

2 Stakeholder engagement across the European Union

It is important for policy makers to engage and discuss with those affected by regulations. This not only improves the quality of regulations, it also promotes transparency and strengthens both trust in the government and compliance with any resultant rule. Using the results of the OECD 2021 Indicators of Regulatory Policy and Governance, this chapter reviews stakeholder engagement practices in all 27 EU Member States and in the European Union. It assesses the timing and content of stakeholder engagement at various stages of policy development as well as how governments use input received from interested parties. In addition, it further discusses the use of stakeholder engagement when EU Member States negotiate or adopt regulatory proposals of the European Commission.

Key messages

- Only a few EU Member States and the European Commission inform stakeholders in advance of upcoming consultations. EU Member States could benefit from adopting this practice more widely to boost transparency and participation in policy development.
- Policy makers in EU Member States engage with stakeholders systematically at the regulatory draft stage. Opportunities exist for Member States to further engage with stakeholders when discussing policy problems and exploring potential solutions.
- Consultations are generally open and available to the public in most EU Member States. Policy makers most commonly invite stakeholders to participate online. Progressively more EU Member States are systematically listing their consultations on respective single websites.
- EU Member States tend to initially engage with selected stakeholders that are likely to be particularly affected by the problem or that have some type of expertise. Member States use online platforms more systematically to consult on regulatory drafts.
- Most EU Member States have set minimum consultations periods. A few EU Member States have a time interval that policy makers must use as a guide for specific consultations. A minority do not have a fixed time or an interval, but require policy makers to be proportionate when deciding the time available for consultations.
- Views of participants are publicly available online in most EU Member States. Around two-thirds of EU Member States have requirements to make use of comments when developing final regulatory proposals. That said, in practice it is often unclear to stakeholders how their comments have shaped proposals, and more can be done by EU Member States to respond to comments received.
- EU Member States are partly responsible for determining the outcomes of the European Commission's proposals by informing domestic stakeholders of ongoing Commission consultations. In addition, the facilitation role played by EU Member States to engage domestic stakeholders in ongoing European Commission consultations can improve resultant EU policies at both the negotiation and transposition stages. More research is needed to ascertain the extent to which Member States alert stakeholders beyond the "usual suspects" to ongoing consultations by the European Commission.
- Few EU Member States formally require stakeholder engagement to inform their negotiating position on the European Commission's policy proposals. However, when undertaken in practice they are generally open to the public. Some EU Member States use the results of the European Commission's consultation processes as input to inform their negotiating position. EU Member States would benefit from more systematically engaging with affected parties in the formulation of their negotiation position to better understand domestic impacts. This is especially the case for proposed EU regulations, for which the negotiation stage represents the final opportunity to shape such proposals.
- Nearly 90% of EU Member States have formal requirements to conduct stakeholder engagement when transposing EU directives into national law. EU Member States do not generally rely on the results of the European Commission's consultation during the transposition of EU directives. Member States can still benefit from the European Commission's consultation results, particularly where implementation issues were considered, and to potentially identify affected domestic stakeholders.

Introduction

Stakeholder engagement is a critical enabler of improved regulatory quality. Stakeholders can bring their own perspectives and learnt experiences to help shape solutions and to avoid costly mistakes. Stakeholders also possess a potential wealth of data on actual impacts incurred, thus providing governments with valuable information to help improve estimations of likely regulatory impacts. Aside from direct information, involving stakeholders helps to garner trust amongst the regulated community, create buy-in and support for new initiatives, and also to boost compliance with any resultant rules. In particular, when stakeholders feel that their views were considered, they received an explanation of what happened with their comments, and they feel treated with respect (Lind and Arndt, 2016^[1]). Perfunctory consultation without any actual interest in the views of stakeholders because a decision has already been made, or failure to demonstrate that consultation comments have been considered may have the opposite effect.

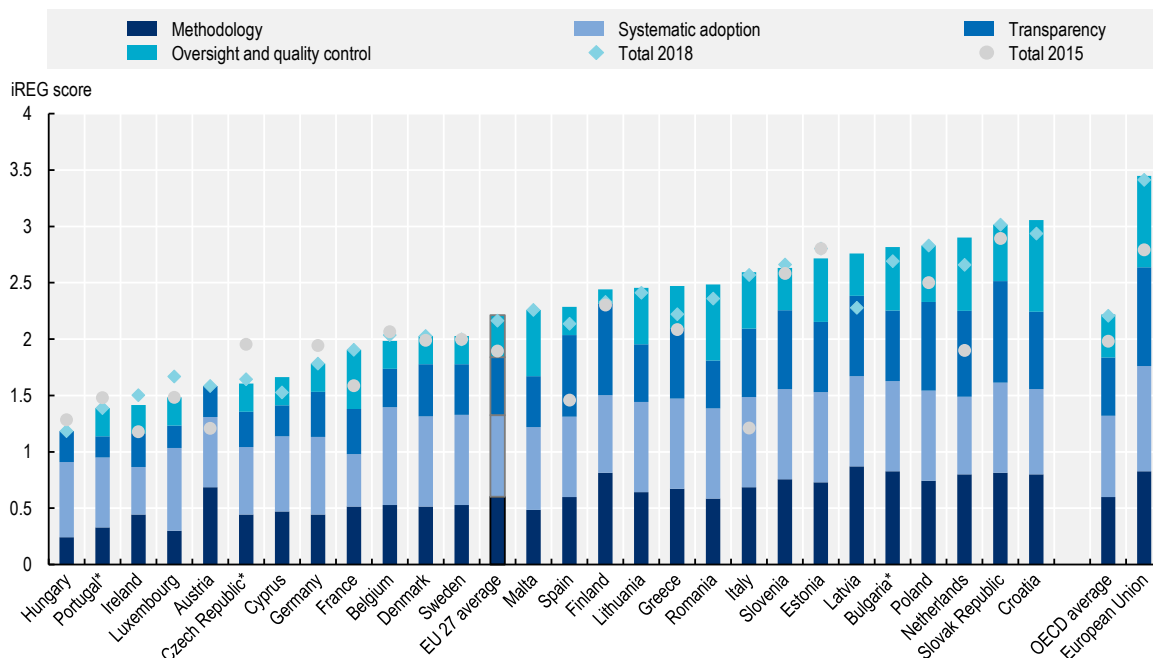
Ensuring that stakeholders are adequately consulted has been formally recognised by the OECD. The *OECD 2012 Recommendation on Regulatory Policy and Governance* (OECD, 2012^[2]) provides that member countries should “adhere to principles of open government, including transparency and participation in the regulatory process to ensure that regulation serves the public interest and is informed by the legitimate needs of those interested in and affected by regulation. This includes providing meaningful opportunities (including online) for the public to contribute to the process of preparing draft regulatory proposals and to the quality of the supporting analysis. Governments should ensure that regulations are comprehensible and clear and that parties can easily understand their rights and obligations” (OECD, 2012^[2]).

This chapter analyses EU Member States’ stakeholder engagement requirements and practices as reported in the indicators of Regulatory Policy and Governance (iREG) survey and its extension to all EU Member States. The first section presents an overview of the results and recent reforms based on the iREG survey. The second section focuses on the domestic requirements and practices of individual Member States and includes information pertaining to those of the European Union where relevant. In particular, it provides information about both the timing and content of stakeholder engagement, and how governments use input received. The final section presents information on stakeholder engagement as it relates to the legislative processes of the European Union. It looks at the extent to which individual EU Member States inform domestic stakeholders of European Commission regulatory proposals of interest. It also examines how EU Member States use the European Commission’s stakeholder engagement processes to inform both their negotiating position and on the transposition of EU directives.

General trends in stakeholder engagement across the EU

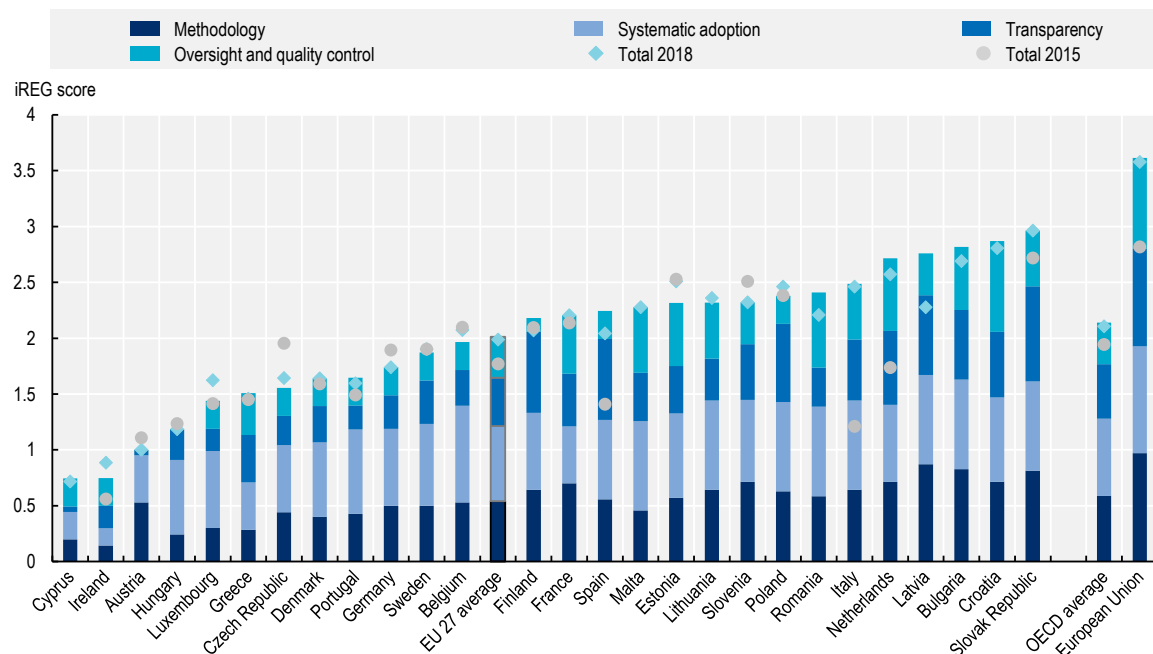
EU Member States improved their stakeholder engagement practices with respect to primary laws to a greater extent than subordinate regulations. EU Member States are now more often conducting their consultations concerning primary laws over the internet for both early and late stage consultations, and more countries have developed guidance for their policy makers on how to engage stakeholders. Some EU Member States have also improved the transparency of their consultations for primary laws, as they now publish the decision to not conduct a consultation and the reasons as to the decision. There have been slight improvements on the oversight and quality control of stakeholder engagement for both primary laws and subordinate regulations, with more EU Member states having oversight bodies in charge of promoting and scrutinising consultations of stakeholder engagement.

