents from business organisations reply positively to that question, and in the UK, Austria and Spain the answers were split. Public administrations representatives shared the opinion of business respondents in Germany, Portugal, Latvia, Norway, the UK and Romania, and the replies from Denmark, Slovakia and Spain were split.

When comparing these answers, we observed the highest level of discordance on this question in Germany, the UK, Norway and Romania.

According to the survey results, the “I do not know” reply was given most often by representatives of public administrations and business organisations from the new Member States (respectively 36.5% and 23.7% of replies). Malta and Lithuania (66.7% of replies) stand out for the highest proportion of “I do not know” answers, followed by Slovakia (50%) and Romania (40%).

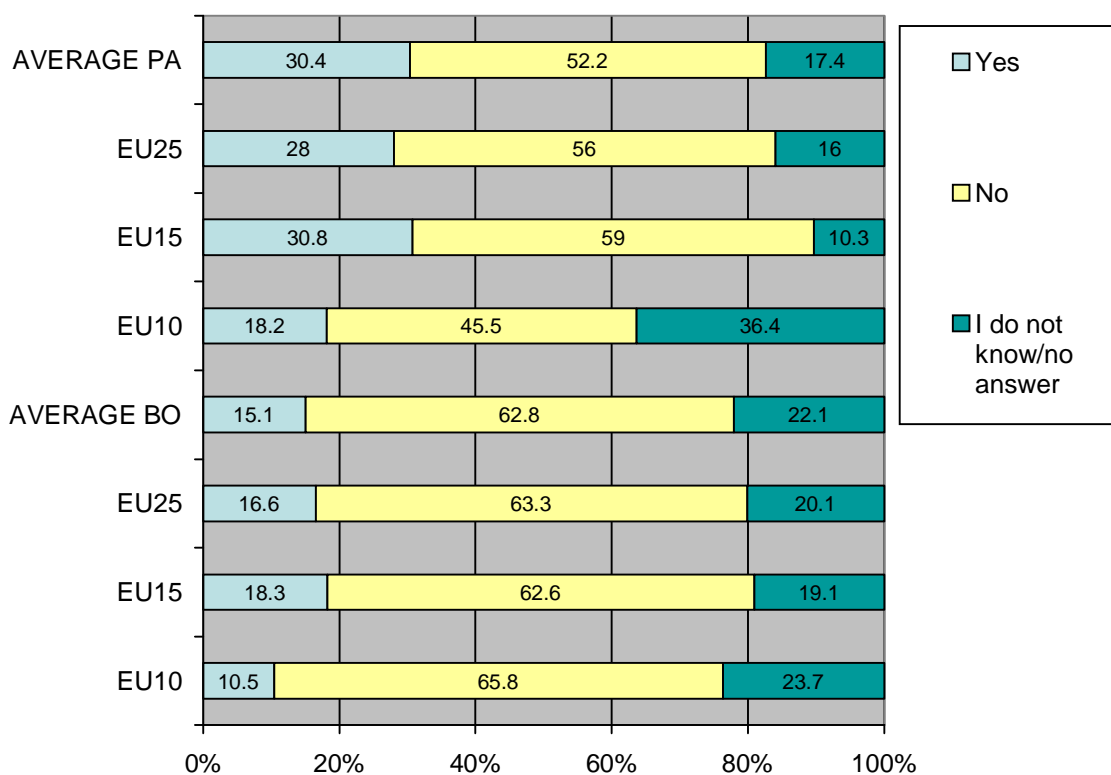
In general, a relatively high proportion of “I do not know” answers in the case of both business organisations and public administrations responses (respectively 22.1% and 17.4%) suggest that more information and knowledge is needed about the consultation frameworks and procedures⁴⁷.

⁴⁴ See “Code of Practice on Consultation” by the Cabinet Office at <http://www.cabinet-office.gov.uk/regulation/consultation-guidance>

⁴⁵ *Towards a reinforced culture of consultation and dialogue - General principles and minimum standards for consultation of interested parties by the Commission*, 11 December 2002, COM (2002) 704 final, p. 21.

⁴⁶ Ibidem

⁴⁷ For more details, please consult Graphs 10.1 and 10.2 in the Annex II.



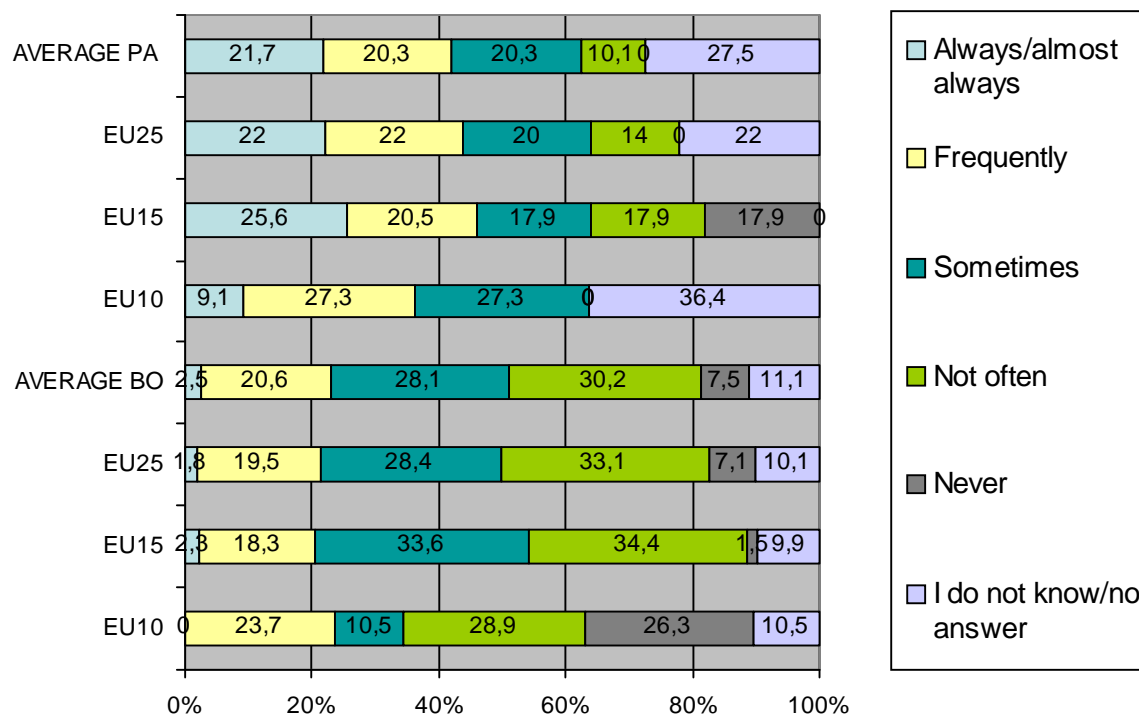
Graph 10: Compulsory time for consultation: Source: the online survey. Replies of business organisations and public administrations

Another question concerning the timing was focused on collecting the respondents’ opinion on the sufficiency of time foreseen for consultations. The graph number 11 shows clearly that public administrations are in general more positive about it than business organisations. If we regroup “always/almost always” and “frequently” replies from public administrations, they stand for 46% of replies in the case of the EU 15 and 36.4% of replies in the case of the new Member States.

Business organisations responses show that their representatives are more critical about this issue, as only 20.6% of replies from the EU 15 and 23.7% replies from the EU 10 have fallen into this regrouped category. The highest proportion of “never” replies was observed in the case of public administrations from the EU 15 (17.9%) and business organisations from the new Member States (26.3%).

Business organisations from Cyprus, Lithuania, Luxembourg, Slovakia and the UK as well as public administrations from Denmark, Germany, Austria, Czech Republic, the UK, Cyprus, Greece and Norway were of the opinion that the time provided for consultations is generally sufficient (“always/almost always” and “frequently” replies regrouped)⁴⁸.

⁴⁸ For more details, please consult Graphs 11.1 and 11.2 in the Annex II.



Graph 11: Sufficiency of time for consultation. Source: the online survey. Replies of business organisations and public administrations.

The most negative opinions on the sufficiency of time provided for consultations (the highest proportion of “never” replies) came successively from business organisations located in Slovenia, Sweden, Poland and Latvia.

Consultations should never be truncated for reasons of government convenience. The complexity of the issue to be consulted upon needs to be taken into consideration when planning the timetable for consultation, since much more time is usually required to understand the issue(s) if it is a very complex one and presumably is going to have a significant impact on business. Moreover, there should be sufficient time allowed for business organisations to duly consult their members in order to produce a consolidated response on the issue at stake. It is also worth mentioning that more time for a consultation should be given during main holidays or summer breaks.

3.4. When to consult

Consultation, when developing new policies, should be an ongoing process, but especially at the early development stage, where informal consultation might help shape the process and can give early indication of likely problems. If major problems are identified, formal consultation should be undertaken.

Online surveys can also be used as the means of providing a useful and low cost input from a large group of stakeholders. The identification of general opinion trends among stakeholders

or needs assessment can be done by conducting statistically meaningful surveys on concrete political and economic issues.

The survey statistics (graph 12) for both business organisations and public administrations prove that the majority of respondents are convinced that consultations take place when a new legislation or policies “are being drafted” and/or “have been already drafted”. If we regroup these two categories of replies, we can see that 82% of business representatives and 64% of governments’ representatives share this opinion.

Public administrations’ representatives were more inclined to think that consultations are usually conducted “when ideas for a new legislation/policy are proposed”. In the ten new Member States 45.5% of respondents expressed this opinion while in the EU 15 only 15.4%. Germany, Portugal, Czech Republic and Slovakia are the countries with the highest proportion of such replies.

Opinions of business organisations are slightly different, as only 13.2% of respondents from the new Member States and 21.4% from the EU 15 were convinced that they are consulted at this stage of the consultation process. Ireland stands out, along with Denmark, Greece, Luxembourg, Austria, Cyprus and Latvia with the highest proportion of replies stating that consultations are conducted at an early stage⁴⁹.

These results confirm that there is a significant difference between public administrations and business organisations on how they perceive this issue.

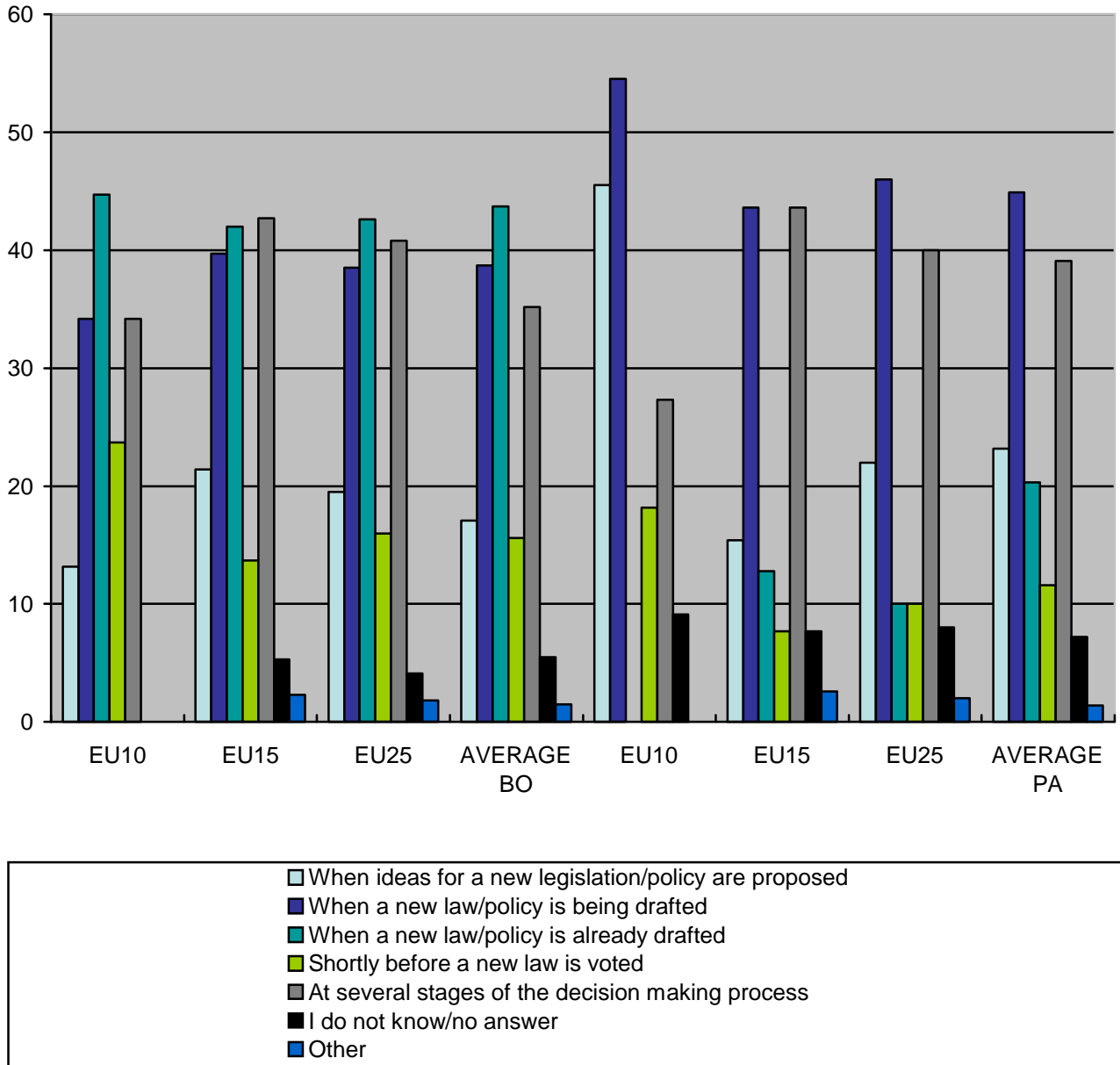
A relatively high proportion of respondents stated that consultations “take place at several stages” of the decision making process, and this can be interpreted as a positive sign. This option was chosen by 42.7% of business representatives in the EU 15 and 34.2% in the new Member States. In the case of public administrations this opinion was expressed respectively by 43.6% and 27.3% of respondents.

What seems to be less positive is that almost 24% of business representatives from the new Member States and 14% from the EU15 were of the opinion that they are consulted “shortly before a new law is voted”. Belgium (38.5% and France (37.5%) stand out for the highest proportion of such replies in the EU 15 while Estonia (75%) and Czech Republic (50%) in the new Member States.

When looking at replies of the public administrations’ representatives, this opinion was shared by more than 18% of respondents from the EU 15 countries and almost 8% of respondents from the new Member States. Once again Latvia, Norway and Belgium featured as three countries with the highest proportion of such replies.

The survey results suggest that there is still room for further improvements in this area, as in many cases respondents expressed the opinion that consultations are conducted too late for business to make a difference to the outcome. Therefore, policy makers are encouraged to address this issue and improve the situation.

⁴⁹ For more details, please consult Graph 12.1 and 12.2 in the Annex II.



Graph 12: Stage of consultation. Source: the online survey. Replies of business organisations and public administrations (please note that more than one answer was possible to this question so percentage do not add up to 100).

From the stakeholders’ perspective, being consulted at an early stage generates more commitment to an issue, introduces the notion of shared responsibility and increases confidence in governments that are open about their plans.

3.5. *Methods of consultation*

Different methods of consultation are appropriate for different policy areas and for different stages in the consultation process. Meetings with representatives of business organisations, advisory committees and business test panels may be suitable for the preliminary stage of the policy making process, while the drafting stage of a legislative proposal is likely to require close collaboration with a smaller group of stakeholders.

As regards the consultation methods, respondents were requested to answer two questions: “what consultation methods are currently used in their countries” and “what methods they would consider as the most efficient”.

When comparing responses of business representatives to these two questions (graph 13), it is encouraging to see that there is no significant difference between consultation methods currently used and those considered as the most efficient.

As for the methods currently used, the following ones were the most popular:

- Meetings with representatives of business organisations (74.9%),
- Consultation by written procedure (53.8%),
- Meetings with social partners (45.2%),
- Expert group meetings (43.7%).

The same methods were considered by business representatives as the most efficient but they were ranked in a slightly different way. “Meetings with representatives of business organisations” were ranked the highest and then successively: “expert group meetings”, “consultation by written procedure” and then “meetings with social partners”⁵⁰.

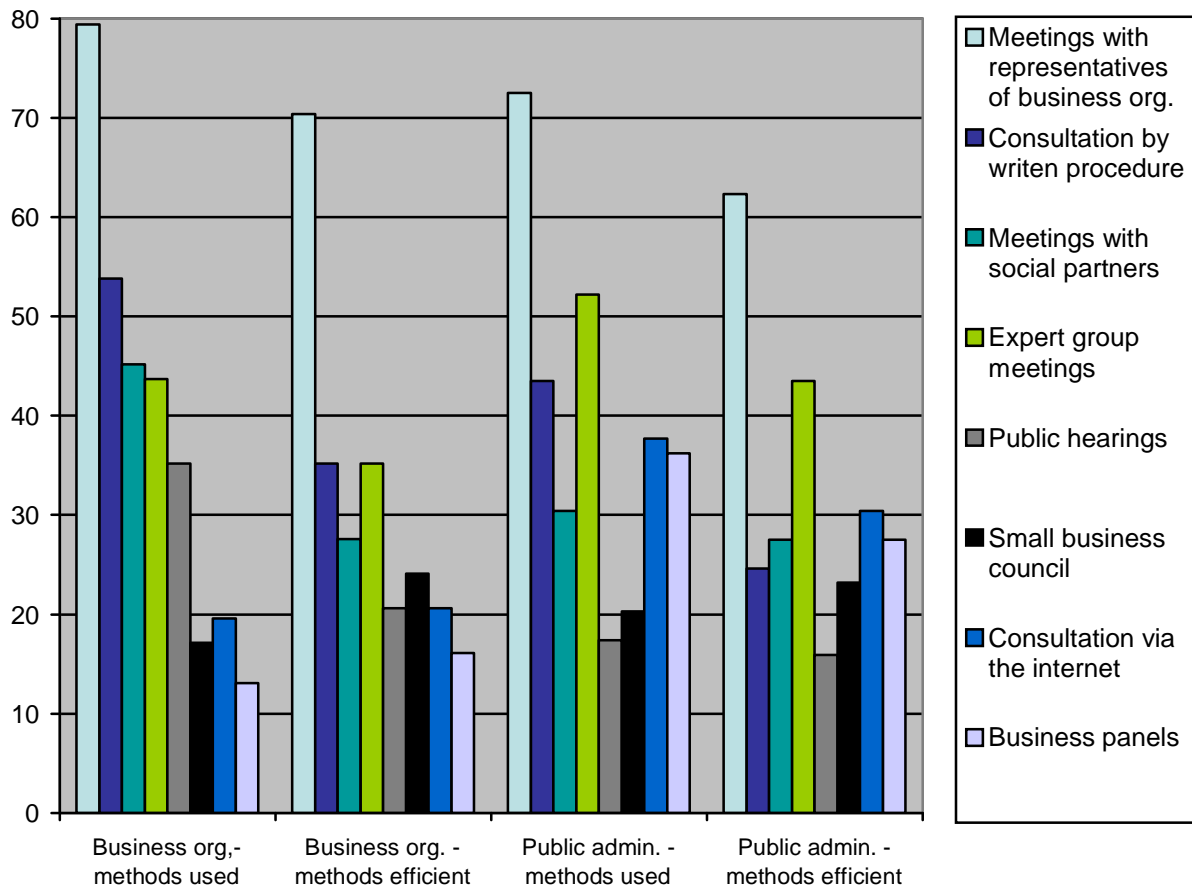
However, according to the opinions of business representatives, there are countries where only some of these methods are used and considered as efficient⁵¹.

The strongest increase in support was observed in the case of “small business council” which moved from 11th to 5th position in the ranking, and “advisory committees of entrepreneurs” going up from 10th to 6th position.

The least supported method among those listed was “public hearings”, dropping down from the 5th to the 13th position in the ranking.

⁵⁰ Please note that the number of responses to the question concerning methods of consultation considered as the most efficient was much lower compared to the number of replies to the question concerning the consultation methods currently used.

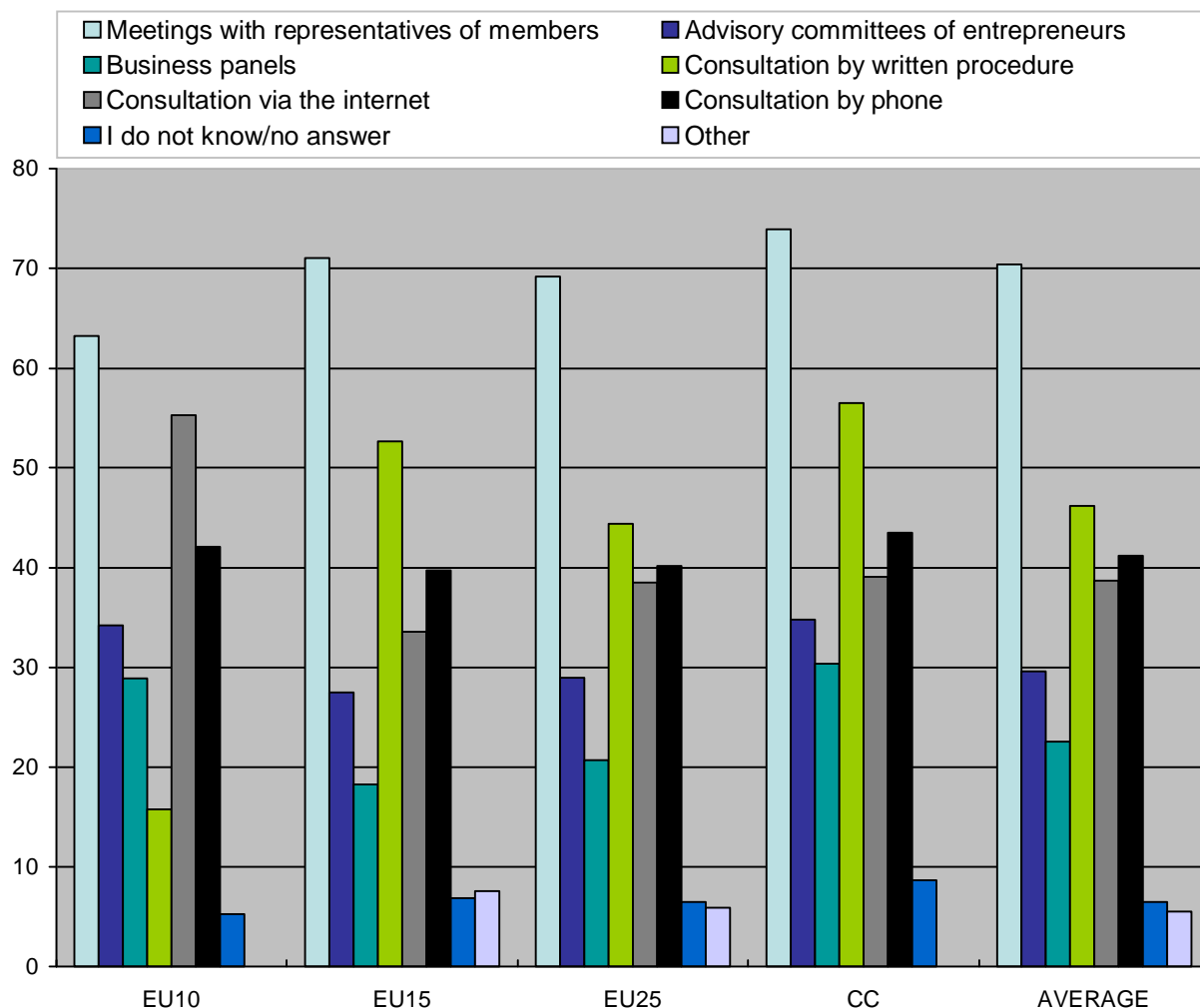
⁵¹ The Netherlands, Portugal, Hungary, Lithuania, Slovakia, Slovenia are countries where these methods are not used most often and the Netherlands, Portugal, Finland, Sweden, the UK, Latvia Malta, Czech Republic, Slovenia and Norway are countries where not all these methods are considered as the most efficient (for more details, please consult Graphs 13.1, 13.2, 13.3 and 13.4 in the Annex II.



Graph 13: Methods of consultation currently used and methods considered as the most efficient. Source: the online survey. Replies of business organisations and public administrations (please note that more than one answer was possible to this question so percentage do not add up to 100).

“Meetings with representatives of business organisations” were ranked first and “expert group meetings” second in the case of both “methods currently used” and those “considered as the most efficient”. “Consultation by written procedure” was ranked 3rd in the case of methods currently used but did not receive the same level of support as “the method considered most efficient”, and dropped from the 3rd to the 6th position. “Consultation via the Internet” and “meetings with social partners” moved up, respectively from the 4th to the 3rd and from the 6th to the 4th position. A growing support for “small business council” and “advisory committees of entrepreneurs” was also observed. They moved up in the ranking, respectively from 10th to 7th position, and from the 14th to the 8th position. “Business panels” remained the same in the 5th position.

Finally, when looking at the results concerning the consultation methods “considered as the most efficient”, we saw that public administration representatives supported “expert group meetings”, “consultation via the Internet” and “business panels” much more than business organisations’ respondents. Only “small business council” has got a similar level of support from both groups (approximately 24% of responses).



Graph 14: Methods of consultation with members. Source: the online survey. Replies of business organisations (please note that more than one answer was possible to this question so percentage do not add up to 100).

Furthermore, if we look at the results regarding level of activity of the business organisations, no major difference can be observed either. The same consultation methods are used and they proportionally get a similar level of support.

Responses from public administrations regarding level of activity reveal that “meetings with social partners” as “method currently used” are mentioned more often by regional and local authorities than national governments. On the other hand, “consultation by written procedure” is used more often by national governments than regional and local ones.

Interestingly, “a specific ministry dealing with SME issues” is not mentioned at all by local governments but it received a significant number of replies from national and regional governments. In contrast, “the contact person for SME issues (SME Envoy)” is mentioned more often by regional and especially by local governments. “Expert group meetings” are least often used by regional governments⁵².

A further question concerning consultation methods was addressed to those business organisations who admitted that they consulted their members when asked for opinions on new legislation or policy proposals (graph 14). Almost 73% of respondents (regrouped

⁵² For more details, please consult Graphs 13.5, 13.6, 13.7 and 13.8 in the Annex II.

answers “always/almost always” and “frequently”) confirmed that they do consult with their members in order to elaborate consolidated contributions. Approximately 21% (regrouped answers “sometimes” and “not often”) consult with members from time to time and 6% of respondents were not aware if they consulted their members.

When asked about the methods of consultation with members, the majority of respondents stated that “meetings with representatives of members” (ranked first by all groups), “consultation by written procedure”, “consultation by phone” and “consultation via the Internet” are the ones used most frequently. Only Denmark did not mention it while Sweden⁵³, Estonia, Czech Republic,⁵⁴ and Turkey⁵⁵ ranked “meetings with representatives of members” second.

Interestingly, we observed that “consultation by written procedure” is least used in the new Member States⁵⁶ while in the EU 15 and in the candidate countries this method seems to be much more popular, as it occupies the second place in the ranking⁵⁷. “Consultation by phone” is almost equally popular among all the countries while “consultation via the Internet” is mentioned most often by respondents from the new Member States (55.3%)⁵⁸. In the EU 15 this method was chosen by 33.6% of respondents. “Business panels” and “advisory committees of entrepreneurs” are generally less popular but in some countries they are used in parallel to some other methods. Only in Ireland, Slovenia and Lithuania “business panels” received the same level of support as “meetings with representatives of members”⁵⁹.

In most cases “one size will not fit all” so the consultation method chosen should be tailored to respondents needs. Sharing good practice means that policy makers can profit from the previous experience of others when choosing consultation methods and use those which proved to be the most efficient in a similar situation (similar policy area, stage of consultation and a similar profile of stakeholders consulted). It is important for policy makers to evaluate each completed consultation in order to increase the level of expertise of those who are responsible for organising and managing consultations.

