

## DRAFT REPORT

# Economic governance: public consultations during the crisis

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This paper follows an earlier internal ECAS report *Economic Governance: Citizens' Involvement in Crisis Times* which examined the role of public consultations in the decisions made by the European Union in its initial response to the financial and economic crisis.

This study builds upon its predecessor by updating the analysis to encompass a period that has seen significant moves to increase preventative and corrective measures to better manage sovereign debt and Member State deficit levels; reform of the banking sector and the launch of a proposal for a Eurozone banking union; and enhanced surveillance and control of the financial sector.

Five years on from the start of the economic crisis, it is now possible to identify some general trends in the use of public consultations in the decision-making procedures employed by the European Union in the economic and financial sector. This report therefore begins with a summary of the various decision-making procedures used to deal with the economic crisis and the principles and minimum standards intended to provide a framework for the use of public consultations, before examining when and to what extent these guidelines have been adhered to in reality. It is then possible to assess the trends and reasons for divergences from this framework.

This paper will show that the consultations for economic governance carried out by the Commission leave much to be desired. First, there has been an ongoing issue with the vast majority of economic consultation documents being available exclusively in English. Further, in the few instances of significant citizen participation in consultations, it is difficult to discern how much influence these citizens have had. Next, and perhaps most importantly, the economic consultations are usually highly technical documents that require such an extensive level of knowledge and expertise that the majority of consultations are inaccessible to most citizens. This, along with other issues which will be described in the paper, runs contrary to the Minimum Standards of Consultation established in 2002.

In highlighting the flaws with consultations as they are currently run, the intention of this paper is to show that there are solutions which will allow for increased citizen involvement in the Economic governance consultation process going forward.

## **Public Consultations**

When studying the numerous decisions made at the European level in the field of financial and economic governance since the start of the crisis, it is firstly essential to establish which institutions have made the decision in question and via which procedure. It is then possible to determine whether a public consultation would usually be expected and verify whether or not it did, in fact, take place. Finally, it is then possible to assess to what extent the consultations that did occur comply with the established framework and minimum standards.

Decisions related to the crisis have emanated from a number of sources. Heads of State have taken actions such as the initial bail-out of Greece in 2010 and agreeing to the Treaty on Stability, Coordination and Governance (TSCG); the Troika (ECB, European Commission and IMF) oversee financial assistance to Greece, Ireland, Portugal, Spain and Cyprus, counter-balanced by the enforcement of measures at national level impacting significantly upon the lives of citizens; national finance ministers meeting in the Council of the European Union (ECOFIN) possess important powers in terms of economic policy coordination, economic surveillance, monitoring of Member States' budgetary policy and public finances, while the same representatives of the Eurozone countries in particular convene in the Eurogroup. In other cases, the European Commission, Parliament and Council have cooperated to bring about reforms. This process has largely followed the Ordinary Legislative procedure (COD) used for the majority of EU decision-making, although it should be noted that consultation remains the procedure used in certain economic and fiscal affairs. It is within these inter-institutional processes that the Commission has the right of initiative and that the role of public consultations is inscribed.

Wide consultation is a duty of the European Commission according to Protocol 7 on the application of the principles of subsidiarity and proportionality annexed to the Amsterdam Treaty: "the Commission should... consult widely before proposing legislation and, wherever appropriate, publish consultation documents".<sup>1</sup> Furthermore, Article 11 of the Lisbon Treaty states that:

1. The institutions shall, by appropriate means, give citizens and representative associations the opportunity to make known and publicly exchange their views in all areas of Union action.
2. The institutions shall maintain an open, transparent and regular dialogue with representative associations and civil society.
3. The European Commission shall carry out broad consultations with parties concerned in order to ensure that the Union's actions are coherent and transparent.<sup>2</sup>

In the 2001 White Paper on European Governance, the Commission stated its intent to "reduce the risk of the policy-makers just listening to one side of the argument or of particular groups getting privileged access on the basis of sectoral interests or nationality..."<sup>3</sup> A 2002 Commission

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<sup>1</sup> European Union, "Treaty of Amsterdam amending the Treaty on European Union, the Treaties establishing the European Communities and certain related acts-Protocol annexed to the Treaty of the European Community – Protocol on the application of the principles of subsidiarity and proportionality." *Official Journal C 340, 10/11/1997 0105*. Accessed July 11, 2013 at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:11997D/PRO/07:EN:HTML>.

