



CONSULTATION PRINCIPLES TO BE INCORPORATED IN CODE OF NORMS AND STANDARDS OF CONSULTATION FOR THE BOARD AND REGISTRARS AS REFERRED IN FINANCIAL SERVICES BOARD LEGISLATION:

1.1. The appropriate stakeholders to be consulted must be identified

Prior to any consultation process, the FSB must identify the *stakeholders that have significant and legitimate interests* in the subject matter of the consultation – usually those most likely to be materially affected by the subject matter. This includes both stakeholders who are likely to benefit from the proposal concerned, those potentially negatively affected, and those with particular information, resources or expertise in relation to the subject matter.

Identification of affected stakeholders should take into account the nature of the proposal forming the subject matter of the consultation as well as the purpose of the consultation.

Factors to be taken into account in identifying stakeholders include:

- The *industry sectors or sub-sectors* to whom the proposal consulted on is intended to apply. Consultation should include either the regulated entities in that sector themselves (particularly where the proposal is likely to impact a relatively small or specialist group of entities), or trade associations which the FSB is satisfied adequately represent the affected sector/s.
- The extent to which *technical expertise* (such as legal, economic, actuarial, accounting, marketing, technological expertise or expertise relating to a particular financial product or business process) is required to provide meaningful input into the proposals concerned. Where appropriate, consultation should include relevant experts or trade or professional associations adequately representing such experts).
- The extent to which *consumers* of financial services or *communities* will be affected by the proposal being consulted on. Where appropriate, consultation should include relevant consumer or community representative organisations.

1.2. The purpose and scope of consultation must be clear

Consultation material must set out the *purpose* of the particular consultation process. Consultation can serve one or more of the following purposes:

- To obtain stakeholder *opinions and preferences* on policy proposals
- To test the viability and narrow the range of alternative *options*
- To identify stakeholder *needs*
- To identify *practical implications* and possible *unintended consequences* of a proposal
- To request *specific inputs* (such as drafting suggestions, practical implementation suggestions, particular expert input, etc.)

- To *evaluate or review* existing policies or processes.

The *scope* of consultation must also be clear. Aspects of a proposal that have already been decided on should be distinguished from those aspects where decisions have not yet been taken, clarifying which aspects are still open for discussion. Wherever feasible, the consultation should set out specific questions or statements on which stakeholder input is invited, distinguishing these from information that is provided purely for explanatory or background purposes. .

1.3. The timing of consultation must be appropriate and enable meaningful stakeholder input

The timing of the consultation process must be *proportional to the type and scale of consultation* being carried out. Aspects of timing that must be considered include:

- The *appropriate stage of development* of a proposal at which consultation should occur. Generally, consultation should take place at an early enough stage of development to ensure that inputs can still meaningfully influence the outcome.
- The *time period* granted within which to provide input. The period must be realistically proportional to the complexity and expected impact of the proposal concerned, including the number and diversity of stakeholders affected; the extent of impact on business models or operations; and the time stakeholders will reasonably require for consulting with constituents and / or experts, where applicable.
- The *number of opportunities* to provide input. These should also be proportional to the complexity and impact of the proposal, as well as the extent to which a previous round/s of input has influenced the content of the proposal, the level of divergence of input received, and whether initial input received indicates misunderstanding or confusion regarding the proposal. Where it becomes clear that the final action to be taken is likely to differ materially from the proposal consulted on - particularly where the final action will also differ materially from that recommended by some or all of those consulted - a further round of consultation should be undertaken.
- *Practical considerations* that could reasonably be expected to impact on the time required to provide input. These include matters such as public holiday periods, postage times (where applicable), other consultation processes being undertaken by the FSB that are likely to require the same stakeholder resources, and significant external national or industry events.

1.4. The medium and process of consultation must be proportional, appropriate and enable meaningful stakeholder input.

Different media and processes are appropriate for different types of consultation, and the medium and process adopted must be *proportional to the nature and scale of the proposal* being consulted on, as well as to the *nature and capacity of the stakeholders* being consulted.

Consultation options include:

- Task groups or committees with multi stakeholder representation
- Meetings with industry associations or other representative bodies – whether as part of regular scheduled engagements or on an ad hoc basis
- Expert panels whose membership can be drawn on for inputs on specific specialist areas (such as panels comprising experts in particular sectors or disciplines, consumer panels, etc.)

- Electronic / web-based communication forums
- Workshops or seminars with groups of regulated persons or entities. Where appropriate, these can be carried out on a "road show" basis, in multiple geographic locations
- Written procedure - for e.g. through publication of discussion documents or proposed drafts, inviting feedback
- Consumer or other interest group surveys
- Outsourcing consultation and / or analysis of feedback to relevant expert service providers
- Interviews with individual stakeholders
- Speaking at industry meetings and conferences
- Inviting comment through public media such as radio, television, press advertisements or leaflet campaigns (for significant policy proposals where input from the broad public is desirable.)

Relevant considerations in selecting the consultation medium and process include:

- *Efficiency.* The medium and process should be designed to be as cost effective and administratively efficient as possible, for both the FSB and the stakeholders consulted. The cost of the consultation process used should be proportionate to the anticipated impact of the proposal concerned.
- *Accessibility.* The medium and process selected should be reasonably accessible to the identified stakeholders, taking account of their capacity and resources. Use of electronic communication methods, for example, are generally efficient but may not always be reasonably accessible to poorly resourced consumer organisations or small businesses. Conversely, use of face-to-face meetings should take due regard of travel time and cost and geographical location. Those providing input should be able to do so in the medium most suitable for them.
- *Flexibility.* The FSB need not necessarily use only one consultation medium or process for all stakeholders, or for a particular consultation, but should consider using a combination of appropriate options.

1.5. Consultation material must be clear, concise and transparent

Consultation material must be written in *plain, understandable language*¹ and avoid the use of technical or legal jargon as far as possible, bearing in mind its *intended audience*. Where, for example, the purpose of consultation is to obtain particular expert technical input, technical content is appropriate, whereas it would not be appropriate for a broader audience. The circumstances of smaller, less sophisticated stakeholder entities who may not be familiar with the intricacies of regulatory frameworks, must be considered.

Although consultation material should ideally be self-contained, supporting information or references to supporting information – for example relevant research findings - may be considered where appropriate.

Where the FSB has already formed a view of potential impacts or consequences of the proposal concerned, this information should also be included in the consultation material to provide an opportunity for challenge.

¹ Consultation material is in plain, understandable language if it is reasonable to conclude that a person or class of persons for whom the material is intended, with average literacy skills and experience could be expected to understand the content, significance and import of the material without undue effort.

Consultation material must provide suitable contact details for input or queries and instructions for submission of input. Consultation material should also provide an indication of the overall consultation process to be followed, where possible.

1.6. Stakeholder input must be considered and feedback provided

The FSB must ensure that all input received is respected and considered. Wherever feasible, feedback must be provided to those who provide input. The feedback provided should summarise the input provided, indicate whether the FSB agrees, partially agrees, or disagrees with the input and - unless obvious from the context - provide a brief explanation of why the FSB agrees with the input or intends to adopt a particular recommendation, as well as reasons why it disagrees with the input or does not intend to adopt the recommendation concerned.

Feedback should as far as possible be provided to the same stakeholders as the consultation material itself.