

## Consulting Citizens on Draft Laws

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Sounding out views from the public on draft laws has become widely endorsed by international organisations such as the OSCE, OECD<sup>1</sup> and European bodies such as the EU, GRECO and the Council of Europe<sup>2</sup>. Countries however should embrace consultation not as a tick the box exercise to gain outside praise but rather out of conviction that it can enhance good governance. Furthermore it should not be adopted as a quick fix for broken trust in a political system. This will require far more effort and a consistency over time. Citizens for their part do want to have a say in decisions that affect them even if they prefer not to be asked about every question. They also expect politicians to come up with solutions to problems and take responsibility for their actions. Here we look at some preconditions for effective public consultation and pitfalls to avoid.

Detailed work on the topic of democratic lawmaking including public consultations was published by the OSCE in 2024 <https://www.osce.org/odihr/558321>. This was a four year project on which the author with many international colleagues was privileged to work.

### Why Consult with Citizens?

In many democracies trust in politicians and democratic institutions has dwindled. An increase in alleged corruption cases in for example Austria and the UK has undermined public confidence in how the country is governed. The feeling that ‘there is one rule for them and one rule for us’ has exacerbated the perceived gap between privileged politicians and ordinary folk. Often these trends are brought into association with a supposed disinterest in politics, an unwillingness to vote or ‘switching off’. Yet this is the result of a failure to remain in contact with citizens in between elections and to listen to grievances at a local level. A consultation process can act as a safety valve for those frustrated with politics by giving them a chance to contribute in a positive way. This could minimise societal friction or even street violence.

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<sup>1</sup> <https://www.oecd.org/mena/governance/36785341.pdf> and an OSCE specific country study, Ukraine, [https://www.legislationline.org/download/id/8083/file/Guidelines%20on%20public%20consultations%20in%20Ukraine\\_ENG\\_A5.pdf](https://www.legislationline.org/download/id/8083/file/Guidelines%20on%20public%20consultations%20in%20Ukraine_ENG_A5.pdf)

<sup>2</sup> Articles 1 and 2 of the Treaty on European Union stress that decisions shall be taken openly and “as close as possible to the citizen”, in a manner that adheres to democracy, the rule of law and respects human rights. Article 11 obliges EU institutions to “give citizens and representative associations the opportunity to make known and publicly exchange their views in all areas of Union action” and to maintain an open, transparent and regular dialogue with representative associations and civil society.

Consultation can help combat corruption by increasing transparency and accountability. It can together with Regulatory Impact Assessments be an additional tool in good governance.

That the interest in political decision-making is very much alive is evident in some positive trends. After a phase of declining electoral participation we can see a readiness to go out in vote for example in the Scottish Independence Referendum of 2014 and also in the Vote to leave the EU that took place in the UK in 2016. Party membership is also in some cases on the rise in parties with good use of social media. Here civil society and NGOs can help youth to register to vote and increase participation.

Electing a parliament is not the end of the democratic process but the beginning of law-making and rules that affect the lives of citizens. Political participation fulfils an important role in providing a sense of ownership in the democratic process. For politicians it can seem as burdensome and time-consuming but if managed well it can save time. Consultation with those on the ground and with relevant civil society organisations can glean important information on how a law will work in practice. Pitfalls can be identified in advance and save time for lawmakers later by avoiding a costly repair of legislation. Citizens frequently trust their peers more than politicians and consultations can facilitate the connection between groups who are engaged on likeminded issues. They can share information and experience and lawmakers should also be receptive to this input and not see the consultation as a one way exercise.

### **Preconditions for Effective Consultation**

A non-exhaustive list of points for consideration:

- For citizen participation to work there has to be a climate free from fear so genuine concerns can be voiced without fear of adverse repercussions such as job loss or university place. Opposition rights in parliament should be guaranteed and the work of committees transparent.
- A Freedom of Information Act can help provide interested parties with the necessary background to comment on draft legislation. Failing that information on proposed legislation should be readily available and published online.
- A well-equipped and resourced parliamentary administration with trained staff can help provide information to citizens on the legislative process. Democratic workshops for young people can ensure that future citizens will be aware of the possibilities they have to take part in political life. Smaller parliaments will struggle to provide this service but inter-parliamentary cooperation can compensate for scarce resources.