<sup>2</sup> "Article 11", *The Lisbon Treaty*. Official Journal of the European Union, C306 1.12.2009. Accessed July 10, 2013 at <http://www.lisbon-treaty.org/wcm/the-lisbon-treaty/treaty-on-european-union-and-comments/title-2-provisions-on-democratic-principles/75-article-11.html>.

<sup>3</sup> European Commission, "European Governance: A White Paper," July 25, 2001, 17. Accessed July 11, 2013 at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2001:0428:FIN:EN:PDF>.

Communication established a clear and coherent framework for consulting external parties.<sup>4</sup> The following principles were established and must be adhered to by all parties in the consultation process.

- **Participation:** 'The Commission is committed to an inclusive approach when developing and implementing EU policies, which means consulting as widely as possible on major policy initiatives.'<sup>5</sup>

In relation to maximising participation, in October 2012 the European Ombudsman criticised the Commission for not publishing consultations in all 23 EU languages. Mr Diamandouros stated: "European citizens cannot exercise their right to participate in the EU's decision-making process effectively if public consultation documents are not available in all official languages."<sup>6</sup>

- **Openness and accountability** of both the consultation and the participants<sup>7</sup>
- **Effectiveness:** 'Interested parties should... be involved in the development of a policy at a stage where they can still have an impact on the formulation of the main aims, methods of delivery, performance indicators and, where appropriate, the initial outlines of that policy.'<sup>8</sup>
- **Coherence:** 'The Commission will ensure that there is consistency and transparency in the way its departments operate their consultation processes. The Commission will include in its consultation processes mechanisms for feedback, evaluation and review.'<sup>9</sup>

Minimum standards of consultation were also established, including:

- “(1) Consultation documents are clear, concise, and include all necessary information;
- (2) relevant parties have an opportunity to express their opinion;”<sup>10</sup>
- (3) the Commission publishes consultations widely in order to meet all target audiences, in particular via the web portal "Your Voice in Europe", which is the Commission's single access point for consultation;
- (4) "participants are given sufficient time for responses,"<sup>11</sup> (8 weeks for open public consultations);
- (5) "acknowledgement and adequate feedback is provided."<sup>12</sup>

These consultation standards apply, at the policy-shaping phase, to major proposals before decisions are taken.

It should be noted that public consultations do not represent the only form of consultation used by the European Institutions when making decisions. In addition to the consultative institutions of the

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<sup>4</sup> European Commission, "Towards a reinforced culture of consultation and dialogue - General principles and minimum standards for consultation of interested parties by the Commission," Brussels, 11.12.2002, 16-18. Accessed July 10, 2013 <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2002:0704:FIN:EN:PDF>.

<sup>5</sup> Ibid., 16.

<sup>6</sup> "Ombudsman criticises Commission's restrictive language policy for public consultations," 11.10.2012. Accessed July 11, 2013 at [http://europa.eu/rapid/press-release\\_EO-12-17\\_en.htm](http://europa.eu/rapid/press-release_EO-12-17_en.htm).

<sup>7</sup> European Commission, "European Governance: A White Paper," 17.

<sup>8</sup> Ibid., 18.

<sup>9</sup> Ibid.

<sup>10</sup> European Commission, "Review of the Commission Consultation Policy," SWD(2012) 422, December 12, 2012, 7. Accessed July 24, 2013 at [http://ec.europa.eu/governance/better\\_regulation/documents/document\\_travail\\_service\\_part1\\_en.pdf](http://ec.europa.eu/governance/better_regulation/documents/document_travail_service_part1_en.pdf).

