

**“Public Consultation in Rule-Making:
A Practical Guide” –
A Training Course for Practitioners,
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1. What? Definition.
2. Why? Functions.
3. When? Positioning.
4. Who? Stakeholders.
exercise
5. How? Methods.
6. How best? Best practices.
7. Limits.
8. Consultation design.
exercise

1. What?

- “Systematic procedures by which governmental bodies ask stakeholders for input into the policy making or law making process.”
 - > Stakeholders:
 - parties which are affected by the measures but external to the decision making body
 - experts
 - > Input:
 - rational, evidence based law making
 - democratic support

1. What?

Consultation ♥ Better Regulation

1. Enlargement and strengthening of the rational, analytical basis for sound decision making
2. Enlargement and strengthening of public participation in the decision making process

1. What?

Consultation and...

- political decision making?
 - > consultation is not a substitute for politics
 - > involving civil society in the decision making process
- lobbying?
 - > when civil society tries to gain access to policy and law making.
 - > Consultation is the opposite: state trying to involve civil society through systematic, procedures!

2. Why? Functions.

- Notifying function
- Policy analytical function
- Empirical function
- Control function
- Legal function
- Democratic function

(with Prof Patricia Popelier)

The notifying function

- Informing the public, target groups and enforcement bodies.
- Transparency

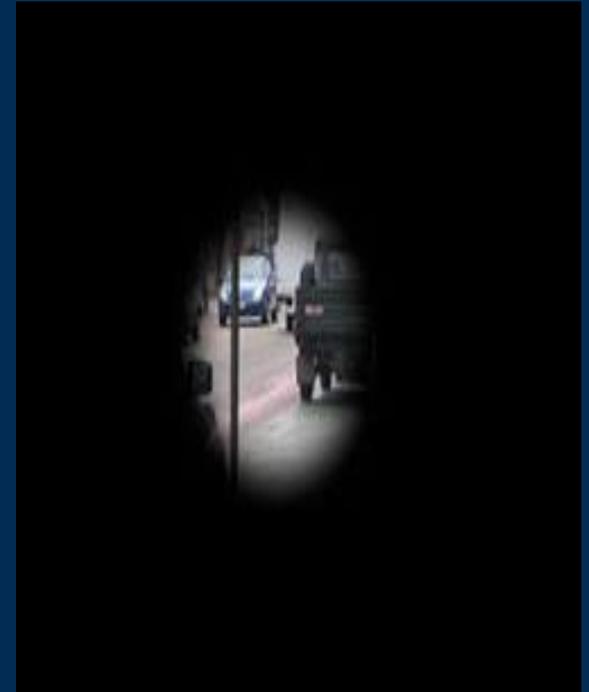
The empirical function and the control function

- Evidence based law making
- Identification of problems
- Assessment of effects

- External control
- Identification of deficiencies

The policy analytical function

- Picturing potential alternatives
- A duty to challenge
- Avoid tunnel vision
- Complement technocratical knowledge with broad consultations



The legal function

- Fulfilment of formal requirement
- Making legal acts juridical review proof: justification