Figure 2.1. Composite indicators: Stakeholder engagement in developing primary laws, 2021



Note: Data for 2015 is based on the 34 countries that were OECD members in 2014 and the European Union, which included 20 of the current 27 EU Member States. The OECD average is based on the 38 member countries at the time of the survey. Data for 2018 and 2021 includes the remaining EU Member States of Latvia, Lithuania, Bulgaria, Croatia, Cyprus, Malta and Romania. The more regulatory practices as advocated in the 2012 Recommendation a country has implemented, the higher its iREG score. * In the majority of EU Member States, most primary laws are initiated by the executive, except for Bulgaria, the Czech Republic and Portugal, where a higher share of primary laws are initiated by the legislature. Source: Indicators of Regulatory Policy and Governance Surveys 2014, 2017 and 2021.

Figure 2.2. Composite indicators: Stakeholder engagement in developing subordinate regulations, 2021



Note: Data for 2015 is based on the 34 countries that were OECD members in 2014 and the European Union, which included 20 of the current 27 EU Member States. The OECD average is based on the 38 member countries at the time of the survey. Data for 2018 and 2021 includes the remaining EU Member States of Latvia, Lithuania, Bulgaria, Croatia, Cyprus, Malta and Romania. The more regulatory practices as advocated in the 2012 Recommendation a country has implemented, the higher its iREG score. Source: Indicators of Regulatory Policy and Governance Surveys 2014, 2017 and 2021.

Countries that made substantive changes since 2017 include **Greece**, **Latvia**, the **Netherlands** and **Spain**.

- **Greece** is now using its consultation portal more frequently to seek public comments on draft primary laws and it now publishes a list of laws to be prepared or modified in advance. It has also developed written guidance on how to conduct stakeholder engagement for primary laws.
- Public consultations in **Latvia** are now systematically conducted on draft legislation and stakeholders benefit from having a broader range of supporting material to help focus their input into policy proposals.
- **Netherlands** now offers written guidance to policy makers on how to conduct stakeholder engagement. In the past three years policy makers in the Netherlands have begun to carry meetings at an early-stage of policy development with SMEs.
- **Spain** now lists all ongoing consultations on its centralised online platform and allows citizens to engage both before regulatory development starts and at the draft regulation stage.

Stakeholder engagement for the development of domestic regulations

Policy makers in EU Member States engage and consult more systematically with stakeholders on draft regulatory proposals; and less frequently when discussing the policy problem and exploring alternative solutions

The *2012 Recommendation* (OECD, 2012^[2]) calls for transparency and participation in the regulatory process to ensure that regulation serves the public interest and is informed by the legitimate needs of those interested in and affected by regulation. Some examples from EU Member States where stakeholder engagement improved the resulting policy are summarised in Box 2.1. Civil society, businesses, non-governmental organisations and the public sector can be affected by policy problems and by the solutions that policy makers find to those problems. It is therefore important that decision makers engage and consult with concerned parties that have expertise, information and interests to help deliver a regulatory or non-regulatory solution that is adequate to the policy issue at hand. Policy makers should engage stakeholders throughout the policy development process, including when they have identified the existence of a public policy problem and are considering various ways to solve it – which is referred to as early stage consultation; and when the decision to regulate has been made and a draft of the regulatory proposal already exists – which is referred to as late stage consultation.

Box 2.1. Selected EU Member States' examples where stakeholder engagement improved the resulting policy

Dialogue and early involvement of stakeholders facilitated the co-ordination of the approach chosen by **Bulgaria** to transpose the Directive on the reduction of the impact of certain plastic products on the environment into the national legal framework. A preliminary consensus on the basic approach and measures to transpose the Directive was reached, while the official procedures for public consultations served to refine concrete texts and provisions.

Croatia launched a consultation on the initiative to ban the use of pyrotechnics (Explosives Substances Act and the Production and Trafficking of Weapons) in 2020. The consultation was conducted through the e-Consultation portal with 788 comments received. Following the comments received and with the aim of protecting human life, the government adopted the Explosives Substances Act with provisions prohibiting the sale, possession and use of firecrackers and weapons to citizens for personal use.

The “Citizens’ Climate Convention” (*Convention citoyenne pour le climat*) was held in **France** between 2019 and 2020. A panel of 150 citizens representing the diversity of French society was chosen at random. Following hearings of experts and summaries of the work of researchers, international bodies and civil society organisations, the panel formulated normative proposals, some of which were included in the Climate and Resilience Law adopted in August 2021.

In **Italy**, the Ministry for Disabilities, the Association of Disabilities, and public authorities established a work programme with the aim to promote the application of the principles of the United Nations Convention on the Rights of Persons with Disabilities (CRPD). The programme set-up 13 working groups specialised in different areas (e.g. definition of disability, simplification of sector regulations, social policies or international co-operation) consisting of representatives of the civil society and institutions. The work outputs and consultation results significantly contributed to the formulation of the Government Delegation Law on Disability Matters adopted in October 2021.

In October 2021, The Ministry for Finance and Employment in **Malta** launched a National Employment Policy for 2021-2030. During the drafting of the Policy, a wide and intense consultation process was carried out. Thirty focus groups were held across various industry sectors which were attended by industry leaders and academic experts. Participants provided feedback on their perceptions and expectations of the economy, which were fed into a forecasting model used to gauge future sentiment. A focus group with foreign workers engaged in the Maltese labour market was also carried out. The feedback helped to understand the situation at hand as well as to capture areas of concern and aspects that required addressing by the Policy.

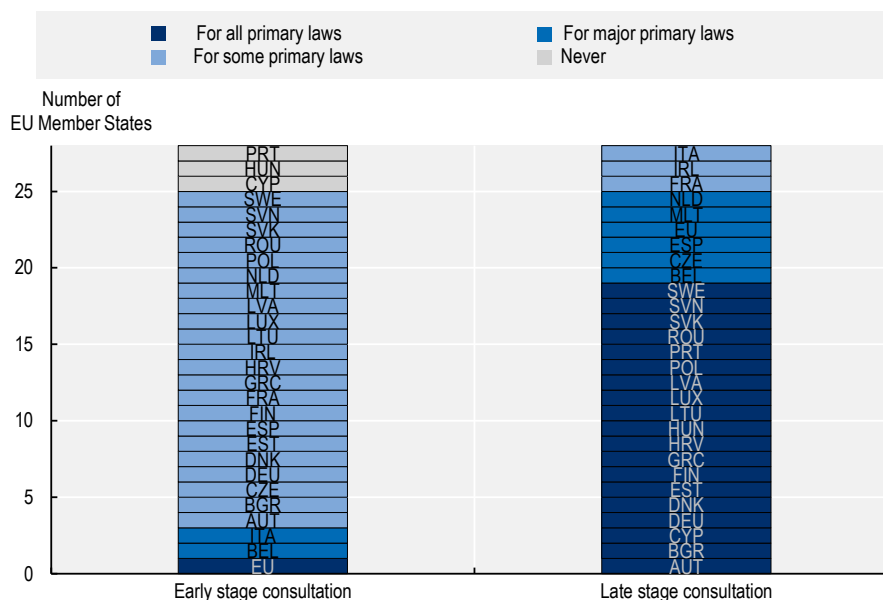
Co-operation with relevant stakeholders in **Poland** at the early stage of development of reforms to the Public Procurement Act helped improve the decision making process by, amongst others, identifying a number of problems, including barriers related to the access of SMEs to the public procurement market. Some of the stakeholders consulted were industry representatives, entrepreneurs, Polish and foreign scientists, local governments, contracting authorities, practitioners, and state champions amongst others.

In **Romania**, a public debate helped policy makers identify the need to regulate internships. Ministry representatives as well as representatives of public institutions and civil society partners were part of the working groups invited to participate in the consultation. The discussions focused on a range of topics related to the organisation and conduct of internships, such as the integration of people into the labour market through internship opportunities, the internship contract and allowance, as well as the Employment Premium Fund for employers (which turns internship contracts into employment contracts).

Source: Supplementary material provided to the indicators of Regulatory Policy and Governance Survey 2021.

Policy makers in EU Member States engage and consult more systematically with stakeholders on draft regulatory proposals; and less frequently when discussing the policy problem and exploring alternative solutions (Figure 2.3). Consulting with citizens, businesses and other relevant stakeholders once there is a regulatory draft is important. Firstly, because stakeholders can provide input on how any resultant regulation could be delivered. Secondly, because stakeholders know how any new rule may affect them before it becomes part of their daily lives. However, when policy makers engage with those who are affected or have some expertise in the topic early, when discussing the issue and its potential solutions, they can get important information to help shape the regulatory or non-regulatory options (OECD, 2020^[31]). Stakeholders engaged early in the regulatory process are better able to participate in the development of the proposed policy. The European Commission, **Belgium** and **Italy** consult with stakeholders when a policy problem is being discussed.

Figure 2.3. Most EU Member States and the European Commission tend to systematically engage with stakeholders once there is a draft regulation



Note: Data is based on 27 EU Member States and the European Union.

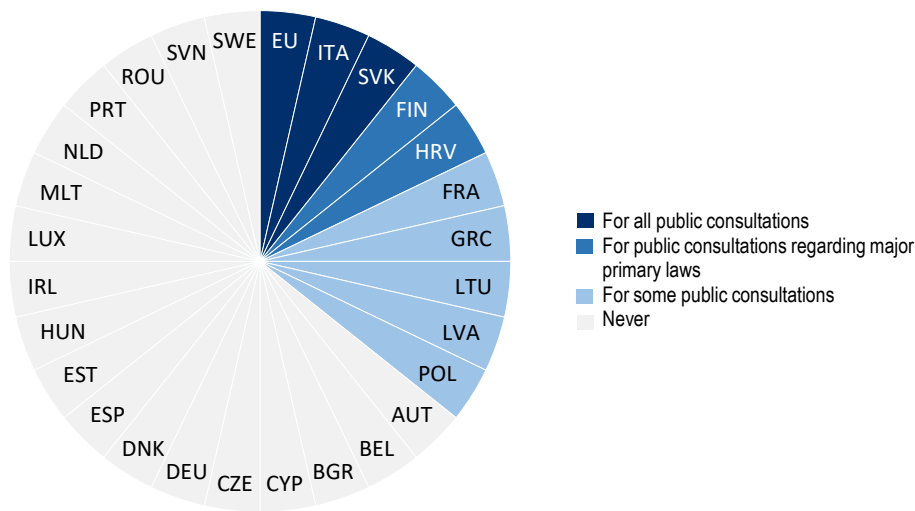
Source: Indicators of Regulatory Policy and Governance (IREG) Survey 2021.

