



Consultation, Concealment or Confusion

Practices and Principles for European Policy Formation

Introduction

The consultation mechanisms for formation and implementation of European Policy are many and varied and provide employment for over 5,000 lobbyists. Several EURIM members have full time teams in Brussels and EURIM now has five years' experience of the inter-action of the semi-autonomous systems of the competing Directorates, Ministries, Legislatures and Judiciaries involved. The Commission commonly bases its consultation processes on the trade associations registered in the Directory of Interest Groups. Those who lobby a Directorate or Department consistently over time are commonly consulted in advance by those handling the policy initiatives for which it is responsible. Those not represented by effective groups which have pre-registered their interests can be unaware that consultation is under way before it is over. The consequences include the risk of backlash from those affected but not consulted and a growing risk of incompatibilities and inconsistencies between Directives covering industries and technologies which are converging or evolving in unpredictable ways. These problems are particularly acute in regard to Information Society issues, most of which cut across traditional sector boundaries.

Recommendations

1. The Council of Ministers, Commission and European Parliament should agree and publicise consultation processes for Directives, Regulations and Decisions.
2. Consultation periods should be not less than eight weeks, commencing when papers have been delivered (including electronic access) to the European and national Parliaments and the national offices of the Commission and Parliament.
3. Draft consultation papers and the texts of proposed Directives should be released (including electronically) immediately the original language version is agreed – though formal consultation should not commence until delivery as above.
4. Both Commission and Parliament home pages should point to tables of proposed Directives, Communications, and Recommendations with brief description, status, timetables for debate and decision, those responsible in Commission, Council, and Parliament and websites for consultation papers, drafts and other relevant material.
5. The inter-service consultation processes, Council Working Group activities and compliance cost assessments should be published (including electronically), along with the comments and opinions of each Directorate General.
6. The performance of the Commission electronic information services (including updating and response times and reliability) should be monitored and published.
7. HMG should require UK Departments to adopt similar processes for their inputs to Council Working Groups and proposals for implementation.

What Must Change

Paragraph 6 of the recent UK Government White Paper, *Modernising Government*, calls for a “new and more creative approach to policy making”. This includes “learning lessons from other countries and integrating the European Union and international dimension into our policy making.”

There are strong words on the need to base decisions on “careful appraisal of the benefits any measure seeks to achieve, the costs it entails and the cumulative burden of regulation on business”. This entails a new approach to policy formation: *“Rather than defending policies, government should lead the debate on improving them. This means developing new relationships between Whitehall, the devolved administrations, local government and the voluntary and private sectors; consulting outside experts, those who implement policy and those affected by it, early in the policy making process so we can develop policies that are deliverable from the start.”*

The key principles for the proposed “new approach to policy making” are:

- designing policy around shared goals and carefully defined results, not around organisational structures or existing functions;
- making sure policies are inclusive;
- avoiding imposing unnecessary burdens;
- involving others in policy making;
- improving the way risk is managed;
- becoming more forward- and outward- looking;

Substitute “Commission” for “Whitehall” and this might be an agenda for the new European President to agree with the Council and Parliament. Action is needed at both the European and National level to greatly improve current consultation processes on policy formation and implementation if the UK and Europe are to remain locations of choice to bring up a family or grow old, let alone to grow a competitive business, in the information age.

Industry players, for their part, should pay more attention to these issues, not just for their own benefit but also with consideration of the needs of those in their supply chains.

The EURIM Perspective

EURIM has five years experience of working with and through the evolving policy fora of the European Commission. Several of our Parliamentary Members have ten or more years experience in Brussels and Strasbourg. A number of our Corporate members maintain permanent teams in Brussels to monitor policy in areas core to their business. One of the original EURIM objectives was to pool their experience and resources to help improve the information flows available to all. This is now being achieved by most working parties but the methods used to obtain

prompt copies of “published” papers, let alone access to drafts in time to influence thinking, indicate the scale of change needed. The task has become easier over time as Officials copy us at the early stages of debate but also more challenging as we work with them to try to ensure balanced inputs. These should include the needs of those unaware of the importance of the issues or with no time to spend on the growing range of initiatives which will affect the ability of the UK and Europe to create and sustain a healthy, competitive and socially inclusive “Information Society”.