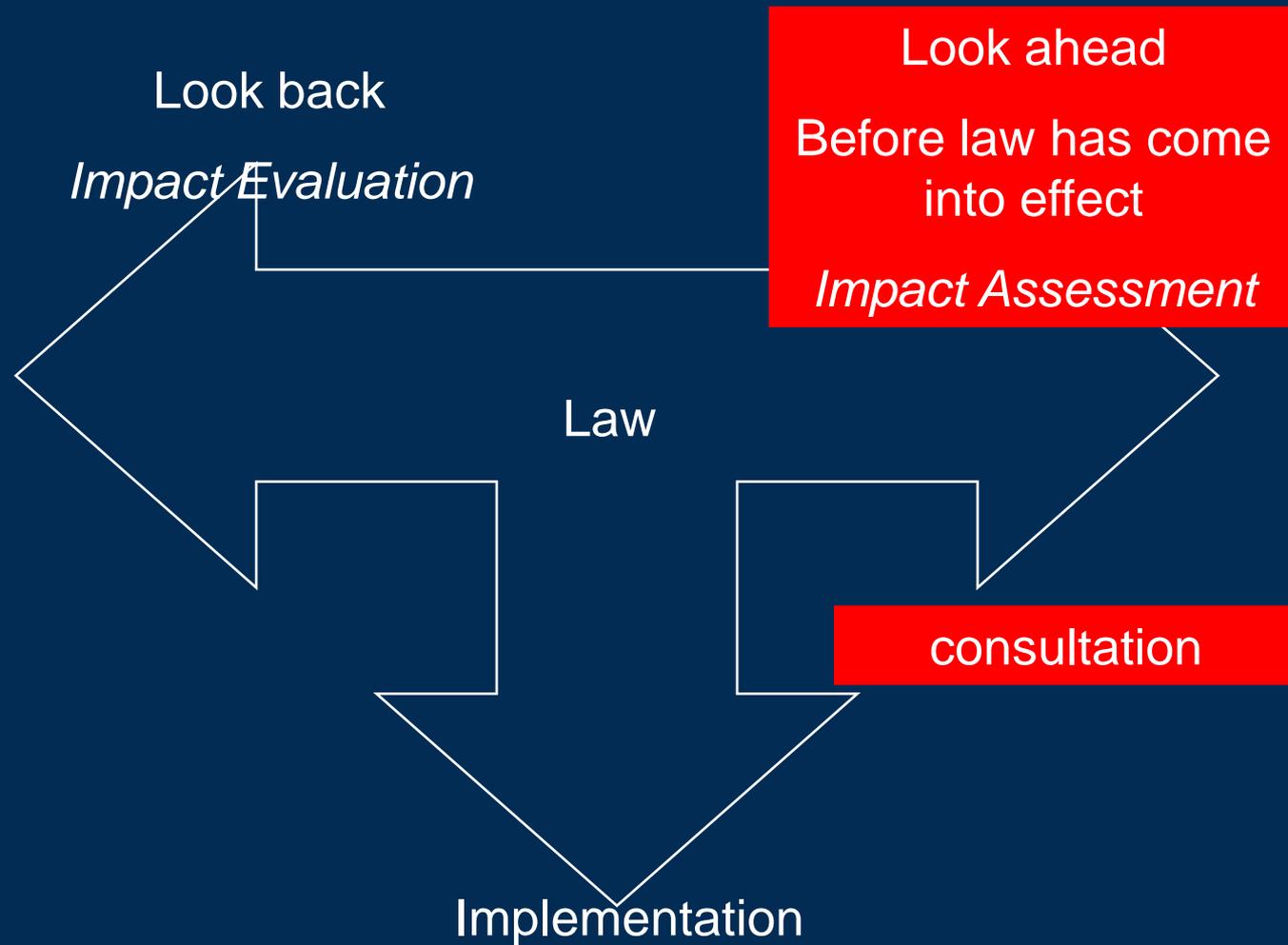


The democratic function

- Democratic governance: substantive guarantees → balance of interests, public support
- A say for less well organized people who otherwise never get heard
- Supporting representative democracy: control tool for Parliament

3. When?

The position of consultation in the law making process.