The rapid development of new information and communication technologies makes it possible to involve and consult with stakeholders in many new ways. Making participation easier for people is one of the key methods in increasing levels of involvement. Policy makers should, however, be aware that access to new technologies is not yet universally the case. The Internet needs to be further explored as an adjunct to any consultation process, as it offers the possibility to make all major consultation documents easily accessible by placing them on the web page for downloading by stakeholders and other interested groups. The Internet has enormous potential especially in the quick uptake and exchange of opinions and ideas.

It is a fact that in most European countries new electronic media and communications channels are increasingly used for both general and targeted consultations.

⁵³ In Denmark and Sweden “consultation by phone” was ranked first.

⁵⁴ In these countries “consultation via the Internet” was mentioned most often.

⁵⁵ According to the Turkish respondents, “consultation by written procedure” is used most often in their country.

⁵⁶ This method was not mentioned by respondents from Estonia, Hungary, Latvia, Lithuania and Slovenia.

⁵⁷ Respondents from Finland, Portugal, the Netherlands, Spain and Austria ranked it first or equally with the other methods.

⁵⁸ This method was ranked first in Estonia and in the Czech Republic while in Finland, Ireland, the Netherlands, the UK, Norway, Slovakia and Slovenia the first place was occupied by “consultation via the Internet”.

⁵⁹ For more details, please consult Graph 14.1 in the Annex II.

3.6. *Different policies consulted*

One of the aims of the survey was to find out what policies are most often consulted upon with business organisations. The statistics show that “SME policy” received from both business organisations and public administrations the highest number of replies, respectively 57.3% and 59.4%, followed by “enterprise policy” (49.7% and 43.5%), “employment and social affairs” (49.7% and 39.1%) and “environment policy” (46.2% and 36.2%).

As regards business organisations, the lowest proportion of replies was observed in the case of “services of general interest” (24.6%) and “financial policy” (31.2%) while in the case of public administrations the lowest support was given to “consumer protection” (24.6%) and “financial policy” (29%).

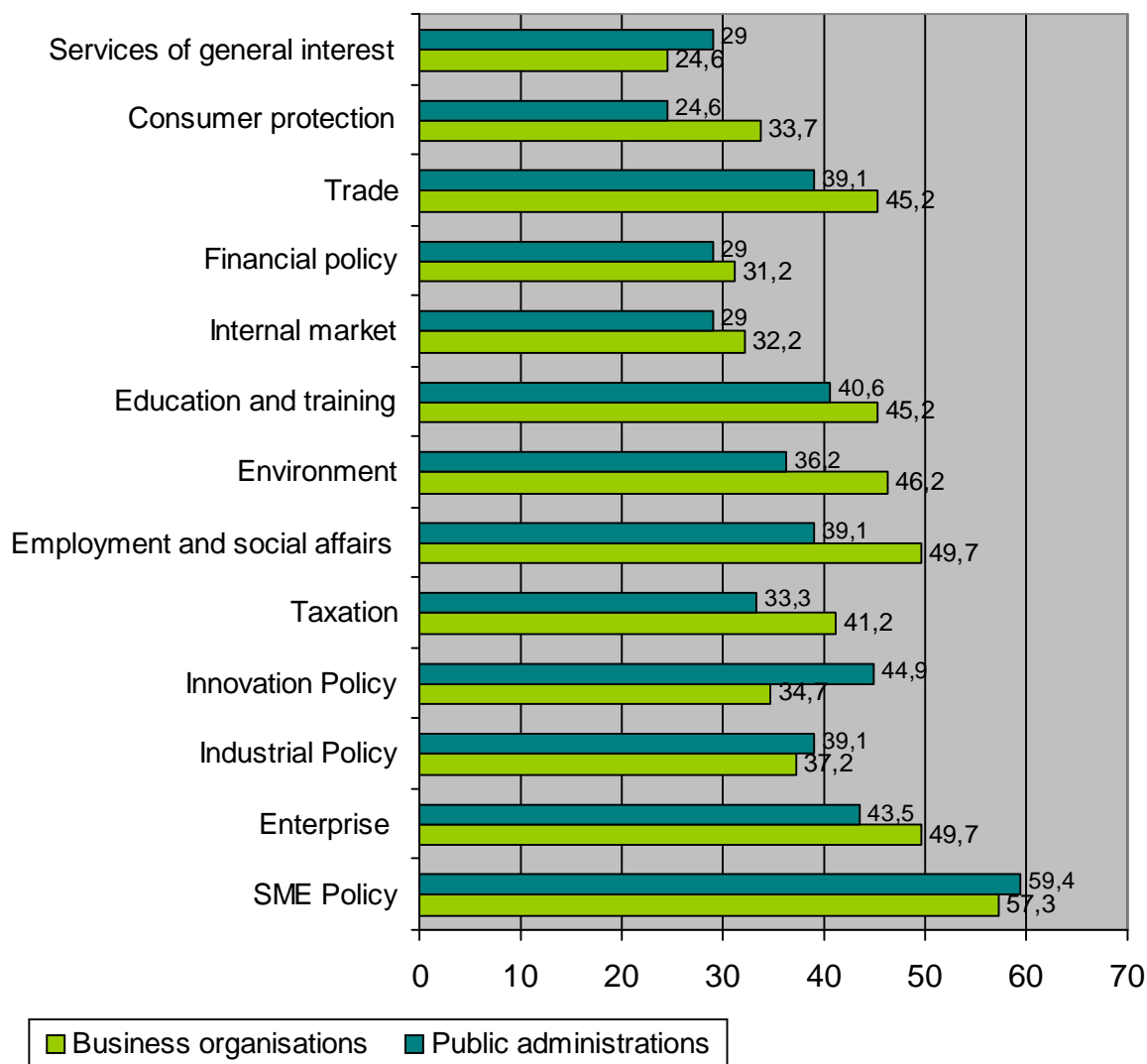
No major difference occurred between the opinions of business organisations and public administrations acting at a national level. The relative proportion between replies of both groups of respondents was maintained. Some discrepancies were observed when looking at replies of regional and local business organisations and public administrations.

At regional level, “taxation policy” and “financial policy” were not even mentioned by public administration representatives while respectively 47% and 33.7% of respondents from regional business organisations pointed these two policies out. Relatively lower level of support from public administrations was noted also in the case of “consumer protection” and “trade policy” (6.2% each) while respectively 36.1% and 48.2% of business organisations representatives mentioned these two policies⁶⁰.

Local administrations and locally based business organisations seemed to have slightly different opinions on what policies are consulted most often. Local administrations put lots of emphasis on “services of general interest” (75%) and show no interest in “enterprise policy”. At the same time, 51% of respondents from local business organisations mentioned “enterprise policy” and only 30% pointed out “services of general interests”.

Survey statistics prove that “SME policy”, “employment and social affairs”, “environment policy”, education and training” are the ones consulted most often at all levels of the decision making process.

⁶⁰ For more details please consult Graph 15.1 and 15.2 in the Annex II.



Graph 15: Other policies consulted. Source: the online survey. Replies of business organisations and public administrations (please note that more than one answer was possible to this question so percentage do not add up to 100).

It should be underlined that other policies gathered a significant level of support from both business organisations and public administrations representatives, which suggests that consultations are usually conducted when new policy initiatives affecting business are proposed by policy makers.

3.7. Potential shortcomings in the consultation process

Different risks might be related to the consultation process. These risks should be identified, assessed and managed by policy makers. One of the risks that potentially may occur is the capacity of stakeholders (organisations or individuals) to effectively participate in the consultation process. Some of them may experience different problems or suffer from certain shortcomings which can influence the quality of the consultation process.

The survey participants were asked to answer a question concerning the capacity of business organisations to respond to the consultation. It seems that business organisations' representatives are much more positive about their capacity to respond to consultations. If we group two categories of replies together: "very well prepared" and "sufficiently prepared", they constitute almost 80% of such replies within the EU 15 and 60% in the new Member States. In the case of public administrations, respectively 59% and 45% of respondents shared this opinion.

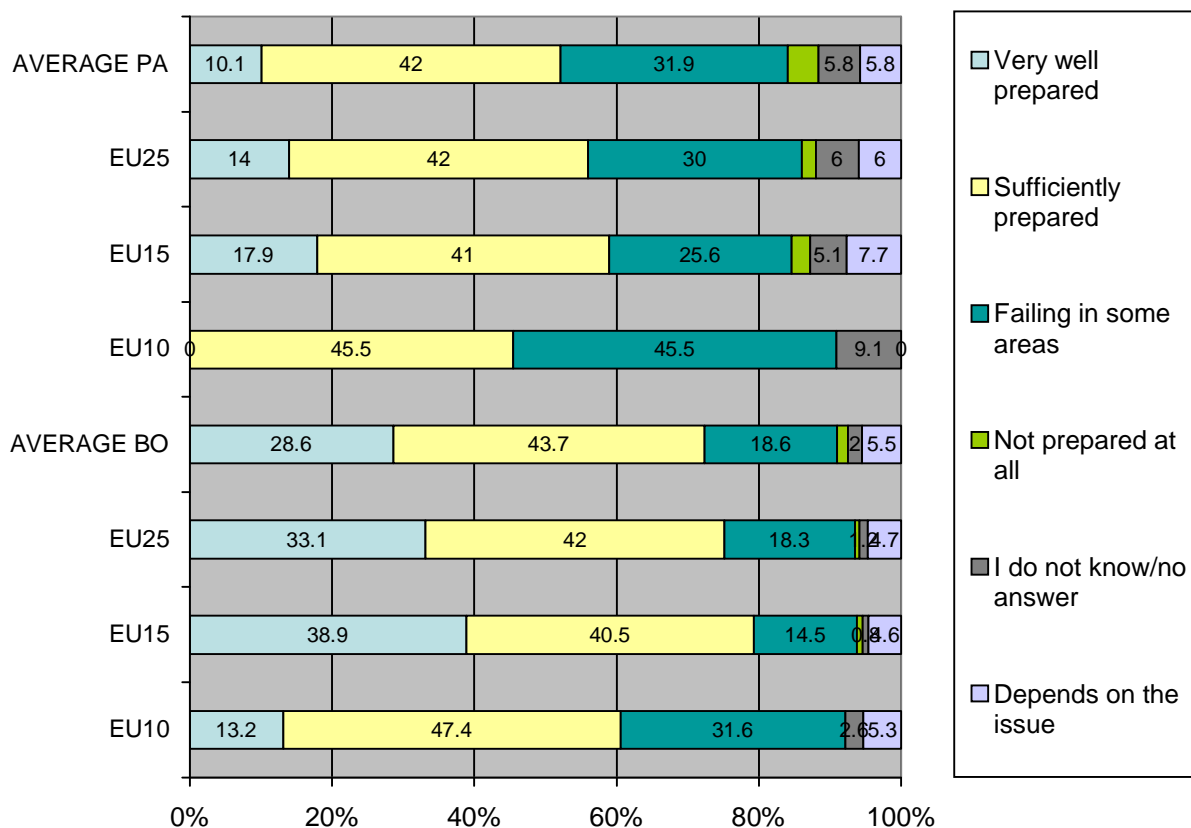
Business organisations' respondents from Finland and the Netherlands, followed by Denmark, Belgium Portugal, Cyprus, Hungary and Slovenia are the most optimistic about it. In all of these countries the regrouped answers "very well prepared" and "sufficiently prepared" constitute 100% of replies. In the case of public administrations the same refers to Germany, Austria, Denmark, Greece, Ireland, Finland, Cyprus, Latvia, Czech Republic and Norway⁶¹. Finland, Denmark and Cyprus are countries where there is no difference in opinions between business organisations and public administrations and both state that business organisations are "very well" or "sufficiently prepared".

A proportion of those who say that business organisations are "failing in some areas" is much higher among public administrations representatives. Within the EU 15 countries, 25.6% of public administrations representatives and 14.5% of business organisations' respondents shared this opinion. In the new Member States respectively 45.5% of public administration representatives and 31.6% of business representatives believed that business organisations sometimes have difficulties in responding when asked for contributions.

Looking at the replies from business organisations per country, we see that Ireland and Malta (66.7% each) stand out with the highest proportion of those who are convinced that business organisations have some difficulty in responding to consultations. In Luxembourg, Sweden, Estonia, Latvia and Slovakia approximately 50% of respondents shared this opinion. Public administrations' respondents from Portugal, Slovakia and Bulgaria, followed by Belgium and Lithuania, firmly supported the same believe.

The proportion of those who say that business organisations "are not prepared at all" to respond to consultations is rather small, and it makes up 4.3% in the case of public administrations and 2.5% in the case of business organisations' representatives. Looking at public administrations responses per country, Romania (25%) and Sweden (20%) stand out with the highest proportion of those who believe that business organisations are not prepared to respond to a consultation. Turkey with 7.7% of such replies is next.

⁶¹ For more details, please consult Graphs 16.1 and 16.2 in the Annex II.



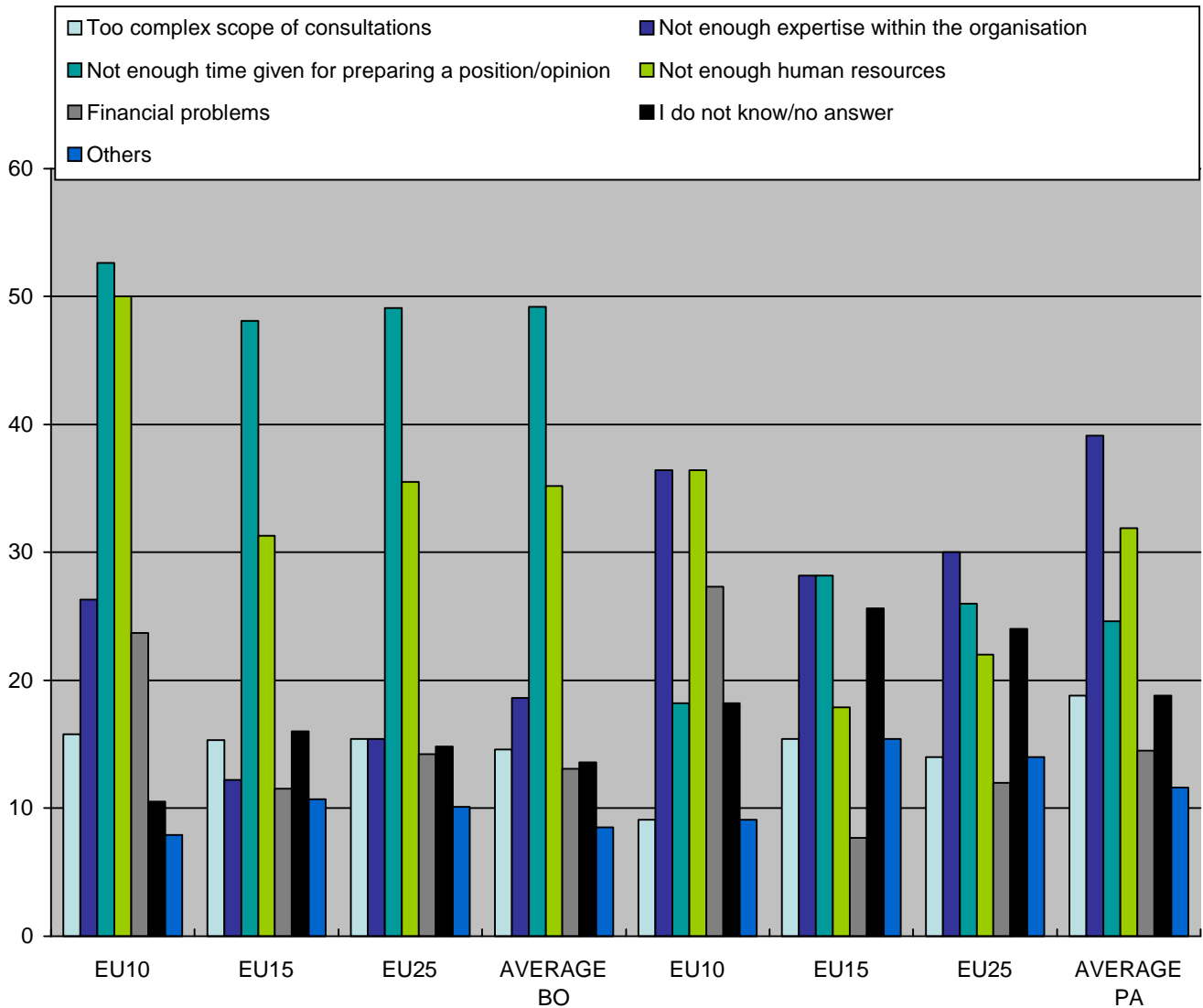
Graph 16: Capability of business organisations to participate in the consultations. Source: the online survey. Replies of business organisations and public administrations.

Business organisations’ perceptions on this issue seem to be more positive. However, once again Romania (10%) and the UK (4.3%) stand out with the highest proportion of those who are convinced that business organisations are not prepared to respond.

Those who admitted that business organisations experience some problems or lack the capacity to respond to consultations, were asked their opinion on what were the main reasons causing these problems.

The majority of respondents from business organisations pointed out “not enough time for preparing a contribution” (49.2%), “not enough human resources” (35.2%) and “not enough expertise within the organisation” (18.6%) as the main problems faced by business organisations. There are some differences between the EU 15 and the new Member States in terms of how much importance is given to each of these three problems. It seems that “not enough human resources” (50%) and not “enough expertise within the organisation”(26.3%) are perceived more often as a significant obstacle in the new Member States than in the EU 15, respectively 31.3% and 12.2%. Moreover, “financial problems” seemed to be a much more important issue for business representatives in the new Member States (23.7%) than in the EU 15 countries (11.5%).

“Not enough time for preparing a contribution” was ranked first by business representatives in countries such as Finland, the Netherlands, Portugal, Hungary and Slovenia, followed by Belgium, Germany, Greece, Estonia, Czech Republic, Poland, Malta, Denmark, Luxembourg, Austria, France as well as Turkey and Romania.



Graph 17: Main reasons for capacity shortages. Source: the online survey. Replies of business organisations and public administrations (please note that more than one answer was possible to this question so percentage do not add up to 100).

“Not enough human resources” was ranked first in Ireland, Finland, Slovakia, Spain, Luxembourg, Sweden, the UK, Cyprus, Latvia, Lithuania, Malta and Romania⁶² while “not enough expertise within the organisation” seemed to be the biggest obstacle in Norway. “Financial problems” received the highest number of replies in Cyprus.

As regards public administrations, “not enough expertise within the organisation” was ranked first in Greece, Ireland, Latvia and Bulgaria, followed by Turkey, Italy, Slovakia, Belgium France and Lithuania while “not enough human resources” was ranked first in Portugal, Slovakia, Norway, Bulgaria, Romania, Belgium, France and Lithuania. In Latvia, France and Lithuania “financial problems” seemed to be the most important obstacle.

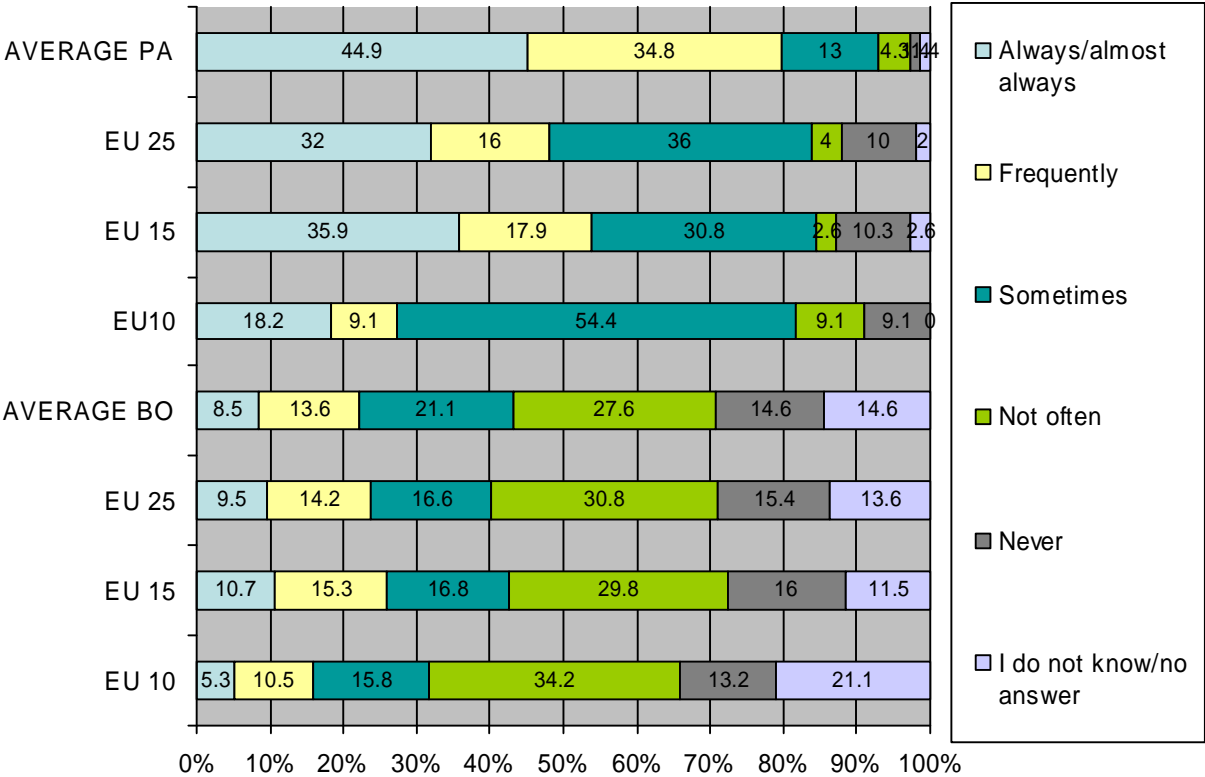
⁶² In some countries certain shortcomings were ranked first *ex equo*. For more details, please consult Graphs 17.1 and 17.2 in the Annex II.

A relatively high proportion of respondents admitted that they “do not know” what the main shortcomings experienced by business organisations might be, and this was especially the case in the EU 15 countries⁶³.

In countries such as Belgium, France, Italy, Austria, the UK, Cyprus, Estonia, Latvia, Malta, Poland, Romania and Turkey replies were split (however not equally) among different options. These results suggest that in many countries business organisations experience difficulties and face different capacity shortages in more than one area.

3.8. Regulatory impact assessment

Impact assessment is one of the most important tools to improve the effectiveness and efficiency of new policy initiatives. Whenever a new policy or legislative proposal is likely to have an impact on small business, this impact should be identified and properly analysed. The impact assessment can help policy makers to identify the most cost-effective way to reach the policy objectives. Moreover, it can help to find out what are the possible mitigating measures that might be used to reduce any disproportionate burdens imposed on small enterprises.



Graph 18: Business impact assessment. Source: the online survey. Replies of business organisations and public administrations.

The definition, scope and application of impact assessments vary from country to country but the objective of this exercise is similar and should be focused on finding the right balance of costs and benefits for business, consumers, citizens and the environment.

⁶³ In the EU 15 countries 25.6% of public administrations’ representatives and 16% of business organisations representatives shared this opinion; in the new Member States, respectively 18.2% and 10.5%.

The survey participants were asked whether the business impact assessment is carried out for new legislative or policy proposal in their country. The regrouped “always/almost always” and “frequently” replies constitute approximately 80% of public administrations replies and only 22% of business organisations’ responses. In the EU 15 the schism in opinions was less significant but still 53.8% of public administration representatives and 26% of business representatives shared the same opinion while in the new Member States, respectively 27.3% and 15.8%.

A significant number of replies, particularly from the business organisations, pointed out that impact assessments are conducted “sometimes” or “not often”. These two answers together constitute 46.6% of responses in the EU 15 and 50% of responses in the new Member States. In the case of public administrations these two regrouped categories constitute respectively 48.7% and 63.5%.

A slight difference in opinions was observed when looking at the “never” answer. Public administrations less often admitted (1.4%) that impact assessment is not conducted than business organisations’ representatives (14.6%). Business organisations’ representatives from the EU 15 more often stated (16%) that business impact assessments are “never” carried out in their country than those from the new Member States (13.2%). The similar tendency was observed among public administrations’ representatives, as respectively 10.3% from the EU 15 and 9.1% from the new Member States expressed such opinion.

In Finland, the Netherlands and Austria as well as in Denmark, Ireland, Italy, Portugal, Hungary, Slovakia, Latvia, Norway and Turkey, a relatively high number of business organisations’ respondents admitted that business impact assessments are conducted “always/almost always” or “frequently” while 25% of respondents from Estonia and Czech Republic pointed out that they were “never” carried out.

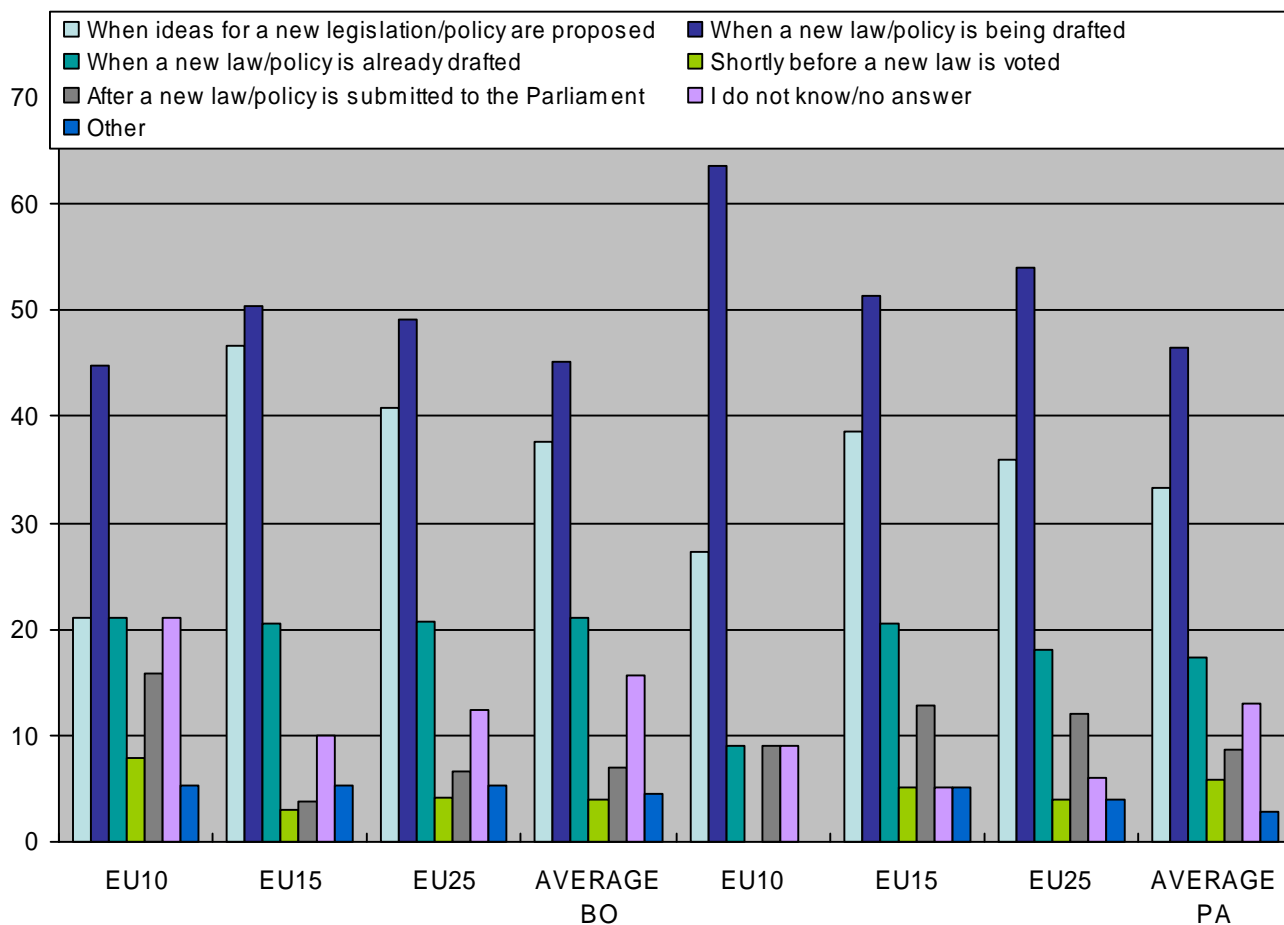
At the same time public administrations’ representatives from the large majority of countries believe that impact assessments are conducted “always/almost always” or “frequently”. Only in Portugal and Sweden a high proportion of respondents admitted that impact assessment is carried out “sometimes” or “not often”⁶⁴.