▪Crucial for a public consultation is the fact that voters must know it exists. Here the media has an important role to play and parliament staff too can provide dossiers with background information for journalists and citizens alike on specialised subjects.<sup>3</sup>

▪Every effort should be made in a consultation to be as inclusive as possible. Are contributions coming in from the usual suspects, from big economic and social interest groups or are they reaching individual citizens right across the country. What efforts are made to involve the relevant groups and civil society on an issue? If there is a large digital gap in the country how can this be overcome? Fast internet may not be available in rural communities to allow for online participation or the elderly may not be Internet savvy. Collecting data on consultation to ensure gender, ethnic and social background and so on is duly represented can help.

▪Consultations and information therefore should be widely publicised and also produced in different languages relevant to minority groups in the country as well as braille. The latter is also used in some televised parliaments and in news bulletins and /or press conferences for example in Austria.

▪It is important that a consultation takes place early on to allow for possible changes.

▪Expectations on what a consultation can achieve should be clear to avoid disillusionment. If the object of the consultation by politicians is to secure an endorsement of a policy already planned but to seek additional expertise, this should be set out. How much scope will the consultation have to allow citizens to influence what parts of the legislation? It could be that the draft law has within it a major policy decision for example adopted from an election pledge that the government does not intend to change. However it may be open to alternative ways of implementing the Act. Citizens who are fundamentally opposed to the policy per se will feel let down if the policy goes ahead. Both sides must know what is realistically feasible.

▪Assuming citizens have access to information it is important this is comprehensible to the layman. What tools or assistance will be made available to help the citizen to cope with expert jargonese. Should citizens feel unable to take part in a written consultation online themselves they will simply cut and paste the contribution from a likeminded advocate. If multiplied on a mass scale this could reduce the credibility of the input.

▪How can the confidence of citizens be increased so they can question experts seeking to justify draft laws? Here civic education could play a role in equipping the citizen with the know-how of democratic decision-making. Not only that but some aspects of the day to day running of the school should allow for pupil involvement in practice to enable a culture of participation to develop.

▪Draft laws themselves need to be carefully formulated where possible free of jargon and endless cross-references. As law-making is a complex process drafting simpler

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<sup>3</sup> See as an example the specialized dossiers on the Austrian parliament website:  
<https://www.parlament.gv.at/fachinfos/>

laws is a difficult task<sup>4</sup>. Explanatory notes should be clearly available for draft laws and consolidated versions of laws publicised to enable citizens to see where changes have been made.

- There should be some indication of which draft laws will go to consultation. Too many could lead to consultation fatigue and failure to put out controversial bills for this process will not help build voter confidence. Principles could be adopted whereby bills not put out for consultation will be accompanied by a justification for this decision. Should for example, draft constitutional bills, budget and finance bills be as a matter of course put out for consultation?

- The motives for a consultation on the part of a politician are important. Is it simply to avoid a bigger problem, look good on the international stage or to score domestic politics points? Is it to shelve an issue or to avoid spelling out a policy with the promise of a consultation in the future? Voters are increasingly sensitive to the ulterior motives of the ruling elite and consultations will be seen as a sop to citizens to give them something to do, the feeling of being involved and to keep them quiet. There has to be a genuine interest by both politicians and citizens to contribute to better law-making. The tone for this will be set from above in the first instance and citizens will take their cue from the initiators of the consultation.

- Ideally election campaigns should be avoided when carrying out a public consultation. The heated atmosphere of campaigning does not help objective debate of issues and information may not be easily provided by the civil service due to codes of conduct in the campaign period.