Policy makers need to inform stakeholders about upcoming consultations and provide them with enough time to participate

Policy makers should enable stakeholders to provide their feedback in consultations by making them inclusive, timely and accessible (OECD, 2012^[2]). Engaging in consultations might not always be a priority for citizens who are pressed with other issues in their day-to-day life, nor for companies, as they might rather spend their time and resources on other activities, such as growing their businesses. At the same time, stakeholders have information and experiences that can contribute to a better regulatory environment that can improve their daily lives. This duality reflects the need to facilitate participation and to obtain public feedback during the policy making process. Part of enabling the public to participate includes three practices: letting stakeholders know in advance of upcoming consultations, being informed when a consultation has started, and granting them enough time to provide their feedback.

More EU Member States would benefit from informing either the public at large or specific stakeholders when a planned consultation is going to take place. Currently only the European Commission, **Croatia**, **Finland**, **Italy**, and **Slovak Republic** systematically do so (Figure 2.4). Knowing in advance of a consultation is generally the first chance that stakeholders have of figuring out whether the issue is relevant to them, and if so, to organise themselves to be able to provide feedback. In particular individuals or groups with fewer resources, such as small businesses and NGOs might not be able to participate in consultations if they learn about them too late in the process.

Figure 2.4. Only a few EU Member States systematically inform stakeholders in advance about upcoming consultations

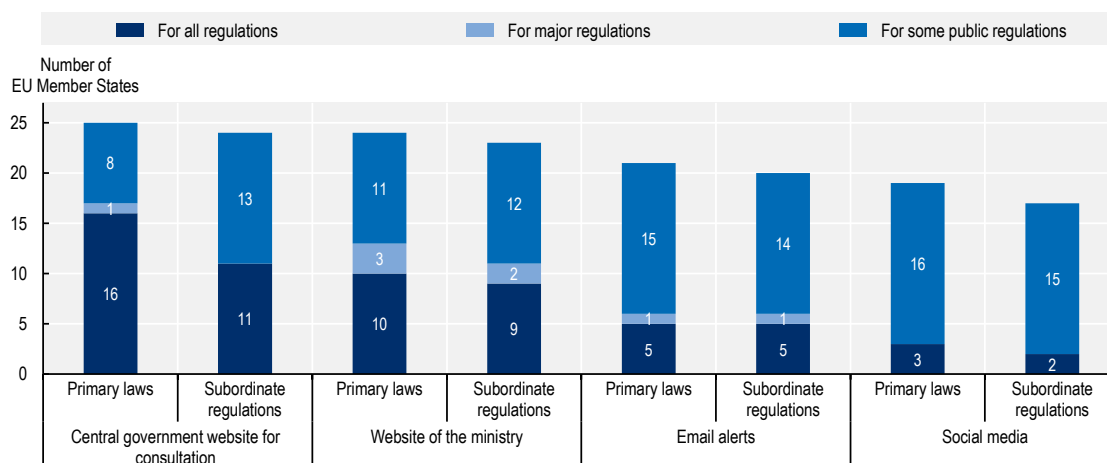


Note: Data is based on 27 EU Member States and the European Union.
Source: Indicators of Regulatory Policy and Governance (iREG) Survey 2021.

The EU Member States that notify the public in advance of upcoming consultations do it through different means such as roadmaps or announcements on a website to ensure that this information reaches relevant stakeholders. This shows these countries' commitment to transparency. **Croatia, Finland, Italy, Latvia** and **Lithuania** publish a road map or early warning document that lists all upcoming consultations in a defined period. In particular, **Croatia** publishes dates of consultations of each public body in the Consultations Plan at the beginning of the year, and **Italy** publishes a document outlining consultations that are planned to take place during a period of six months on the webpage of the Department for Legal and Legislative Affairs (DAGL). Other EU Member States make individual announcements of upcoming consultations. For instance, the **Slovak Republic** shares this information through its central legislative website at least 15 days prior to the consultation starting. The European Commission publishes a timeline of each initiative on their "*Have Your Say*" web portal, which for upcoming consultations shows that the initiative is "*in preparation*" and informs when it is planned to take place (see Box 2.2 below).

A large majority of EU Member States invite stakeholders to participate in consultations once they have started (Figure 2.5). Effectively communicating that consultations are underway to affected parties is crucial to receiving input as part of the development of regulations and for the transparency of the process. The most effective way to inform stakeholders about ongoing consultations is in part dependent on the resources and capacities of those involved (OECD, 2021^[4]). Most EU Member States invite stakeholders to participate in ongoing consultations both through ministries' websites and through central government consultation websites. Furthermore, governments use the latter more systematically to invite stakeholders to participate in consultations that pertain to primary laws (Figure 2.5).

Figure 2.5. Most EU Member States invite the public to participate in consultations via central consultation government websites



Note: Data is based on 27 EU Member States.

Source: Indicators of Regulatory Policy and Governance (iREG) Survey 2021.

EU Member States are aware that stakeholders may more regularly check their emails and social media than consultation websites, and also take advantage of these means to invite them to participate in ongoing consultations (Figure 2.5). Policy makers can reach participants more easily through these forms of communication, which may also stimulate stakeholder buy-in. As an example, stakeholders that are interested in consultations conducted by the European Commission can subscribe in the 'Have Your Say' web portal selecting specific policy areas to receive an email notification when a consultation has started (see Box 2.2). **Estonia, Malta** and the **Netherlands** have a similar subscription system where the public can register to get alerts based on the ministries and topics they are interested on. In other countries, ministries use their social media to invite the public to participate in consultations and in the post provide the link to visit the consultation website.

Box 2.2. The consultation website for the European Commission: "Have your Say"

"Have Your Say" is the European Commission's entry point for contributions to its legislative proposals, evaluations/fitness checks and communications. The European Commission posts and conducts consultations open to the public in the 'Have Your Say' portal. Stakeholders, including members of the public, businesses, scientific and technical experts, can contribute through the portal to initiatives as they are formed before and after the adoption by the European Commission.

The "Have Your Say" consultation portal has several features that make it accessible, comprehensive, user friendly and that can contribute to stakeholders' participation throughout several stages of policy making:

- Stakeholders can participate in the Commission's Call for evidence by providing feedback (including on the definition of the problem) and by participating in public consultations, provide feedback on regulatory drafts, and during the European Commission's adoption of the initiative. Likewise, participants can provide feedback on the simplification of existing regulations through the "Have Your Say: Simplify!" portal.

- Each initiative has a graphic timeline that indicates what stage of policy making the consultation concerns to (i.e. Call for evidence, draft, etc.), and also indicates whether each consultation stage is upcoming, open or closed.
- The home page displays a warning message informing stakeholders about the number of days remaining to provide comments in an active consultation. Some important consultations are showcased in the opening page.
- Stakeholders can filter consultations by stage, topic, type of act, and other criteria, which helps them to visualise the consultations more easily.
- Stakeholders can provide their feedback in 24 languages, which makes consultations accessible to a wide range of public.
- Comments and feedback are made public and visible to everyone after they are posted.
- Stakeholders can subscribe to get e-mail notifications of upcoming and ongoing consultations based on their topic of interest.

Note: To see more access https://ec.europa.eu/info/law/better-regulation/have-your-say_en

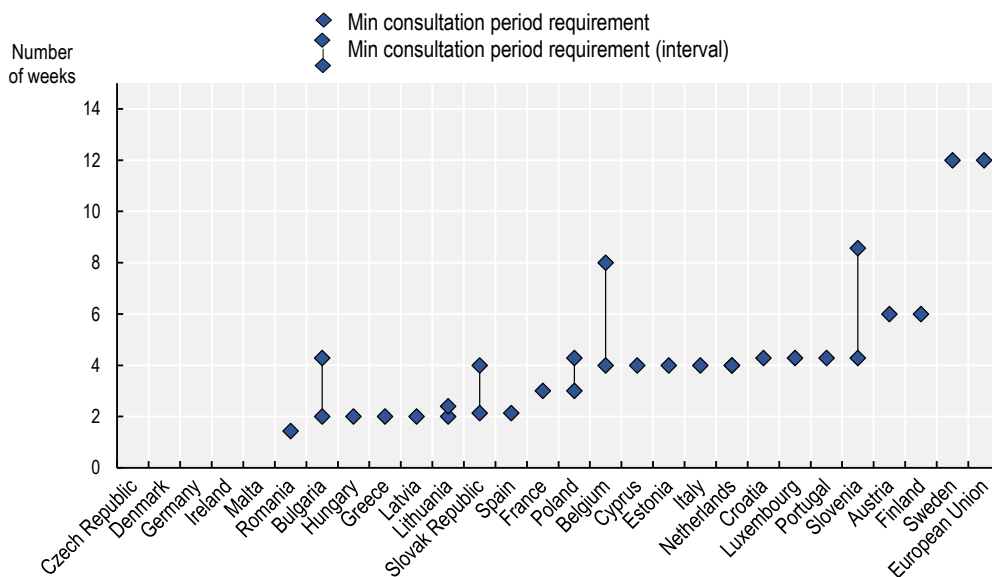
Source: European Commission (2021^[5]); Better Regulation Guidelines, https://ec.europa.eu/info/sites/default/files/swd2021_305_en.pdf; European Commission (2021^[6]), Better Regulation Toolbox, https://ec.europa.eu/info/sites/default/files/br_toolbox-nov_2021_en_0.pdf.

Once consultations are ongoing, in most EU Member States there are minimum periods during which consultations should be open to allow stakeholders enough time to provide their feedback (Figure 2.6). This time enables the public to study the documents made available for discussion and to form an opinion. In one third of EU Member States the minimum consultation period is of at least 30 days or four weeks. However, there are also extreme differences across EU Member States since countries like **Hungary**, **Greece**, **Latvia**, and **Spain** require consultations to be open only for at least two weeks, while **Sweden** and the European Commission require a minimum is 12 weeks (Figure 2.6). In **Romania**, at least 10 days of public consultation must be undertaken within a period of minimum 30 working days prior to the submission of the draft regulation for inter-ministerial approval.

Instead of having a minimum fixed time for consultation, **Bulgaria**, **Belgium**, **Slovak Republic** and **Slovenia** have an interval that guides policy makers to determine for how long a specific consultation should be open for (Figure 2.6). Intervals allow policy makers to be flexible and proportional and give each consultation the appropriate time it needs (OECD, 2021^[4]). The choice of the specific time that policy makers will grant for each consultation usually depends on the complexity of the policy draft that is being consulted on. In **Belgium** the minimum consultation period requirement ranges from four to eight weeks; while in **Lithuania** there is a minimum 10 working days which can be extended to 12 working days for voluminous or complex draft legal acts.