<sup>11</sup> Ibid.

<sup>12</sup> Ibid.

European Economic and Social Committee and the Committee of the Regions, specialised consultation can be organised through a variety of channels, including consultative committees, expert groups and scientific committees.<sup>13</sup> Nevertheless, online public consultations are essential as they allow direct contact between the Commission and target groups, including citizens. It is therefore this particular form of consultation that is the object of the present study.

## **The Economic and Financial Crisis: An Outline**

The nature of the economic crisis has changed over time: firstly the turmoil affected the financial sector, and then went over to the real economy creating dire macroeconomic scenarios. Eventually the prompt and massive state interventions in Europe triggered a sovereign debt crisis.

Descriptions of the timeline of the crisis and relative healing measures abound, and at the same time it is almost impossible to give a detailed and comprehensive summary as the phenomenon at hand is fairly complex. For the present report, it suffices to give a general overview of the main tools and the role of the institutions that implemented them.

- At an early stage *national policies were uncoordinated*, as there was no communal framework for crisis management. The only centralized action came from the ECB, which cut interest rates and provided liquidity in the banking system. At this point stakeholders raised calls for a reaction at EU level that could coordinate interventions in the national economies otherwise connected via a common currency;
- A turning point was the *Eurogroup emergency summit* with the participation of Gordon Brown in Paris in October 2008. The main resolutions concerned the re-launch of inter-bank lending by providing a guarantee for such loans, to raise banks' liquidities so that they could continue to lend to businesses and households, and to recapitalize the banks whose insolvency could threaten the soundness of the financial system.<sup>14</sup> This was the first unified reaction to the crisis that came from Europe.
- As early as November 2008, the Commission proposed *A European Economic Recovery Plan* (EERP).<sup>15</sup> The plan is inscribed in the *macroeconomic downturn* phase of the crisis and was aimed at boosting demand and stimulating investments by injecting 200 billion Euros into the economy. Along the same lines, the Commission launched a new proposal "*Driving European recovery*" (March 2009) that stressed the need for additional coordination among states in the phase of recovery from the crisis. Both the proposals make clear the backstage role of the Commission at this point to provide guidance to member states.
- The uncontrolled financial crisis had led to the question of reforming the *supervisory framework of financial institutions*, both from a micro and macro level. A key document is the communication of the Commission "European financial supervision", May 2009.<sup>16</sup> This

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<sup>13</sup> Elodie Fazi and Jeremy Smith, "Civil Dialogue: Making it Work Better." Civil Society Contact Group, 2006, **28?** Accessed July 11, 2013 at <http://act4europe.horus.be/module/FileLib/Civil%20dialogue%2C%20making%20it%20work%20better.pdf>

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<sup>15</sup> "A European Economic Recovery Plan," European Commission. 26.11.2008. Accessed July 12, 2013 at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2008:0800:FIN:EN:PDF>.

<sup>16</sup> European Commission, "Communication from the Commission: European financial supervision," (Brussels, COM(2009) 252), May 25, 2009. Accessed July 31, 2013 at [http://ec.europa.eu/internal\\_market/finances/docs/committees/supervision/communication\\_mav2009/C-2009\\_715\\_en.pdf](http://ec.europa.eu/internal_market/finances/docs/committees/supervision/communication_mav2009/C-2009_715_en.pdf).

document is important because it led to new supervisory authorities being established in January 2011. Measures to repair and restructure the financial sector have continued, while work on restructuring the banking sector and developing instruments for the supervision, recovery and resolution of banks culminated in Eurozone heads of state putting a European Banking Union on the political agenda in June 2012.