- One essential element in a public consultation is that there should be sufficient time allowed for the process. Here we have a potential clash between the aims of legislators and citizens. The former may want a rapid timetable to enable them to move on to further work in the government's programme. Those taking part in the consultation will strive for a longer timespan to enable greater mobilisation of experts, collection of material, publicity and interaction between the participants in the light of ongoing comments if made online. Lawmakers should state general principles on this and for example put forward a consultation period of six weeks and justify deviations. The period included for consultation should not stretch over recognised holiday sessions for example Summer school holidays or Christmas and New Year vacation.

- Above all when the citizen has gone to the time and trouble to make an input for a public consultation they are entitled to expect some feedback. Have their ideas been taken on board, if not why not? Little feedback will mean voters will not bother to submit suggestions or ideas in future and join the ranks of the disgruntled or non-voters. Feedback should be provided shortly after the consultation ends.

- The dos and don'ts of consultation could be formulated in general principles. To involve a wider section of the population a template at the beginning setting out a

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<sup>4</sup> See the Better Lawmaking Agreement, adopted by the European Council on 13 April 2016 and published in the Official Journal on 12 May 2016, at <https://www.consilium.europa.eu/en/policies/better-regulation/>.

series of questions for citizens to consider in their contributions could help<sup>5</sup>. The template can provide the format preferred for the contribution from citizens. How long should it be and how could it be structured would give ordinary citizens guidance on how to get started. If online clear data protection should be given to contributions and the names of the authors not published if so wished.

## **The Role of Parliaments**

Many parliaments have developed online tools to increase public participation and as the Austrian parliament have a Citizens Service which can provide information on the legislative process<sup>6</sup>. The UK parliament can offer a well-run outreach service with drop in sessions for potential campaigners to gain information on how to contact a Member of Parliament and how to interest them in giving a talk. Citizens also are presented at the outset of such sessions with a political quiz to see if they understand the job of a Member of Parliament and the constraints imposed on them. Often citizens expect solutions to their problems from an MP where they are not directly competent but where the local Mayor or respective regional assembly have more powers. Depending on the electoral system the contact with the local MP will vary and in some cases where a party list dominates, the names of the Members of Parliament may be unknown let alone the work they fulfil<sup>7</sup>.

Parliaments should ideally have a work plan for the session to allow citizens the opportunity to prepare for making a contribution. Consultation rules could be anchored in the rules of procedure or in constitutional laws. A Consultation Office with staff responsible for overall coordination can also help the running of different consultations but also could make recommendations for improving the system.

The Committee system can play a useful role in political participation if they are able to gain some independence of the government parties. In the UK the chairpersons are elected by the plenary and so have some scope free from the party whips. There is also more of a cross-party culture which helps to shape an open agenda and each committee has its own webpage where upcoming consultations can be announced. Online evidence can be submitted and will as a rule be published unless there is a genuine reason provided by the author. To guide the citizen through the legal jungle, guidelines are issued for a template for submission of evidence and consolidated versions of a Bill available.

## **Conclusion**

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<sup>5</sup> An example of information which could accompany a consultation is here:

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/233330/consultation-document.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/233330/consultation-document.pdf) . Principles of consultation could include:

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/100807/file47158.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/100807/file47158.pdf)

<sup>6</sup> <https://www.parlament.gv.at/PAKT/BEST/GESI/index.shtml>

<sup>7</sup> For details of principles in France and comparative examples see <https://www.senat.fr/notice-rapport/2014/lc258-notice.html>

Each country will need to work out how best to devise effective consultation but some of the general points here will be useful in making for effective and productive consultations:

- Democratic rights for Opposition, Civil Society and Media
- A Freedom of Information Act
- Well-equipped parliamentary administration
- Inclusive consultations with regard to gender, ethnic background etc
- Timely pre-information and subsequent feedback on results of consultation
- Consolidated laws and explanatory notes accessible on relevant websites
- Simple law-making
- Education for general public on political affairs
- Clearly formulated aims of any consultation

In conclusion we can say that the consultation if carefully designed can be advantageous for all concerned.

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