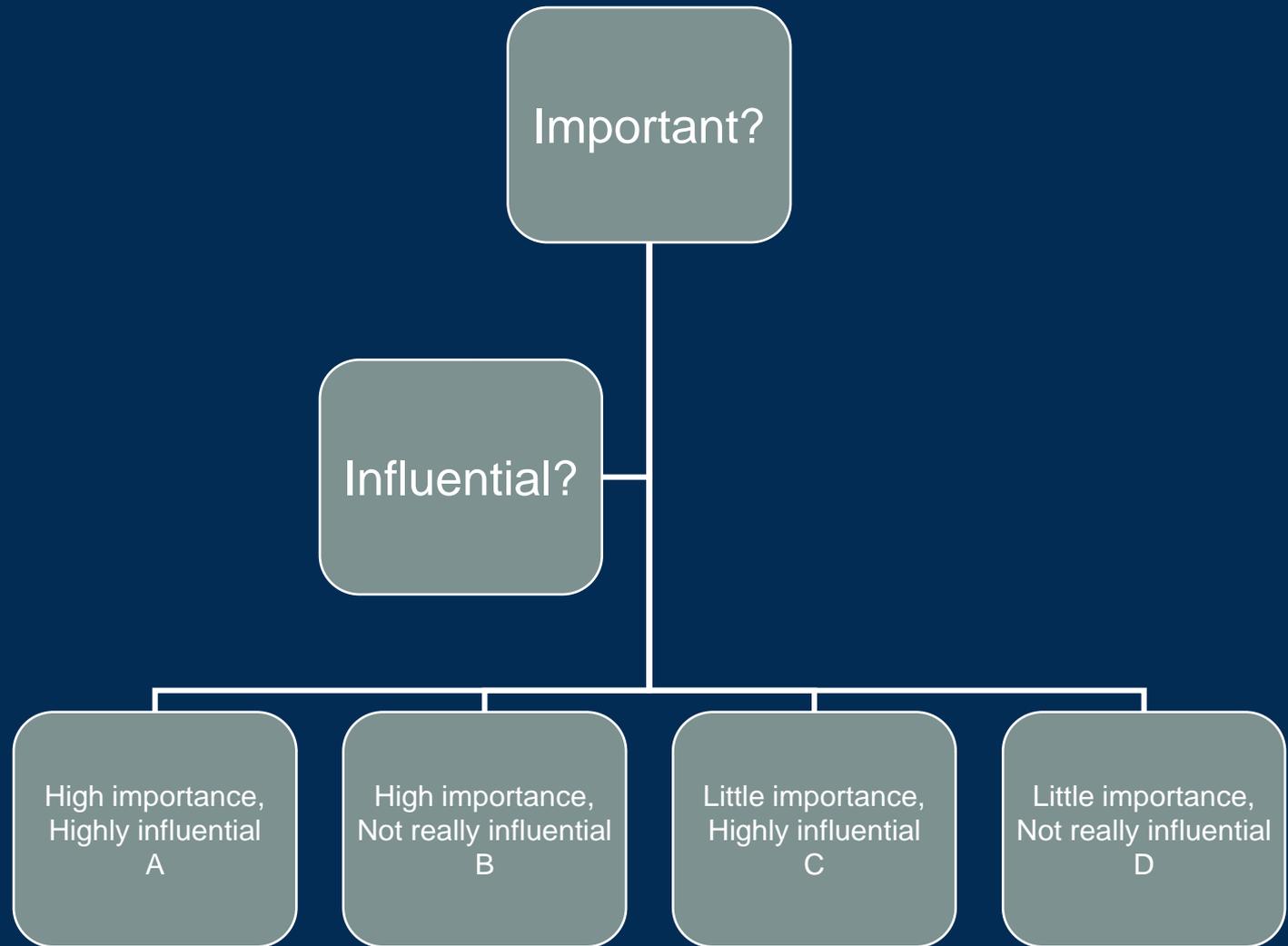
3. When?

- Depends on the legislative procedures in a specific country
- Ideally, consultation takes place:
 - > Early: when the draft regulation is still open to alternatives
 - > Later: when the draft regulation has taken shape and enforcement- and implementing bodies are known

4. Who? Systematic stakeholder analysis



4. Who? Involvement.



Exercise: stakeholder analysis and involvement.

Trainees are divided in small groups. Each group is assigned one of the following case studies. Identify all relevant stakeholders and try to assess their importance and influence. Results are discussed together.

1. Providing quality education is a great concern. The government and lawmaker wish to launch regulation which seeks to provide for basic education for all citizens.

2. The government and lawmaker wish to increase the level of social security by introducing new regulation on substitute income for the ill and the handicapped.
3. Youth unemployment rates are a major concern. The government and lawmaker proceed to introduce regulation which tries to tackle youth unemployment.

5. How?

Remember the double ambition of consultation:

1. providing input for rational, evidence-based law making and
2. creating or strengthening popular support.

How to achieve these goals?

- Many methods are at your disposal...
- ...but mainstream methods often presume high internet penetration, high literacy, advanced levels of education, easy access to media, well developed governmental institutions...

When to choose for a specific method?

- There are various reasons to select a specific method.
- For now, the most important aspect is the varying degree of **openness and interaction**:
 - > What is the ability of the stakeholders to contribute to the problem formulation?
 - > Are the stakeholders invited to offer new ideas?
 - > How well is the concept regulation defined yet? Is there still room for change?

Ranking of methods

Ranking the most commonly used consultation methods.

Limited openness and interaction

e.g. *public internet consultation survey*

.....

Extended openness and interaction

e.g. *deliberative polling*
focus groups
dialogue method

11 selected methods



Closed

Open

1. Notice and comment
2. Public internet consultation
3. Survey (citizen panels, test panels, internet panels)
4. Circulation for comment
5. Written consultation request with standing/ad hoc advisory bodies
6. Public hearing (21st Century Town Hall meeting)
7. Deliberative polling © (deliberate opinion poll)
8. Delphi
9. Focus group
10. Expert panel
11. Dialogue method (citizens' jury; consensus conference and more)

Notice and comment

1. A consultation document is made public with a request for reactions. No specific questions are asked. Comment period is no less than 60 days.
2. To reach out to a large group (full population of a country, e.g.) with mixed opinions;
Need for new, often surprising insights with regard to the side-effects and alternatives.