- The sovereign debt crisis resulted in *massive financial assistance to euro-area member states*. The bailout of Greece was decided by an emergency summit of European country leaders on May 8<sup>th</sup> 2010.<sup>17</sup> After the first bailout a few temporary measures were taken by the Council in order to ease the borrowing of money by member states in difficulties. These measures were later on used for the bailout of Ireland, Portugal and Cyprus via the work of the Troika. A *Permanent European Stability Mechanism*, a permanent support measure for states in difficulties, was created in September 2012.
- The theme of improved Economic governance for Europe, i.e. a new set of reforms able to prevent other such crises in the future and to enable the exit from the current one, is now the mainstream work of the Commission. The new set of reforms have a common feature: stronger coordination when deciding on economic and fiscal policies. *Closer EU surveillance* has been sought via a range of measures, including a new working method (*the European semester*); the 6-pack of 2011, the Treaty on stability, coordination and convergence signed in March 2012 and the 2-pack which is due to be adopted in 2013.

### **Analysis:**

The EU's reaction to the crisis can broadly be broken down into 3 areas: the initial emergency response to the crisis; reforms to the financial and banking sector; and dealing with the sovereign debt crisis. The level of public consultation is closely linked to the Commission's level of responsibility for reform in each area, along with the level of urgency demanded by specific circumstances. While the Commission has been the main source of policy initiative in the first two areas, the Council has been largely responsible for directing the latter.

### **1) Initial Emergency Response:**

The four key documents issued by the European Commission in its initial response to the crisis are mentioned above. There was no consultation directly linked to the EERP and no information provided on the likely economic impact of the plan. However, the consultations on the modification of the legislative framework on state aid<sup>18</sup> can be inscribed in the outline provided by the EERP. In particular, two open consultations were held between December 2008 and 2010, resulting in the

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<sup>17</sup> Julien Toyer and Jan Strupczewski, "EU works on mechanism to stop Greek Contagion," *Reuters*, May 8 2010. Accessed July 12, 2013 at <http://www.reuters.com/article/2010/05/08/us-eurozone-idUSTRE6400PJ20100508>.

<sup>18</sup>

“Change of legislative framework for state aid during the crisis”. In addition, two follow up questionnaires on the implementation of the framework were targeted at member states only. Both the public consultations lasted less than 8 weeks due to reasons of urgency, and no results of the contributions are available. The consultation is inscribed in the *real economy* crisis phase.

Another document, *Driving European recovery*,<sup>19</sup> gives a more global overview of the crisis management and provides a more detailed agenda than the EERP. It outlines policies in four areas (the financial system, real economy, support to people, and global recovery). There was one consultation concerning financial system policies.<sup>20</sup> The general aim was to collect opinions about policies for measures at EU level on responsible lending and borrowing, including a reliable framework on credit intermediation, in the context of delivering responsible and reliable markets for the future and restoring consumer confidence. Although not the most technical of consultation documents, the questions asked usually required a substantial base of knowledge in order to provide a coherent response. For example, one question asks, should policymakers “make distinctions between credit intermediaries in terms of the products they sell (mortgage, consumer credit, 'point of sale' credit)? Should credit intermediaries be treated differently in terms of the status of their relationship with lenders (tied versus untied intermediaries)?”<sup>21</sup>

In total, there were 109 responses, out of which only one came from an individual citizen. The largest share (46) of contributors came from the financial sector, while consumers, consumer groups, and user representatives accounted for 27 contributions. As for the geographical distribution, contributions from the UK alone outnumbered the others.<sup>22</sup>

As regards the real economy dimension of the agenda set out in the *Driving European recovery* document, an Employment Summit was held in May 2009, while later consultations were held on issues such as the pension system. For instance, the *Green Paper towards adequate, sustainable and safe European pension systems* was published in 2010.<sup>23</sup> The consultation was well managed. Aside from the standard consultation document a tailored summary for citizens was available. The results are positive: they received 1647 responses, out of which 1234 came from citizens. Disappointingly, however, looking at the sources it turns out that most of the contributors were involved in the campaign on UK State Pensions and most of them were actually in Canada. Therefore the largest share of contributions comes from countries outside of the EU, followed by UK, Germany, France and then Belgium.