Another question addressed to the survey participants referred to the stage of conducting a regulatory impact assessment to make it potentially most efficient.

According to the survey results (graph 19), a large majority of respondents was convinced that an impact assessment needs to be carried out at an early stage of the decision making process in order to be efficient, and this opinion was shared by both public administrations and business organisations representatives.

Looking at the public administration responses, we see that the regrouped categories of replies: “when ideas for a new legislation/policy are proposed” and “when a new law is being drafted”, constitute a large majority of replies from many countries. However, France, Portugal and Sweden do not belong to this group.

⁶⁴ For more details, please consult Graphs 18.1 and 18.2 in the Annex II.



Graph 19: At what stage the business impact assessment is done effectively. Source: the online survey. Replies of business organisations and public administrations (please note that more than one answer was possible to this question so percentage do not add up to 100).

It seems that in these countries conducting an impact assessment “after a law is submitted to the Parliament” or “shortly before a law is voted” is considered more efficient. In the case of business organisations, a similar opinion was expressed by respondents from Slovenia while in Finland, Greece and Lithuania respondents stated that “impact assessment” should be carried out also at this stage of the decision making process (other options received a similar level of support).

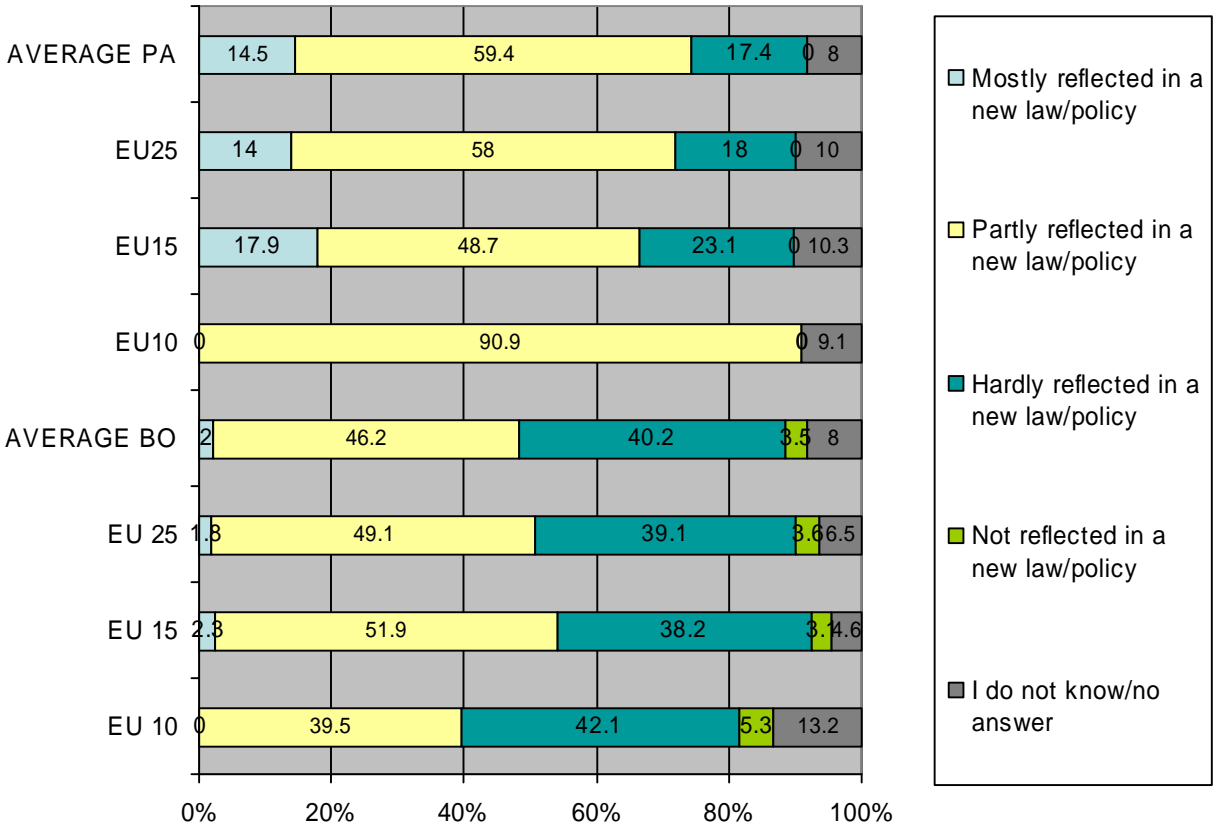
Analysing the responses of business organisations, we observe that the idea of conducting an impact assessment at an early stage is supported by majority of business representatives in a large majority of countries⁶⁵. There is no doubt that this approach should be a prevailing behavior of governments in the process of shaping new legislation or policies.

3.9. Consideration of business opinions

Consultation should mean an opportunity to have an influence on the decision making process, and not simply information. Therefore policy makers should evaluate the stakeholders’ contributions and inform them on how they have been considered.

⁶⁵ For more details, please consult Graphs 19.1 and 19.2 in the Annex II.

Looking at the results, we note that the majority of public administrations’ representatives believe that business opinions are taken into account by decision makers. If we regroup two categories of replies: “mostly reflected” and “partly reflected in a new law/policy”, we see that 72% of respondents from the EU 15 and almost 91% of respondents from the new Member States expressed this opinion. Business organisations’ representatives seemed to be less positive about it but still a majority of respondents from the EU 15 (54.2%) and almost 40% of business representatives from the new Member States supported the same opinion. A significant discrepancy (over 40%) was observed, however, between replies given by public administrations and business organisations, especially in the new Member States.



Graph 20: Consideration of business opinions. Source: the online survey. Replies of business organisations and public administrations.

Business organisations’ representatives seemed to be more inclined to think that their contributions are “hardly reflected in the new law/policy”. Approximately 40% of respondents from both the EU 15 countries and the new Member States expressed such opinion. In the new Member States this opinion did not occur among public administrations’ representatives while in the EU 15 more than 23% of respondents shared it. Only respondents from business organisations stated that their contributions were “not reflected at all in a new law/policy” but the proportion of such replies was low (3.1% within the EU 15 and 5.3% in the new Member States).

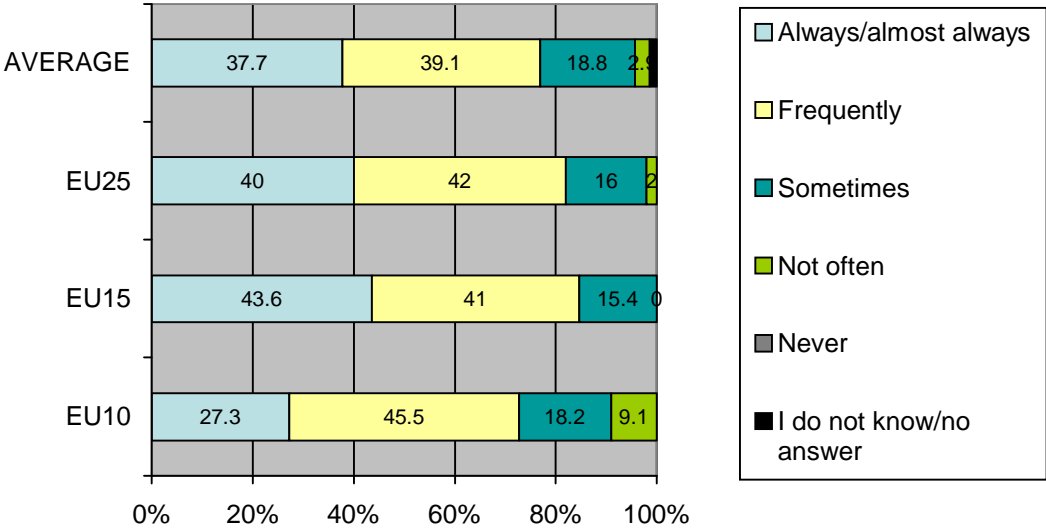
Again, a relatively high proportion of “I do not know” answers occurred, especially in the case of business organisations from the new Member States (13.2%) and public administrations from the EU 15 (10.3%).

Business organisations replies from countries such as Germany, Denmark, Italy, Czech Republic, Lithuania, Slovakia and Malta were equally split between "partly reflected" and "hardly reflected" options. In Finland, the Netherlands, Luxembourg, Hungary, Cyprus, France, Austria, Belgium, Greece, Ireland and Norway, the majority of respondents believed that business opinions were "partly reflected" in a new law/policy. The option "hardly reflected" was ranked first in Portugal, Slovenia, Spain, Romania, Poland, Estonia, Turkey and the UK. In Sweden the replies were split equally between "hardly reflected" and "not reflected at all".

The answer "partly reflected in a new law/policy" was ranked first by public administrations' respondents in most countries, except Belgium, Sweden and the UK. In the UK the answer "reflected in a new law/policy" was ranked first (80%) while in Belgium and Sweden "hardly reflected" was the most common choice of the public administrations respondents⁶⁶.

Contributions of business organisations are least considered in Sweden (regrouped answers "hardly reflected" and "not reflected at all") and this opinion was shared by both business organisations and public administrations' representatives.

The question, whether business opinions are considered a valuable contribution to the quality of a new law or policy, was addressed to the representatives of public administrations.



Graph 21: Are opinions of business a valuable contribution to the quality of laws/policies. Source: the online survey. Replies of public administrations.

A large majority of public administrations' respondents confirmed that business opinions were in most cases a valuable contribution to the quality of legislation/policies. Regrouped answers "always/almost always" and "frequently" constitute 84.6% of replies in the EU 15 and 72.8% in the new Member States. Some 15.4 % of respondents from the EU 15 and 18.2% from the new Member States stated that they consider business opinions a valuable contribution "sometimes" or "not often (9.1%)". The highest level of criticism was observed

⁶⁶ In Romania the answers were equally split between "partly reflected" and "hardly reflected" options.

among respondents from Latvia and Romania, where the answer “not often” was ranked first⁶⁷.

The survey results suggest that a large majority of governments appreciate business opinions and use them to improve the quality of legislation and policies but further improvements are possible and needed in this area, and it refers to both, with business improving the quality of its contribution and policy makers properly using the contribution from business to inform policy development.

3.10. Feedback to stakeholders

Providing good feedback to stakeholders is good practice and one of the most effective ways to reassure those who participated in the consultation that their views and efforts are valued and that they can influence the decision making process. Giving feedback after consultations also helps to secure better response in the future and provides context to the policy decisions. It increases trust in policy makers and enhances the commitment to shape the right policy.

Giving early informal feedback shortly after consultation is a good way to maintain the commitment and pass the message that the stakeholders’ contributions were evaluated and valued. Later on, other methods of giving feedback might be used. It can include publishing a summary of responses on the Internet or providing all participating stakeholders with the findings and a summary of their contributions. Another possible way of giving feedback is to organise a post-consultation meeting to discuss the main findings and explain how the consultation process influenced the policy. Those who have no Internet access should be able to request a hard copy of the summary report.

When asked about providing feedback to stakeholders, a high proportion of public administrations’ representatives acknowledged that feedback was provided. The regrouped “always/almost always” and “frequently” responses constitute 46.1% of replies from the EU 15 and 54.6% from the new Member States. It is worth mentioning that the responses from the EU 15 were more equally split between those two categories.

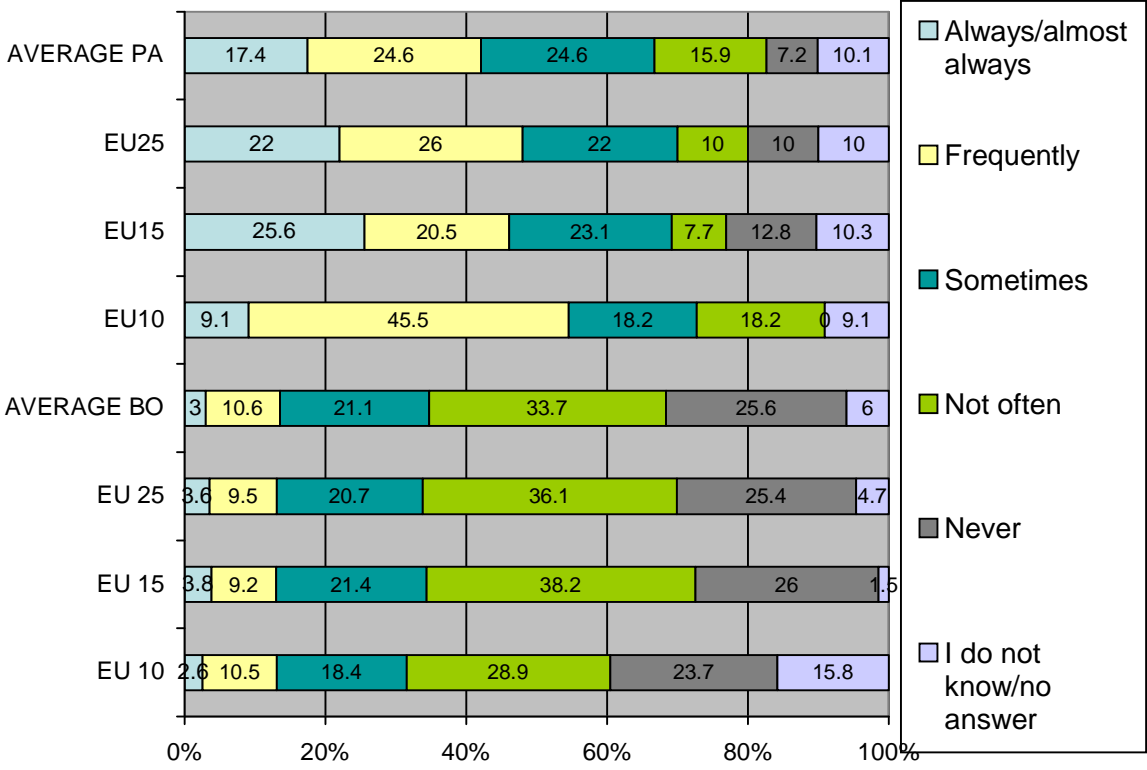
Respondents from business organisations were in general less convinced about receiving feedback, as respectively only 13% of respondents from the EU 15 and 13.1% from the new Member States supported this opinion.

On the other hand, the proportion of the regrouped answers “sometimes” and “not often” was higher in the case of business organisations (59.3%) than public administrations (40.5%). This tendency was similar in both the EU 15 and in the new Member States and the difference in proportions was not significant.

Looking at the ratio of “never” answers, it seems that approximately every fourth respondent representing business organisations was convinced that the government does not provide feedback after consultations. This opinion was shared only by 12.8% of public administrations’ respondents from the EU 15 and in the new Member States the reply “never” did not occur.

⁶⁷ For more details, please consult Graph 21.1 in the Annex II.

In some countries (e.g. in Belgium and Italy) public administrations' choices were split more or less equally between different options, thus giving a mixed picture of the situation. The same tendency was observed in the case of business organisations' choices in countries such as Belgium, Germany, Greece, France, Spain, Ireland and Cyprus. The answer "never" was ranked first by business organisations from the Netherlands, Portugal, Slovenia, Spain, Estonia, Romania, France and Germany while in Austria, Belgium this answer was ranked first by public administrations' representatives⁶⁸.



Graph 22: Providing feedback to stakeholders. Source: the online survey. Replies of business organisations and public administrations.

There is a significant discrepancy between opinions of business organisations' representatives and public administration about giving feedback after consultations. There might be different reasons for that. One reason could be a lack of information on where feedback can be found, another could be a different notion of what giving feedback means and what is considered as feedback. Whatever the reason, it is obvious that the current situation about giving feedback is perceived by many respondents from many different countries as unsatisfactory. Therefore policy makers are encouraged to make more effort in this area and look to improve the situation.

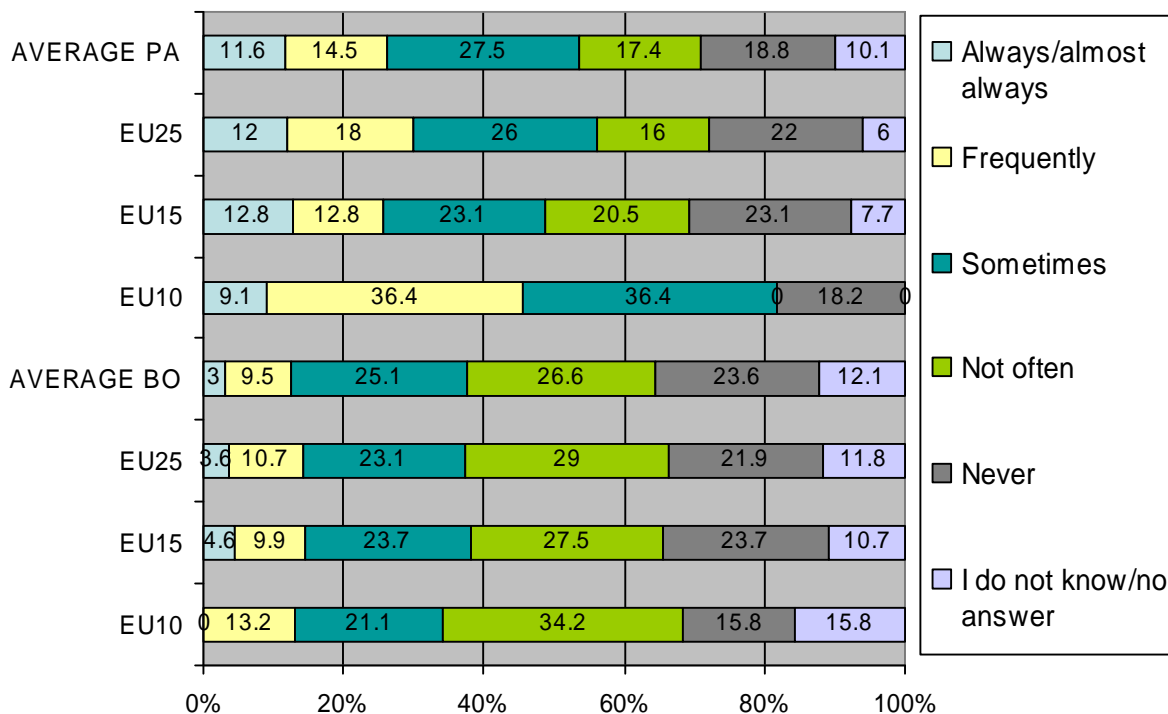
⁶⁸ For more details, please consult Graph 22.1 and 22.2 in the Annex II.

3.11. Publishing results of consultations

Publishing results of consultation is the way to demonstrate greater transparency in the policy making process. The results could be published online (the web address should be communicated in the consultation document) but those without Internet access should be able to request a hard copy of the consultation results. The early publication of responses is also very desirable because it adds to the integrity of a consultation (allowing assessment and reflection by other stakeholders) whilst also stimulating debate.

Early publication of results can be particularly important for small business organisations, with limited resources and/or expertise, as sometimes they are not able to fully participate in debates of critical importance to their members. For these organisations, which are often the hardest to reach or solicit opinions from, there is a real benefit in seeing responses from others, as it allows them to simply signal agreement, disagreement or context to other submissions. Information should also be provided on the issues that came out during the consultation process and were not covered in the original proposal.

Opinions of the survey participants about publishing results of consultation seem to be similar to the opinions expressed about providing feedback. It is worth noting, that respondents were even less optimistic about publishing results than providing feedback, especially among public administrations representatives.



Graph 23: Publishing consultation results. Source: the online survey. Replies of business organisations and public administrations.

The regrouped “always/almost always” and “frequently” responses of public administrations’ representatives constitute 25.6% of replies from the EU 15 and 45.5% from the new Member States. Once again, responses from the EU 15 were equally split between those two categories, while in the case of the new Member States the number of “frequently” replies

was much bigger. In the UK and Denmark, the answer “always/almost always” was ranked first, however it has to be noted that in the case of the latter the replies were equally split between “always” and “never” options. The answer “frequently” was ranked first in Germany, Greece, Cyprus and Slovakia.

The proportion of the regrouped answers “sometimes” and “not often” is higher in the case of business organisations (51.7%) than public administrations (44.9%). This tendency is similar in both the EU 15 and the new Member States. This regrouped category of answers was ranked first by public administrations in Finland, Czech Republic and Norway, followed by Romania, Portugal, Italy, Spain and Turkey. In the case of business organisations, these answers were ranked first in Hungary, Norway, Sweden, Czech Republic, Finland, Slovakia, Turkey and Spain.

The ratio of “never” answers also remains similar and it accounts for more than 20% of responses, with the lowest at 15.8% in the case of business organisations from the new Member States. In the Netherlands, Portugal and Slovenia, followed by Belgium, Austria, Spain, Cyprus and Romania, the answer “never” was ranked first by business organisations representatives while in Austria and Latvia the same answer was ranked first by public administrations⁶⁹.

As already mentioned, publishing results of consultation contributes to the transparency of the decision making process and can be particularly important for small business organisations, since it provides them with the opportunity to voice their opinions even without an active participation in the consultation process. Policy makers should therefore consider early publication of consultation results, as this can be the way of increasing participation in the consultation as well as improving the integrity of the decision making process.

3.12. Level of satisfaction on the consultation process

As the survey results demonstrate, business organisations’ representatives are less satisfied with the current consultation process than public administrations respondents. Almost 60% of business representatives considered the consultation process unsatisfactory while in the case of public administrations this opinion was shared by 30% of respondents. Business representatives from the new Member States seemed to be less satisfied than those from the EU 15, respectively 73.7% and 56.5 % expressed such opinion.

The opposite tendency was observed in the case of public administrations representatives. The survey result demonstrate, that in the EU 15 the ratio of those who were not satisfied with the process was higher than in the new Member States, and it amounted respectively for 25.6% and 18.2% of replies.

A large majority of business representatives from Portugal, Denmark, Finland, Hungary, Slovenia, Austria, Ireland, Cyprus, Norway, Latvia and the UK were of the opinion that the existing consultation process in their country is satisfactory. In countries such as the Netherlands, Sweden, Estonia, Czech Republic, Poland, France, Belgium, Romania, Spain, Malta, Germany and Italy the majority of business representatives were not satisfied with the process. The most unsatisfied were respondents from the Netherlands, Sweden, Czech

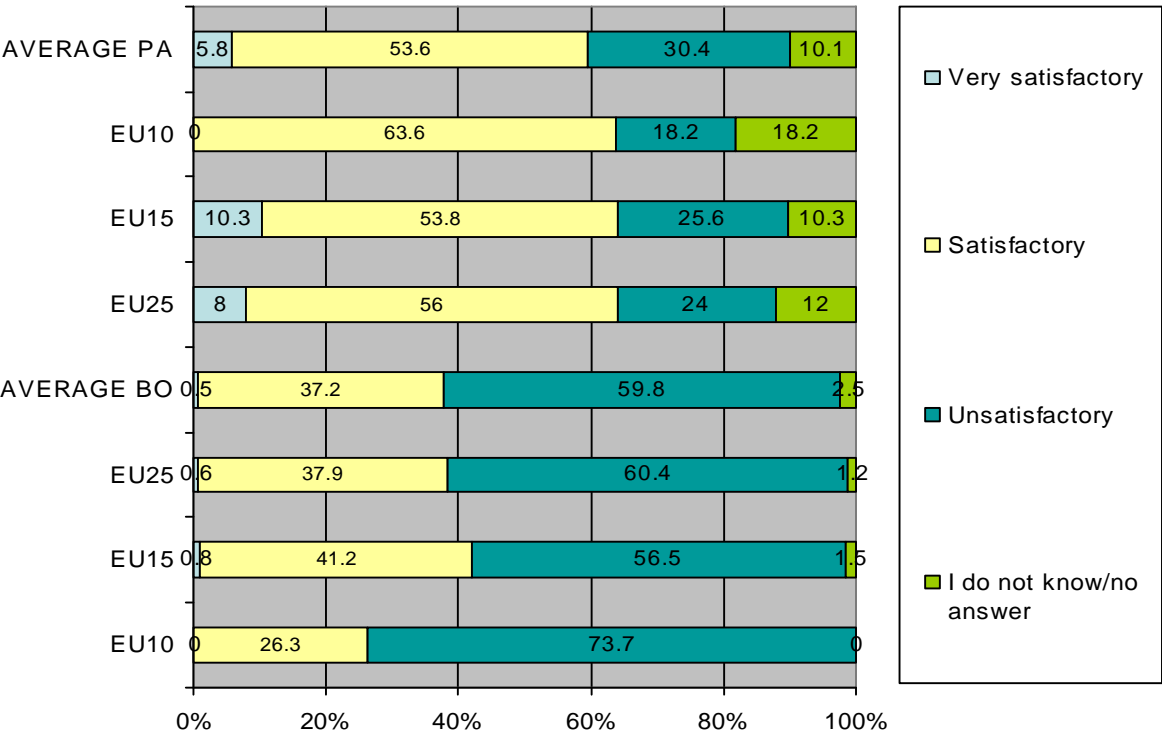
⁶⁹ For more details, please consult Graphs 23.1 and 23.2 in the Annex II.

Republic, Estonia and Poland. In Greece, Luxembourg, Lithuania, Slovakia and Turkey the answers were almost equally split between those who are satisfied with the process and those who are not, thus providing a mixed picture.

Public administrations’ representatives from a majority of countries participating in the survey⁷⁰ were satisfied with the current consultation process. Only in Portugal and Bulgaria representatives of public administrations expressed the opinion that they were not satisfied with the consultation process, whilst the majority of business representatives from these countries had a positive opinion about it. In countries such as Belgium, Sweden, Slovakia, Romania and Turkey opinions were almost equally divided.

In Austria, Denmark, Finland, Ireland, the UK, Cyprus, Latvia and Norway both partners participating in the process shared positive opinions about the existing consultation provisions, while in Portugal, Czech Republic, France and Germany a significant discrepancy in opinions was observed.

According to the survey results, there is no positive correlation between availability of the legal provisions for the consultation process and the level of satisfaction of those who participate in the process. No strong correlation can be observed either between the availability of compulsory time for consultation and the level of satisfaction in countries such as Austria, Finland, Ireland and Slovenia but in Denmark, Portugal and Hungary such correlation can be noted. This may suggest that time provided for consultation in these countries is usually considered not sufficient.



Graph 24: Level of satisfaction on the consultation process. Source: the online survey. Replies of business organisations and public administrations

⁷⁰ In 15 countries out of 29 (no data available from 7 countries).

In countries where a relatively high proportion of respondents stated that the consultation is taking place “shortly before a new law is voted”, there is also a high percentage of those who are not satisfied with the consultation process. The same tendency occurs when we compare the level of satisfaction with the consideration of business opinions. Obviously, those who were convinced that the opinions of business are “never or hardly considered” by policy makers, were not satisfied with the consultation process.

Looking at the countries, where business organisations representatives claim that they do not receive feedback from policy makers, the majority, with the exception of Portugal and Norway, was not satisfied with the current consultation process in their countries. However, the fact that results of a consultation were not published did not change the positive opinion of stakeholders about the consultation process in countries such as Austria, Portugal and Slovenia. In the case of other countries, a large majority of those who stated that results of consultations were not published expressed also a negative opinion about the current consultation procedures applied in their countries.