In **Czech Republic**, **Denmark**, **Germany**, **Ireland** and **Malta** there is not a mandatory interval or fixed consultation period; however, in **Denmark** and **Germany** policy makers are required to be proportional when deciding on the time for each consultation. Under the principle of proportionality in **Germany**, policy makers are to give appropriate, sufficient and fair time for consultation but it is at their discretion to decide whether public consultations will be carried out, in what format, and for how long. The Joint Rules of Procedure of the Federal Ministries and additional decisions of the Federal Government however recommend four weeks as a standard period. Similarly, in **Denmark**, the consultation period must be adapted to the specific circumstances, but should always be long enough that the parties consulted have the opportunity to prepare an adequate response. A consultation period of four weeks is thus recommended, but not mandated. However, information on whether actual consultations are sufficiently long for stakeholders to provide meaningful input in countries without minimum periods is currently not available.

Figure 2.6. The shortest consultation period in EU Member States is of less than two weeks and the longest is of at least 12 weeks



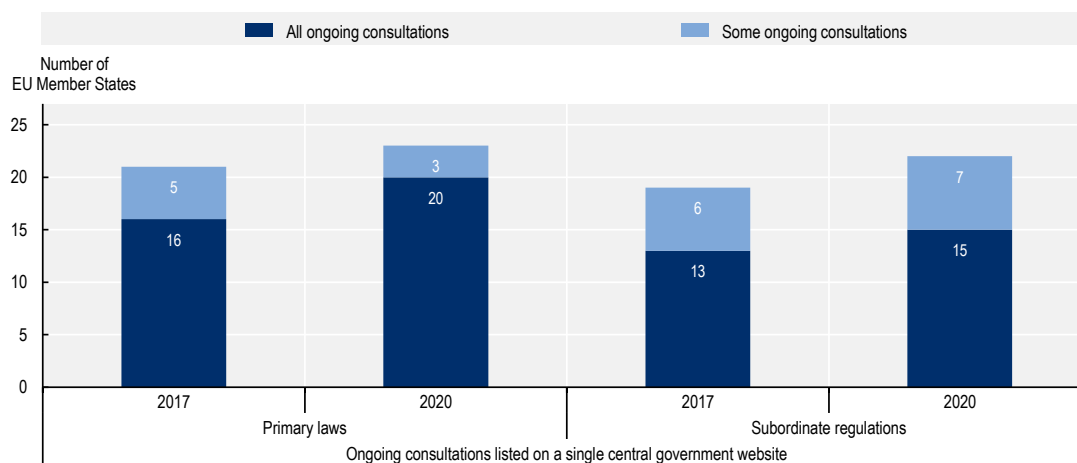
Note: The minimum consultations period requirements refer to primary laws. Data for France and Malta relates to subordinate regulations, since these countries have no formal requirements for minimum period for consultations for primary laws. Data is based on 27 EU Member States and the European Union.

Source: Indicators of Regulatory Policy and Governance (iREG) Survey 2021.

Consultations in EU Member States are generally open to the public

In most EU Member States, as well as in the European Commission, consultations are generally open to the public, which contributes towards their transparency. Only five EU Member States – namely **Austria, Czech Republic, Finland, Germany, and Ireland** – have no requirement to conduct consultation open to the general public. However, Austria and Finland regularly undertake consultations open to the general public in practice. Interestingly, in the last few years, more EU Member States are systematically listing their consultations on a single website (Figure 2.7). Having all consultations listed on a single website, or having all links redirecting to other consultation portals on a single website, can reduce stakeholders’ search costs, as they know there is a single place to look at to participate in a consultation.

Figure 2.7. More EU Member States now list their ongoing consultations on a single central website



Note: Data is based on 27 EU Member States.

Source: Indicators of Regulatory Policy and Governance (iREG) Surveys 2017 and 2021.

EU Member States enable stakeholders to provide feedback by providing supporting documents and consulting in different ways

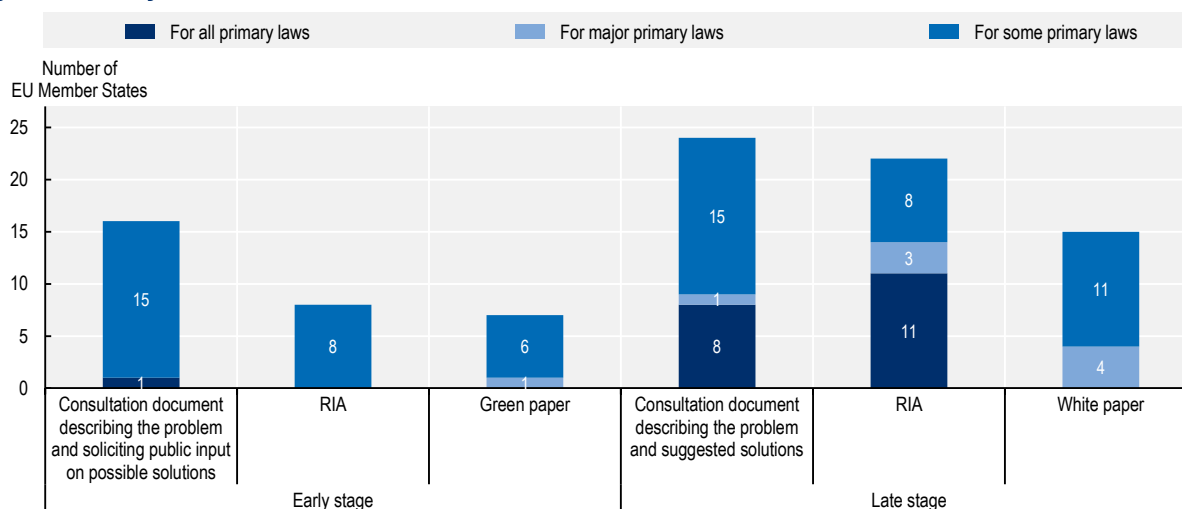
Most EU Member States enable stakeholder engagement by providing documents that help prepare their feedback and by undertaking tailored consultation approaches. Member States can further their consultation practices by more frequently using different consultation channels, such as citizen panels, at early stages of policy development and by more systematically providing documents such as green papers or preliminary impact assessments

Policy makers should offer documents and information that are clear, complete, timely, reliable and easy to both find and understand (OECD, 2017^[71]). For early stage consultations, stakeholders need to understand the policy problem, while for late stage consultation, in addition, it is important that they also be informed of the implementation of a preferred policy solution.

It is less common for policy makers in EU Member States to share supporting documents during early stage consultations, such as documents describing the problem and soliciting input from the public on possible solutions (Figure 2.8). That said, **Ireland** highlighted that documents can be shared at an early stage of policy development. As part of improving the quality of its education qualifications systems, **Ireland** published a green paper outlining its system and asking stakeholders on possible enhancement opportunities.

Conversely, it is more common that EU Member States share supporting documents with stakeholders once there is a regulatory draft (Figure 2.8). This allows citizens and businesses to better understand the preferred solution, to read the actual draft and its planned implementation, to look at the different costs and benefits that the regulatory proposal entails – with the Regulatory Impact Assessment (RIA) – and overall to be in a position to provide a more informed opinion.

Figure 2.8. During early stage consultation, stakeholders receive less documents, less systematically



Note: Data is based on 27 EU Member States

Source: Indicators of Regulatory Policy and Governance (iREG) Survey 2021.

As a means of transparency, policy makers in EU Member States could publish the information and evidence gathered as part of informing both early and late stage consultations. Providing, for example, draft RIAs, where a policy problem is identified and where the impacts of various policy options is assessed, enables stakeholders to help assess the feasibility of such options and to raise alternatives that may not have been considered previously by policy makers. This is however dependent on policy makers identifying and assessing a range of regulatory and non-regulatory policy alternatives in RIAs. Publishing RIAs for

consultation on regulatory drafts helps to focus stakeholder feedback, especially on potential implementation issues. Only eight EU Member States make RIAs available for some of their early stage consultations, while half of the EU Member States make RIAs systematically available when a regulatory draft exists (Figure 2.8).

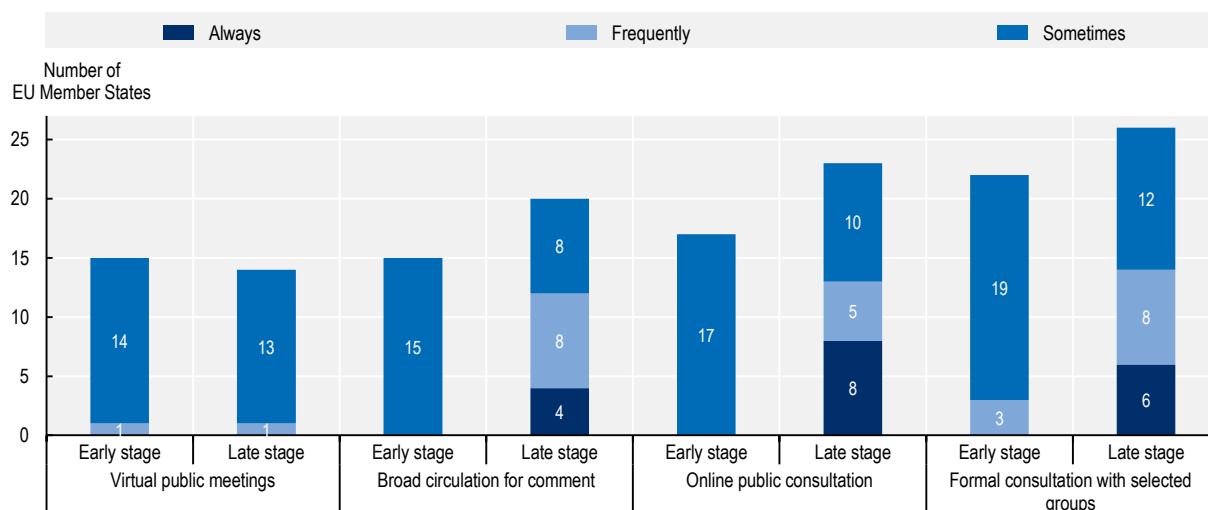
Policy makers should use different formats of engagement that facilitate participation, do not create unnecessary burden on those whose input is needed, and also help engage the appropriate stakeholders for the problem at hand. Stakeholders can have different resources, time availability and preferences for particular communication avenues (OECD, 2009^[8]; OECD, 2015^[9]). At the same time, policy makers are called to create strategies that can help reach out to diverse stakeholders in a way that all voices can be heard (OECD, 2012^[2]) (OECD, 2015^[9]; OECD, 2021^[4]).

The most common format of consultation in EU Member States is online and open to the general public, as well as formal engagement with selected groups of stakeholders such as trade unions or business association (Figure 2.9). EU Member States also conduct both physical and virtual public meetings, citizen panels or workshops, albeit less systematically.

EU Member States more often conduct closed consultations when engaging stakeholders at an early stage (Figure 2.9). Consulting with selected groups in a focused manner at an early stage can be appropriate for situations where input from a specific group or specific experts is needed. This is particularly true of qualified stakeholders, i.e. representative associations of businesses, consumers, employers and so on whose mission it is to articulate the opinions of their members, including on policy and regulatory drafts. Their capacities and ability to represent a range of smaller stakeholders means that they are particularly important to consult. Policy makers in EU Member States also use this focused approach for consultation on regulatory drafts (see Box 2.3). For policy problems of more general nature, it is also advisable to consult more openly (OECD, 2021^[4]; OECD, 2021^[10]), when inputs from the general public can, for example, help to inform the magnitude policy problem early on.