The initial response to the financial side of the crisis was centered on two key documents on the reform of the supervisory framework for financial institutions: the “De Larosière report” and “European financial supervision”. Both the documents were subject to a consultation,<sup>24</sup> but they targeted stakeholders only (all financial service sector operators and their representative bodies, regulators, supervisors, other interested parties) even though consumers and user associations were

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<sup>19</sup> European Commission, “Driving European Recovery,” COM(2009) 114, Volume 1, 4.3.2009. Accessed July 17, 2013 at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2009:0114:FIN:EN:PDF>.

<sup>20</sup> European Commission, “Consultation on how to ensure responsible lending and borrowing in the EU” 31.08.2009. Accessed June 27, 2013 at [http://ec.europa.eu/internal\\_market/consultations/2009/responsible\\_lending\\_en.htm](http://ec.europa.eu/internal_market/consultations/2009/responsible_lending_en.htm).

<sup>21</sup> European Commission, “Public Consultation on Lending and Borrowing in the EU (consultation document)”, Brussels, 15.06.2009, 12 (question 9). Accessed July 17, 2013 at [http://ec.europa.eu/internal\\_market/consultations/docs/2009/responsible\\_lending/consultation\\_en.pdf](http://ec.europa.eu/internal_market/consultations/docs/2009/responsible_lending/consultation_en.pdf).

<sup>22</sup> European Commission, “Summary of Responses to the Public Consultation on Responsible Lending and Borrowing in the EU,” 30.10.2009, 3. Accessed July 17, 2013 at [http://ec.europa.eu/internal\\_market/finances-retail/docs/credit/resp\\_lending/feedback\\_summary\\_en.pdf](http://ec.europa.eu/internal_market/finances-retail/docs/credit/resp_lending/feedback_summary_en.pdf).

<sup>23</sup> European Commission, “Green Paper towards adequate, sustainable and safe European pension systems,” 7.7.2010-15.11.2010. Accessed July 24, 2013 at <http://ec.europa.eu/social/main.jsp?catId=700&langId=en&consultId=3&visib=0&furtherConsult=yes>.

<sup>24</sup> European Commission, “Consultation on the future of financial services supervision in the EU,” 10.03.2009-10.04.2009. Accessed June 15, 2013 at [http://ec.europa.eu/internal\\_market/consultations/2009/fin\\_supervision\\_en.htm](http://ec.europa.eu/internal_market/consultations/2009/fin_supervision_en.htm). Consultation only lasted one month. “Consultation on Commission Communication of 27 May 2009 on European Financial Supervision,” 15.07.2009. Accessed July 17, 2013 at [http://ec.europa.eu/internal\\_market/consultations/2009/fin\\_supervision\\_may\\_en.htm](http://ec.europa.eu/internal_market/consultations/2009/fin_supervision_may_en.htm).

also able to participate. In both consultations most contributors complained about the lack of details on the proposed material. Both also lasted less than the minimum eight weeks expected because of the minimum standards of Consultation, which was justified by the need to react rapidly to the economic crisis. Only 116 and 98 responses were received to the two consultations respectively.

Besides these, there were a number of other consultations on financial matters, most of which targeted the financial sector only. One of these, “An EU Framework for Cross-Border Crisis Management in the Banking Sector”, focused on the banking sector only.<sup>25</sup> A mere 64 responses were received, mainly from national authorities and industry stakeholders. Another, the “Consultation on audit policy - Lessons from the Crisis” included a Green Paper which aimed to draw the lessons from the crisis with respect to the external audit of companies. With its 688 responses the Commission states that, at the time, this was “certainly the widest consultation response coming out of the financial crisis.”<sup>26</sup> The country that contributed the most was Germany, with 42% of all responses. It was followed by the UK, France and Spain. The largest share of contributions came from the audit sector (407), and it is worth noting that 200 of these were identical and received from the German audit profession. Citizens, on the other hand, account for less than 20 contributions. The “Consultation on audit policy” is also interesting because the general comment drafted by the Commission in the summary of responses was that there was a need for better clarification and transparency in what audits were actually meant to do because of the gap between the public perception and the actual scope of the financial tool at hand.<sup>27</sup> In this case then, we see that the Commission acknowledged that citizen understanding is both important and could be improved through more extensive efforts. In another case, however, the “Call for evidence on Market Abuse Directive (Directive 2003/6/EC)”, the results and follow up were not published.<sup>28</sup>