Level of satisfaction of those who participate in the consultation can serve as an indicator to assess the quality of the consultation process. This indicator, however, is entirely based on the personal judgement and perception of the process which might be considered as its weakness. On the other hand, perceptions and personal opinions of those who take part in the process should not be underestimated, as they can influence the commitment and the level of participation. If the existing consultation structures are perceived as not satisfying and inefficient, there is less chance that stakeholders will get actively involved in the process and show their commitment.

Level of satisfaction on the consultation process should be perceived as an important indicator even though the high level of satisfaction of those who participate in the process does not necessarily mean that the quality of the process is better than in the country where stakeholders are less satisfied with it. Sometimes negative opinions on the consultation process in a given country simply reveal the lack of efficient structures and procedures but they can also suggest that the existing procedures or frameworks are not properly used and benefited from, or perhaps higher standards and expectations towards the quality of the consultation process are applied in this country. The results of the online survey suggested for example, that in the Netherlands and Sweden⁷¹ business organisations representatives were very critical and they unanimously stated that the existing consultation process is unsatisfactory. It came as a surprise, as these two countries were mentioned in the previous Charter implementation reports as the ones having a relatively efficient consultation structure in place⁷².

In any case, if negative opinions occur, policy makers should try to find out why the consultation process is perceived as not being effective and should consider what needs to be done to improve it. Sometimes providing more information and explaining the process could

⁷¹ For more details, please consult Graphs 24.1 and 24.2 in the Annex II.

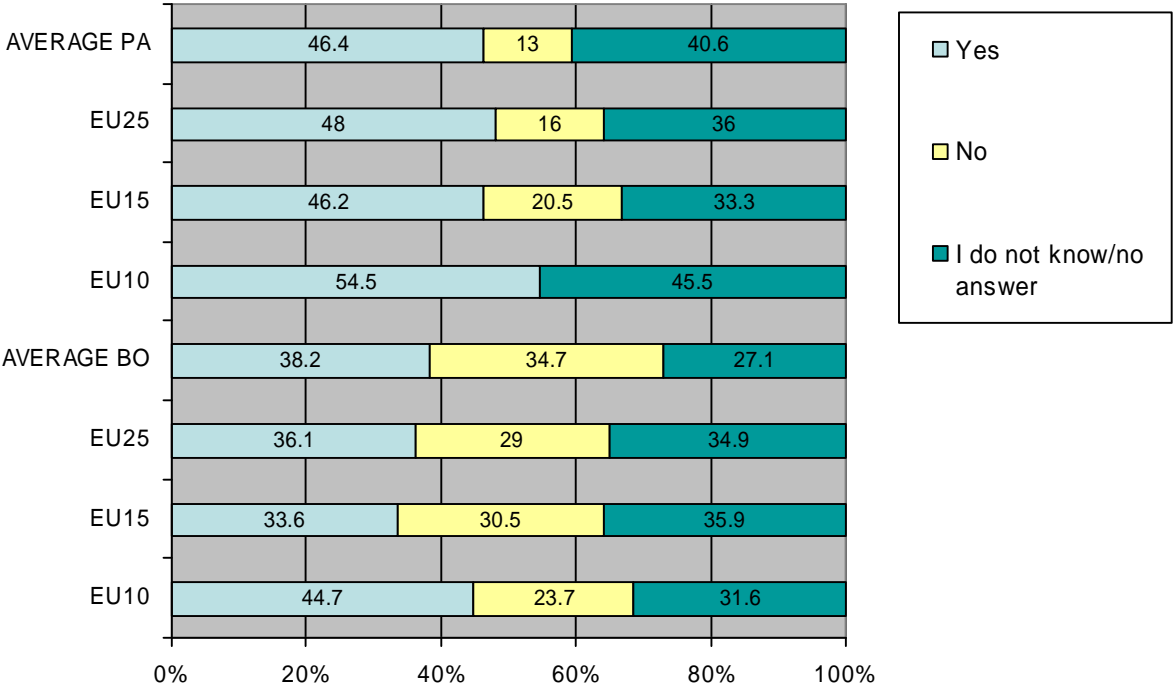
⁷² Good practice examples were identified in those two countries. Please consult Charter Implementation Reports 2003 and 2004, http://www.europa.eu.int/comm/enterprise/enterprise_policy/charter/reports.htm

partly solve the problem. Once again, the survey results revealed, that the assumption on the part of policy makers that the consultation process is common knowledge is not always correct.

3.13. *New initiatives in the area of consultation*

Consultation procedures need to develop and evolve in accordance to the changes affecting a decision making process. The consultation process can also be improved on the basis of experiences and practical knowledge cumulated within the ministries’ departments or other institutions responsible for the organisation of different consultations (learning by doing).

The survey results reveal that a relatively high proportion of respondents from both business organisations (38.2%) and public administrations (46.4%) were convinced that some new developments in the area of consultation have been recently initiated in their countries. On the other hand, approximately one third of business organisations’ representatives (34.7%) and 13% of public administrations’ respondents expressed the opinion that there were no new initiatives in relation to the consultation process. Finally, 27.1% of respondents representing business organisations and 40.6% representing public administrations stated that they were not aware of any new initiative in this area. Comparing responses of public administrations and business organisations’ representatives from the new Member States and the EU 15, we see that the ratio of positive answers to this question was approximately 10 points higher in the new Member States.



Graph 25: *New initiatives in the area of consultation. Source: the online survey. Replies of business organisations and public administrations.*

Finland, Hungary and Slovenia, followed by Sweden, Czech Republic, Turkey, Cyprus, Italy and Austria stand out with the highest proportion of “yes” answers. In Luxembourg, the Netherlands, Ireland and Portugal respondents expressed the opinion that there were no new

initiatives related to the consultation process in their country. A relatively high number of business representatives from almost all countries participating in the survey stated that they did not hear about any new initiative in this area⁷³.

As regards public administrations' responses, Germany, Greece, Ireland, Portugal, Finland, Cyprus, Czech Republic, Slovakia and Norway stand out with the highest proportion of positive answers to this question. In France, Italy and the UK, approximately 60 % of respondents were convinced that new actions have been initiated in relation to the consultation process. In Denmark and Austria public administrations' respondents stated that they were not aware of any new initiative in relation to consultation procedures, followed by Belgium, where this opinion was shared by 50% of respondents. Latvia, Bulgaria, Sweden, Lithuania, Spain and Turkey are countries where the highest proportion of "I do not know" answers was observed⁷⁴.

It is legitimate to say that in many countries new initiatives in the area of consultation are currently being undertaken and that the situation is constantly improving, especially in the new Member States.

⁷³ For more details, please consult Graph 25.1 in the Annex II.

⁷⁴ For more details, please consult Graph 25.2 in the Annex II.

4. OVERVIEW OF CURRENT DEVELOPMENTS

Analysis and information presented in this chapter is based on the contributions from national experts (where available) and the national Charter implementation reports. In the case of countries that did not nominate experts for this project, the Charter implementation reports were the main source of information.

Belgium

Belgium is a federal state divided into three parts⁷⁵: the Flemish, Walloon and Brussels Regions. There are also three language groups established: the Dutch, French and German speaking Communities. Each of these entities has a considerable power regarding economic policy, education, infrastructure, agriculture, foreign trade, welfare, environment etc.

The law of 21 January 1985 provides the framework for SME representatives to participate in the legislative process and to advice government as well as other federal bodies on various policies falling within their respective fields of competence. When a draft law affecting enterprises in general and SMEs in particular is submitted to the Parliament, specialised Chamber and Senate Committees hold public hearings where representatives of all leading business organisations are invited.

The professional and inter-professional organisations are represented within the “High Council for Self-Employed Persons and SMEs” (CSIPME), which is a federal public institution with a legal personality. The CSIPME comprises approximately 140 recognised professional and inter-professional organisations and its mission is to provide advice to the government and represent interest of their members. The Council can submit its opinions to the Minister concerned and to the Minister for Medium-Sized Enterprises. The Council must be consulted on draft regulations, particularly as regards commercial practices and conditions of operation for various professional activities. As a consultative body, the Council is a valued government’s interlocutor.

In 1994, the Brussels-Capital Region established the Chamber of Medium-Sized Enterprises, which is a co-operation structure for examining regional economic policy measures that influence the socio-economic environment of self-employed persons, craftsmen and SMEs. This structure acts under the Economic and Social Council of the Brussels-Capital Region (CESRB).

In April 1990, the Flemish Parliament adapted and extended the decree ruling the Flanders’ Social and Economic Council (SERV)⁷⁶ in order to respect the new state structure. SERV is a consultative body of the Flemish social partners where they can jointly explore and elaborate views on legislation with regard to social and economic matters in Flanders. Over the recent

⁷⁵ The division was a result of the state reforms of 1980 and 1988. These reforms were further developed in 1993.

⁷⁶ The SERV consists of twenty representatives of the Flemish social partners: ten delegates of the representative Flemish employers’ associations (BB, UNIZO, VCSPO and VEV) and ten delegates of the representative Flemish trade unions (ABVV, ACLVB and ACV).

years the SERV's tasks and competencies have been constantly expanding. The SERV can act on its own initiative or at the request of the Flemish Parliament, the Flemish Government or one of its members. Moreover, the Flemish Government is obliged to seek an advice from the Council on each draft decree related to social and economic matters.

The important areas tackled by the SERV include: industrial policy, regional development, infrastructures, labour market, education and training, environment, transport, traffic etc. Furthermore, the SERV is obliged to report annually on the Flemish budgetary policy.

In general, the SERV fulfils its task by issuing recommendations to the Flemish Government or to one of its members. Each recommendation is prepared by a special study group which consists of experts representing the social partners. The study group reports to the Executive Committee⁷⁷ and formulates a preliminary draft recommendation. The Executive Committee examines the draft recommendation and may decide to send it to the Council. It is then up to the Council to decide whether it should be submitted to the Government as a final recommendation.

In 1983, the Flemish Economic and Social Consultative Committee (VESOC) was established. The Committee holds regular meetings of the Flemish Government and the Flemish social partners during which consultations take place and concrete agreements are made. In 1986, the Government pledged (and reconfirmed in 1992) to implement each agreement reached in the framework of the VESOC. The social partners committed themselves to participate in the execution of such agreement and to defend it against their members.

Besides these two structured modes of consultation, there are also other initiatives in this area, such as "rule of compensation". This rule aims at maintaining the same level of administrative burden for enterprises. Before adopting a new legislation the Government is obliged to abolish the existing legislation so that the level of administrative burdens remains the same. The government has also expressed its intention of setting up a business test panel in order to reduce administrative burdens imposed by new regulation.

Recently, an attempt of providing an overview of administrative burdens has been undertaken by the Belgian federal Government by introducing the *Kafka test*. It allows everyone to inform the Government about his/her own experience in relation to the administrative burdens⁷⁸.

The Walloon Government and the member organisations of the Economic and Social Council of the Walloon Region signed on 17 June 2002 a Charter for Partnership where five priority areas of partnership: training, mobility, business development, administrative simplification and quality were identified.

⁷⁷ The Executive Committee of the SERV is formed by the representatives of four major social partners (ABVV, ACV, UNIZO and VEV), the general administrator and the deputy general administrator of the SERV. The chair changes every year and there is a rule that the chair and the deputy cannot represent the same type of organisation.

⁷⁸ More details can be found on the website: www.kafka.be.

Czech Republic

In the Czech Republic, the dialogue between the government and business was primarily linked to the employment and labour relations issues, which are discussed within the Economic and Social Cohesion Council. The Council consists mainly of government representatives and social partners but representatives of small and medium sized enterprises are also present during the discussions. Results of these discussions contribute to the solutions presented to the government. Social conferences are also organised at national level to debate on major employment issues. In addition, social partners participate in the work of the relevant Committees of the Parliament and the Senate.

In February 2002, a merger of biggest SME associations allowed for the creation of the Association of Small and Medium-Sized Enterprises and Proprietors of the Czech Republic. This organisation is much stronger, more representative and better equipped to represent SME interests.

The amended Legislative Rules of the Government permit the introduction of impact assessments for new legislative proposals affecting business, especially small and medium-sized enterprises. Impact assessment is mandatory and has to be a part of each legislative proposal submitted to the Parliament. There is no strict requirement in The Legislative Rules to consult the draft legislation with business organisations or with the public at large but in practice they are sent for comments to different organisations and institutions, such as employer's federations, trade unions, business associations etc.

In February 2004, the *Council for the Development of the Entrepreneurial Environment*, an advisory body to the Ministry of Industry and Trade in the field of business environment, was established. The Council created a platform where representatives of the government and other public bodies as well as representatives of business can meet, discuss problems and propose concrete solutions.

Denmark

Denmark has a long tradition of consultation with stakeholders at an early stage of the law making process. Each draft law or regulatory acts have to be sent to the Danish Commerce and Companies Agency⁷⁹ where experts assess whether the proposed law or regulatory act implies economic or administrative burdens for enterprises. If during the assessment process significant burdens are identified, the draft law or regulatory act in question is analysed in a more detailed way in order to determine all administrative steps that need to be undertaken by an enterprise to comply with the new legislative or regulatory proposal.

After the analysis, a business panel consisting of a wide variety of enterprises that are likely to be affected by the draft law or regulatory act is set up to discuss their potential implications. On the basis of the analysis by experts, an in-depth interview is carried out with each business panel member in order to get precise information on how much time is needed for each administrative activity. If these interviews provide evidence that the draft law or regulatory act may require the administrative work of more than 10.000 hours per year for the affected enterprises altogether, then it has to be sent to the Government. The key Ministers of

⁷⁹ This Agency was established under The Ministry of Economic and Business Affairs.

the Cabinet take a political decision whether the draft law or regulatory act should be changed to reduce the administrative burden.

A method underlying this kind of impact assessment is known as the *Standard Cost Model* and it is internationally acknowledged and employed by many countries to measure both administrative burdens in existing regulation and estimating administrative burdens in new regulation. One of the key elements in the *Standard Cost Model* is the systematic consultation with stakeholders.

The business community is consulted at least three weeks before a new law is submitted to the Parliament. This formalised public hearing procedure is considered “good administrative practice” and it is very rarely - if ever - departed from, but it does not guarantee the direct consultation of businesses in the legislative process.

Sometimes additional measures are taken by law makers in order to facilitate the direct consultation with businesses (e.g. focus groups, visits to businesses etc).

Qualitative data from the public hearings and consultations in combination with the quantitative data from the business test panels proves to be an efficient tool.

It is very important that the impact assessment is carried out at an early stage of the decision making process so that it can influence the content of the new legislative or regulatory acts.

Germany

In Germany, the Federal Government adopted the new common rules of procedure for the Federal Ministries (*Gemeinsame Geschäftsordnung der Bundesministerien - GGO*) on 26 July 2000. Article 44 of these new rules stipulates that all umbrella business organisations must be involved in the legislative process. Each Ministry responsible for drafting a particular bill is obliged to consult with industry associations about the costs that will be incurred by industry, and particularly by small and medium-sized enterprises. These associations must be involved in the legislative process at an early stage (§47 GGO) so that the interests of their members are taken into account. The adequate representation of their interests is ensured at all levels of German administration (federal government, *Länder*-regions and communes) through both formalised procedures and *ad hoc* discussions and working parties.

The two main contact points for SME interests at federal level are the following:

- The Federal Minister for Economic Affairs and Labour;
- The authorised representative of SMEs (SME Envoy) at the Federal Government.

The main role of the authorised representative of SMEs is to co-ordinates activities of the Federal Government in the field of SME policy and to ensure that interest of SMEs are properly taken into account.

Since 1956, the SME Advisory Board provides analysis of the current economic situation and assesses impact of different policy measures on SMEs. The Board members appointed each year are all independent figures with economic, political or academic background presenting their own opinions without any instructions from the government.

Chambers network (Chambers of Trade and Industry, professional Chambers, craft Chambers) is a broad and well established structure with a great importance for representation of SME interests. They participated in the consultation process and are considered by the governments at different levels representative business organisations. The umbrella and liberal professions' organisations are also in regular contact with policy makers in the framework of bilateral discussions, working groups on specific topics or public hearings as regards current plans.

Estonia

In the course of the recent years, more practical and beneficial relations have been established between different Estonian ministries and business organisations. As stated by the Estonian Chamber of Commerce and Industry (ECCI), the possibilities for enterprises to express their opinions on legislation and policy issues have notably increased. Estonian enterprises (including SMEs) can contribute to the legislative process by using electronic channels created by the Government or influence the process through business organisations.

ECCI has offered to the member companies easily accessible channels for exchanging information and opinions. Every draft law that can potentially influence the activity of the Estonian enterprises is sent to the relevant stakeholders for comments and contributions so that the proposal can be amended accordingly. ECCI evaluates these opinions and sends the position papers to the relevant authorities that are responsible for a given legislative act.

Regular consultations are conducted with the leaders of business community and the public sector. They are based on the Agreement signed by the Estonian Government and by leaders of the two largest business organisations: the President of the Estonian Chamber of Commerce and Industry and the President of Employers Confederation.

This Agreement called *The Memorandum of Co-operation* was signed in July 2003⁸⁰ and it creates the basis for consultations between the Government and the business community. As it is stated in the Agreement:

1. The Government has to discuss with business organisations all important proposals concerning the business environment before they are drafted and adopted;
2. If any changes are to be introduced to the important legal acts related to the business activity (e.g. fiscal system), a sufficient period of time has to be granted to examine them before they are enforced. In general, the changes that potentially might produce negative effects on business should not come into force earlier than 12 months after they were adopted;
3. The consistency, economic efficiency and legitimacy of laws should be ensured as well as the stability and simplicity of the tax system. Achieving better quality legislation should be the starting-point for changing laws;
4. Legislation related to the business activity should be reviewed and the excessive regulation limiting business activity should be abolished. More efficient way to carry out impact assessment analysis, including the assessment of costs for business, also needs to be introduced;
5. Activity of initiating, drafting and revising drafts should be conducted by both parties with a respect to the principles of mutual partnership;

⁸⁰ Similar agreements have also been signed by some of the previous Estonian governments.

6. Representatives of business organisations should be involved in the development and management of vocational education and training;
7. Partners should meet on a regular basis, at least every three months, in order to exchange opinions on important matters concerning economic development, business environment and strategic planning.

On the basis of this Agreement, several meetings have already taken place and facilitated a better mutual understanding and the necessity of consultation and dialogue between business representatives and the public sector.

The Estonian Association of SMEs⁸¹ was not completely satisfied with the existing system and expressed the opinion that small enterprises do not have sufficient communication with public authorities. In contrast to that, the Estonian Taxpayers' Association expressed the opinion that some of the Government bodies, e.g. the Ministry of Economic Affairs and Communications, try to exercise an open and permanent consultation process in their respective field of competence.

In the end of 2003, the Ministry of Economic Affairs and Communications started a new project "Strengthening the co-operation between the public sector, business organisations and non-governmental organisations in Estonia". The project was funded by the Danish Government through the National Agency for Enterprise and Housing. The aim of the project was to enhance and strengthen the co-operation between the public sector and business sector by elaborating the administrative procedures within the ministries for regular involvement of non-governmental organisations (NGO) in the policy making process and by increasing the knowledge and competence level of the NGOs through the information and training activities. The increased awareness of both officials and businesses concerning the need for closer co-operation and more efficient consultation process was one of the aims of this project.

Greece

In Greece, the Economic and Social Council (ESC) is the only institution conducting formal consultations. ESC was established by law in 1994 (Law 2232/94), and in 2001 it was incorporated into the Greek Constitution. The Council's main role is to promote the social dialogue, to discuss issues that are important for the national economy and to secure agreements that can be accepted by all stakeholders involved.

ESC has to put forward the expert opinion as regards issues of great importance for social partners (e.g. social insurance, taxation, financial policies, investments, consumer protection, competition etc), and this opinion is mandatory for the laws to be voted by the Parliament. For the ESC, the consultation period ranges between 30 and 45 days.

ESC can also submit on its own initiative an expert opinion about any legislative proposal that concerns the State's Social and Economic Policy. Apart from the ESC acting at national level, there are also social and economic committees at local level and they are discussing matters concerning local governments and relevant stakeholders.

⁸¹ The Estonian Association of SMEs represents exclusively small enterprises (approximately 400 enterprises).

The ESC proved to be a very efficient platform for consultations and the exchange of opinions between the government and social partners. The ESC is incorporated into the legal framework of the country.

In 2001, there was an attempt to introduce a new law on better regulation where consultations were foreseen as an integral part of the decision making process but this law has not been adopted at that time. Recently, there was another legislative proposal on “Quality Control of Regulations” and the Government promised to adopt this law as soon as possible⁸². There are provisions for the consultation process foreseen in a new draft law. According to the article 3 of this law, the quality control of regulations will be undertaken by the competent Ministry and the General Secretariat of the Government. This will be done during the process of the law drafting. If the draft law is likely to affect business functioning, the Quality Control Report will have to be accompanied by the impact assessment consisting of the detailed cost-benefit analysis. The impact of the new law on competition, environment, consumer protection and sustainable development will have to be assessed as well. The time foreseen for the consultation ranges from 4 to 8 weeks (Art. 2).

According to the draft law (Art. 7) the results of the ESC discussions and reports on how the social dialogue has been conducted will also have to be included into the Quality Control Report.

For the time being, there is no horizontal policy as regards consultation (apart from the ESC). The consultation practice is followed, however, by most Ministries to provide all interested parties with the opportunity to express their views on major legislative proposals but these contacts are still far from being systematic and structured.

The Greek Constitution provided for the establishment of six permanent Parliamentary Committees⁸³ and ensured that all interested parties can participate in the meetings of these committees⁸⁴. Consultation has also been institutionalized in the case of two Ministries:

- Ministry of Development: Law 2731/1994;
- Ministry of the External Affairs: Law 2731/1999 - establishment of the International Co-operation for Development Service.

In addition, the Central Committee for the Simplification of Administrative Procedures was established by law 3242/04, and it has already started its activity. Consultation will become an integral part of the administrative simplification process. Once the priorities for the work of this Committee are identified, all stakeholders will be invited to submit their own opinions as regards the procedures that need to be simplified. Entrepreneurship is one of the priorities for this Committee.

There are also isolated cases of public consultation undertaken by different agencies such as the Regulatory Authority for Energy, the Hellenic Capital Market Commission and the National Commission for Post and Telecommunications.

E-business Forum is the only permanent mechanism of consultation with businesses and the academic community as well as social and professional agencies. The main aim of this Forum

⁸² The Greek Ministry of Interior in its Press Release issued on 16th of June 2005 stated that the plan of the present Government is to adopt this law as soon as possible.

⁸³ Article 72, paragraph 1 of the Constitution and article 31, paragraph 1 of the Parliament Rules of Order.

⁸⁴ Article 66, paragraph 2 of the Constitution and article 38, paragraph 2 of the Parliament Rules of Order.

is to collect views and proposals to strengthen business competitiveness on the new digital market and support e- business⁸⁵.

The other Ministries such as Ministry of the Interior, Finance, Labour and Social Security started publishing the draft bills on their websites, so that all interested citizens can participate in the law drafting process.

Spain

In Spain, the DGPYME coordinates the implementation of different measures and actions aiming at improving the competitiveness of small and medium-sized enterprises. It applies a policy of ongoing dialogue with other governmental institutions, and in particular with the autonomous communities and the target audience for its various actions. In the latter case, either directly with businesses or indirectly through their most representative sectoral or inter-sectoral business associations, associations of women entrepreneurs, young entrepreneurs and self-employed professionals.

The Sectoral Conference of Small and Medium-Sized Enterprises provides a forum for discussions on various SME issues with the autonomous communities. It operates in the framework of plenary sessions under the chairmanship of the Minister of Industry, Tourism and Trade, and it consists of corresponding Ministers from each autonomous community.

The Board of Directors-General of the autonomous communities comes under the responsibility of the Sectoral Conference. The former meets on the initiative of the DGPYME to define the membership and operation of working parties and the selection criteria for committees of programmes, to approve and coordinate supra-regional projects, to establish monitoring procedures etc.

The Observatory on Small and Medium-Sized Enterprises was created in 1997 pursuant to the Royal Decree 1873/1997 of 12 December. Its regulations have been recently adapted to the new functional structure of the Ministry of Industry, Tourism and Trade. The Observatory is a consultative, advisory and assistance body with the aim to encourage and facilitate the creation, development and competitiveness of SMEs. It should function as an analytical and predictive tool to assess the structural position and performance of SMEs in Spain and in the other EU countries, and to provide policy makers, researchers and companies themselves with the valuable information to improve their decision making process.

France

Listening to SMEs has been a priority for the French public authorities for a long time. In 1998, as a result of the internal reform, a Directorate for Commercial, Craft and Service Enterprises (DECAS)⁸⁶ has been created with the task to be a focal point for small enterprises and to assess the policy proposals of the Government that are related to business, crafts and services⁸⁷.

DECAS participates in the preparation of fiscal, commercial and social regulations in order to ensure that small and medium-sized companies concerns and interests are taken into account.

⁸⁵ For more information, please consult the website: www.ebusinessforum.gr.

⁸⁶ DECAS was created within the Ministry of Economic Affairs, Finance and Industry.

⁸⁷ Article 2 of the Decree n ° 98-976, 2 November 1998.

It proposes the adoption procedure for legal and fiscal regulations and initiates the administrative simplification actions within its competence.

The abovementioned reform also aimed at improving visibility and efficiency of dialogue with enterprises, mainly through institutionalised relations with chambers and trade associations (*Assemblée permanente des chambres des métiers* and the *Association française des Chambres de commerce et d'industrie*) as well as other business organisations⁸⁸.

Regular meetings between the Government and business representatives are held to discuss current issues and to comment on draft legislations. Consultations with business, however, are not compulsory and they are not required by any legal act.

As regards small enterprises, the Secretary of State for SMEs established a direct dialogue with entrepreneurs with the aim to involve them in drafting the legislative proposals (Economic Initiative Bill on the modernisation of businesses). In 2002, the Green Paper on enterprise policy was published in order to encourage comments from business representatives, individual enterprises and other stakeholders.

The *Business Creation Train* (an initiative supported by The Secretary of State for SMEs) was travelling through the country between 8-23 of September 2003 in order to promote entrepreneurial activities and provide necessary information to the potential entrepreneurs.

An ongoing dialogue between the French authorities, different chambers and other business organisations created the basis for establishing common objectives and finally signing the Framework Agreement between DECAS and the *Assemblée des Chambres Françaises de Commerce et d'Industrie*.

A good example of involving business representatives in the drafting of a new law concerning the business development, job creation and business transfers was the initiative to set up the Parliamentary project. Direct and indirect consultations with chambers of commerce, professional associations, SME associations, industry and banking sector, social bodies and individual entrepreneurs resulted with the draft proposal of a new law. DECAS coordinated the whole process and was responsible for the assessment of all written contributions submitted by stakeholders. The final draft proposal contained and took into account numerous business proposals and this new law, once adopted by the Parliament, was very well received by the business community. There is an obligation in France to carry out impact assessment studies for each legislative proposal.

Ireland

In Ireland, the main forum for consultations and discussions with small enterprises is the Round Table for Small Business, established by the Department of Enterprise, Trade and Employment in April 2001⁸⁹. The Round Table participants meet two or three times a year to discuss issues important for the Irish small business⁹⁰.

⁸⁸ Confédération générale du patronat des petites et moyennes entreprises (CGPME), Mouvement des entreprises de France (MEDEF), Union nationale des professions libérales (UNAPL), L'Union Professionnelle Artisanale (UPA).

⁸⁹ More information on the Round Table for Small Business can be found in the chapter 6.

⁹⁰ Round Table participants include representatives of the Small Business sector, government officials, academics and the development agencies.

Extended consultations with relevant bodies are also conducted in relation to Revenue issues. For example, the Tax Administration Liaison Committee, the Customs Consultative Committee and other groups provided feedback related to policy formulation and legislative processes.

All necessary assistance and support is provided to each development of the Revenue On-Line Service (ROS). This consultation process facilitates the development of stronger, more effective representation of small enterprises within Revenue. ROS Liaison Officers operate in each Revenue Office and are available to call out to any local business, if required, to deal with queries and give demonstrations on the system.