All EU Member States use more forms of engagement for consultations on draft regulations and use them more systematically (Figure 2.9). As explained before, this diversity of means facilitates stakeholders' participation, but it also contributes towards the transparency and inclusivity of consultations. Policy makers in EU Member States could benefit from more systematic engagement in early stage consultations.

Figure 2.9. EU Member States engage with stakeholders through more open formats at a later stage of policy making



Note: Data is based on 27 EU Member States.

Source: Indicators of Regulatory Policy and Governance (iREG) Survey 2021.

Box 2.3. Consultations can be proportionate and focused on selected stakeholders

Consultations can be burdensome for policy makers as well as for participants. Not all stakeholders are interested in all consultations nor have expertise in all topics. At the same time, policy makers benefit from input of specific stakeholders who have particular expertise or are particularly affected by the policy matter at hand. The OECD Recommendation on Open Government calls for policy makers to have a proportionate approach to consultation. The Recommendation encourages policy makers to be aware of the possibility of consultation fatigue, but also to dedicate specific effort to reach out to “*the most relevant, vulnerable, underrepresented, or marginalised groups in society*” (OECD, 2017^[7]). In addition to having open online consultations, which can have low administrative costs, policy makers must also adapt who they consult with to the type of problem that is being discussed and invest time and resources in those consultations.

Some EU Member States already require their policy makers to consult with specific parties depending on the topic of the consultation, for instance:

In **Germany**, when developing a regulation, federal ministries are required to consult with state governments, associations, and experts in the specific field affected by the policy problem or the draft regulation being discussed.

When regulations or policy problems might impact small businesses in the **Netherlands**, the policy maker invites SMEs, entrepreneurs and SME representatives to panel discussions about the problem at hand. During these discussions, the policy makers, together with these groups, consider the feasibility of the legislative proposal and discuss how these proposals might affect SMEs’ regulatory pressure.

In **Lithuania**, when regulations pertain to small businesses, policy makers invite to consultations representatives of The Small and Medium-sized Business Council and of the Tripartite council (formed by the tripartite co-operation between the Government, trade unions and employers’ organisations).

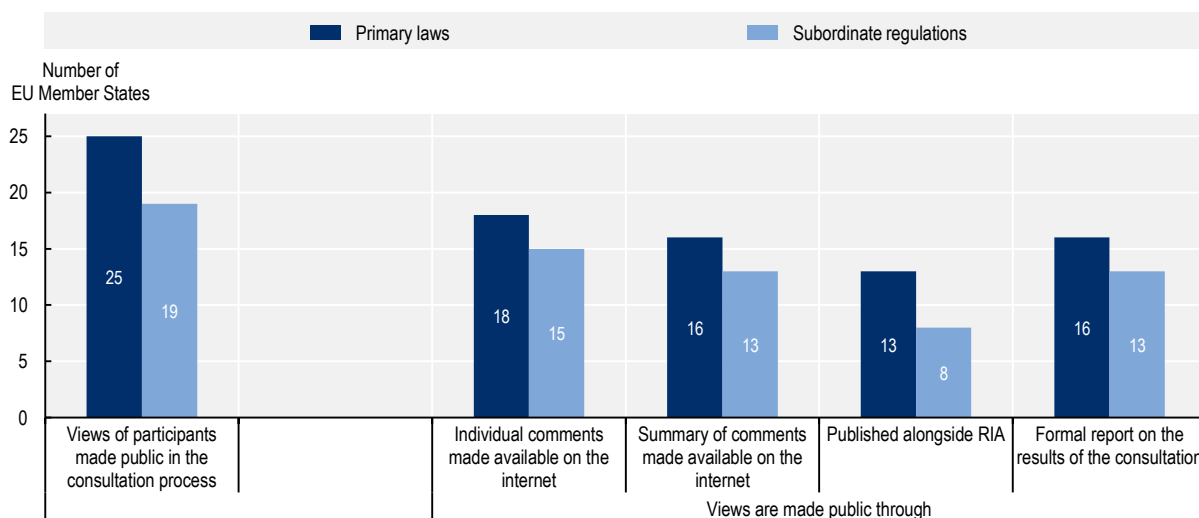
Policy makers in **Sweden** should ask the opinion of authorities, organisations and municipalities when conducting consultations. In addition, policy makers indicate which stakeholders each published consultation pertains to, even when it is open to the general public.

Source: Indicators of Regulatory Policy and Governance (iREG) Survey 2021; OECD (2021^[4]), Regulatory Policy Outlook 2021, <https://doi.org/10.1787/38b0fdb1-en>; OECD (forthcoming^[11]), SME test: Taking SMEs into account when regulating. Annex to the RIA’s Best Practice Principles.

Transparency and the use of comments

Most EU Member States publish participants’ views (Figure 2.10), which is another example of transparency during consultations. Policy makers sometimes make views of participants public immediately on their interactive websites, which is the case of the European Commission and some EU Member States such as **Bulgaria, Croatia, Greece and Slovenia**. On **Croatia**’s interactive consultation website, each input provided by stakeholders is visible, and other people are able to like or dislike each comment. Website users are also able to order comments by newest to oldest, or for instance, to see the most popular comment first. On **Slovenia**’s interactive consultation website, participants can reply to each other’s comments, transforming the consultation into an interactive conversation. In other countries, such as **The Netherlands**, comments are made public on the website, but only after the person providing the feedback authorises it. In other EU Member States, policy makers publish feedback from stakeholders after the consultation is over, either through a summary or together with the RIA for the regulatory proposal (Figure 2.10).

Figure 2.10. The majority of EU Member States publish stakeholders' comments

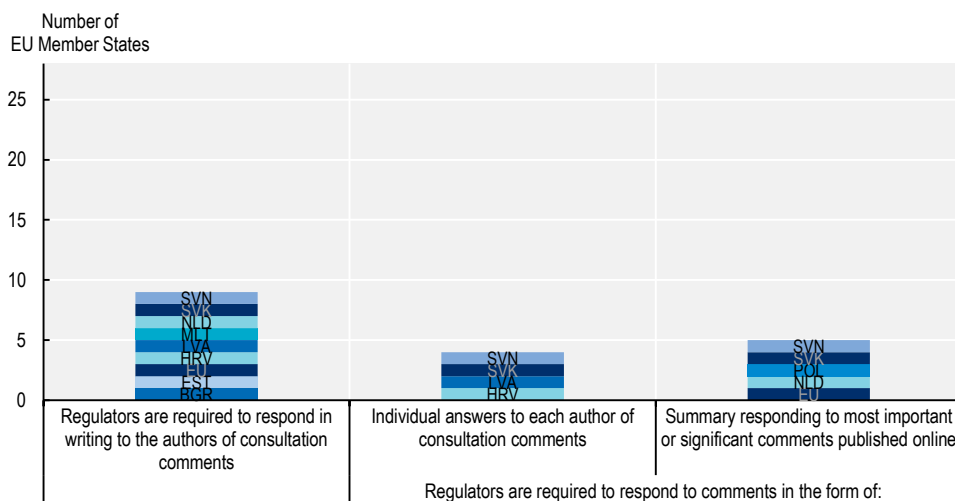


Note: Data is based on 27 EU Member States.

Source: Indicators of Regulatory Policy and Governance (iREG) Survey 2021.

Even though consultations in EU Member States are mostly transparent and public, less than a third of Member States have a requirement to respond in writing to comments received which undermines the purpose of consultations (Figure 2.11). Responding to comments shows stakeholders that their effort and opinions are valuable and were taken into account (Lind and Arndt, 2016_[11]). This can encourage stakeholder participation in future consultations as it provides a sense of ownership regarding regulations that affect their lives and business. Policy makers responses to consultation comments should not be limited to merely acknowledging receiving a comment, but should also explain how the comment was taken into account. In four EU Member States policy makers are required to respond to each individual comment directly, while another four Member States have a requirement to publish a summary responding to the most significant or important comments received (Figure 2.11). It is important to highlight that even in the absence of an explicit requirement, there are some EU Member States where policy makers do reply to individual comments directly online, for example when consultations are conducted through interactive websites.

Figure 2.11. Only a few EU Member States require policy makers to respond in writing to consultation comments

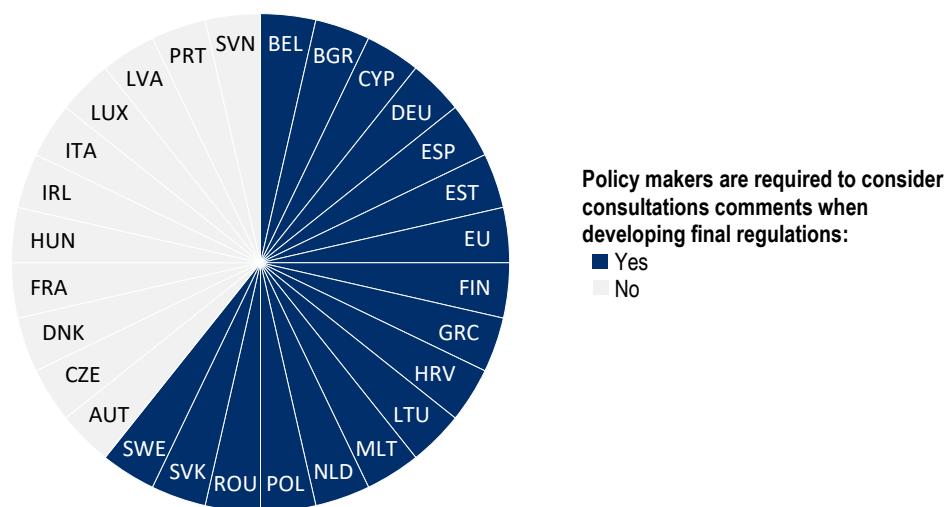


Note: Data is based on 27 EU Member States.

Source: Indicators of Regulatory Policy and Governance (iREG) Survey 2021.

In most EU Member States, the views expressed in the consultation process are made available to decision makers in the RIA report. In **Belgium, Estonia, Lithuania and Luxembourg** comments are summarised in other documents such as an explanatory memorandum or regulatory preamble document. Two-thirds of EU Member States require decision makers to actually consider comments when developing the final regulation (Figure 2.12). Knowing that their comments are seriously considered and potentially used to develop the final regulation can increase stakeholders' trust in the consultation process. It is important to note however that policy makers might not be able and should not be expected to action and incorporate all received comments in the final decision. Policy makers should make the best decision in the public interest whilst considering multiple and sometimes competing stakeholder interests. Stakeholders are by definition biased as they represent specific interests (e.g. trade unions, employer organisations, business representatives, and consumers' associations) and policy makers ought to carefully balance all interests received when treating stakeholder consultation responses.

