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Public consultation: a mandatory stage of the Swiss legislative procedure

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The public consultation procedure in Switzerland

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1. Introduction

- Switzerland: a long tradition of public consultation and participation of civil society in the legislative process
- In recent years, public consultation has become part of the international "good practices" in legislation
- Consultation procedure at all levels of the State (national, cantonal, communal)
- Focus on national level
- Switzerland: some facts and figures



Switzerland

- 8 mio inhabitants
- 26 cantons (constituent entities)
- ~ 2500 communes
- bicameral parliament (National Council 200, State Council 46 members; Federal Assembly)
- federal government with 7 members acting as a collective body and representing the major political parties
- institutions of direct democracy (popular initiative and mandatory referendum in constitutional matters, optional referendum in legislative matters)
- 3 official languages



2. Normative framework and foundations

- **Article 147 of the Federal Constitution:**
Consultation procedure

The Cantons, the political parties and interested groups shall be invited to express their views when preparing important legislation or other projects of substantial impact as well as in relation to significant international treaties.

- **Consultation Procedure Act (CPA)**

- **Federal Ordinance on the consultation procedure (CPO)**



3. Institutional context

Intense involvement of the civil society in the legislative process:

- popular initiatives (100'000 citizens may request a amendment of the Federal Constitution)
- optional referendum (50'000 citizens may request a popular vote on a law adopted by parliament)
- representatives of the civil society (academic experts, representatives of NGO's and of cantonal or communal authorities) are members of task forces and expert committees helping the responsible ministry to prepare drafts for legislative acts
- hearings with representatives of the civil society before the government adopts a bill or before parliament

adopts a law



4. Main features I: The subject matter of public consultation (Article 3 CPA)

- draft amendments to the constitution
- draft Federal laws (and amendments of such laws) prepared by the government
- parliamentary approval of international treaties subject to the optional or mandatory referendum
- other projects of major political, financial, economic, social or cultural significance
- draft ordinances (to be enacted by the government) if they are of a certain importance (in particular for the cantons)



Main features II: Who is invited to submit an opinion? (Article 4 CPA)

- the cantons
- the political parties represented in the Federal Assembly
- the national umbrella organisations for the communes, the cities and the mountain regions
- the national umbrella organisations for the economic sector (trade unions, employers' organisations, etc.)
- other NGOs (interest groups) relevant to the specific subject matter

Individuals and corporations may take part without being formally invited



Main features III: Forms and deadlines (Article 7 CPA)

- procedure conducted in written form (mostly electronically); exceptionally in the form of a conference (hearing)
- duration: 3 months; exceptionally shorter
- documents submitted for consultation: draft legislation, explanatory notes, sometimes questionnaire



Main features IV: Transparency (Article 9 CPA)

- all relevant documents are available to the public (in electronic form or on paper)
 - consultation documents
 - opinions expressed by addressees
 - summary of the results
- the summary is submitted to the government
- in its dispatches accompanying bills that are submitted to parliament, the government informs the parliament about the results of the consultation and the changes it made in the draft thereafter



5. Trends and practical problems

- large number of consultations □ high burden on organisations and cantons (□ concentration on important cases?)
- delimitation of the circle of addressees
- limited representativeness (e.g. are umbrella organisations representing their members reliably? intraorganisational "democracy")
- evaluation of the political weight of opinions (criteria?)
- lengthening the legislative process



6. Multiple effects and functions

- Strengthening the legitimacy of political or legislative decisions
- Gathering evidence (fact finding, collecting information)
- Testing the practicability and implementability of draft legislation
- Testing the political acceptance of draft legislation (making it "referendum-proof")
- Improving the knowledge about the proposed legislative action
- Informing the public



7. Conclusion

- consultation is more than information or governmental PR
- consultation is more than opinion polls or use of social media (clear and binding procedural rules)
- public consultation significantly contributes to the quality of legislation (evidence-based, legitimacy, political consensus, practicability)