Revenue also published a new Customer Charter in April 2004 which set out, for the first time, the mutual expectations of both Revenue and its customers. Consultations on the Charter took place with a number of bodies, including the two organisations representing small firms in Ireland.

A good example of consultations with business was the one focusing on the barriers that may exist for entrepreneurs and the impact that this may have on the development of Micro-enterprises and SME's in Ireland. A study concerning these issues was commissioned in 2002 by Forfás, The National Competitiveness Council, Enterprise Ireland, and the Department of Enterprise, Trade and Employment. The study was carried out with a view to make recommendations and improve the environment for entrepreneurs.

There is no centralised consultation procedure in Ireland and the process itself can vary from Department to Department. As a response to the OECD Report on Ireland's regulatory regime, a *White Paper: Regulating Better* was published in January 2004. It stated that RIAs would be piloted in a number of Government Departments before being mainstreamed across the main system. RIA is not at the stage yet where requirements are being imposed on Departments, nor is it intended that a legal requirement to consult would be imposed in the future.

There are no legal criteria to assess the representativeness of business organisations, and according to the Department's experience, business organisations, such as SFA and the Irish Small & Medium Enterprise (ISME), may not be representative of all small businesses in the country.

Two studies on consultations have been carried out in Ireland. One study aimed at evaluating appropriate technologies and processes for citizens' participation in public policy, and was funded by the European Union's Programme for Peace and Reconciliation⁹¹.

The main project's objectives were as follows:

- To identify the social context and political implications of electronic forms of consultation and participation in Ireland, North and South;
- To identify the e-consultation technologies and processes that are most appropriate to the needs of local communities, and to determine the best ways to apply these technologies and processes focusing on the identified needs;

⁹¹ This study was conducted jointly by QUB, NUI Maynooth and Letterkenny IT.

- To advise, help, study and evaluate at least two electronic consultation exercises over the project period, and report on what has been learned from them;
- To disseminate the research results through an online e-consultation guide and training workshops to help groups develop their awareness of and basic skills in e-consultation⁹².

Another study is currently conducted by the Consumer Strategy Group on the importance of consumers' views in the consultation process in relation to consumer policy legislation.

In July 2005, The Minister for Enterprise, Trade and Employment, has announced the establishment of a new Small Business Forum. He has asked the Forum to consider, in broad terms, the current environment for conducting small business in Ireland and the adequacy of the public policy responses, in the context of that environment, including the interventions of the enterprise development agencies.

The Forum has also asked to specifically consider:

- whether the strategies being followed to support and develop the spirit of entrepreneurship in Ireland are effective and appropriate;
- how the pattern of growth of small businesses in Ireland compares internationally and seek to identify the particular characteristics that tend to lead to the growth of small businesses or inhibit such growth;
- the existing environment for accessing finance by small businesses at each stage of development;
- the propensity of the small business sector to conduct research and development and to innovate and to consider the capacity of the sector to access the programmes aimed at the promotion of such activity.

The Forum consists of a group of people with extensive knowledge and expertise in relation to the small business sector:

- a number of successful dynamic business people with a background in, knowledge of, and experience in running a small business;
- nominees of the main small business representative organisations in Ireland;
- representatives of the agencies charged with the development of indigenous enterprise;
- a number of people with a particular expertise or interest in the area of entrepreneurship.

The Forum is expected to produce a report and to present the main findings to the Minister by 31st March 2006.

Italy

In Italy, direct consultations with social partners are well established. Art. 99 of The Italian Constitution provided for the creation of the Italian National Economic and Labour Council (CNEL)⁹³. After the reform of the CNEL in 1986⁹⁴, consultations have become a common

⁹² The contact point is Dr Michael Murray, NIRSA, NUI Maynooth. Tel: 708 6157.

⁹³ The Council was established on the basis of the subordinate law on 5 January 1957, n° 33, where the composition of the Council was also defined. The Council consists of 79 members representing employers' federations, trade unions, social insurance institutions and the Government.

practice for the Council members to assess the policy initiatives and the legislative proposals concerning economic and social matters. On the basis of the Art.6, the CNEL General Assembly on its session of 20 January 2000, allowed for the involvement of the external participants representing different productive categories of the economy.

The CNEL consists of experts and representatives of the productive sectors who are selected on the basis of the criteria that permit to take account of their economic importance. The CNEL has the right to initiate different legislative acts and it contributes to the formulation of economic and social legislation.

The procedures for consultation with social partners have been developed, especially over the last decade, thanks to the major reform of laws enacted in specific sectors. Consultations with social partners became a formal part of the legislative process on the basis of the reform of the Parliamentary Regulations (governing both Chambers), which in 1971 finally formalised a practice that had been common since 1960.

The new Regulations introduce “information surveys” (*indagini conoscitive*) and “legislative hearings”, which allow Parliamentary Commissions to collect news, information and documentation in their respective fields of competence from persons and organisations within and outside the government/civil service structures.

There has been a major increase in the use of information surveys in the last few years. There has also been a significant increase in the number of informal hearings, through which Parliamentary Commissions obtain information from professional and employers’ associations, trade unions, industrial groups and other bodies.

In 2002, Unioncamere General Assembly launched an idea of shaping the territorial development pacts through the concerted procedures that foresee the involvement and consultation with the representatives of public and private institutions. The aim of this initiative was to conduct the economic and strategic planning through the extended dialogue and consultations providing for the fine tuning of regional projects.

Moreover, the Ministry of Productive Activities undertakes actions in order to increase the involvement of business in the policy making process and to ensure that their opinions are taken into account. Many opportunities for the direct exchange of opinions between the Government and business organisations are provided, and some of them have a form of a permanent consultation mechanism, e.g. permanent consultation panel on intellectual property rights.

A number of sectoral Observatories are either planned or already operating within the Ministry of Production Activities. Their main purpose is to redefine and update the policy aimed at promoting industrial development. Many local Observatories have been set up by the National Observatory. They are run by a local authority (usually the Provincial Administration) and include local representatives of all the groups represented within the national Observatory as well as other persons who are responsible for promoting local development at the appropriate level. Provincial Observatories have been set up in Varese, Novara, Mantua, Ferrara, Ravenna, Pisa, Livorno, Terni, Matera, Brindisi and Sassari, and

⁹⁴ The reform of the Council in 1986 (Law, 30 December 1986, n°. 936) increased the number of members up to 111 and provided for extended consultations on the basis of Art. 10-12.

there is a Communal Observatory at Gela. Local Observatories have been recently opened also in the Provinces of Bergamo, Venice, Savona, Crotone and Syracuse.

Cyprus

In Cyprus, discussions between Government and business organisations⁹⁵ on different issues concerning small enterprises are undertaken on a regular basis. They concern e.g. policy formulation, taxation, employment policies, social and economic issues etc.

The existing practice of consultation is well established and it was adopted by the Ministry of Commerce, Industry and Tourism, which has the overall responsibility for SMEs as well as by other Ministries involved in the consultation process with business organisations (Ministry of Finance, Ministry of Labour and Social Insurance).

If the business organisations or individual enterprises have some concerns, they can submit written opinions to the Minister of Commerce, Industry and Tourism. These contributions are then examined by the ministry officials who prepare and submit a report to the relevant Minister. After examining the report, the Minister calls for a meeting with representatives of business organisations to exchange opinions on the issues raised. Usually, during such meetings the Minister briefs the interested parties about the Ministry's intentions on each topic and, where the need arises, forwards these issues to the Council of Ministers for final decision. The interested parties are then informed about the Council of Ministers' decision.

As regards policy issues aiming at enhancing and developing SMEs, the Minister invites all SME organisations to meetings in order to brief them about the policies, which the Government intends to adopt within the next 3–4 years. They are invited to voice their opinions and submit their suggestions and comments in writing.

When the taxation policy or other legislative proposals likely to affect small enterprises are at stake, the business organisations from various sectors of the economy (manufacturing, tourism, trade and services) can submit their opinions or suggestions to the Minister of Finance and to the relevant parliamentary committees as well as various political parties.

As far as labor issues are concerned, SMEs organisations can express their views and positions to the Minister of Labour and Social Insurance, and in the cases where there is a risk of labour upheaval, the Ministry takes a role of the mediator between employers and employees in order to facilitate negotiations and create the basis for the agreement than can be accepted by both sides.

On several occasions, in particular when general economic and social issues are at stake, the representatives of SMEs can meet directly with the President of the Republic of Cyprus, who usually takes their views and suggestions into account so that they can contribute to the process of identifying the most favorable and constructive solutions to the problems currently faced by the country.

⁹⁵ The main business organisations in Cyprus are the following: Cyprus Chamber of Commerce and Industry (CCCI), <http://www.ccci.org.cy>, Employers and Industrialists Federation (OEB), Pan-cyprian Association of Shopkeepers and Handicraftsmen (POVEK).

In general, the practice of consultation with business organisations and representatives of SMEs is informal and not required by law. The consultation framework is flexible and it adapts to the current needs. It usually refers to the issues that are likely to affect enterprises or the economy as a whole.

On 18th of March 2005, the House of Representatives adopted the Law that stipulates the establishment of the Council of Industrial Development, pursuant to a bill that had been submitted by the Ministry of Commerce, Industry and Tourism after extended consultations with the relevant stakeholders. The Council is an advisory body to the Minister and its main task is to provide expertise and advice on various issues relevant to the planning of a sound and sustainable industrial development and the shaping of an appropriate strategy⁹⁶. The Council can act on its own initiative and submit to the Minister proposals that are consistent with the prevailing conditions and aim at the drafting of policies that will ultimately lead to the growth of the manufacturing sector. The Council meets at least four times a year and its Chairman can convene a general assembly whenever deemed necessary. Members can also request a general assembly on their own initiative⁹⁷.

In addition, following the suggestions of the SMEs representatives, the establishment of a National Council for Competitiveness is currently under consideration. The main objective of this Council would be to enhance the entrepreneurial spirit, to improve the competitiveness and to stimulate the development of the economy as a whole.

Latvia

In Latvia, The National Economy Council, an advisory institution to the Ministry of Economy, was created by main Latvian business organisations and public institutions⁹⁸. The Council consists of 23 experts from different organisations and institutions who are discussing matters of a crucial importance for the Latvian economy, elaborating concrete proposals and facilitating dialogue between enterprises, Ministry of Economy and other governmental and non-governmental organisations.

On 7 July 2004, Ministry of Economy, the National Economy Council and sectoral experts' councils signed an agreement protocol with the aim to efficiently represent interests of different sectors, improve the business environment in Latvia and promote the cooperation between the above mentioned institutions. The protocol foresees the following:

- experts' councils will assess the legislative drafts and provide their opinions;
- Ministry of Economy will inform the authors of the legislative drafts about the results of assessment and proposed changes;
- the National Economy Council will review the legislative proposals and the results of assessment submitted by the experts' councils;

⁹⁶ The Council is composed of 17 members representing employers' federations, trade unions, business organisations, the University of Cyprus and other relevant bodies.

⁹⁷ At least five members of the Council have to submit a written request for the Chairman to convene a general assembly of the Council within one month. The members have to receive written invitations at least seven days prior to the intended date of a meeting.

⁹⁸ Latvian Chamber of Commerce and Industry, Latvian Employers' Confederation, Confederation of Industry, Free Trade Union Confederation of Latvia and The Union of Local and Regional Governments of Latvia were main founders of this Council.

- all institutions involved in the process will consolidate resources to develop good quality documents;
- other measures to develop national economy and to improve the business environment in the country will be implemented.

There are several SME organisations in Latvia covering different sectors and types of companies. In May 2003, they established the Latvian Council of Cooperation of SMEs and Crafts, which represents 27 SME organisations and acts as an advisory body to the Ministry of Economy on SME related matters. In the area of employment and social issues, labour relations and education, the SME interests are represented by the Latvian Employers Confederation (LDDK). In addition, LDDK represent the employers' interests to the Cabinet of Ministers and in the Parliament.

Lithuania

The Lithuanian Government issued a resolution on the basis of which all public institutions (ministries, agencies) are under the obligation to allow an easy access to the drafts of all legal acts. They all have to be available on the ministries' websites. Once the legal acts are adopted, they are published in the Official Journal (Valstybes zinios). The digital database of the Parliament can also be accessed by anyone who is interested in following the policy making process or participate in it. Business organisations actively participate in the policy making process⁹⁹ and become more and more effective in solving problems.

Surveys are also carried out by the Ministry of Economy, together with the Lithuanian Agency for Small and Medium-Sized Business Development (SMEDA)¹⁰⁰, to assess the Strategy for Small and Medium-Sized Business Development and its implementation action plan. The survey carried out in 2004 showed that the changing legislation is the biggest obstacle for small enterprises. Business organisations, business support institutions and local governments were also asked to evaluate state aid provided to SMEs in 2002-2004, to submit proposals for the improvement of the SME Strategy and to identify new support measures so that they can be introduced in the Strategy for 2005-2008. Over 200 new measures have been proposed and they were used as the basis for discussions on the new strategic guidelines for SME development.

According to the New Small and Medium-Sized Business Development Measures for 2005-2008, there is an obligation for different public institutions and agencies to consult with these SME interest groups that are likely to be affected by new policies or legislative acts. They are also encouraged to establish a permanent mechanism for such consultation process.

Luxembourg

In Luxembourg there is a compulsory membership to the Chamber of Commerce but the enterprises, if they wish so, may also join the Confédération Luxembourgeoise du Commerce. Craft businesses are obliged to join the Chambre des Métiers and may optionally join the

⁹⁹ The Lithuanian Confederation of Industrialists, the Lithuanian Confederation of Business Employers, the Chamber of Trade, Industry and Crafts are the strongest business organisations in Lithuania.

¹⁰⁰ www.svv.lt

Fédération des Artisans. The Chamber of Commerce and the Chambre des Métiers have to be consulted for any legislative proposal that is going to be adopted by the Chamber of Deputies. In practice, the Conseil d'Etat will not give its opinion if the positions of these two trade Chambers are not available.

Apart from this legal consultation, other practical consultation measures are in place. They include an institutionalised, regular dialogue between the government and SME representative organisations and the exchange of information on the Community work. Informal consultations with trade chambers and federations are usually held by all ministries responsible for drafting legislation as soon as the drafting begins. The professional chambers themselves consult with federations widely before giving their official opinion.

All new legislative acts are accompanied by the assessment form explaining in detail an impact of new measures on SMEs. They are sent to all stakeholders involved in the legislative process for comments. Since 1 of September 1998, the impact assessment form has to be attached to each draft proposal submitted to the Government Council (*Conseil de Gouvernement*). The Council will refuse to examine the draft proposal if an impact assessment is not included.

Hungary

In Hungary, the *Economic and Social Council* was established as a consultation and advisory platform between the Government and social partners. Many important economic and social issues are discussed by members of the Council, and results of these discussions are presented to the Government¹⁰¹.

The activities of Sectoral Dialogue Committees need to be further developed and equal opportunities to all sectoral business organisations representing small businesses should be better ensured. There is also a need to involve small business organisations in the work of the monitoring committees which have been established with the aim to prepare the operational programmes within the National Development Plan of Hungary.

Malta

The representatives of main Maltese business organisations¹⁰² participate in the work of various Government Boards, such as the Small Business and Crafts Directorate within the Ministry for Economic Services, which co-ordinates the activities of the Consultative Committee. The Small Business and Crafts Directorate regularly organises meetings with the owners of small businesses either at their location or at the offices of the respective Local Council. Moreover, the business organisations are frequently requested to give their feedback with regard to matters of national concern.

¹⁰¹ Information about the social dialogue system can be found on the Ministry of Employment Policy and Labour website: www.fmm.gov.hu

¹⁰² The Malta Chamber of Commerce, The Malta Federation of Industry and The General Retailers and Traders Union.

In April 2002, the National Crafts Council was established in order to create a platform for exchange of views between the Government and representatives of craftsmen and other small businesses.

Since December 2000, Malta has maintained a regular consultation process with all social partners through the formation of the Malta Council for Economic and Social Development. This Council has become an effective forum of discussions, where social partners can agree on solutions concerning employment and labour relations and propose some recommendations to the Government. Consultation within the policy making process is mostly related to policies brought up to the Malta Council for Economic and Social Development, where the social partners, including SME representatives, are consulted on the impact of the policies proposed.

Policies related to innovation and entrepreneurship are also to be adopted through the consultation mechanism, therefore the policy making process in these areas will have to undergo the public consultation procedure.

Netherlands

The Dutch Ministry of Economic Affairs has established regular contacts with both business organisations and individual companies. The Ministry has two direct contact points: one for VNO-NCW and the other one for MKB-NL, the two biggest business organisations in the Netherlands. These contact points offer an easy way to submit opinions or concerns of business to the Government, exchange views and discuss important issues. These contacts are informal, direct (phone conversations, exchange of e-mails, regular meetings) and they are conducted on a regular basis.

There is no legal obligation to involve business organisations in the assessment of new policy initiatives or legislative proposals that might have an effect on business, but in practice they are well informed about any new initiatives and they are offered an effective mechanism to voice their views through the series of informal meetings with the Government representatives.

The SME opinions are regularly examined and evaluated by the research agency - EIM¹⁰³ within the *Program on SMEs and Entrepreneurship* sponsored by the Government. Results of these studies are published on the EIM website and are used for the policy making purposes. In addition to these regular studies, the Ministry of Economic Affairs sets up the topics for EIM' research projects, e.g. entry barriers, transfer of business etc.

Another institution, where business organisations can express their views on enterprise policies or social and employment related matters, is the Economic and Social Council (SER)¹⁰⁴. Representatives of employers' federations (including MKB-NL and VNO-NCW), trade unions as well as the government officials meet twice a year (in spring and in autumn).

¹⁰³ www.eim.nl

¹⁰⁴ www.ser.nl

In 2003, the Ministry of Economic Affairs initiated a Programme on External Orientation with the aim to improve the knowledge of public administration officials about business and trade matters. The Programme was focused on the three main topics:

1. Focal points for business and account managers;
2. Proactive consultation with entrepreneurs;
3. Traineeship programme for government officials.

The abovementioned proactive consultations, in the form of so-called *Pizza sessions*, were initiated by the Secretary of State to discuss a new policy paper: *Action for Entrepreneurship*. These are informal lunchtime sessions, during which the individual entrepreneurs and the Secretary of State of the Ministry for Economic Affairs, can discuss important economic and business related issues. *Pizza sessions* are already well established and they can be seen as a new tradition in the policy making process.

Moreover, the Ministry of Economic Affairs, together with two business organisations and two employers' federations, initiated a *traineeship programme* providing the policy advisors at the Ministry with the opportunity to spend one or two weeks in an enterprise. The aim of the programme was on one hand, to raise the policy advisors' awareness of the impact of policy initiatives on business, and on the other hand, to inform the companies about the way the government works and to provide them with the opportunity to contribute to the policy making at an early stage. This programme proved to be a successful tool allowing for better mutual understanding and better informed policies.

Austria

In Austria, the representation of small enterprises' interest is safeguarded mainly by the Austrian "chamber system", which brings together the interests of various economic groups in the chambers (including chambers of trade and lawyers' and civil engineering associations). The chambers take measures to ensure that the government takes their interests and opinions into account. The chambers of trade were established in 1946 and their activity is regulated by the Chambers of Trade Act¹⁰⁵.

The chambers of trade are characterised by a mandatory membership. Pursuant to the Section 2 WKG, its members are namely *all physical and legal persons and other legal entities which legitimately run independent enterprises within trade, crafts, industry, mining, commerce, the financial, credit and insurance industry, transport, communications, broadcasting, tourism, the leisure industry and other services or are entitled to do so*. Given that these areas are largely dominated by SMEs, it is clear that they occupy a strong position in the chambers of trade. Mandatory membership guarantees that the chambers of trade have a broad basis and the corresponding political weight at their disposal.

One of the most important tasks carried out by the chambers of trade is the participation in drafting legislative proposals in the framework of the right of comment. Drafts of new regulations have to *be communicated to the relevant chambers prior to their incorporation in*

¹⁰⁵ [Wirtschaftskammergesetz, WKG, Federal Law Gazette 103/1998). Representation of their members' interests is set out as one of the constitutional tasks of the chambers of trade (FLG 620/1991, Art. IV; consult also Section 1, subsection 1 of WKG).

*the body of the law, allowing appropriate time for comments*¹⁰⁶. In many cases coordination with the chambers of trade also takes place before legislative drafts are adopted. Finally, the chambers of trade are also involved in the implementation of legal instruments.

The position of the chambers of trade is also strengthened by the constitutional provision in the Section 68 of WKG concerning the obligation to provide information to the chambers of trade by both federal and provincial authorities.

Poland

In Poland, public consultations constitute an integral part of the law drafting process. There is no single act that sets up basis for the public consultation, but the obligation of consulting particular organisations or entities is included in over 80 sectoral legal acts. Moreover, the duty of consulting draft legislation is explicitly enumerated in the *Law on Access to Public Information*¹⁰⁷.

The obligation to consult particular organisations or entities that is included in the sectoral legal acts should be treated as a minimum requirement. A draft should be available to the public and consulted as early as possible, even during an inter-service consultation procedure. A uniform minimum period for consultation is not established. It exists only for certain matters, e.g. labour and employment issues (the minimum time is 30 days). In all other cases, the time allowed for consultation depends on government resources, complexity of the proposal etc. In practice, the consultation period is usually not shorter than two weeks.

There are no imposed methods of consultations. The choice of methods depends on the project requirements or on the practice developed by a particular Ministry. According to abovementioned *Law on Access to Public Information*, consultation documents should be made public. They are usually available online but a hard copy can also be requested.

Moreover, on 22 October 2002, a guidance document *Principles of Public Dialogue* has been adopted by the Council of Ministers. This document sets up the rules for conducting public dialogue and encourages the co-operation between the Government and social partners.

The general procedures providing the basis for drafting regulation, impact assessments and public consultations are included in the *Rulebook for the Work of the Council of Ministers*. The common guidelines to ensure the harmonisation of the assessment methods are included in the *Methodological bases for the impact assessment (OSR)*, a Government document approved by the Council of Ministers on 1 July 2003.

In addition, the Regulation of the President of the Council of Ministers, *Principles of Legislative Technique*¹⁰⁸, defines measures that need to be taken before a draft law is prepared, e.g. examination of social conditions in the area which requires intervention¹⁰⁹.

¹⁰⁶ Pursuant to the Section 10 of WKG.

¹⁰⁷ Journal of Laws of 2001, No 112, item 1198, Article 6.1.1 points b and c.
<http://home.online.no/~wkeim/files/poland-foia.htm>

¹⁰⁸ Journal of Laws, No 100, item 908.

¹⁰⁹ More details about the impact assessment procedure can be found in the Chapter 6.

In the beginning of 2003, institutions involved in the dialogue with social partners were reviewed by the Social Dialogue Department of the Ministry of Economy, Labour and Social Policy. Currently, there are around 125 different channels of dialogue between the government and stakeholders.

One of the most important institutions for public dialogue is the Tripartite Commission for Socio-Economic Affairs. The Commission is a common platform for discussions between employees and employers as well as for wider socio-economic policies. The Commission consists of representatives of national administration bodies, trade unions and federations of employers¹¹⁰.

Another important consultative forum is the Entrepreneurship Council where issues related to the economic development strategy are debated. The Council has also become an important partner for the Government in the implementation of the economic policy. The final organisational structure of the Council was approved on 4 March 2003¹¹¹.

Debate related to the *Law on the Freedom of Business Activity* (2004) was a good example of broad and detailed consultations with the relevant stakeholders¹¹². The draft proposal was carefully consulted with the Tripartite Commission and than twice with the Entrepreneurship Council. Many opinions of business organisations were taken into account and were reflected in the final version of the law.

An interactive forum devoted to the new legislation of the European Union was also established in Poland¹¹³. The aim of the forum is to inspire discussions and encourage consultation on draft laws and other key documents published by the EU. The forum provides SMEs with the opportunity to get acquainted with the changes in the European legislation and to join the discussion. All contributions are registered, analysed and forwarded to the relevant Ministries and other governmental institutions.

Portugal

In Portugal, social partners are involved in the consultation process and they receive the necessary information to feed the discussions. All citizens are able to participate in public discussions concerning the implementation of structural legislation. Recently, a new Labour Law was extensively discussed with social partners.

According to the recent public announcement of the Government, a “Productivity Panel” has been established to create a platform for exchange of opinions and more systematic dialogue

¹¹⁰ Employers are represented by: Confederation of Polish Employers (KPP), Polish Confederation of Private Employers Lewiatan (PKPP), The Association of Polish Crafts (ZRP) and Business Centre Club – Employers’ Union (BCC-ZP).

¹¹¹ The following are the parties to the agreement: Polish Chamber of Commerce, Association of Polish Crafts, Polish Confederation of Private Employers Lewiatan, Business Centre Club, Supreme Council of Associations of Trade and Services, Confederation of Polish Employers, Polish Business Council, Foreign Investors Chamber of Industry and Commerce in Poland, American Chamber of Commerce in Poland, Managers Association Council in Poland, Polish-German Chamber of Industry and Commerce.

¹¹² Law of 2 July 2004 on the Freedom of Business Activity (Journal of Laws of 2004, No 173, item 1807, as amended).

¹¹³ www.debata.ukie.gov.pl/www/dp.nsf/Start?Open

between the Government and social partners, so that business interests are better heard at national level.

Directorate-General for Enterprise, established within the Ministry for Economic Affairs, was entrusted with the specific tasks related to public policies in the area of industry and commerce as well as some sectoral policies. These should be linked with various aspects of Community-level enterprise policies and also with other national policies, such as employment, education and environment.

This approach will require a permanent collaboration and more efficient communication channels between the respective structures in order to create more responsible partnership and to ensure greater recognition of the legitimate interests of the enterprises.

Slovenia

In Slovenia, interests of enterprises are represented mainly by The Chamber of Commerce and Industry of Slovenia and the Association of Entrepreneurs of Slovenia created within the Chamber structure with the aim to ensure the influence of entrepreneurs on the development of a business-friendly environment.

Pursuant to the Act of Chamber of Commerce and Industry of Slovenia, membership to the Chamber is compulsory for all economic entities that carry out any type of economic activity and are registered in Slovenia, unless they are craftsmen and are members of the Chamber of Crafts of Slovenia, or they carry out agriculture or forestry related activities and are members of the Chamber of Agriculture and Forestry.

Small enterprises are also members of professional associations and they are directly involved in the work of administrative bodies of these associations. In practice, SMEs are represented via the chamber system at regional and national level, via sectoral associations and also via the Association of Entrepreneurs, where they have their representatives. The Association is a partner of the Government in discussions concerning new measures for business or new legislative proposals in the area of employment and labour related matters.

Slovakia

In Slovakia, there are several business organisations representing SME interests but some of them seem to have more influence than the others¹¹⁴. According to the Slovak legislation, there is no compulsory membership to chambers of commerce or any other type of business organisation¹¹⁵.

¹¹⁴ The main business organisations are the following: Entrepreneurs' Association of Slovakia; Slovak Crafts' Union; Slovak Chamber of Commerce and Industry; Slovak Crafts' Chamber (Slovak Small Business Chamber). Slovak Chamber of Commerce and Industry and Slovak Crafts' Chamber are settled by law (Act No. 9/1992 and 126/1998 Coll.).

¹¹⁵ Only representatives of certain free professions, such as medicine doctors, lawyers, architects, who are considered as entrepreneurs, have an obligation to be a member of the relevant professional chamber.

Consultations between business organisations and government usually take place within the tripartite system of the Economic and Social Council, which brings together representatives of the government, employers and employees. Since December 2004¹¹⁶, a new form of tripartite consultations was introduced. The role and the scope of activities of the Council are defined in the statute of the Council. According to the Council's statute, consultations should be carried out once the fundamental issues concerning economic, social, labour or budgetary matters are at stake¹¹⁷.

The law drafting procedures of different ministries and other public bodies are regulated by measures contained in the following documents:

- *Legislative Rules of the Slovak Republic Government* (adopted by the resolution of the Slovak Government no. 241/1997);
- *Guidelines for Preparation and Submission of Documents to the Government Sessions* (adopted by the resolution of the Slovak Government no. 512/2001 as a part of *Procedure of the Government Sessions*).