Some Symptoms

◇ We tracked one consultation paper where we received an English language draft two weeks before it was due for release with a consultation period of six weeks. Copies were not publicly available in Brussels until a week after the supposed publication date. It was not mentioned in the UK press. It was not mounted on any Website. UK MPs were informed that copies were available from the Vote Office less than a week before the end of the consultation period.

◇ A proposal for a Directive (supported by many MEPs and Commission Staff) was about to be dropped in favour of a code of conduct, after consultations with the relevant supplier trade associations, when a survey of large users by a EURIM Working Party (we had learned of the proposal from a disaffected supplier) revealed a total lack of confidence in the proposed code.

◇ Four months of intensive lobbying over the drafting of a potentially controversial Green Paper was followed by four weeks of public consultation.

◇ Several Ministers, told by officials that they had to approve regulations (against party policy) because they were required under a Directive, have learned, after ceasing to be Ministers, from constituents who had been put out of business by the regulations (and thus had time to investigate) that they were not in fact so required.

◇ Intellectual property rights, consumer protection responsibilities and applicable jurisdictions differ under the twenty or so Directives and Draft Directives that may be held to apply to

Internet-based transactions. There appears to be no mechanism to reconcile the differences other than to ignore them or to base transactions outside the European Union.

◇ It is common for Directives to spend so long under consultation that they are out-of-date, irrelevant or counter-productive before they are implemented.

In theory, the consultation arrangements in Brussels are reasonable, with appropriate access to officials and adequate timescales allowed for responses to consultations. There are, indeed, issues of co-ordination, consistency and efficiency but the problem lies more in communication with those in member states who lack the funds and time to brief lobbyists in Brussels to monitor all areas which might affect them and respond to consultation opportunities accordingly. This all-too-often leads to problems being identified at the later stages of the decision process, or during implementation, when resolution is more difficult.

The solution followed by most Officials (in both Brussels and London) is to seek to improve the facilities they offer to Trade Associations and other representative bodies, via Memoranda of Understanding, Round Tables, Conferences et al. Commercial pressures, however, mean that, in businesses subject to rapid change, few of those with responsibility for, or an understanding of, policy have time to participate in these organisations. Meanwhile Internet-based discussion groups also tend to be unrepresentative, dominated by those with more time than influence.

The Way Forward

Part of the solution is to use the new communications technologies in unambitious ways to publicise proposals across the community as soon as they are fit for consultation so that the areas of agreement and of disagreement can be found at the earliest practical opportunity. "Fit for consultation" need not entail translation into all official languages or agreement across all Directorates. Much effort can be saved if "unintentional controversy" is identified early by releasing provisional drafts in the most commonly used languages. Action can then be expedited where there is agreement on what is needed and consultation focused on where there is agreement that action is necessary but disagreement on what should be done.

Suggestions for Commission Action include:

◇ The text of proposals, including explanatory statements to proposed Directives, should be released immediately the original language version is agreed - though formal consultation periods should not commence until translations are available.

◇ All consultation documents should be made available, if necessary in an agreed subset of the official languages, on the appropriate Service's web-site before the start of any consultation period.

◇ All Service web-sites should have a simple index to relevant Draft Directives, Directives, Communications, and recommendations and appropriate cross-references to related material across the Commission's pages. In the case of proposed Directives there should be a summary giving the stage reached within the co-decision process, next key dates for Council and Parliament review, and names of responsible officials within

Commission, Council, and Parliament.

◇ There should be greater visibility of the inter-service consultation process – with access to comments and opinions of each Directorate General.

◇ There should be greater visibility of Council Working Group activities via the web.

◇ A rapid response time is needed from servers holding the above information.

It is also desirable for the UK Departments to hold consultations embracing all relevant industry groups, with web access for those not in such groups, before forming their final position on any EU consultation. The opportunity for UK interests to work directly with UKREP in Brussels need to be better promoted in the UK. Ongoing routines should be used to feed back the general positions being discussed in the Council Working Groups and in Council itself. The processes should enable:

- appropriate input to the relevant UK Department(s) in the pre-drafting phase and at the start of the formal consultation process;
- visibility of arguments and amendments as developed in Council Working Groups;
- opportunities to comment on briefings produced for Ministers, MEPs and MPs.

Agencies with revenue targets and Trading Funds should not normally have a lead role in responding to Commission legislative proposals or preparing external briefing material. The parent Department should handle these activities so as to minimise any potential conflicts of interest