### Analysis:

Many gaps can be identified in the use of consultations in the initial response to the crisis. Firstly, several steps, such as those taken by the Eurozone leaders (see summary above) were taken at intergovernmental level and therefore they automatically involved no consultation. Moreover, the Commission also bypassed this step in some cases, as with the proposals outlined in the EERP. Secondly, in those cases in which consultations were employed, the 2002 minimum standards were regularly not met, either due to limited participation, inadequate feedback or restricted time periods. However, given the emergency context of the decisions taken in the immediate fall-out of the financial crisis, it is understandable and in certain cases even justified that the ‘effectiveness’ of decision-making, be it via public consultation or otherwise, should take precedence.

### **2) Financial and banking sector reforms:**

Since the end of 2010, the European Union’s work to restore stability to the financial markets has continued. As in the initial stages of the crisis, public consultations have been a notable element in the preparation of new legislative proposals. These consultations have all been officially open to all

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<sup>25</sup> European Commission, “Technical details of a possible European crisis management framework” (03/03/2007). “Consultation on the review of the Directive on Deposit Guarantee Schemes” (27/07/2009) Open to the public. “Call for evidence on Market Abuse Directive (Directive 2003/6/EC)” (10/06/2009). Open to the public. No results available.

<sup>26</sup> European Commission, “Summary of Responses: Green Paper on Audit Policy: Lessons from the Crisis,” (Brussels, February 4, 2011), 2. Accessed October 1, 2013 at [http://ec.europa.eu/internal\\_market/consultations/docs/2010/audit/summary\\_responses\\_en.pdf](http://ec.europa.eu/internal_market/consultations/docs/2010/audit/summary_responses_en.pdf).

<sup>27</sup> Ibid., 6.

<sup>28</sup> European Commission, “Call for Evidence on Market Abuse Directive (Directive 2003/6/EC)”, 20.4.2009-10.6.2009. Accessed July 17, 2013, at [http://ec.europa.eu/internal\\_market/consultations/2009/market\\_abuse\\_en.htm](http://ec.europa.eu/internal_market/consultations/2009/market_abuse_en.htm).

citizens but many remain clearly restricted to their respective target groups by their technical nature. As a result, participation has generally continued to be very low.

The EU's work on the banking sector can be broadly split into 3 areas: reform of the banking structure; provisions for the recovery of banks in crisis; and surveillance of the banking sector, all of which were brought together on 28-29<sup>th</sup> June 2012 when the Eurozone summit supported Commission President Jose Manuel Barroso's earlier call for a banking union.<sup>29</sup> As a consequence, the European Commission will make proposals in each of the 3 areas.

#### Reform of the banking structure:

A High Level Group was set up by the European Commission to study structural aspects of the EU banking sector, starting in November 2011 and culminating in a final report in October 2012.<sup>30</sup> The aim was to consider whether structural reforms were necessary to increase stability and consumer protection.

Two public consultations were launched in relation to the High Level Group: one by the Group itself as part of its work and another by the Commission to allow interested parties to react to the Group's conclusions. The High Level Group received only 80 replies to their initial consultation.<sup>31</sup> The consultation was split into 3 parts: questions directed at banks, questions directed at corporate customers, and questions directed at retail customers. This approach, combined with clear and targeted questions, such as "*What are the main concerns of retail customers in their relationship with the bank?*"<sup>32</sup> made the consultation genuinely accessible to a wide range of stakeholders. In addition, no report was made regarding the results of the consultation or its follow-up.