In addition, the Economic Council has been established as a consultative body to the Government in the area of economic policy development. Representatives of the Entrepreneurs' Association of Slovakia and Slovak Chamber of Commerce and Industry participate in the work of this Council.

According to these measures, the draft act has to be discussed with relevant organisations and bodies (public administrations, other stakeholders, general public) in the framework of the inter-institutional review¹¹⁸. The draft acts are available on the website of the Slovak Government¹¹⁹ and on the websites of respective ministries. The minimum time to submit comments is usually 15 working days (following the day of publication) but a longer consultation period can also be granted. The results of the consultation are reviewed and introduced into the draft law, which is then submitted to the Legislative Council of the Government. Consultations with stakeholders affected by the legislative proposal (e.g. small business organisations), at an early stage of the legislative process, depend on the internal procedures of the individual ministry.

A requirement for systematic business impact assessments for all legislative drafts has been introduced by the amendment of the *Legislative Rules* in January 2005. Until the end of 2004, the impact of all legislative proposals was analysed only in relation to the state budget, employment and environment matters.

¹¹⁶ In 1990 – 2004, the consultations were conducted on the basis of the Economic and Social Council Act (106/1999 Coll.).

¹¹⁷ As from December 2004, the employer's interests in the Council are represented by two organisations: Republic's Union of Employers (RUZ) and Federation of Employers' Associations (AZZZ). Major SME organisations are members of these organisations and are present as members in their executive bodies. Entrepreneurs' Association of Slovakia is a member of RUZ and Slovak Crafts' Union is a member of AZZZ. According to the Council statute, the organisation of employers is representative if its member enterprises employ more than 100.000 employees.

¹¹⁸ It is not obligatory for the Government to involve small business organisations in the inter-institutional review.

¹¹⁹ www.vlada.sk

The potential of using Regulatory Impact Assessments as an effective tool for continuous improvement of business environment is not fully exploited due to the different approaches applied by the relevant ministries. It is expected that by the end of 2005 the government will adopt the general guidelines setting up a common methodology for conducting RIAs.

In the beginning of 2005, The National Agency for SME Development (NADSME), together with the Ministry of Finance and Ministry of Economy, has started the implementation of the bilateral project with the Dutch government on establishing the framework for the systematic business impact assessment.

Finland

In Finland, stakeholders' consultations are conducted informally. There are no legal provisions on how the consultation should be conducted thus, there are no specific legal requirements with whom and at what stage of the law drafting process consultations should take place. There is neither minimum time period that should be allowed for consultation, nor instructions on how feedback should be provided after the consultation.

In practice, however, public consultation in Finland is mandatory. It is conducted at various stages of the legislative process with the aim to obtain information and feedback from potential addressees on the effects of the regulation under examination. Different stakeholders are widely consulted and different techniques are used, according to the scale and nature of the project. The techniques include written contributions, circulation of documents, public hearings and consultation via the Internet.

On average, the consultation period lasts from two to six weeks. Its results are evaluated by those who are responsible for the project and they are involved in supporting or redesigning the proposal. There are no sanctions if the requirements of a good consultation process are not met. On the other hand, according to the results of some reviews, more stringent approach might raise resistances or might be interpreted in a bureaucratic way, merely increasing workload and slowing down the decision making process.

However, in the *Instructions on the Drafting of Government Proposals*¹²⁰, there are general rules on how consultation processes, including the outcomes, have to be documented as a part of Government proposals. The guidelines are available electronically¹²¹ and since 2004 also in the form of a book.

The *Act on the Openness of Government Activities*, containing legal standards concerning transparency and openness of law drafting, was adopted in 1999. According to this Act, various studies and reports linked to a given policy matter should enter the public domain as soon as they are fit for their purpose. This has to be done even if the main drafting process is still undergoing.

¹²⁰ These Instructions, also called "HELO-instructions", have been accepted by the Council of State and they "should not be derogated from without special reasons". In the "HELO-instructions, as from 2004, the importance of impact assessments is strongly underlined Law Drafter's Guide (1996).

¹²¹ In the "Senaattori" and "Oiva" databases.

Previously, there were rules governing the issue of setting up Committees for legislative projects, but these rules are not applied anymore. Committees are set up when the proposal is considered to be of a major importance and it is assessed to have a significant impact. The final Memorandum of the Committee must always include an assessment of the social, administrative, economic and other impacts of the legislative proposal.

The Ministry of Finance has recently established a working group to assess the need for revised rules on setting up Committees. The working group is also discussing the questions of the comprehensiveness of different types of law-drafting processes at a more general level.

In addition to the above mentioned obligations, there are several guidelines on the law drafting, such as:

- Law Drafter's EU-Guide (1997);
- Instructions on Business Impact Assessment (1999);
- Law Drafter's Constitution Guide (2000).

In practice, guidelines on the law drafting and the way law drafting processes are conducted have lead to a situation, where the key business stakeholders are well informed about any important new initiative or major changes in the legal framework. Often the consultation process begins at a very early stage by consulting stakeholders on the overall need to set up a law drafting project. It includes having the stakeholders' representatives as members in the Committees or working groups that are responsible for the law drafting.

This kind of an intensive participation in the actual drafting work is the key element in the Finnish legal system. In the course of the Committee work and after the draft has been published, various business stakeholders are also widely consulted. The Finnish legal system has in general an effective in-built system of consultation and impact assessments.

The instructions on business impact assessments have been set up in 1998, but they have not been used consistently. Mainly for this reason, the Ministry of Trade and Industry has launched a three-year project (2005-2007) for assessing the effects of new legislative acts on enterprises¹²². The project team has a support function to all Government ministries. The project is also a part of the *Finnish Entrepreneurship Policy Program* implementation which is included in the Government's Strategy Document. In addition to this, there is a new initiative from the Finnish business community to set up a national better regulation action plan and program. This initiative will most probably contribute, among other things, to the improvement of consultation processes in the drafting legislation.

¹²² More details on the Project for Assessing Business Impacts of New Legislation (known as SÄVY-hanke) can be found on www.ktm.fi/savy.

Sweden

In Sweden, when there is a need to explore and discuss complicated issues, the Committees of Inquiry are appointed on the basis of specific terms of reference unanimously approved by the Government¹²³.

For the regulations that are issued directly by the Government, consultations are also foreseen, but the period of time allowed for comments is shorter. Consultation documents are always available at different ministries' websites. In addition, the SimpLex checklist is used to deal with the consultation of enterprises and public bodies as well as individual citizens.

Official guidelines for the consultation process and minimum standards for consultations have been established. Consultations results are not published online, but they are available to the public.

United Kingdom

The UK government is continually improving its consultation procedures, and its engagement with the business community. The Small Business Minister regularly holds one-to-one meetings with the main SME representative organisations¹²⁴.

The UK's *Small Business Council* (SBC), an independent advisory body is made up of individual active entrepreneurs and was strengthened in 2002. Its chair attends meetings of ministerial committees discussing the new regulation and she has access to the Prime Minister. The SBC consults small businesses through a rolling programme of "*Town Hall*" meetings and issues an annual report with recommendations to the Government. The SBC currently comprises of 23 entrepreneurs (nine new members were appointed in July 2004). The Department of Trade and Industry (DTI) accepted, on behalf of Government, most of the recommendations contained in the SBC's 2004 annual report, and is now working closely with the SBC on their implementation.

In 2000, the government set up the *Small Business Service* (SBS), an executive agency of the Department of Trade and Industry. In 2003, the SBS introduced the Small Firms Impact Test (SFIT)¹²⁵ into the RIA process¹²⁶, where officials have to test their policy assumptions by having a dialogue with business. The SBS has the right to see all RIAs throughout the process and comment upon them. If there is a disagreement between the department and the SBS on the impact the policy will have on business, the SBS's comments have to be recorded in the SFIT section of the RIA.

In August 2003, to help officials consult with small businesses, the SBS set up an exclusive Small Firms Database, made up of companies that had indicated their willingness to work with officials at the early stage of developing business friendly regulations¹²⁷. And in January

¹²³ More information on the Committees of Inquiry is available in the Chapter 6.

¹²⁴ British Chambers of Commerce, Confederation of British Industry (CBI), Federation of Small Businesses, Forum of Private Business (FPB) and Institute of Directors).

¹²⁵ For information on the SFIT process, see the SBS website at www.sbs.gov.uk.

¹²⁶ For the RIA process, see the Cabinet Office website at:

www.cabinet-office.gov.uk/regulation/scrutiny/ria-guidance.pdf.

¹²⁷ This is a growing database, with over 1100 companies on it, and a target is to recruit 3000 by December 2005.

2004, the SBS launched the Government Action Plan for Small Business – consisting of seven key strategic themes. Better Regulation being one of its main themes – it marshalled the whole of Whitehall behind the SME agenda.

DTI initiatives have brought an additional dimension to private sector influence on the development of government policy. Following recent reviews into business support, and the department's priorities and structure, the DTI has introduced an element of corporate leadership through the setting up of a Strategy and an Executive Board, as well as Group Boards reflecting the main strategic areas of the department. A team of independent members drawn from business, unions and academic backgrounds serve on these boards, offering independent expert advice on how the department can work more effectively. A second initiative requires all senior officials in the DTI to spend at least one week each year in an enterprise. Middle ranking officials are also encouraged to spend at least one week in an enterprise during each posting. Most officials have chosen to spend time with an SME.

DTI recently consulted representative organisations about featuring SME representation in the European Social Dialogue during the UK's Presidency of the EU in 2005. As part of reducing the burdens on business, it ran a consultation on whether the UK Government should adopt common commencement dates for all new business related regulations¹²⁸.

The Cabinet Office has issued an extensive guidance for policy officials on consultation (Code of Practice on Consultation) and this has been backed up by individual Government Departments supplementing it with their own guidance. On the basis of the Cabinet Office proposal, DTI have produced its own guidance for their policy officials¹²⁹.

The SBS part funds an independent SME liaison office in Brussels - smallbusiness|Europe. It sets its priorities in close consultation with the UK's SME community. The office works mainly with the five main business organisations¹³⁰, but it is also building up its contact and working relations with other organisations, such as trade associations and unrepresented SMEs. It continues to link-in with UK-based SMEs via sector-specific trade associations but also through other intermediaries at national, regional and local levels. It now also offers a useful hot-desk facility for SME representatives who are in Brussels.

In Scotland, the Ministerial Small Business Consultative Group holds its quarterly meetings bringing together the small and other business representative organisations to discuss business issues with the Deputy First Minister and Minister for Enterprise and Lifelong Learning.

In April 2004, The Scottish Executive worked in partnership with the Parliament to co-host the *Business in the Parliament Conference*¹³¹. The main aim was to engage with the business community in continuing to grow Scotland's economy, focusing on the key themes of the Executive's enterprise strategy, *A Smart, Successful Scotland*. A mixture of SMEs and large businesses attended the Conference, which provided an opportunity to hear about the

¹²⁸ The consultation ran until 3 September 2004 and the consultation summary is available at: <http://www.sbs.gov.uk/sbsgov/action/layer?r.l2=7000000041&r.l1=7000000035&r.s=tl&topicId=7000015592>. To see examples of consultations from other UK Government Departments visit the website www.businesslink.gov.uk/consultations or www.consultations.gov.uk.

¹²⁹ The Code of Practice on Consultation will be presented in the Chapter 6.

¹³⁰ British Chambers of Commerce, the Confederation of British Industry (CBI), The Forum of Private Business, the Federation of Small Businesses and the IoD.

¹³¹ <http://www.scotland.gov.uk/businessintheparliament>.

Executive's current and planned policies for growing the economy and for Ministers and Parliamentarians to listen to and respond to questions from business representatives and individual entrepreneurs.

The Welsh Assembly Government has a statutory duty to consult business and other organisations, such as trade unions, where exercise of the Assembly's functions impacts on their interests. The *Business Partnership Council (BPC)*, chaired by the First Minister, helps to build good relationships between the social partners and the Assembly. It helps to inform Assembly judgement on the condition and prospects for the Welsh economy. A full evaluation of the BPC's work should be available in 2005.

Norway

In Norway, small enterprises are usually consulted through their business organisations, but in some cases informal meetings between the responsible ministry and business representatives (organisations or entrepreneurs) are organised. Informality, consensus-building, broad participation, mutual trust and close links between regulators and stakeholders are the important characteristic of the Norwegian consultation process. This process is decentralised and ministries enjoy considerable autonomy in the regulatory process.

There is also more formal consultation procedure introduced by the *Instructions for Official Studies and Reports*¹³². According to these instructions, the responsible ministry or the subordinate agency should circulate the draft proposal to all public and private institutions and organisations that are likely to be affected. This consultation procedure is mandatory and applies to both, legislation and subordinate regulations. Circulation for general consultation, however, in some cases, may be waived.

The general consultation process is open to any institution, organisation or individual who wants to submit comments, opinions or statements, and not only to those who received a formal invitation to participate. The draft proposal is available on the website of the responsible ministry or agency, but a hard copy can also be requested. The consultation period is usually three months, but it cannot be less than six weeks. Only under special circumstances the minister (or ministry, if the enacting body is a subordinate agency) may allow for a shorter period of time.

Responses and opinions from the stakeholders, including small businesses, are analysed and used. If the original proposal has substantially changed as a result of the consultation process, it undergoes once again the consultation procedure. Opinions of various stakeholders are contained in the document, which is then submitted to the Parliament. These are all public documents.

Recently, the Ministry of Trade and Industry has introduced the following instruments:

- Business Test Panels/Focus panels,
- Forum of Dialogue on Better Regulation for Small Businesses (chaired by the Minister of Trade and Industry),

¹³² Royal Decree of 18 February 2000.

- Regulatory Impact Assessment Unit¹³³,
- Zero-Base Measurement Project¹³⁴ to measure the administrative burden,
- Innovation Forum¹³⁵,
- Entrepreneurship Forum¹³⁶.

Norway has recently (2003) undergone an OECD country review of Regulatory Reform and it has been confirmed that the formal framework for consultations is in place, however some deviations from the formal consultation requirement merit attention to avoid a potential weakening of the credibility and legitimacy of the consultation procedures. Furthermore, one of the recommendations for action was to improve consultation on EEA regulations by involving all affected parties as early as possible in the implementation process.

Some observers have noted a few cases of rushed-through consultations, including some controversial issues. In many of these cases, a consensus among the political parties has allowed for a fast decision making process through the Parliament but there is no evidence that such breaches were deliberate.

Bulgaria

The Bulgarian Government has taken proactive measures for involving business in the process of economic policy development and decision making. According to business organisations in Bulgaria, the quality of the social dialogue has significantly improved. The most important issues affecting Bulgarian business environment have been identified through an effective dialogue between the policy makers and the business community, and will be addressed.

Most of the ministries in Bulgaria established their own forums on important topics open to public debates but these channels are not extensively used by small enterprises as they do not have enough time and resources to be proactive in seeking information. There are a lot of programmes and facilities set up by the Government but more effort would be required to disseminate the information about those opportunities.

SMEs in Bulgaria are represented at a national level. Business organisations such as Bulgarian Chamber of Commerce, Bulgarian Industrial Association, different sectoral associations etc., are more directly involved in the policy making process. There are approximately 60 sectoral organisations representing the SME interests.

¹³³ The Ministry of Trade and Industry has also published guidelines for Business Impact Assessments.

¹³⁴ This project is implemented in co-operation with other countries, such as Denmark.

¹³⁵ Established in June 2004 with the aim to compare notes and exchange ideas in order to develop a comprehensive innovation policy. The Forum consists of nine ministers and representatives of the Confederation of Norwegian Business and Industry, the Norwegian Confederation of Trade Unions, Innovation Norway, Norwegian Research Council, Norwegian Council for Higher Education, and representatives of the municipal level.

¹³⁶ The Forum was established in October 2004 by the Ministry of Trade and Industry with the aim to develop the entrepreneurship policy.

The National Society of Small and Medium-sized Businesses (NSSMB) represents their members in the private-public dialogue and works on improving the communication between small companies and governmental institutions. The NSSMB has 15 regional structures and, according to the representatives of business organisations, most of them are involved in the policy making process.

The Council for Economic Growth was created in order to unite representatives of the Government and business in a continuous effort to promote the long term, sustainable economic growth. The Council is formally an advisory body to the Council of Ministers, and as such institutionalises the private-public dialogue on the national economic policy. The exchange of opinions and recommendations, which occurs at the Council meetings, guarantees that a wide scope of views from different stakeholders are included in the policy formulation. It also ensures that solutions for strategic economic issues provide the broadest incentives to economic growth. The Council discusses the concepts of the proposed legislative changes and gives statements on different issues being raised.

The Ministry of Economy set up a call-centre for the business community with the aim to provide enterprises with information related to the European integration.

In 2004, another body, the Joint Consultative Committee, was created in order to assist the Ministry of Economy in implementing concrete measures directed towards the current major issues. Individual working groups by sectors were established within the Consultative Committee.

Some of the main Consultative Committee objectives are the following:

- Informing businesses about the commitments linked to the accession negotiations under the chapters falling within the competence of Ministry of Economy¹³⁷;
- Discussing about the problems that occurred during the preparation of the Bulgarian enterprises to the implementation of the EU requirements and standards.

The Ministry of Agriculture and Forestry was involved in the creation of the AgroBioTechPark¹³⁸. The aim of ABTP is to promote an open and informed debate with all stakeholders - scientists, policy makers, public officials, farmers, entrepreneurs, consumers, NGOs, journalists etc. The Bulgarian society will from now on be better informed about the benefits, risks and development of biotechnologies and especially genetic engineering. This will happen through the Bulgarian Biotech Information Centre which is a part of an “Agrobiotech park” in Sofia.

In June 2003, the Bulgarian Parliament adopted a *Law on Reduction of Administrative Regulations and Administrative Control*. The law stipulates general rules for the reduction of administrative regulations and control of economic activities by introducing uniform definitions of the types of regimes and competences. It also establishes strict requirements concerning the quality of services provided to businesses. The second important novelty is that the new Law provides for the regulatory impact assessment (RIA) of draft laws and ensures that new regulatory regimes may be introduced only by the primary legislation (e.g. laws), therefore the administration has limited possibilities to put additional requirements and burdens on businesses.

¹³⁷ Chapter 1 - “Free movement of goods”; Chapter 15 - “Industrial policy”; Chapter 16 - “Small and medium sized enterprises”; Chapter 23 - “Consumers and health protection”; Chapter 26 - “External relations”.

¹³⁸ <http://bgbic.abi.bg/home/index.php>

The amendment of the Law on Small and Medium Enterprises was adopted by the National Assembly on 8 July 2004¹³⁹. This Law, among other things, clearly determines the policy making and policy implementation functions in relation to SMEs. According to the Law, the Minister of Economy is responsible for the formulation, co-ordination and supervision of the SMEs policy while the chairperson of the Executive Agency for the Encouragement of SMEs will be entrusted with the implementation of that policy. According to these competencies, it is for the Minister of Economy to submit the National Strategy for Encouragement of Entrepreneurship and SMEs together with the Annual Programmes for its implementation to the Council of Ministers for approval.

In terms of administrative structure, the Law provides for the merger of the SME Agency with the Trade Promotion Agency into an Executive Agency for the Encouragement of SMEs that will be headed by the Minister of Economy. The establishment of the new Executive Agency and the other structural changes will ensure more and better public services at one place and more efficient expenditure of budgetary resources. The establishment of district offices of the Executive Agency in 28 Bulgarian municipalities is also envisaged.

Moreover, the Law creates the basis for the establishment of an advisory body on SMEs to the Minister of Economy. The functions of the Advisory Council are currently expanding and will also include discussions on entrepreneurship policy, improvement of regulatory framework in this field, public control on the implementation of the National Strategy and Annual Programmes. The Law provides the opportunity for NGOs to be directly involved in the SME policy implementation.

Romania

In Romania, a new law on transparency of the decision making process, so called *Sunshine law* (52/2003), was adopted in 2003¹⁴⁰.

The law sets up the following principles (Article 2):

- early *ex officio* notification of the public interest matters and draft legislations that are going to be discussed and dealt with by central and local public authorities;
- consultation with all natural and legal persons when drafting new legislation;
- active participation of citizens in the administrative decision making process and in the process of drafting legislation.

The emphasis is put on the consultation with civil society, including the professional and business associations. Ministries, local authorities as well as the other services of public interest (at central and local level) are obliged to conduct consultations.

The notification should be published on the website and via other media at least 30 days before the draft legislation is due to be adopted. The notification should also be sent to all natural and legal persons that either made a prior request or are presumably interested, according to their area of activity. The notification has to be accompanied by a motivation regarding the context and the necessity of the proposed legislation.

¹³⁹ The Law was promulgated in the State Gazette • 64 on 23 July 2004) and came into force on 24 August 2004.

¹⁴⁰ The Law was published in the Official Journal on 3 February 2003 and can be found on the website: http://legislatie.resurse-pentru-democratie.org/52_2003.php

After the notification, there is a minimum time of 10 days to submit written comments on the proposals. If requested by an organisation or another public authority, a public meeting to discuss the draft legislation has to be organised.

The final decision on the draft legislation is taken by the public authority. All the opinions and recommendations provided during the consultation process have an advisory status. All contributions and recommendations from the stakeholders, as well as the report of the debate concerning the draft proposal, should be recorded and made available at request.

Turkey

There are no legal provisions for the consultation process with business in Turkey but there is a framework that allows for the effective communication channels between the Government and the private sector and this include:

- The Coordination Council for the Improvement of Investment Environment (CCIIE-YO•KK), established on the basis of The Council of Ministers decision on 11 December 2001, as a part of the national strategy to increase the level of income and productivity, and to improve the competitiveness of companies operating in Turkey. The Coordination Council had also a mandate to identify and remove regulatory and administrative barriers to private investment;
- The Economic and Social Council established in April 2002 on the basis of the Government legal act¹⁴¹ to provide the platform for exchange of views and discussions on different business related issues and concerns.

The idea of establishing an effective consultation procedure was linked with the Government Reform Programme launched in 2001. The main aim of this Programme was to reduce administrative barriers and to improve administrative procedures in order to attract more foreign investors and to encourage more domestic investments.

There is no compulsory time foreseen for consultations and the results of consultations are not published but they have to be a part of the justification for the legislative or policy proposals.

To increase the influence of CCIIE, the Government decided that its work will be headed by the high level Government representative (Minister). Despite the changes in the Government, the Reform Programme has proved to be an effective forum to discuss and agree on various legislative proposals and changes of the existing laws.

Conclusions and decisions taken as a result of the consultation, conducted within the Technical Committees and approved by the CCIIE, were reported directly to the Council of Ministers.

TOBB, the largest organisation representing the Turkish private sector, gathers 364 business organisations (mostly chambers of commerce and industry, maritime commerce and commodity exchanges) which all together stand for approximately 1 200 000 companies. TOBB is present in the work of the CCIIE Technical Committees and sub-committees and co-

¹⁴¹ Legal Act n° 4641, The Official Journal N°24380, 24 January 2001.

ordinates actions of other business organisations aiming at elaborating the consolidated opinion of the private sector on matters discussed by CCIIE. The President of TOBB is a member of CCIIE. The CCIIE (YO•KK) was restructured and as a result, the CCIIE Steering Committee was established to increase the effectiveness and efficiency of the Technical Committees. The Steering Committee meets every month to discuss the issues and concerns expressed by the private sector representatives. On the basis of these discussions the Technical Committee elaborate necessary regulations to address the problems and propose concrete solutions.

In September 2005, special Expert Group Committees have started their work under the State Planning Organisation on the Five Year Development Plan. TOBB participate in the work of 28 Committees out of 55. These Committees offer a good platform for a consultation process as regards the preparation of the next Five Year Development Plan for Turkey in compliance with the EU standards.

KOSGEB is a public institution responsible for designing and implementing the SME support schemes in Turkey. In 2003, KOSGEB has started the reorganisation process aiming at increasing the efficiency of KOSGEB support measures for SMEs. A consultation study has been carried out to “identify and evaluate target group demands”. The results of the consultation had an impact on the re-organisation process of KOSGEB and allowed for the creation of new support measures for small businesses. A number of application documents required has been significantly reduced (from 48 to 5 on average). These concrete results have been achieved in a short period of time and they had an immediate impact on SMEs’ performance.

The advantage of this study was that it covered a wide range of stakeholders interested in adapting support schemes and services to the needs of SMEs. The stakeholders have been asked to submit their comments and ideas about the support measures. No structured questionnaire or concrete guiding questions were proposed, so that the responses were spontaneous. This method of consultation allowed for a free articulation of any ideas or comments but the evaluation of replies was more difficult and time consuming, since it required an extra effort to ensure the proper classification and interpretation of responses. The lack of a clear structure for contributions could be seen as an advantage but it could also discourage those who have less experience or less clear ideas about the topic undergoing the consultation process.

This above presented practice creates the basis for establishing sustainable consultation procedures, but there are no concrete measures yet on how to ensure its sustainability.

5. REFERENCE MODEL OF CONSULTATION AND INDICATORS FOR MONITORING THE CONSULTATION PROCESS

5.1. Reference model of consultation

Consultation procedures and methods differ from country to country and even from region to region¹⁴². Therefore, building one universal model of the consultation process suggesting the observance of the same procedures and consultation methods seems to be unrealistic and would not be efficient. For example, there is no evidence that countries where the consultation process is secured and conducted on the basis of legal measures have more efficient consultation structures in place than those countries where business is consulted informally. However, it would be fair to say, that the consultation process foreseen and protected by the legal or another formal framework has a better chance to be sustainable and less dependent on the *ad hoc* decisions of the policy makers. The real challenge for each country/region is to find out what consultation procedures and methods would fit best to the specific country situation and traditions of dialogue.

The main aim of developing a reference model of consultation (graph 25) is to provide national and regional governments with a practical tool that they can refer to while planning and organising consultations in their own countries or regions. It can help to identify the main stages of the consultation process and the main actions that need to be undertaken in order to make the whole exercise potentially more successful. This model indicates what eventually should be done or can be done by different actors involved the consultation process in order to make it potentially more efficient but it does not impose any concrete solutions, actions or methods to be used. These should be identified and chosen by policy makers in accordance to the country specific structures and priorities.

The proposed European reference model of consultation includes the following main elements:

1. **Preparatory Phase** - identifying needs for a policy/legislation, collecting information, data, statistics and evidence, testing general opinions and ideas.
2. **Pre-consultation Phase** – drafting new legislative/policy proposal (alternative proposals or different scenarios could also be elaborated), conducting a Regulatory Impact Assessment (RIA), appointing a consultation coordinator, selecting consultation methods, securing greater stakeholder participation by early notification, identifying stakeholders, planning the consultation timescale.
3. **Consultation Phase** – launching consultation, providing information about the consultation procedures and timing, collecting contributions, organising consultation meetings.
4. **Post-consultation Phase** – modifying the draft legislative/policy proposal building on outcomes of the consultation, evaluating contributions from stakeholders, providing feedback, publishing results of consultation.