Figure 2.12. Most EU Member States require decision makers to use consultations comments in any final regulation

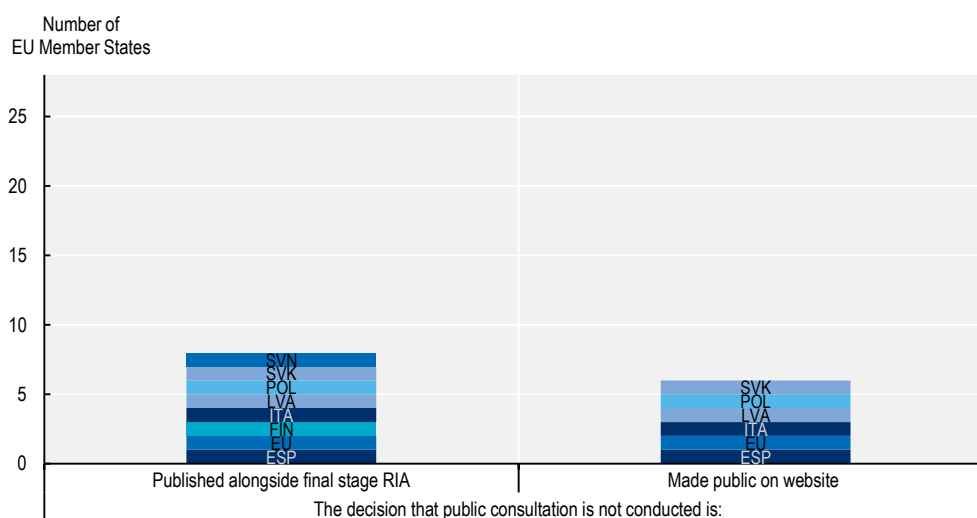


Note: Data is based on 27 EU Member States and the European Union.
Source: Indicators of Regulatory Policy and Governance (IREG) Survey 2021.

There needs to be more transparency when policy makers decide to not conduct consultation

Even though openly engaging with stakeholders is the norm in most EU Member States, in some cases consultation is bypassed. For example, in some EU Member States public consultation may not be considered necessary where regulatory proposals are political and/or sensitive or when policy makers consider that the costs of conducting consultation would outweigh its benefits, or be an ineffective method for reaching target groups (European Commission, 2021^[6]; Minister van Veiligheid en Justitie, 2011^[12]). In the vast majority of EU Member States, the decision itself requires a high level of approval, as either a minister or the head of the responsible department has to decide to forego a consultation that was required in principle. Policy makers in EU Member States however rarely inform the public of the decision to bypass a consultation (Figure 2.13). The lack of public communication regarding this decision is not in line with the overall transparency and openness policies that EU Member States show in other parts of their consultation process. Only seven EU Member States and the European Commission either publish the decision to bypass stakeholder consultation on a website or as part of the final RIA (Figure 2.13).

Figure 2.13. EU Member States can improve transparency when bypassing public consultation



Note: Data is based on 27 EU Member States and the European Union.

Source: Indicators of Regulatory Policy and Governance (IREG) Survey 2021.

Stakeholder engagement during the negotiation and transposition of EU directives/regulations

Facilitating Member States' domestic stakeholders in EU consultations

Individual Member States play an important role ensuring that their stakeholders are informed about European Commission proposals that affect them. In policy areas where the EU has sole competency all proposals are generated by the European Commission. In practice this means that consultations for these proposals follow the European Commission's processes (Box 2.4). Similarly, standard Member State procedures apply where they have policy exclusivity (see previous section). For areas of shared regulatory competency a mix will apply.

Box 2.4. Stakeholder engagement by the European Commission

Under Article 11(3) of the [Treaty on European Union](#), the European Commission is required to conduct broad consultations with parties concerned in order to ensure that the EU legislation is coherent and transparent.

Stakeholder consultations support policymaking by facilitating the collection of evidence. According to the *Better Regulation Guidelines* (2021^[5]), taking into account stakeholders' views and experience helps to improve the Commission's understanding of the issues at stake and leads to better quality and credibility of proposed policies, while also fostering trust and acceptance by the EU citizens.

Consultations should be carried out when preparing initiatives that are accompanied by an impact assessment. For evaluations of policies and programmes of broad public interest and for fitness checks, a public consultation is highly recommended. Where "back-to-back" impact assessments and evaluations are carried out, the mandatory public consultation should cover both the backward- and forward-looking elements, to provide input for the evaluation and the impact assessment. However,

consultations on very technical initiatives and of limited interest to the general public tend to be targeted at specific groups of stakeholders, e.g. experts in the field.

Stakeholder engagement in the European Commission is guided by four principles: First, consultations should be inclusive and engage a wide range of stakeholders. Second, the consultation process and the use of the input should be transparent to those involved and to the general public (including those with disabilities). Third, consultations should be conducted when stakeholders' input can still make a difference, while taking into account proportionality and other constraints. Fourth, the consistency of consultation processes, analysis, review and quality control should be ensured across all services.

The European Commission's consultation system is based on the **"Call for evidence"** which combines two elements:

- Feedback to the Call for evidence documents that present key elements of impact assessments and evaluations of broad public interest and fitness checks,
- And public consultation, if it is required.

At the initial stage of policy development, the public has the possibility to provide feedback on the European Commission's policy plans through its "Call for evidence", including data and information they may possess on all aspects of the intended initiative and the initial impact assessment. Feedback is taken into account by the European Commission when further developing the policy proposal or when evaluating several related laws or policies in a single policy area. The feedback period for the "Call for evidence" is four weeks.

For most major policy initiatives and those accompanied by an impact assessment, a 12-week public consultation is conducted simultaneously or not with the Call for evidence through the multilingual "Have Your Say" portal and may be accompanied by other consultation methods (such as targeted consultation, workshops, and small-business panels). The consultation activities allow stakeholders to express their views on key aspects of the proposal and the main elements of the impact assessment or evaluation under preparation.

Stakeholders can provide feedback to the Commission on its proposals and their accompanying final impact assessments once they are adopted by the College. Stakeholder feedback is presented to the European Parliament and Council and aims to feed into the further legislative process. The consultation period for adopted proposals is 8 weeks. Draft delegated acts and important implementing acts are also published for stakeholder feedback on the European Commission's website for a period of 4 weeks. At the end of the consultation work, an overall synopsis report should be drawn up covering the results of the different consultation activities that took place.

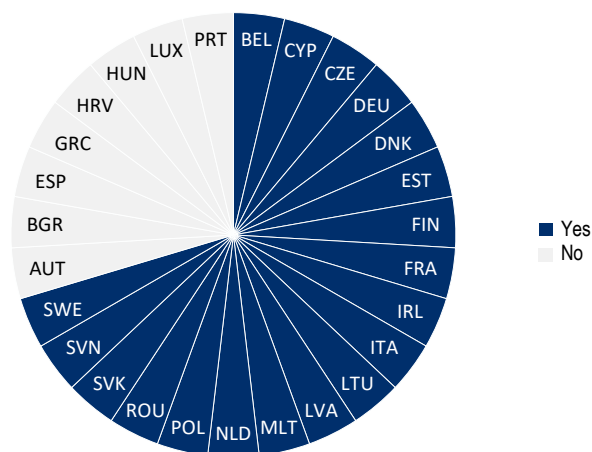
Finally, the Commission also consults stakeholders as part of the *ex post* evaluation of existing EU regulations. This includes feedback on evaluation "Call for evidence" for the review of existing initiatives, and public consultations on evaluations of individual regulations and "fitness checks" (i.e. "comprehensive policy evaluations assessing whether the regulatory framework for a policy sector is fit for purpose"). In addition, stakeholders can also provide views and recommendations on how to simplify existing EU legislation via the "Have your say: Simplify!" web portal.

Source: Indicators of Regulatory Policy and Governance (iREG) Survey 2021; OECD (2019^[13]), Better Regulation Practices across the European Union, <https://doi.org/10.1787/9789264311732-en>; European Commission (2021^[5]), Better Regulation Guidelines, https://ec.europa.eu/info/sites/default/files/swd2021_305_en.pdf.

Facilitating domestic stakeholder participation in European Commission's consultations helps to ensure that all views are included and taken into account by the European decision makers. Member States' stakeholder input can help to identify feasible alternatives to those proposed by the European Commission; identify and assess potential benefits and costs of various policy options; and raise potential implementation issues. Member States thus have an important role in ensuring that European legislative proposals consider all stakeholder views and are evidence-based (see Chapter 3).

Nineteen EU Member States facilitate the engagement of domestic stakeholders in the European Commission's consultation processes (Figure 2.14). Most EU Member States inform stakeholders of the European Commission's consultations through their individual ministries' websites, where stakeholders are redirected to the relevant Commission consultation page. Some EU Member States (**Denmark**, **Finland**, the **Netherlands** and **Slovenia**) list the European Commission's consultations on their respective central consultation portal that their own stakeholders are already familiar with. Ministries in **France** communicate the European Commission's public consultations to stakeholders through publication on their websites or through direct exchanges relevant parties. **Germany** uses a multi-step process to assist stakeholders prioritise potentially relevant consultations. The Federal Ministry of Economic Affairs and Energy contacts a large range of stakeholder representatives to examine all proposals of the annual Commission Work Programmes with regards to potential SME impacts. The Federal Ministry of Economic Affairs and Energy then publishes a list that includes all proposals of the Commission Work Programme and indicates their importance for SMEs. The list is made publicly available online. It includes regularly updated information on ongoing Commission consultations and aims to encourage domestic stakeholders to actively participate.

Figure 2.14. A majority of EU Member States report informing domestic stakeholder about European Commission consultations



Note: Data is based on 27 EU Member States.

Source: Indicators of Regulatory Policy and Governance (iREG) Survey 2021.

Half of the EU Member States facilitate the co-ordination of domestic government input in the European Commission's consultations. Qualitative evidence suggests that the national ministry in charge of the regulatory agenda co-ordinates with other ministries or officials to submit an official response. For example, government officials in **Latvia** are engaged through a co-ordination mechanism – during the consultation process the competent institution involves the other relevant institutions and government officials to formulate a government response to relevant EU proposals.

The use of stakeholder engagement by EU Member States to inform the negotiation of EU directives and regulations

Engaging with stakeholders at the early stages of policy development helps to identify specific issues and provides the opportunity to citizens to help shape regulatory proposals (OECD, 2021^[4]). The types of legislative acts available to the European Union were described in Chapter 1. Two relevant dimensions to consider in the EU context are the extent of substitutable and complementary stakeholder engagement:

- The *substitutionary dimension* relates to EU Member States utilising the input received to the European Commissions' proposals by their domestic stakeholders (irrespective of whether the Member State helped to facilitate that input).
- The *complementary dimension* is when individual EU Member States call for domestic input directly from stakeholders in forming their negotiating position. This may unearth new stakeholders who were either unwilling, unable – or, if not facilitated by the EU Member State – uninformed about the European Commission's own stakeholder engagement on a proposal.