Assessment of popular support (political legitimating function)

Procedure is relatively easy for both government and stakeholders.

Not intensive and cheap.

Notice and comment

3. Not very stimulating method; response can be low;

Not very representative, especially when conducted by the internet.

What happens with the results?

Danger of formal procedures.

Public internet consultation

1. The public at large is informed about new legislation by means of the internet, and is invited to provide remarks.

The consultation website contains specific questions about the proposed law. These questions are open or closed and can be answered through the internet.

2. Internet consultations have a wide range, which is good to reach out to a large and varied group of stakeholders.

New and surprising input.

Legitimizing function (public support).

Transparent, informative, efficient and cheap.

3. Not very representative - vulnerable groups not heard.

Only useful if there is still room for policy change and new ideas;

Presupposes technical support and maintenance of servers and website;

Does this mean that the lawmaker actually listens to the views and comments of the respondents? Can impose pressure upon the government in case of many respondents wishing the same;

Survey

1. Large-scale poll among a representative sample of a population of stakeholders.
Uniform questions.
Various types: face-to-face, telephone, mail or internet.
Repeated over time: a panel. Panels can include citizen panels, business panels or test panels.
2. Generalization to the population with known degrees of error and reliability;
it allows for a detailed measurement of support;
It can provide new information which can be pinpointed to specific categories of respondents;
It is anonymous;
Costs can be easily estimated.

3. Drawing a good sample to represent the full population is very difficult;
Results are subject to the form and wording of the questions;
Response varies with specific type.
Biased results.
'Social desirability' – people will try to please the interviewer in case of face to face interviews;
Preparation and analysis take a long time;
Can be very expensive (up to 100 euro per interview)

Circulation for comment

1. Consultation documents are sent directly to involved parties, asking for comments. This is a much more delineated technique than the much broader notice and comment or internet consultation.
2. When target groups are diverse and scattered, so that different opinions can be voiced;

Especially useful when all involved interest groups oppose the legislative proposal; by not bringing them together, they cannot create a solid block of opposition;

Useful for technical matters and clearly defined and well-organized stakeholders (banks, insurance,...)

Cheap and efficient.

Circulation for comment

3. Identification of target groups is crucial; often the same stakeholders are consulted, creating the danger of regulatory capture;

Is often experienced as not transparent due to the selective character of the invitations to stakeholders to participate;

Written consultation request with standing/ad hoc advisory bodies

1. Most commonly used. Only expert advice. Advisory bodies are often standing institutions which are often state-sponsored. They differ from civil society.
2. Often regulated by law. Very useful when the advisory body is representative for interest groups with conflicting visions. Recommended for expert advice on matters such as health, education, ...
Time frame: they work under time pressure.

Written consultation request with standing advisory bodies

3. Are they really representative?

Their influence on the legislative bodies might be too large.

Advice is best brought when a longer timeframe is available and can have a strategic nature;
Not always capable of dealing with a continuous stream of requests for advice.

Public hearing and 21st Century Town Hall Meeting

1. One-off meeting. Hundreds or thousands of people at a time. They receive information on a specific topic and may comment.
Variations: 21st Century Town Hall Meeting –technology such as large screen projections, teleconferencing, keypad polling and more.
2. Consultation with a direct link to decision makers; very accessible, wide reach. Media attention might be invoked.

Direct response: the government can react immediately in case of misunderstandings.

For difficult technical issues.

Legitimizing effect since citizens are involved directly and reaction to their response are immediate.

Public hearing and 21st Century Town Hall Meeting

3. Traditional public hearings often see a low response.

Careful planning and organization is needed.

Dominant voices.

Group processes.

Often emotional without empirical content.

Deliberative polling © and deliberate opinion poll.

1. Randomly composed samples of a population are consulted in three phases.
 1. First phase is a survey.
 2. In the second phase, subgroups are invited to more profound discussions, in real life or online
 3. Finally, the subgroup is surveyed again to monitor change in opinion.

Deliberate opinion poll is a variation with a smaller number of participants (100-300). Very useful for controversial topics with great importance.