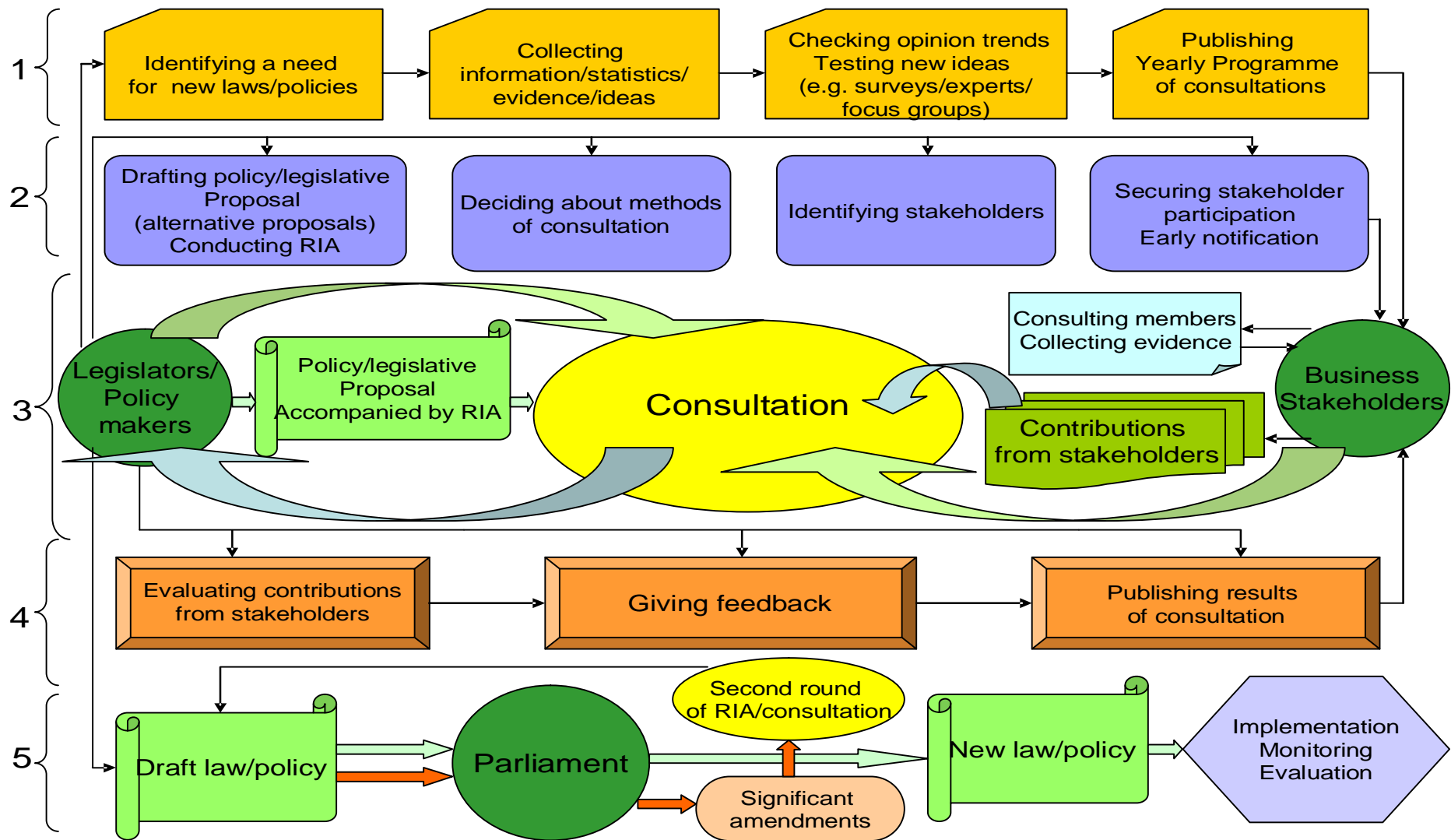
¹⁴² In Germany e.g. almost each Bundesland applies different consultation procedures and uses different consultation methods.

5. ***Adoption/Implementation/Evaluation Phase*** – at least three scenarios are possible within the adoption phase: 5.1. - submitting the draft proposal to the Parliament, voting the proposal and adopting the new law/policy; 5.2. – adopting the new law/policy with minor amendments that are not subject to the second round of RIA or/and consultation; 5.3. – introducing significant amendments during the adoption phase which are subject to the second round of RIA and consultation; an amended proposal is voted once again by the Parliament.

Both policy implementation and evaluation should be regarded as a component of a policy making process. Ensuring a smooth transition from policy development to policy implementation is one of the most difficult and challenging aspects of policy delivery. A plan for the successful implementation of the new law/policy should identify, among other things, the resources needed for an effective implementation, those responsible for the implementation (ministries, agencies and/or individuals), the appropriate procedures and anticipated problems in the implementation process as well as planned solutions to them. Implementation analysis might involve a “best-case” scenario and a “worst-case” scenario for each policy alternative, as well as the “most likely” outcome. The implementation of the policy/law should be monitored and evaluated.

To monitor the implementation of a policy, some information and data about the policy must be available. An implementation plan should suggest some ways in which ongoing data and information about the policy can be generated in the regular course of policy maintenance, e.g. from records, documents, feedback from policy addressees and other stakeholders, ratings by peers, tests, observation and physical evidence. If adequate monitoring processes are applied, it should be easier to detect whether a policy has been implemented as intended by policy makers.

Evaluation closes the loop of the policy making cycle and it points forward to the next round of the cycle, returning to the policy agenda setting stage. There are two central reasons for conducting evaluation: improve the policy development and implementation as well as reinforce accountability. Evaluation is required to measure the extent to which policies meet their outcomes. Good evaluation is systematic and based on planning. The earlier evaluation is planned, the greater the opportunities to conduct genuine “before and after” comparisons. Because available methodologies vary significantly, there is no one “right” way to evaluate policy and both qualitative and quantitative evaluations may be equally valid.



Graph 25: European reference model of consultation. 1. Preparatory phase; 2. Pre-consultation phase; 3. Consultation phase; 4. Post-consultation phase; 5. Adoption/Implementation/Monitoring/Evaluation phase

The following actions might be undertaken by different actors participating in the consultation process in relation to the abovementioned five consultation phases:

1. Preparatory phase

1. A. Optional actions for policy makers:

- a) Identifying needs for new laws/policies – what, why and how should be regulated (consultation with selected experts and individual entrepreneurs).
- b) Collecting necessary information, statistics and evidence (e.g. desk research).
- c) Seeking general opinions of experts and relevant stakeholders (specific methods can be used to identify general opinion trends among small enterprises before the new proposal is drafted (e.g. online surveys, phone surveys, information in the media).
- d) Testing new ideas, identifying potential controversial areas (meetings with experts, focus groups, test panels etc).
- e) Publishing a yearly programme of consultations to facilitate the planning and allocation of time and resources.

1. B. Optional actions for stakeholders:

- a) Actively participating in the actions aimed at collecting general opinion trends about a given policy area (e.g. replying to questionnaires, participating in discussions, meetings, test panels or focus groups).
- b) Identifying potential problems and/or benefits.
- c) Seeking general opinions of members and collecting information from the ground.

2. Pre – consultation phase

2. A. Optional actions for policy makers:

- a) Elaborating legislative/policy proposals (alternative legislative/policy proposals (scenarios) could also be prepared).
- b) Conducting a Regulatory Impact Assessment for each new legislative/policy initiative (the impact assessment should be included as a part of the consultation dossier).
- c) Actively promoting awareness and raising interest in the consultation.
- d) Appointing a consultation coordinator/manager.
- e) Identifying target groups of stakeholders to be consulted (stakeholders analysis). Representative business organisations and other relevant stakeholders that potentially have an interest in a new policy proposal should be involved in the consultation process. A list of stakeholders containing their postal addresses should be developed in case the consultation documents are to be sent by post.
- f) Securing participation of stakeholders through early notification about the consultation objectives, scope and timing.
- g) Identifying the most appropriate methods of consultation to be used for a given legislative/policy proposal (more than one method should be used in order to increase the chances of a better response in terms of both quality and quantity and extract the appropriate information).

- h) Ensuring that appropriate skills and sufficient resources are available to develop and carry out consultation exercise.
- i) Preparing consultation documents (making sure that the language is comprehensive, modern and jargon free).

2. B. Optional actions for stakeholders:

- a) Once stakeholders are notified about the consultation, they can start collecting evidence and securing expertise in a given policy area (using internal experts or searching for the relevant expertise outside the organisation or through their membership).
- b) Business organisations may consider conducting a pre-consultation with their members.

3. Consultation phase

3. A. Optional actions for policy makers:

- a) Launching consultations – proactively informing about timing and other actions foreseen during the consultation process so that stakeholders can plan their activities effectively (e.g. deadline for submitting responses, dates of consultation sessions, meetings).
- b) Making consultation documents easily accessible (e.g. publish them on the website or provide a hard copy/copies for blind/regional languages). The context for the consultation should be clearly described and explained.
- c) Allow sufficient time for consultation so that the necessary internal consultation and formal approval of responses through the organisation's constitutional channels can be conducted.
- d) Consulting with business representatives using previously selected methods of consultation (e.g. meetings with business representatives, consultation by written procedure, meetings with social partners, expert group meetings, online consultation etc.). More than one method of consultation should be considered and used.
- e) Adopting a proactive media campaign if for any reason there is a tight time frame for responding to consultation.
- f) Keeping an open mind and be ready to change or modify the scope of consultation, even start afresh, if necessary.
- g) Acknowledging responses from stakeholders.

3. B. Optional actions for stakeholders:

- a) Seeking members' opinions in order to prepare the consolidated version of contribution (in some cases consultations with members through a structure of members' committees from all over the country might be required by the internal consultation procedures. The issues consulted upon may themselves be

complex thus requiring a sufficient period (of weeks in some cases) to draft responses).

- b) Elaborating the contribution by making use of expertise and collected evidence, so that policy makers are provided with valuable arguments.
- c) Submitting contributions within the set deadline.

4. *Post - consultation phase*

4. A. Optional actions for policy makers:

- a) Analysing and evaluating contributions from stakeholders with an open-minded approach.
- b) Providing feedback to stakeholders, so that all those who participated in the consultation are reassured that their views and efforts were valued. A summary of responses and an indication of how they have made a difference to the final outcome should be made available.
- c) Publishing the results of the consultation, so that the transparency in the policy making process is increased. Results of the consultation should be easily accessible (e.g. in an electronic form, through press reports or hard copies).
- d) Planning an evaluation of the new policy/law (ensuring that the policy proposal has clearly defined and measurable objectives, identifying both progress and outcome indicators).

4. B. Optional actions for stakeholders:

- a) Make sure that the contributions content and arguments used were correctly understood and be ready to provide additional information or clarification, if required.
- b) Get familiar with the consultation results in order to be able to properly assess the quality of arguments and evidence provided.

5. *Adoption /Implementation/Evaluation phase*

5. A. Optional actions for policy makers:

- a) Submitting the consolidated version of the legislative/policy proposal to the Parliament for voting.
- b) Monitoring the amendments made by Members of Parliament. If amendments to the legislative/policy proposal are significant, policy makers should consider carrying out additional impact assessment and conducting a second consultation.

- c) Ensuring the proper implementation of the new policy/law (make sure that adequate resources are secured and those responsible for the implementation (individuals, ministries, agencies) are identified and equipped with all the information needed.
- d) Make sure that all procedures (regulatory and administrative provisions) necessary for the successful implementation of the new policy/law are in place on time.
- e) Identifying potential problems/risks and developing appropriate actions that can be taken to address them or reduce losses.
- f) Undertaking analysis on a “best-case” scenario and a “worst-case” scenario for each policy alternative and its “most likely” outcome.
- g) Make sure that adequate monitoring processes are applied and that the appropriate information and data about the policy are available.
- h) Conducting an evaluation of the new policy/law (e.g. mid-term and ex-post evaluations can be carried out).
- i) Choosing the most appropriate methodology to carry out evaluation for a given policy/law (it needs to be decided case by case taking into account the political context, time constraints and a decision maker’s need for information).

5. B. Optional actions for stakeholders:

- a) Monitoring the adoption process of Parliament.
- b) Notifying policy makers, if the amendments are likely to affect business. A request for a second consultation can be submitted to policy makers.
- c) Actively participate in the evaluation process of the new policy/law.

5. C. Optional actions for a deciding authority:

- a) Getting familiar with the consequences of the legislative proposals that are to be voted or decided upon.
- b) Keep an open mind and be ready to listen to and correctly weight arguments from all those who try to influence the decision or provide additional information about the issues at stake (e.g. lobbying groups). Keep in mind that not all groups of stakeholders concerned (only the strongest ones) have an easy access to Members of Parliament or Ministers.
- c) Requesting additional expertise if there are some significant amendments to the original proposal that might put additional requirements and burdens on business.

The reference model of consultation was elaborated in relation to the indicators proposed for monitoring progress in the area of consultation.

5.2. *Indicators for a consultation process*

The Lisbon European Council defined the Open Method of Coordination as one of the means of disseminating best practice and achieving greater convergence towards the main EU goals. This method employs different tools such as indicators and benchmarks, as well as the exchange of experiences, peer reviews and the dissemination of good practice.

National targets in enterprise policy can help Member States to focus their attention on the key issues and measure the progress in different policy areas. The opportunity of using qualitative and quantitative national targets in a number of areas related to the European Charter for Small Enterprises (one of them being better representation of small enterprises interests at national and European level) has been underlined by the national Ministers on several occasions¹⁴³.

The indicators for monitoring the progress in a given area should serve as the basis for setting up the national targets. Experts expressed the opinion that national targets should be different for each country because the consultation structures and procedures as well as the national priorities and goals are different too. Therefore, the following approach has been proposed to address these differences: each country is free to shape its own targets and to choose the most appropriate areas for improvement using the set of indicators provided within this project. These targets are to be reached on a voluntary basis.

5.2.1. *Qualitative indicators*

The indicators proposed here have been approved by the experts as a tool that can be used by regional and national governments to monitor progress in the area of consultation. They can be used as a reference when setting up the national or regional targets. These targets should be based on realistic indicators that are following the three main criteria: they should be meaningful, relatively easy to measure and assessed on a regular basis.

Qualitative indicators or check-lists usually give an assessment of areas which cannot easily be measured quantitatively. They are audit questions generally accompanied by checkboxes for “yes” or “no” answers. The following qualitative indicators have been proposed within this project:

1. *Legal framework for a consultation process.*
2. *Special provisions for consultation with small enterprises within the legal framework of the consultation process.*
3. *Formal or informal basis for a consultation process clearly determined (e.g. stating procedures, time for consultation, who should be consulted, criteria for identifying the topics that have to be consulted, necessity of providing feedback on how business opinions were considered).*

¹⁴³ Conclusions of the Competitiveness Council, 3 March 2000 and Conclusions of the European Council, Lisbon, 20-21 March 2000.

- 4. Proactive consultation with business representatives and/or businesses on proposed new legislation/policies (e.g. this could be a published document or a proposal made available via a government website).*
- 5. All representative business organisations and other relevant business stakeholders involved in the consultation process.*
- 6. Consultations with business and other stakeholders conducted at an early stage of the policy/legislative development process.*
- 7. Business/Regulatory Impact Assessment (BIA/RIA) carried out for all new legislative proposals to ascertain whether the proposed policy/legislation has an impact on business (BIAs/RIAs are considered as an integral part of the legislative development process and undergo the consultation procedure).*
- 8. BIA/RIAs carried out at an early stage of the policy/legislative process and updated/repeated, if some important changes have been introduced to the original proposal.*
- 9. Impact on small business assessed in the BIA/RIAs, where appropriate.*
- 10. Obligation (or a tradition) on the policy-maker/legislator to provide feedback on how the opinions of business have been taken into consideration.*
- 11. Results of a consultation process are published/made public.*

As mentioned above, these qualitative indicators relate to the main elements of the European reference model of consultation.

5.2.2. Quantitative indicators

In addition, some quantitative indicators have also been proposed to help the monitoring process. They are both, important for policy matters and relatively easy to collect. They are either numbers, percentages or ratios.

- 12. Minimum time for a consultation process established (in weeks).*
- 13. Time given for consultation commensurate to the complexity of a policy/legal proposal.*
- 14. Number of policy/legislative proposals formally consulted yearly in relation to the total number of policies/laws proposed in the country (percentage of all new policy/legislative proposals having an impact on business).*

15. Number of positions papers/opinions/contributions prepared by business organisations yearly as a percentage of all new policies/legislative proposals having an impact on business and undergoing the consultation procedure.

For the monitoring process readily available data can be used or these that can easily become available. This approach will provide a good basis for the national and regional administrations to make commitments. It is suggested that each country chooses a limited number of key areas based on the proposed indicators and agree on targets related to them.

A monitoring process in the area of better representation of small enterprises interests at national and European level has already taken place within the context of the annual reporting on the implementation of the European Charter for Small Enterprises. This exercise involved yearly national reports and bilateral meetings between representatives of the Commission and national administrations as well as business stakeholders' representatives. The objective of this exercise was to monitor the progress in different areas of the Charter made by the Member States, Accession/Candidate Countries and Norway as well as Western Balkans.

The monitoring process at national and European level will continue, however starting from the year 2005 it will be done within the Lisbon Strategy streamlined reporting system.

One of the most important indicators that allow a proper judgement on the consultation efficiency is the quality of new legislation/policies, as those two are inter-linked. Better regulation should be the ultimate goal of policy makers and stakeholders, therefore ensuring the effective and efficient consultation frameworks has to become one of the priorities for policy makers and business. The adequate monitoring of implementation and properly conducted evaluation of new laws/policies are equally important and can significantly contribute to the quality of the decision making process.

The European reference model of consultation and indicators for monitoring progress in the area of consultation proposed within this project are concrete and practical tools for all actors involved in the decision making process. They can be used on a voluntary basis to improve the effectiveness and efficiency of the consultation procedures, and finally contribute to the quality of new laws and policies.

6. SELECTION OF GOOD PRACTICE CASES

6.1. *Test Panel of Entrepreneurs in Auvergne - France*

The Regional Chamber of Commerce and Industry in Auvergne initiated the “panel meetings of entrepreneurs”, so called *economic democracy panels*, in order to get opinions and views on main themes related to the economic, social and territorial environment for business development. Panel members are nominated or elected as representatives of the business community of the Auvergne region with the task to voice opinions of their constituencies.

The main features of the panel are the following:

- Representativeness,
- Capacity to react promptly,
- In-depth knowledge of the topics under consultation.

These three features make this panel different from the other tools (e.g. surveys) used to collect opinions from stakeholders.

The panel has been established on the basis of clearly defined principles, equipped with the relevant tools and is requested to strictly follow the consultation procedure. Approximately 400 entrepreneurs take part in the panel meetings. They are:

- Volunteers;
- Elected or nominated by their constituencies (organisations, unions, groups of entrepreneurs);
- Active (a large majority of them) or retired entrepreneurs;
- Familiar with topics to be consulted;
- Coming from different sectors, geographic areas and enterprises of different size;
- Considered to be representative on the basis of the election or nomination procedure (statistical terms are not applied here).

The panel members use the tools allowing for the rapid collection of opinions:

- Only Internet based tools;
- Short deadlines to provide responses.

Results are evaluated and controlled by the Scientific Committee (independent from the members of the panel and the business community). Results are available quickly and they are based on the recent data. Responses are the subject to detailed analysis, but the main trends are also identified and analysed. Results can be exploited immediately and they can be easily disseminated among both political partners and business circles.

The topic of the first panel survey was related to the economic guidelines and priorities announced by the President Chirac in January 2004. The main objective of the survey was to find out what measures proposed in the guidelines were considered the most urgent to be implemented.

The survey has been addressed to 382 panel members and it was available online for 18 days (8-26 April 2004). 141 responses (37%) to the survey questions were recorded within the deadline. Panel members received documents related to the topics under the consultation via e-mail six days before the survey was launched.

The methods used to collect and analyse the responses were checked for their validity by the Scientific Committee whose members are independent advisors and experts originating from various domains. The representativeness of panel members was also checked in a rigorous way.

It is worth noting that all panel members are equipped with the fast Internet connection to facilitate their tasks. They are also equipped with the relevant information and tools in order to formulate an in-depth opinion on the topic consulted. Their opinions are an important and valued source of information and include concerns and views of business.

6.2. Round Table for Small Business to consult and exchange opinions - Ireland

In Ireland, the Round Table for Small Business¹⁴⁴ was established by the Department of Enterprise, Trade and Employment as a forum for consultation and dialogue with small companies. It is comprised of delegates of the main representative bodies for SMEs, other interested enterprise groups and the state development agencies. Vital issues for the Irish business and economy are discussed by the Round Table participants. Round Table also acts as a forum for the dissemination of results of various projects under the Multiannual Programme for Enterprise and Entrepreneurship 2001-2005.

Another objective of the Round Table is to provide a focal point of contact with the Department and to permit ongoing participation and input by the SME sector to policy matters. The proposed format of the Round Table includes a presentation by the Department representative or the invited expert speaker, opportunity for dialogue and exchange of information and views facilitated by a moderator.

The first meeting of the Round Table was held on 16 October 2001 and usually two or three meetings are organised during a year. Themes discussed so far included, e.g. opportunities for SMEs presented by the enlargement of the EU, intellectual property rights, entrepreneurship, public procurement, innovation and investment, research and development in Ireland etc. The views and conclusions of each Round Table are summarised and a follow up on issues that emerge in the context of overall enterprise policy is properly ensured.

6.3. Consultation of SMEs (concertazione) – a regional approach – Italy

The amended Italian Constitution¹⁴⁵ assigned to the regional authorities a legislative power in relation to the industrial policy and other related matters. The Regional Authorities Statute also contains measures that permit the shaping of regional development programmes through the coordination mechanisms and consultations of all stakeholders concerned. The common

¹⁴⁴ The proposal to establish the Round Table for Small Business was endorsed by the Management Board on 27 April 2001. More information available on www.forfas.ie.

¹⁴⁵ Title V, Law nr 3 (2001).

decision making process (known as *concertazione*) was adopted by the public authorities of many Italian regions. The 1999 Law¹⁴⁶ states that all institutional entities as well as social and economic partners should be involved in the drafting of the territorial development plans through the consultations and by the application of a common decision making procedure (*concertazione*)¹⁴⁷.

Many regional authorities in Italy signed regional operational agreements with different institutions, SME organisations and other partners involved in the planning of regional development programmes in order to streamline actions and efforts along the common goals. This approach creates the basis for a more effective planning of investments and actions tailored to the needs of final beneficiaries. It ensures more transparency in the decision making process and impact assessments and permit a more effective monitoring.

One of the key features of *concertazione* is to maintain a permanent dialogue with all partners involved in the process. It takes a form of general and/or thematic “round table” discussions. These “round table” meetings are organised at least twice a year. The “thematic round table” meetings are focused on specific sectors (e.g. textile industry) or policies (e.g. innovation policy) while the general ones deal with horizontal policies and matters (e.g. taxation policy).

A good example of this common decision making process is a three-year integrated pilot project concerning the regional fashion system (clothing, textile, leather, jewellery) launched by the government of Tuscany in 2003. The main objective of this initiative was to strengthen the competitiveness of the local small and medium-sized enterprises from the fashion related sectors by implementing a set of specific interventions aiming at supporting the innovative processes, the organisational improvements and financial capacity of businesses involved. The yearly budget of the project was approximately 50 millions Euros. The project activities were implemented by means of a “technical *concertazione* table” used to assess the needs of businesses and to identify the local development priorities while designing the specific actions. The bottom-up approach applied in the project management strengthens a decennial tradition of *concertazione* in this region and ensures better co-operation between the economic and social actors involved in the process. The implementation of the project is currently monitored and the evaluation of impact will be undertaken at the end of the project duration¹⁴⁸.

6.4. Consultation of SMEs in the process of harmonisation of the regional construction laws - Austria

The Austrian Constitution ensures that all the provinces (Länder) are entitled to pass laws related to the construction issues. Consequently, each province has issued its own law and these laws were very different, adding to red tape for enterprises being active in more than one of the Austrian provinces thus creating borders within the Austrian construction market.

The Austrian Economic Chambers have criticised this situation for many years but there was no political initiative from the provincial authorities to address this issue. Membership to the

¹⁴⁶ Law no 49, 11 of August 1999, Art. 15.

¹⁴⁷ It is worth mentioning that 315 regional laws in Italy foresee the *concertazione* approach (e.g. in the Umbria region).

¹⁴⁸ For more information please consult the website www.regione.toscana.it or Alessandro Compagnino – a.compagnino@regione.toscana.it.

EU (1995) put pressure on the provinces to coordinate their positions and take some decisions. As a result, they have decided to establish the Austrian Institute for Structural Engineering. In 2003 the provincial authorities asked this Institute to coordinate the harmonisation of the nine different construction laws. This decision was welcomed by all Chambers and other professional federations engaged in the construction activities.

The Institute is the single contact point for all provinces to work on a harmonised construction law but as far as business is concerned all nine regional chambers had to be legally consulted on this issue. On the other hand, the technical knowledge and expertise is available within the national construction federations and not at a regional level, therefore these national federations asked the national chamber to coordinate the position of business.

In this specific situation, the legal provisions for consulting enterprises did not correspond with the needs of both the provinces and the construction industry. A completely new procedure of consultation had to be set up and there was no legal basis available for such procedure. The only reason for that to happen was the willingness of the provinces and the construction industry to reach the consensus and to achieve a harmonised construction law. It is worth mentioning, that this process could be stopped by the intervention of one province or one regional chamber only.

A Contact Forum was established within the Austrian Institute for Structural Engineering, which consists of representatives of the provinces (law makers and technical experts) and the construction industry. The coordination task for the construction industry was entrusted to the Austrian Economic Chamber (at national level). Involvement of the industry representatives has considerably increased during the consultation process. Finally, representatives of manufacturers of construction materials, construction companies, relevant commerce sectors, regional chambers as well as architects and civil engineers representing the liberal professions actively participated in the consultations. Representatives of the relevant Austrian Federal Ministries were also involved in the consultation process.

Another new element in this procedure was the ongoing consultation during the process of drafting legal texts. The new construction law¹⁴⁹ consists of the basic law and six technical directives. All these elements were initially drafted by technical experts of the Austrian Institute for Structural Engineering and then they were passed on to the Austrian Economic Chamber. The Chamber coordinated the consultation process with more than 60 professional associations within the chamber system and with several independent associations, offering them the possibility to comment on the proposal and to send experts to the internal chamber meetings. The results of the consultation were submitted to the Institute and then a second round of meetings with the industry and provinces' representatives was organised to discuss various proposals for amendments¹⁵⁰. The final draft of the construction law together with six technical directives has been sent to the provinces for political agreement and only after that the formal consultation process foreseen by the Austrian Constitution can start. The results of this consultation process are not expected to be very different from those conducted earlier, as all important topics have been already thoroughly discussed with the industry and provinces.

¹⁴⁹ This law will be voted by the regional parliaments in 2005.

¹⁵⁰ The meetings concerning the fire safety measures gathered more than 50 experts representing the industry and 10 experts from the provinces.

The provinces' authorities plan to pass the law together with the technical directives within the next months.

It is worth mentioning, that lobbying and efficient representation of interests (e.g. involvement in the drafting of standards at a national or European level - CEN¹⁵¹) is often restricted to large enterprises that can afford to send experts to committees and to lobby representatives of ministries and provinces. In the case of construction laws, the broad process of consultation organised by the Austrian Economic Chamber and the Austrian Institute for Structural Engineering ensured better involvement of SMEs representatives that are active in the construction industry, so that they were able to discuss the draft laws from the same position as the representatives of large enterprises. Thanks to that, the interests of SMEs were well integrated in the new draft laws, particularly because the main principles followed throughout the drafting process ensured the neutrality in relation to the size of companies and in relation to the type of construction material.

6.5. *Consultations and impact assessment - Poland*

Public consultations constitute an integral part of the impact assessment process in Poland. A general procedure concerning the preparation of the draft regulation, impact assessments and public consultations is included in *The Rulebook for the Work of the Council of Ministers*. Common guidelines to ensure the harmonisation of assessment methods are contained in the *Methodological bases for the impact assessment (OSR)*, a Government document approved by the Council of Ministers on 1 July 2003. In addition, the Regulation of the President of the Council of Ministers *Principles of Legislative Technique*¹⁵² defines measures to be taken before a draft law is prepared, e.g. examination of social conditions in the area requiring intervention.

Impact analysis is obligatory for all acts that have to be published in *The Journal of Laws* or in *The Polish Official Journal (Monitor Polski)* which includes in practice almost all regulations. Impact assessment focuses on the five following sectors: public finances, labour market, internal and external competitiveness of economy, regional development and the environment.