One interesting possibility is that the same stakeholder input can influence policy development differently. For instance a submission to the European Commission that provides detailed disaggregated country level anticipated impacts may not be utilised by the Commission as part of its policy development owing to the fact that the costs may not be representative of the anticipated distribution across the EU. However, such a submission resubmitted to an individual Member State may be viewed as significantly more influential in informing the country's negotiating position. The foregoing highlights that EU Member States can receive stakeholder input through a variety of different means to help inform their respective negotiation positions on the European Commission's proposals.

Despite the potential for Member States to utilise different engagement strategies the reality is more mixed. Only six Member States' governments have systematic requirements to conduct stakeholder engagement to define a negotiating position for the development of EU regulations or directives. Of these, **Italy** and the **Slovak Republic** systematically open stakeholder engagement to the general public (Table 2.1). An additional six Member States require stakeholder engagement to inform their negotiation position for some EU regulations and directives. The approach taken varies significantly across individual Member States (Box 2.5).

Table 2.1. EU Member States use the European Commission's consultations more than requiring stakeholder engagement to form a negotiation position

	Stakeholder engagement is required to define negotiating positions	Stakeholder engagement to define negotiating positions must be open to the public	Results of European Commission's consultations are used to inform negotiating positions
Austria			
Belgium			
Bulgaria			
Croatia			
Cyprus			
Czech Republic			
Denmark			
Estonia			
Finland			
France			
Germany			
Greece			

	Stakeholder engagement is required to define negotiating positions	Stakeholder engagement to define negotiating positions must be open to the public	Results of European Commission's consultations are used to inform negotiating positions
Hungary	For some regulations/ Sometimes	Never	Never
Ireland	Never	Never	For some regulations/ Sometimes
Italy	Systematic approach	Systematic approach	For some regulations/ Sometimes
Latvia	Systematic approach	Never	Systematic approach
Lithuania	Never	Never	Systematic approach
Luxembourg	Never	Never	Never
Malta	Never	Never	For some regulations/ Sometimes
Netherlands	Never	Never	Systematic approach
Poland	For some regulations/ Sometimes	Never	Systematic approach
Portugal	Never	Never	Systematic approach
Romania	Never	Never	Systematic approach
Slovak Republic	Systematic approach	Systematic approach	For some regulations/ Sometimes
Slovenia	For some regulations/ Sometimes	For some regulations/ Sometimes	Systematic approach
Spain	Never	Never	Never
Sweden	For some regulations/ Sometimes	For some regulations/ Sometimes	For some regulations/ Sometimes

- Systematic approach
- For some regulations/ Sometimes
- Never

Note: Data is based on 27 EU Member States.

Source: Indicators of Regulatory Policy and Governance (iREG) Survey 2021.

Approximately a third of Member States report to systematically use the results of the European Commission's consultation processes as input to inform the national negotiating position for the development of EU regulations or directives, profiting from synergy effects through the stakeholder consultation framework of the European Commission. An additional ten Member States sometimes use the Commission's consultation results to inform their respective negotiating position (Box 2.5).

Box 2.5. Selected Member States' negotiation procedures on European Commission's proposals

In **Slovenia** the relevant ministry prepares the draft position and identifies the most important issues and the relevant stakeholders groups to be included in the consultation process, depending on the content of the proposed regulation. Before presenting the draft position to the stakeholders, intergovernmental consultation takes place to discuss open issues. Beside regular consultation via a ministerial advisory body, consultation is most often carried out in writing. Slovenia's positions for the most important dossiers, for instance regarding the Common Agricultural Policy and Common Fisheries Policy, undergo public consultation and conferences.

While **Poland** has no requirement for open public consultation on European Commission's proposals, government officials in different ministries are usually consulted. The mechanism of consultation and conducting work on EU draft legislative acts is included in the Polish guidelines. The mechanism is generally applicable from the official presentation of the draft EU legislative act by the European Commission to the EU Council and European Parliament. Ongoing consultations and dialogue with stakeholders occurs throughout the whole process. All concerned stakeholder organisations are proactively provided with information obtained from the work of the European Commission committee/working group. In this working group the Commission consults the Member States on the

proposal, and leading experts encourage participation in the consultation, in particular to report any reservations, doubts, proposals for more favourable solutions, simplifications, etc.

Source: Indicators of Regulatory Policy and Governance Survey 2021; Radaelli et al. (unpublished^[14]), Extending the OECD indicators of Regulatory Policy and Governance (iREG) to all EU Member States of the European Union.

To assist in carrying out stakeholder engagement, five Member States have specific guidance available to government officials to inform the national negotiating position for the development of EU directives and regulations (Box 2.6).

Box 2.6. Finnish and Slovakian stakeholder engagement to define the negotiation position

The formal requirement to carry out stakeholder engagement in **Finland** is triggered with the mandate given, in practice, once the European Commission adopts the proposal. The Finnish Government must submit a “Letter” to the Parliament informing the Parliament about a new initiative and the Government stance on it, and seeking the formal mandate by Parliament to negotiate at the EU level. The Letter together with the RIA is submitted for public consultation.

Public consultation occurs in two stages. First, the Government informs and seeks feedback from one or more of the permanent sectoral sub-committees of the Committee of the EU Affairs. This is an informal consultation, and it is carried out mainly via email and by individual contacts for six weeks. This gives stakeholders a possibility to react to a change in the proposal also during the negotiation, not only during the first six weeks. Individual ministries might decide to run additional consultation rounds on the Letter, extending it to selected additional stakeholders, if they deem it appropriate. Second, the Parliament also carries out public consultation after receiving the Letter, largely with the same stakeholders as the Government.

In the **Slovak Republic**, stakeholder engagement is required to define the negotiating position for EU directives and regulations and is required to be open to the general public. Regular Preliminary Opinions (i.e. the assessment of impacts) are publically available on the Slov-Lex legislation consultation portal. This allows the general public and any relevant stakeholders to comment and provide feedback on the Preliminary Opinion. In addition, stakeholders can attend the discussion at the national Commission for European Affairs; however, except for representatives of employees and employers, stakeholders are not actively invited and engaged in these discussions.

Central Authorities can also raise any comments or objections to the Preliminary Opinion via the consultation portal. Any disagreements with the Preliminary Opinion are resolved in the consultation process or with the help of the national Commission for European Affairs. Should this not be successful, the Opinion is then presented to the Government with the disagreement. A Preliminary Opinion approved by the Slovak Government is generally binding and serves as the basis for negotiation positions of the Slovak Republic.

Source: Radaelli et al. (unpublished^[14]), Extending the OECD indicators of Regulatory Policy and Governance (iREG) to all EU Member States of the European Union.

Overall results suggest that the majority of EU Member States both facilitate and rely on the consultations of the European Commission. One-third of EU Member States do facilitate the European Commission’s consultations – and use the ensuing results – combined with a requirement to conduct their own stakeholder engagement to inform their respective negotiation positions. **Cyprus, Germany, Ireland, Lithuania, Malta, the Netherlands, and Romania** have no requirement to conduct stakeholder

engagement on proposals of the European Commission and instead both facilitate domestic stakeholders' input into the Commission's consultation processes, and then utilise the ensuing results to inform their negotiating positions.

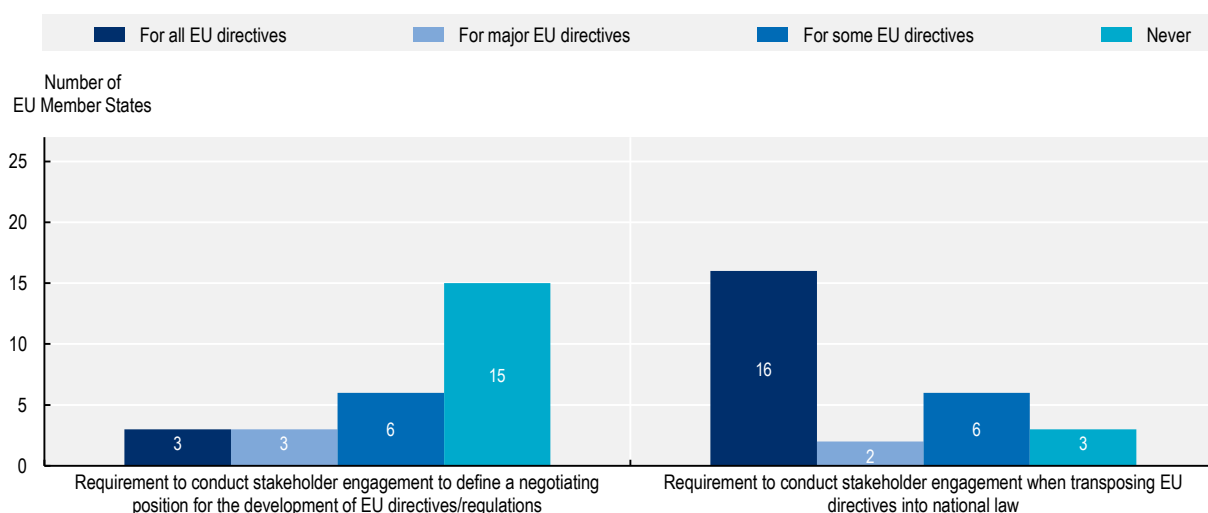
Despite the availability of the European Commission's consultation results, some Member States do not have a requirement for the government to conduct stakeholder engagement to define their negotiating position, nor use the results of the Commission's consultation processes. To some extent this could be because the Member State facilitates the European Commission's consultations and considers that this is sufficient – the substitutionary dimension previously discussed. This may be the case in **Belgium** and the **Czech Republic**, however in **Austria, Greece, Luxembourg, and Spain** it appears that little is done to inform domestic stakeholders about consultations of the European Commission, and there are no requirements in place to either conduct stakeholder engagement or utilise the Commission's consultation results.

The lack of both substitutionary and complementary stakeholder engagement is particularly worrying in the development and negotiation of EU regulations. Since these are directly applicable and binding in their entirety without being transposed into EU Member States' national law, there are fewer opportunities to involve stakeholders and to use their feedback in shaping the legislative proposal.

The use of stakeholder engagement by EU Member States to inform the transposition of EU directives

While few member states require stakeholder engagement to define their negotiation position, the vast majority of Member States have a requirement to undertake stakeholder engagement when transposing EU directives into national law (Figure 2.15). There has been no change in the number of Member States undertaking stakeholder engagement at the transposition stage since 2017. **Ireland, the Netherlands, and Portugal** still have no requirement to do conduct stakeholder engagement at either the negotiation or transposition stages, although both the **Netherlands** and **Portugal** reported that stakeholder engagement at the transposition stage is occasionally done in practice.