2. Different groups of one population can take part.

Informed input (overcomes non-informed response of surveys).
Deep involvement of the public: construction of popular support

Deliberative polling © and deliberate opinion poll.

3. Creates high expectations among participants; can only be used if the policy is not completely decided upon yet.

Group processes might distort the natural proceedings of the discussions.

Expensive, many opinions, requires much planning and preparation, difficult analysis; can take a longer time so respondents are not easy to find.

Delphi method

1. Delphi method is a systematic forecasting instrument, relying on consultation of experts.
RAND corporation, USA, 1940s.
2. Suitable for complex technical matters.
Alternatives and consensual solutions.
Avoids one-sided visions;
Freedom through anonymity
Efficient and not too expensive.

Delphi method

3. Not representative; only expert advice can be obtained.

Often difficult to find enough suitable experts, since it is intensive, takes time and often highly specialized.

Focus group

1. Group discussion.
Around eight participants and moderator.
Topic is introduced and discussed.
2. “Listening and learning”. First insights.
Relatively cheap and easy.
Scouting of support.
Participation of weaker, vulnerable groups.

Focus group

3. Not representative

Risk of conflicting interests and domination by most powerful participants;

Difficult analysis of the results.

Difficult to find good moderators

Difficult to keep discussion focused

Dialogue method, citizens' jury, consensus conference and more.

- 1. Dialogue method:** Various informal conversations are had with members of associations with vulnerable or oppressed interests. Once the main pitfalls have been recorded, these are discussed with experts within these associations.
- 2. Improves participation of vulnerable groups in society;**
Low threshold
- 3. No integral assessment of interests;**
Process takes a long time;
Initially cheap, but can become expensive when process lasts a long time.

Dialogue method, citizens' jury...

- 1. Citizens' jury:** The jury is composed of 12-24 randomly selected citizens, who are informed by several perspectives ('witnesses'). The jurors go through a process of deliberation; sometimes subgroups focus on different aspects of the issue. Takes 4 to 5 days. Often regarded as a bridge between the policy maker and the broader public.
- 2.** A means for obtaining informed citizen input into policy decisions. Very profound discussions, often with regard to values.

Excellent way of obtaining information about values.

Often leads to concrete action, since its close connection with policy making.

3. Demands very extensive preparation;
Continued attention of participants is uncertain;
Much depends on actual selection.
Independency of the jurors.

Criteria to select a method

Which criteria are important to select a specific method?

- How large is the probability that policy still can be changed? Is there still room for change in the law drafting process, or are the decisions fixed and permanent?
- How much time is available for consultation?
- Which budget is available?
- Has the administration sufficient qualified personnel to assist or carry out the consultation?
- Does the government/lawmaker need technical advice?

Criteria to select a method

- Does the consultation aim at measuring social support?
- Does the consultation aim at building social support?
- Is the objective to collect information from a specific sector or group, or from society as a whole, or from less well organized groups?
- Does the consulting government need new, fresh input and ideas?
- Does the government wish to acquire reasoned input, facts and figures and expert advice?

6. How best?

Ten best practices.

- > Learning from experiences
- > Learning from other countries
- > Recommendations by international organizations



Best Practice 1

See to inclusive, balanced but also clearly defined consultations, identifying and involving all relevant stakeholders

→ inclusive and representative!

- Are all relevant groups represented?
- Is the representation of a particular group correct?
- Beware of **regulatory capture**

Best Practice 2

See to consultations throughout the entire decision making process, commencing early in the procedure, repeating later.

- Influencing power
- Political space
- Impact analysis and evaluation

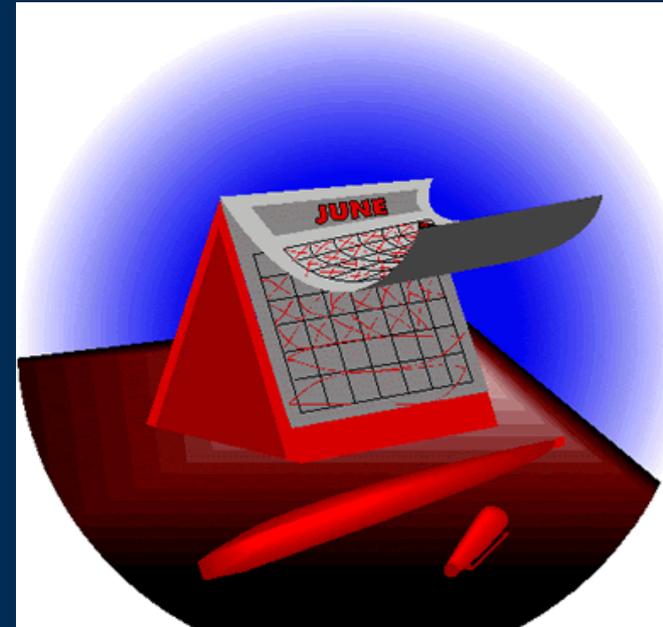


Choose an adapted consultation method conformity with the proportionality principle

- *Light if possible, heavy when necessary*
- See: consultation methods.