The issue of the impact of regulation on SMEs has not been spelled out explicitly in the Impact Assessment procedures. Nevertheless, there is an obligation that the impact assessment includes information about entities on which the draft legislation is likely to have an effect. The impact on small business is studied in the framework of the internal and external competitiveness of the economy.

As regards alternative instruments, in the abovementioned *Principles of Legislative Technique*, there is a requirement for those who propose the new regulatory measures to assess alternative solutions. This requirement is also included in the *Methodological basis for the impact assessment* (point 1.1.3). In line with these requirements, an assessment of all legal and extralegal methods has to be undertaken, and once the decision to propose a draft regulatory measure is taken, it is necessary to assess all legal alternatives.

¹⁵¹ The European Committee for Standardisation (CEN).

¹⁵² Journal of Laws, No 100, item 908.

The obligation of conducting an impact assessment for each legislative proposal has been introduced recently, therefore the practical side of the consultation process conducted in relation to these proposals still differs from case to case.

Results of the consultation process are not binding, thus they do not have to be taken into account by the government. However, the report on the results of the consultation process has to be attached to the impact assessment of each legislative proposal.

6.6. *Committees of Inquiry - Sweden*

In Sweden, Committees of Inquiry are appointed to investigate complicated issues on the basis of specific terms of reference unanimously approved by the Government. The Committees often involve experts and organise their work to make sure that all parties concerned are involved. They try to secure the broadest feasible acceptance for the proposal and make sure that all the conflicting interests are properly presented. The Committees work independently and their findings are presented in a report which is circulated by the Government for a stipulated time of three months.

The report contains a regulatory impact assessment that covers mainly effects on small business. When a proposal is sent out for consultation, organisations often contact the responsible Ministry, asking for meetings with politicians and civil servants and these are almost always granted¹⁵³. The written answers from the parties concerned are usually summarised into one document which is public, although not published on the Internet. The written contributions from organisations, public bodies and private persons are also public.

On the basis of the results of consultation and the findings of the original report the Government develops a legal proposal that will be submitted to the Parliament. At this point, impact assessment carried out by the Committee is re-examined and adjusted by the responsible Ministry according to the final legislative proposal. The proposal submitted to the Parliament is accompanied by the preparatory texts. The results of consultation are published together with all parties' views and with the reasoning on why some views have been taken into account and the others have been not.

Once the law is adopted, some additional regulatory details might be developed in Government's Ordinances (subordinate regulations) or at the regulatory agency⁴⁴ level. If these subordinate regulations introduce some detailed solutions likely to affect small business, they are once again subject to the impact assessment.

6.7. *Code of Practice on Consultation – the United Kingdom*

The UK's Cabinet Office has issued *The Code of Practice on Consultation*, an extensive generic guidance for policy officials, and this is backed up by individual Government departments supplementing it with their own guidance. The Code does not have legal force, and cannot prevail over statutory or mandatory external requirements, but it should otherwise

¹⁵³ The consultation is foreseen in the Swedish law (Regeringsformen, Chapter 7, § 2).

be regarded as binding on UK departments and their agencies, unless Ministers conclude that there are exceptional circumstances that can justify a departure from it.

Ministers retain their existing discretion not to conduct a formal written consultation exercise under the terms of the Code, for example where the issue is very specialised and where there is a very limited number of stakeholders who have been directly involved in the policy development process. In these circumstances the general principles of the code should still be followed as far as possible, and departments should consider how to ensure that the public is made aware of the policy, for example through a press notice or statement on the department's website.

Departments responsible for the organisation of the consultation have to comply with the legal duties, such as those that arise under the Human Rights Act, the Data Protection Act, the Freedom of Information Act and laws against discrimination and defamation. In addition, the Race Equality Scheme contains specific obligations relating to the assessment of the impact of proposed policies on the promotion of race equality and to consultation.

Any deviation from the Code must be highlighted in the consultation document and should state the Minister's reasons for departing from the Code. The specific measures, that have been taken to ensure that consultation is as effective as possible, must be presented as well.

There are six main consultation criteria which have to be followed by departments organising dialogue with stakeholders. They have to:

- Consult widely throughout the process, allowing a minimum of 12 weeks for written consultation, at least once during the development of the policy,
- Be clear about what the proposals are, who may be affected, what questions are being asked and the timescale for responses,
- Ensure that the consultation is clear, concise and widely accessible,
- Give feedback regarding the responses received and how the consultation process influenced the policy,
- Monitor the department's effectiveness at consultation, including through the use of a designated consultation co-ordinator,
- Ensure that the consultation follows better regulation best practice, including carrying out a Regulatory Impact Assessment, if appropriate.

These criteria must be reproduced within all consultation documents. The Code contains more detailed suggestions referring to each of the above mentioned criteria on how these should be tackled and implemented in practice.

Moreover, it has to be ensured that the *Principles of Good Regulations* are followed whenever policy is being developed. These are:

- Proportionality,
- Accountability,
- Consistency,
- Transparency,
- Targeting.

Each department is encouraged to nominate a consultation co-ordinator, who should ensure that the consultation code is followed. The co-ordinator should act as an adviser to those conducting consultation exercises.

It is recommended in the Code, that an informal consultation with relevant stakeholders should be conducted prior to the written consultation period, as it leads to a more informed consultation exercise and it also ensures that stakeholders are engaged early and have a better understanding of the policy.

Representative groups responding to the consultation should be asked to give a summary of the individuals and organisations they represent.

In the case of some groups of stakeholders that might be particularly difficult to reach, e.g. small businesses, it has been suggested to engage proactively with individuals, organisations and trade associations. For such groups written consultation is not always the most effective means of consultation. Other methods may help in this process, e.g. stakeholder meetings, public meetings, web forums, public surveys, focus groups, regional events, targeted leaflet campaigns etc.

It has to be ensured that a Regulatory Impact Assessment (RIA) is attached, where required, highlighting the costs, benefits and risks of the proposal. When consulting on a review of a policy area, the consideration should be given to opportunities for reducing bureaucracy and regulatory burdens, for example simplification or repeal of existing regulations.

The Code states that feedback must be given, and this should be done preferably within three months. This timetable applies to all methods of consultation and not only to written consultations.

The results of consultation are published on the Departmental website and they should be linked to the original consultation document. Those without web access can request a paper copy of the summary. Wherever possible, the summary of responses also includes a summary of the next steps for the policy, and it should also include the information on where a policy has changed as a result of respondents' comments and what are the reasons for decisions taken.

6.8. *Ensuring the users' participation in the Action Plan for Simplifying Norway*

An efficient regulatory framework and good public services contribute to predictable and favourable general conditions for business. Therefore, the initiative of streamlining and simplification of the existing legislation became a key issue for the industrial policy of the Norwegian Government¹⁵⁴. The Contact Forum in relation to the Streamlining for Trade and Industry has been established¹⁵⁵. One of the goals for the Norwegian regulatory framework

¹⁵⁴ Streamlining and facilitation for Trade and Industry - the Government's Action Plan for Simplifying Norway. More information on these matters can be found on www.nhd.no or <http://odin.dep.no/filarkiv/229766/nedvedlegg/eng-tilstandsr.-EeN.pdf>.

¹⁵⁵ The following organisations and institutions participate in the work of this Forum: The Confederation of Norwegian Business and Industry, the Federation of Norwegian Commercial and Service Enterprises, the Federation of Small and Medium-Sized Enterprises, the Norwegian Association of External Accountants, Norwegian Financial Services Association, The Norwegian Savings Banks Association, The Norwegian Ship-owners' Association, the Norwegian Association of Accounting Workers, The Norwegian Confederation of

was also to require the minimum possible compliance resources, and to be perceived as an advantage to businesses.

Cooperation and dialogue with enterprises (as users) is a prerequisite condition to pursue the simplification effort and to achieve the best possible user participation in the work entrusted to the public administration. User's participation became therefore a new priority area and one of the objectives was to ensure a more systematic dialogue at an early stage of the process.

The main goal within this area was to convince the public administration that it should acquire the user orientation whenever new measures are to be implemented, and to maintain a regular dialogue concerning users' needs. Some examples of that may include:

- Collecting good examples on how the dialogue (especially at an early stage) can be carried out. This may include business panels, users' surveys or public hearings.
- Correctly identifying all the relevant groups of stakeholders or users,
- Making the public administration aware that dialogue with users, in particular at an early stage, is important and can bring out useful comments and suggestions,
- Assessing whether there is a need to collect users opinions on specific matters,
- Facilitating the voicing of opinions also by individual businesses on (specific) matters, (this applies mostly to smaller businesses, as at present usually business organisations take part in the formal consultation rounds).

There is a routine procedure established for contact with users whenever a proposal is subjected to regular consultations. At this stage however, the process could reach the point where users think that they have no real influence on the outcome, the actual regulatory framework or measure in question. It was therefore important to pave the way for users to submit inputs as early as possible in the process. The public administration has to decide which parts of the process would benefit from consultations the most. It may be during the problem identification, the assessment of policy instruments, the selection and design of policy instruments (regulatory frameworks or others), information to users, enforcement or the design and provision of services. It is of a crucial importance to facilitate the inclusion of small enterprises in such processes, so that their views are heard and considered, since it is often the case that small and large businesses have different needs and interests.

Another objective was to build effective and flexible schemes which enable the public administration to have a better dialogue with stakeholders, thus creating more efficient regulatory frameworks and government mechanisms. This may give Norwegian enterprises a competitive advantage on the market¹⁵⁶. It is a responsibility of the public administration to ensure that all interests are considered and weighted against each other. What is important is to avoid the situation that those "who make a noise" get the things done their way, regardless of other interests and needs. Another important issue is that the dialogue is open and transparent.

Trade Unions, The Federation of Norwegian Professional Associations, The Confederation of Vocational Unions, the Ministry of Trade and Industry, the Ministry of Finance and the Ministry of Modernisation.

¹⁵⁶ The report *Business-Friendly Legislation* ("*Næringsvennlig lovgivning*") published by the Confederation of Norwegian Business and Industry in January 2004 will be examined in this context.

7. FINAL CONCLUSIONS AND RECOMMENDATIONS FOR FUTURE ACTION

7.1. *Main conclusions and recommendations*

In many countries the system of consultation has recently improved through the introduction of efficient mechanisms of exchange of opinions between administrations and business. There are, however, still some countries that need to further consolidate a culture of dialogue, and there are areas, where some effort still needs to be made in order to find proper solutions. In a number of countries business organisations are participating in advisory councils for policy issues, but their participation in the policy making process is often optional or depends on the *ad-hoc* decisions of public authorities.

Social dialogue is commonly recognised and well established in a large majority of countries but it still requires systematic promotion and strengthening the presence of SMEs concerns in the discussions.

There are some good examples in the area of consultation with stakeholders or promising initiatives aiming at improving the consultation procedures in Europe. The big challenge is to disseminate these positive examples and find the appropriate way to adapt them to a country specific situation. National and regional administrations, business organisations and associations as well as all other stakeholders concerned may learn from each other's experience and best practice and draw some inspirations from these examples.

Good consultation supports the principles of accountability, accessibility, inclusiveness and clarity, and leads to informed, balanced, relevant, transparent and honest policy making. Consultations, if carried out properly, can provide valuable expertise laying the groundwork for - technically and economically- sound decisions. In particular, consultations help reconcile the views and concerns of different actors throughout the policy cycle (i.e. in policy shaping, implementation and evaluation), thereby obtaining wide support and social acceptance for decisions.

Consultation procedures and mechanisms differ from country to country and they reflect national circumstances, structures and traditions. On the basis of the survey results and through their own expertise, the experts put forward the following recommendations addressed to the national and regional administrations inviting them to:

7.1.1. Establish workable and transparent consultation procedures (formal/legal or informal) that provide for efficient and effective exchange of information leading to a more informed decision making process.

The survey results, experts' contributions and the information comprised in the Charter implementation reports confirm that in most countries covered by the project there are no legal provisions for the consultation process. In some countries, e.g. in Austria and Luxembourg, there are regulated mandatory mechanisms for the consultation process; they seem efficient and render good results, but it might be difficult to apply them in other countries. On the other hand, the strong informal consultation schemes, e.g. in Ireland or Finland, seem to be equally effective for

feeding SMEs' concerns into the political decision making process. This confirms, that the availability of legal provisions for the consultation process usually secures more effectively that stakeholders will be consulted, but does not mean that the informal ways of consulting are less efficient.

The survey results suggest that there is a certain level of confusion among stakeholders and not enough knowledge about the existing consultation procedures. More effort is required from both partners involved in the consultation process to increase the knowledge about the legal and informal frameworks existing in their countries, so that they can be more effectively involved in the decision making process.

Efficient regulatory decision making depends not only on scientific, economic and engineering information, but also requires information about the interests and proclivities of affected businesses. Often information about interests is revealed via ongoing interactions, both formal and informal, between policy makers and businesses or their representative organisations.

It is in policy makers' interest as well as in the business community interest to establish appropriate consultation procedures that are most relevant to the new policies being consulted and country specific structures/traditions, so that a more efficient exchange of information and opinions is secured. Policy makers should be encouraged to better communicate information and the reasons for their decisions, adopt a more open approach to decision making and use strategic tools to aid the decision making process, including RIAs for proposed policies and legislation.

7.1.2. Ensure inclusion of all relevant business stakeholders in the consultation process.

Public administration representatives from most countries report on having regular meetings with business organisations. However, in many cases there are no clearly defined criteria as to who should be involved in the consultation procedures and how to properly define the target groups. This may lead to a situation where only the concerns and interests of stronger groups or those with the privileged access to the policy makers will be listened to and considered. Representative business organisations are involved in the consultation process on the basis of regulatory provisions but this is the case mostly in countries where there is a compulsory membership to business organisations. However, the assessment of how representative a business organisation is can create some difficulties, especially in the countries where there is no compulsory membership to business organisations. The results of the online survey indicated that there are no clearly defined criteria to assess representativeness of business organisations and in some countries such assessment does not take place. Also, it is less obvious that smaller business organisations are involved in the consultation process, as they are usually less proactive and they have less human and financial resources to invest in preparing the contributions.

It is a task of policy makers to identify the relevant business organisations and/or individual entrepreneurs who have significant and legitimate interests in the legislative proposals or policy initiatives. This is an essential pre-condition for successful decision making. Everyone should be treated equally. The stakeholders need to be

identified and selected on the basis of clear criteria, so that the risk of listening to only these groups with a privileged access to policy makers is eliminated or reduced. These criteria should be made public and well explained. Methods of consultation should be adapted to the type of audience, e.g. experts or non-experts. Policy makers need to involve all relevant stakeholders who have an interest in a given proposal in order to achieve an outcome that is more likely to be generally accepted. Representativeness of business organisations should be taken into consideration while identifying and involving business stakeholders in the consultation process, as they have contact with a large number of members and are usually cost-effective channels for providing information and gathering opinions.

7.1.3. Secure business stakeholders participation in the consultation process.

The survey results demonstrate that proactive consultation takes place in almost all countries participating in the survey. This opinion was shared by both business organisations and public administrations' representatives. There is still room for further improvements, however, and in some countries better communication channels with business stakeholders should be established. Policy makers rarely provide stakeholders with a long term programme of consultations planned. A good example comes from Cyprus, where the Minister invites all SME organisations to meetings in order to brief them about the policies which the Government intends to adopt within the next 3–4 years. They are then invited to voice their opinions and submit their suggestions and comments in writing.

Stakeholders should get an early notification of forthcoming consultations, so that they can plan their work and collect necessary information or evidence. The choice of the target audience for a consultation is more likely to guide the methods and tools to be used during the decision making process. Policy makers and regulators should be proactive and should use the appropriate instruments to raise awareness and promote the consultation in order to reach the target audience (e.g. media, electronic channels).

7.1.4. Involve business stakeholders in the consultation process at an early stage in order to benefit from their direct experience and their assessment of the potential impact of new legislative and policy initiatives.

Policy makers have to rely on businesses and business representatives for significant information that are needed to shape policies and regulations affecting business. The challenge of securing essential and reliable information for policy makers' decisions is a fundamental one for those interested in improving the quality of regulatory decision making. Consultation, however, is not a pure information provision, it presumes a certain degree of dialogue and interaction between regulators/policy makers and the responding parties. Even though a large majority of the survey participants were of the opinion that the consultations take place when the "legislative initiatives are proposed, are being drafted or have already been drafted", in some countries such as Belgium, France, Czech Republic, Estonia and Latvia, the stakeholders stated that the consultations take place shortly before the new law is voted on.

If policy failures are to be avoided, consultation ahead of legislative proposals/policy initiatives becomes more of a necessity than an option for governments. Consultation should be as inclusive as possible. Involving properly identified stakeholders in the consultation process at the earliest possible stage ensures that policy makers can benefit from their direct experience and their assessment of the potential impact of new legislative and policy initiatives. It will finally speed up the legislative process and make the whole procedure more effective and less costly. Policy makers should give more attention to the need for improving the analytical and scientific basis of regulatory policy making and ensuring the quality and reliability of the information on which these analysis are based.

7.1.5. Allow enough time for consultation to reach the objectives of the consultation process.

The analysis of the survey results demonstrated clearly that inadequate time for responses is the single greatest cause for complaint over consultation procedures in Europe, and is often mentioned, especially by business organisations, as one of the most significant deficiencies of the consultation process. Establishing a minimum time for consultation (minimum standards for consultation) could be the way of refraining governments from imposing very short deadlines for receiving responses from business organisations and other stakeholders involved.

Time allowed for consultation should reflect the complexity of legislative/policy proposals under consideration. Sufficient time should also be given to business organisations to consult with their own constituencies on these proposals and produce consolidated contributions. All stakeholders concerned should be consulted within the same period of time. There must be a correct balance between the need for valuable input and the smooth decision making process. Establishing a minimum time for consultation should be treated as a safety measure rather than an absolute rule. The minimum consultation periods should be established by regulators/policy makers on the basis of consultations with relevant stakeholders. Only working days should be counted when establishing consultation periods. Ideally, consultations should be organised at appropriate times of the year (they should be avoided e.g. during the summer break) or at least stakeholders should be given more time for elaborating their opinions if the consultation takes place during the usual holiday periods. Sufficient time should also be provided for forward planning of meetings and hearings organised throughout the consultation process.

7.1.6. Employ a variety of consultation methods in order to achieve comprehensive coverage and a broad diversity of viewpoints.

There is no one “right” consultation method that will work for any given policy issue in any given country. Identifying which methods to use for a given policy matter is clearly a crucial issue. Many different conditions influence the choice of methods to be used in order to collect necessary and useful information, and there is no guarantee that just because one method worked well once, it will always work the same way. On the other hand, policy makers should profit from the previous experience when choosing consultation methods and use those which proved on many occasions to be the most efficient in a similar situation (similar policy area, stage of consultation and a

similar profile of stakeholders consulted). That is why it is so important for policy makers to evaluate each consultation in order to increase the level of expertise of those who are responsible for organising consultations.

Business organisations' respondents stated that "meetings with representatives of business organisations", "consultation by written procedure", "meetings with social partners" and "expert group meetings" are the consultation methods used most often in a large majority of countries. It is encouraging to see that there is no significant difference between consultation methods currently used and those perceived by business as the most efficient. Public administrations' opinions concerning the consultation methods were in general very similar to those expressed by business organisations. For example, public administrations' representatives were more positive than business about using "consultations via the Internet" and "business panels" while "small business council" was equally supported by both groups of respondents.

The most important thing is not to rely just on one method. Using at least two or more consultation methods increases significantly the chances of a better response, both in terms of quality and quantity.

Methods of consultation proposed should be carefully chosen. Using the right methods of consultation increases significantly stakeholders' participation and commitment. Different methods of consultation may be appropriate for different policy areas and for different stages within the policy making cycle. Meetings with representatives of business organisations, advisory committees, business test panels may be more suitable for the preliminary stage of the policy making process while the drafting stage of a legislative proposal is likely to require close collaboration with a more narrowly targeted group of stakeholders. New electronic media should be increasingly used for both general and targeted consultations but they should not become the only channel of contact with stakeholders.

7.1.7. Conduct Regulatory Impact Assessment (RIA).

Business organisations in a large majority of countries are very positive about conducting an impact assessment at an early stage of the legislative process. There is no doubt that this approach should be a prevailing behavior of governments in the process of shaping new legislation or policies. Some countries have just introduced (e.g. Poland, Bulgaria) or will introduce in the near future (e.g. Greece, Slovakia) new provisions for conducting Regulatory Impact Assessment (RIA) for all new regulatory acts. In countries such as Denmark, Sweden, the UK or Luxembourg impact assessments are already operational and well established.

Regulatory Impact Assessment should accompany each new legislative or policy proposal. RIAs should highlight costs, benefits and potential risks of proposed legislative or policy initiatives. They should constitute an integral part of the legislative dossier and they should be discussed during the consultation. If the legislative proposal has been changed or amended significantly during the decision making cycle, it should be subject to a second round of impact assessment and consultation.

7.1.8. Take into account small business dimension (where appropriate) in the Regulatory Impact Assessments.

In most countries, where Regulatory Impact Assessments are conducted, there are no specific provisions for taking into account interests of small businesses. However, some good examples already exist, e.g. in Sweden, the final report of the Committee of Inquiry contains a regulatory impact assessment that covers mainly effects on small business. If other subordinate regulations introduce additional provisions that might affect small business, they are subject to a second impact assessment. Since 2003, the Small Firms Impact Test (SFIT) is also carried out in the UK. Government officials have to test their policy assumptions by having a direct dialogue with small businesses. There are also some provisions for assessing impact on SMEs in Poland where RIA for each new legislative proposal must include information about all entities on which the draft legislation is likely to have an effect. The impact on small enterprises is assessed in the framework of the internal and external competitiveness of the economy.

Some type of regulations can affect small businesses much more severely than bigger firms. Small business is usually the most fragile group within the business community, therefore a special attention should be given to small enterprises when assessing the impact of new legislation or policies.

7.1.9. Provide feedback after consultation to the consulted stakeholders through clear evaluation of their contributions.

On the basis of the survey results, we conclude that providing feedback after consultation is one of the areas where further progress needs to be made. There is a significant discrepancy in opinions between public administrations and business organisations respondents about providing feedback after consultations. This difference might originate from different concepts or expectations about what providing feedback really means. While public administrations would focus more on giving feedback about the number of replies and content of the contributions received, business organisations would like to hear more about the changes made in policy decisions or reasons why the government was not persuaded by the arguments presented by stakeholders.

Since a large majority of respondents from many different countries is not satisfied with the current situation with regard to providing feedback after consultation, policy makers should consider undertaking concrete actions in order to improve it. Different methods of giving feedback might be used. It can include publishing a summary of responses on the Internet or providing all participating stakeholders with the findings and a summary of their contributions. Another possible way of giving feedback is to organise a post-consultation meeting to discuss the main findings and explain how the consultation process influenced the policy. Those who have no Internet access should be able to request a hard copy of the summary report.

New information technology gives opportunities for greater public scrutiny of administration performance by providing citizens with new instruments of communication and information. Public administration is now more open and transparent than a few years ago. However, greater openness has also changed citizens' expectations and they are now demanding more information, explanation and justification than hitherto. The growing complexity in policy making together with new interactive tools constitute many new challenges for policy makers.

7.1.10. Publish results of consultations and inform all stakeholders involved when and where results can be found.

Publishing results of consultation is considered by business representatives as an important element of the consultation process that contributes to the integrity and transparency of the whole exercise. Looking at the discrepancy of opinions between public administrations and business organisations, we assume that the lack of information on where and when to find the results of consultation might be a part of a problem. Therefore governments should ensure that this information is properly communicated and easily accessible.

Consultation results could be published online (the web address should be communicated in the consultation document), but those without web access should be able to request a hard copy of the summary document. The early publication of responses is also very desirable, since it adds to the integrity of a consultation - allowing assessment and reflection by other stakeholders - whilst also stimulating debate. Early publication can be very useful for small business organisations, with limited resources and/or expertise, as very often they are not able to participate in debates of critical importance to their members. For these organisations, which are often the hardest to reach or solicit opinions from, there is a real benefit in seeing responses from others as it allows them to simply signal agreement, disagreement or context to other submissions. There should also be information provided on the issues that came out during the consultation process and were not covered in the original proposal.

7.1.11. Consider the use of the indicators proposed (Chapter 5)

The indicators proposed within this project (and approved by national experts) could serve as a practical tool for monitoring progress and take stock of improvements made in the area of consultation. National and/or regional governments are encouraged to make their own choices and use the indicators accordingly to their own priorities, so that the system of consultation with business stakeholders is constantly improving.

The indicators could also serve as the basis for establishing national targets. Since the consultation structures and procedures as well as the national priorities are different in different countries, each country is free to set up its own targets and chose the most appropriate areas for improvement. These targets are to be reached on a voluntary basis and may change in time.

7.1.12. Set up minimum standards for consultation

Governments are invited to set up minimum standards for consultation at national and/or regional level (e.g. stating time for receiving contributions from stakeholders) and look at how the results of consultations are applied by national governments. They could use as a reference the provisions for a consultation process already established in some countries like Sweden or the UK where the minimum time of twelve weeks is foreseen for reception of responses to written public consultation¹⁵⁷.

The European Commission could:

1. Facilitate exchange of experience, views and good practice in the area of consultation, at both national and European level, between public administrations and business organisations of EU Member States, EFTA/EEA and Candidate Countries.
2. Offer a mechanism for monitoring progress at a national and European level by means of using and further developing existing consultation methods and tools, based on national input and data.
3. Undertake further actions in the area of consultation, e.g. launching a study aiming at exploring the involvement of business stakeholders, especially small enterprises, in assessing impact of new legislation/policies on small business.

7.2. Some good practice examples to follow by national and regional governments

These are a few proposals of good practices that national and regional governments are invited to follow when planning and organising consultations:

7.2.1. Define precisely the scope of consultation.

Policy makers/legislators should be clear about what their proposals are and who will be affected. They should use appropriate concise language and avoid the public servants jargon when communicating the message. Before conducting a consultation, it would be useful to start out by writing out a list of information that needs to be collected. This list can form the foundations of the consultation framework and guide the consultation organisers throughout the consultation process. Once the basic information is written into the consultation framework, the appropriate methods of consultation should be identified. The number and scope of consultations should be matched by sufficient analytical capacity available within the public administration.

¹⁵⁷ Please consult the website www.cabinet-office.gov.uk/regulation/scrutiny/ria-guidance.pdf.

7.2.2. Explain who will use the stakeholders' contributions and for what purpose they are gathered.

Personal information (names, addresses and phone numbers) should not be revealed once they are subject to the Data Protection Act. Stakeholders should be informed beforehand about the rules of making the information public.

7.2.3. Enhance cooperation between different ministries/departments in the public administration that are involved in organising consultation

Regular contacts between public administrations and business or the general public would allow for exchanging their experiences and apply the same quality criteria to all consultations planned. An inter-ministerial function/structure could be established in order to coordinate the consultation activity and evaluate the effectiveness of consultations that have already been conducted so that lessons could be learned and disseminated across government departments and agencies.

7.2.4. Identify the most likely risks in consultation process

Different risks can occur during the consultation process (e.g. low participation rate, lack of commitment, poor quality contributions). There should be an attempt to identify the most likely risks and to evaluate their impact on the quality of consultation process. A decision should be taken beforehand how these risks are to be managed and controlled. Proper risk management will increase the stakeholders trust throughout the policy making process and contribute to the final outcome of the whole exercise.

ABBREVIATIONS

AT	Austria
Av.	Average
BE	Belgium
BG	Bulgaria
BO	Business organisations
CY	Cyprus
CZ	Czech Republic
DE	Germany
DK	Denmark
EE	Estonia
EL	Greece
ES	Spain
FR	France
FI	Finland
HU	Hungary
IE	Ireland
IT	Italy
L	Luxembourg
LT	Lithuania
LV	Latvia
MT	Malta
NL	The Netherlands
NO	Norway
PA	Public administrations
PL	Poland
PT	Portugal
RO	Romania
SE	Sweden
SI	Slovenia
SK	Slovak Republic
TR	Turkey
UK	United Kingdom

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