Figure 2.15. Stakeholder engagement is more systematically required at the transposition stage than at the negotiation stage of EU directives

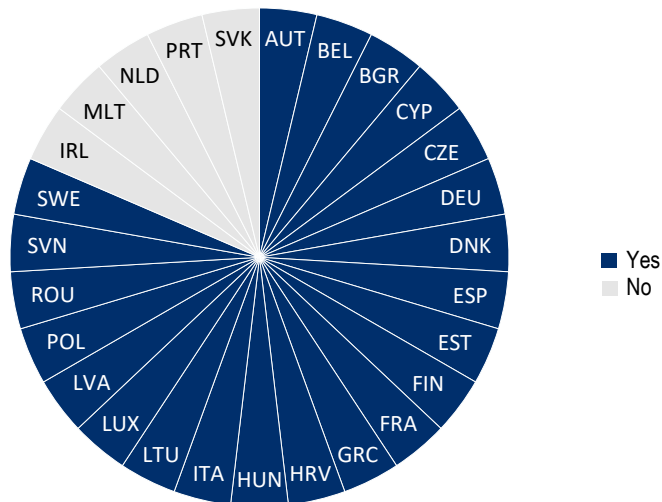


Note: Data is based on 27 EU Member States.

Source: Indicators of Regulatory Policy and Governance (iREG) Survey 2021.

Transposing EU directives involves amending existing or adopting new domestic regulation. As a result, the vast majority of Member States have the same requirements for stakeholder engagement during the transposition of EU directives as they have for regulations originating domestically (Figure 2.16). From a practical perspective it should be noted that consultation at the transposition stage is centrally concerned with assessing various implementation options, since the decision to regulate has already been made. Only **Malta** and the **Slovak Republic** have different stakeholder engagement requirements for transposed EU directives than for regulations originating domestically (see Box 2.7).

Figure 2.16. The vast majority of EU Member States have the same stakeholder engagement requirements domestically as they do for transposing EU directives



Note: Data is based on 27 EU Member States.

Source: Indicators of Regulatory Policy and Governance (iREG) Survey 2021.

Box 2.7. Differences between stakeholder engagement requirements for laws originating domestically and those originating at the EU level

In **Malta**, MUESAC (the Malta-EU Steering Action Committee) is instrumental at defining a negotiating position and during transposition of major EU directives. MUESAC is responsible for conducting consultation on EU legislative proposals, informing citizens on the latest developments in the EU and issues related to the EU Funding.

In order to optimise resources and prevent consultation fatigue, in co-operation with the Core Group, MEUSAC selects the major EU initiatives with great impact on society, be in, societal, economic and environmental terms, and identifies stakeholders who are likely to be affected the most by the EU directive at hand. This process ensures that the consultation is appropriately targeted and brought to the attention of relevant and affected parties. During the transposition stage, further implementation details, such as timing, training, information support, communication or legal drafting, have to be taken into account. During the consultation process there is a degree of co-ordination between the responsible Ministry and MEUSAC so as not to duplicate efforts.

Slovakia has a well-established public consultation in the implementation phases of policy making. Key stakeholders are consulted during the consultation on the preliminary position (the position and the legislative documents are available on the government's Slov-lex portal).

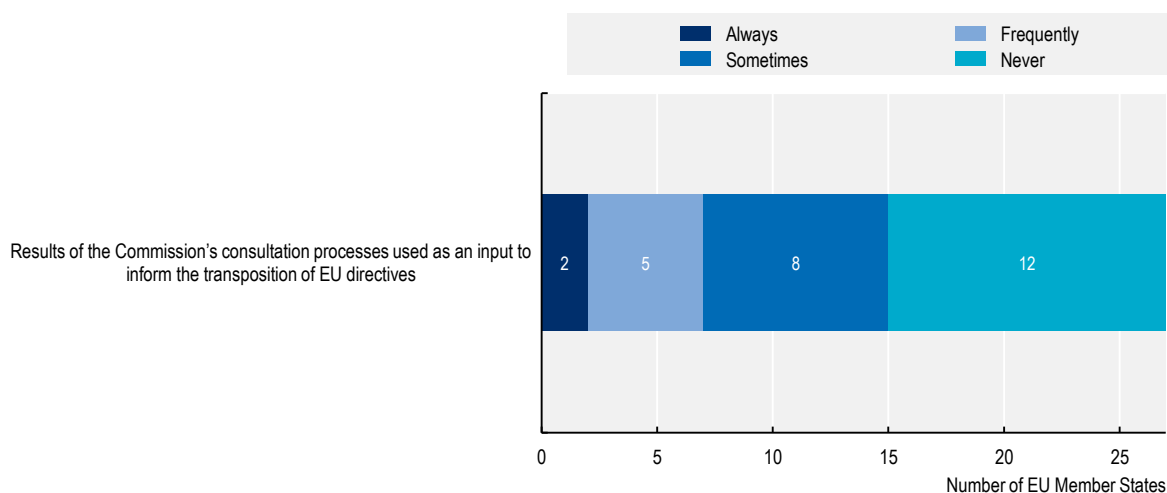
There are a few differences between consultation requirements for transposed EU legislations and for regulations originating domestically. When transposing EU legislation, the dossier accompanying the proposal must include a correlation table of the legislative proposal by the European Union administration and the List of implementing legally binding acts of the European Union. The correlation table is part of the governmental legislative rules and it monitors and rates the transposition of the EU legislation (the correlation tables are published on the Slov-lex portal).

Source: Indicators of Regulatory Policy and Governance, iREG 2021; Radaelli et al. (unpublished^[14]), Extending the OECD indicators of Regulatory Policy and Governance (iREG) to all EU Member States of the European Union.

EU Member States report that they use the European Commission's consultation results less systematically at the transposition stage than at the negotiation stage (Figure 2.17). One reason might be that the results of consultations conducted by the European Commissions are out of date due to changes to draft directives in the Council or the European Parliament (see Chapter 1), or because national adjustments in the transposition including gold plating require additional information (see Chapter 3).

Malta and **Romania** are the only Member States that report to always use the results of the European Commission's consultations. In **Romania**, the results of the European Commission's consultations are processed by the departments for EU affairs and used in the legislative drafting process when transposing the EU directive.

Figure 2.17. The European Commission's consultation results are not systematically used at the transposition stage



Note: Data is based on 27 EU Member States.

Source: Indicators of Regulatory Policy and Governance (iREG) Survey 2021.

Slovenia uses the results of the European Commission's consultation (including the assessment of the EU directive and reasons for adoption) for preparing the legislative proposal with which the European directives are transposed into national legislation. In **Austria**, the results of the Commission's consultation processes can be integrated into the materials used to draft laws, e.g. by giving reasons and explanations for a draft piece of legislation. In addition to use in transposition, **Croatia** uses the results of the European Commission's consultation including impact assessments and opinions/recommendations of the Regulatory Scrutiny Board during the preparation of national opinions regarding EU regulations.

More than a half of the EU Member States require that consultations on the transposition of EU directives be open to the general public. For example in **Denmark**, all rules, including transposed EU directives, are required to undergo a public and internal consultation process. The consultation on EU proposals is carried

out online, via the domestic consultation portal, in addition to taking place through the sectoral EU committees (Radaelli, Dunlop and Allio, unpublished^[14]).

In **Germany**, there are different rounds of consultation on transposed directives depending on the ministry concerned – for instance, the Social Affairs and Employment Ministry conducts consultations and public debates that feed into the RIA process on the proposal to transpose the directive. All proposals of the Federal Government are published online together with the statements of the associations involved in the consultation. It is not required that the consultation is open to the general public (Radaelli, Dunlop and Allio, unpublished^[14]).

In **Poland**, the draft acts transposing EU legislation available during stakeholder and inter-ministerial consultation should be accompanied by several documents. This includes a “reverse compliance table” that provides a summary of the draft provisions of the Act, which go beyond the implementation, and an explanation of the necessity of including them within the project.

Eight EU Member States report having specific guidance available to government officials for conducting stakeholder engagement to inform the transposition of EU directives.

References

- European Commission (2021), *Better Regulation Guidelines*, [5]
https://ec.europa.eu/info/sites/default/files/swd2021_305_en.pdf.
- European Commission (2021), *Better Regulation Toolbox*, [6]
https://ec.europa.eu/info/sites/default/files/br_toolbox-nov_2021_en_0.pdf.
- Lind, E. and C. Arndt (2016), “Perceived Fairness and Regulatory Policy: A Behavioural Science Perspective on Government-Citizen Interactions”, *OECD Regulatory Policy Working Papers*, No. 6, OECD Publishing, Paris, <https://doi.org/10.1787/1629d397-en>. [1]
- Minister van Veiligheid en Justitie (2011), *Brief van de Minister van Veiligheid en Justitie aan de Voorzitter van de Tweede Kamer der Staten-Generaal*, [12]
<https://zoek.officielebekendmakingen.nl/kst-29279-121.html>.
- OECD (2021), *Government at a Glance 2021*, OECD Publishing, Paris, [10]
<https://doi.org/10.1787/1c258f55-en>.
- OECD (2021), *OECD Regulatory Policy Outlook 2021*, OECD Publishing, Paris, [4]
<https://doi.org/10.1787/38b0fdb1-en>.
- OECD (2020), *Innovative Citizen Participation and New Democratic Institutions: Catching the Deliberative Wave*, OECD Publishing, Paris, <https://doi.org/10.1787/339306da-en>. [3]
- OECD (2019), *Better Regulation Practices across the European Union*, OECD Publishing, [13]
<https://doi.org/10.1787/9789264311732-e>.
- OECD (2017), *Recommendation of the Council on Open Government*, OECD/LEGAL/0438. [7]
- OECD (2015), *Policy Shaping and Policy Making: The Governance of Inclusive Growth*, OECD Publishing, Paris, <http://www.oecd.org/gov/governance-for-inclusive-growth.htm>. [9]
- OECD (2012), *Recommendation of the Council on Regulatory Policy and Governance*, OECD Publishing, Paris, <https://doi.org/10.1787/9789264209022-en>. [2]

- OECD (2009), *Focus on Citizens: Public Engagement for Better Policy and Services*, OECD Publishing, Paris, <https://doi.org/10.1787/9789264048874-en>. [8]
- OECD (forthcoming), *SME test: Taking SMEs into account when regulating. Annex to the RIA's Best Practice Principles*, OECD Publishings, Paris. [11]
- Radaelli, C., C. Dunlop and L. Allio (unpublished), *Extending the OECD indicators of Regulatory Policy and Governance (iREG) to all Member States of the European Union*. [14]



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