Provide for a reasonable time for consultation

- What is a reasonable time?
- Objection: is consulting too time-consuming?



Reduce thresholds

- Identify the target group
- Use an adapted communication channel
- Translate official documents to a more simpler language
- Allow for more time for fragmented groups (vulnerable, illiterate...)

Best Practice 6

Be informative, clear and concise about :
the purpose of the consultation, the problem, the questions, the proposed measures, restrictions, procedure and time schedule

- Keep treshold low
- Create trust
- Prevent consultation fatigue

Be **transparent** about the respondents, the consultation method, the questions and the results

- Control
- Accountability
- Safeguard against regulatory capture

Give feedback

- Transparency
- Reduce consultation fatigue
- Create trust and acceptance
- Control and accountability

Fit consultations in with a consultation **policy**

- Consultation coordinator
- Monitoring
- Training
- Consultation code
- Yearly reports and evaluations
- Ongoing process!
- Safeguards the quality of consultations and makes sure that consultation will take place.

Fit consultations and consultation policy in with a more comprehensive **legislative policy**

Remember the positioning of consultation in the wider **legislative cycle**:

- > Impact assesment/evaluation
- > Regulatory agenda

7. Limits, pitfalls and resistance

To safeguard the concept of involvement of civil society through consultation, we need to arm ourselves against a number of problems.

Adhering to **best practices** is often a solution.

- General level of literacy, education and empowerment of the population
- Internet and media coverage
- Absence of Impact Assessment
- Bureaucracy
- Organization of the administration
- Power relations
- Politics
- ...

- Opportunities for well organised interest groups
- BP 1: inclusive
- BP 1: representative
- BP 5: reduce trashold
- Check the output of consultations!



Some specific techniques to combat RC:

- Rotation
- Time horizon
- Exclusion after immoral or unethical practices
- Exclusion on legal grounds
- Internal review of practices and behaviour
- External review

Inclusive consultations: practical problems

- “Old boys” network
- Consultation plan
- BP 3 Adapted techniques
- BP 7 Transparency
- Invest in getting to know your sector



"My nephew is coming to work for me. Newton, and I'm starting him at the bottom. He'll be in charge of your department."

- Are consultations time-consuming?
- BP 4: reasonable time
- BP 2: early phase
- BP 9 and 10: regulatory planning
- BP 3: proportionality principle



- Are consultations politically neutral?
- BP 2: early consultations
- BP 6: information
- BP 1: inclusive consultations
- BP 9: code of conduct
- What does “primacy of policy” exactly mean?

8. Consultation plan

The consultation plan

- This should be prepared as soon as possible
- The most basic plan consists of:
 - The objective of the consultations
 - The target groups
 - The methods and techniques
 - The time schedule

Exercises

Trainees work in small groups on the design of a consultation plan, following the information provided earlier. Pay particular attention to stakeholder identification and methods. List potential problems. The results are presented by each group and discussed together.

1. The government wants to foster economic innovation. One way to achieve these goals is to improve education in the ICT sector. The government now asks for a consultation plan which will shed more light on how to organize effective and affordable ICT-education in the country.

Exercises

2. The government wishes to improve housing conditions for the general population. A bill is being drafted which involves new measures to attract capital to invest in modern housing and to eradicate the majority of large slums. Design a consultation plan.
3. Enhancing entrepreneurship is crucial for economic progress. The government is in doubt about the best way to promote small business. Before engaging in drafting new bills, it wants to consult the relevant stakeholders for input about the most urgent needs for entrepreneurs in the country. Design a consultation plan.

Exercises

4. The government is concerned about unemployment rates. It wants to stop the unemployment rates from increasing and find ways to provide jobs for everyone. To create new, effective and efficient regulation to curb the current unemployment rates, it organizes a consultation. Design a consultation plan.