The Commission's consultation on the conclusions reached by the High Level Group was organised.<sup>33</sup> This was done within the normal consultation framework, apart from the document used: instead of the common consultation method of providing a preamble and following that with questions related to it, the High Level Group's report was used as the basis for the consultation and general comments on their recommendations were requested. No questions were asked in the document. In total, the Commission received only 89 responses. A report of the consultation feedback was published, giving us a clearer picture of who responded. The largest category were individual banks and banking associations (38 responses), followed by other financial institutions or their representatives (13), demonstrating the relatively specialised field affected by the consultation document.<sup>34</sup> A further

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<sup>29</sup> "Euro Area Summit Statement," June 29, 2012. Accessed July 17, 2013, at [http://www.consilium.europa.eu/uedocs/cms\\_data/docs/pressdata/en/ec/131359.pdf](http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/131359.pdf).

<sup>30</sup> Erkki Liikanen, "High Level Expert Group on reforming the structure of the EU banking Sector," *European Commission*, October 2, 2012. Accessed September 30, 2013 at [http://ec.europa.eu/internal\\_market/bank/docs/high-level\\_expert\\_group/report\\_en.pdf](http://ec.europa.eu/internal_market/bank/docs/high-level_expert_group/report_en.pdf).

<sup>31</sup> European Commission, "Consultation by the High-level Expert Group on Reforming the structure of the EU banking sector," 03.05.2012-01.06.2012. Accessed July 17, 2013 at [http://ec.europa.eu/internal\\_market/consultations/2012/banking\\_sector\\_en.htm](http://ec.europa.eu/internal_market/consultations/2012/banking_sector_en.htm).

<sup>32</sup> *Ibid.*, 1. Accessed July 17, 2013, at

[http://ec.europa.eu/internal\\_market/consultations/docs/2012/banking\\_sector/consultation\\_paper\\_en.pdf](http://ec.europa.eu/internal_market/consultations/docs/2012/banking_sector/consultation_paper_en.pdf). \*\*\*\*is this right citation?\*\*\*

<sup>33</sup> European Commission, "Consultation on the recommendations of the High-Level Expert Group on Reforming the structure of the EU banking sector," 02.10.2012-13.11.2012. Accessed July 17, 2013 at [http://ec.europa.eu/internal\\_market/consultations/2012/hleg-banking\\_en.htm](http://ec.europa.eu/internal_market/consultations/2012/hleg-banking_en.htm).

<sup>34</sup> European Commission, "Summary of the Replies to the Consultation of the Internal Market and Services Directorate General on The Recommendations of the High-Level Expert Group on Reforming the Structure of the EU Banking Sector," 12.2012, 2. Accessed July 17, 2013 at [http://ec.europa.eu/internal\\_market/consultations/2012/hleg-banking/replies-summary\\_en.pdf](http://ec.europa.eu/internal_market/consultations/2012/hleg-banking/replies-summary_en.pdf).



consultation focusing on the structural separation recommendation of the High Level Expert Group (HLEG) remained open until 11 July 2013.<sup>35</sup>

A consultation was also held as part of the Commission's preparation of its new proposal (CRD IV) on bank capital requirements for counterparty credit risk, published in July 2011.<sup>36</sup> Contributions were particularly sought from representatives of credit institutions, investment firms, other financial institutions, consumers (depositors and clients of credit institutions and investment firms), and Member States' authorities. The consultation ran for only 1 month so the Commission could incorporate the respective feedback in finalising the legislative proposal on the issue before the summer. No report was made of the consultation's results, although only 34 responses were received. This consultation provides a good example of the highly technical nature of many of the consultations in this field. For instance, question nine reads: "Should the exception for bankruptcy-remote capital in case of use of a qualifying CCP be extended also to collateral posted to non-qualifying CCPs, provided that the latter collateral complies with the same conditions? Why?"<sup>37</sup> Such questions are inaccessible to citizens or organisations without expertise and experience in this domain and is therefore implicitly directed at individuals or organisations specialised in this sphere; a fact borne out in the consultation's response.

Finally, a consultation, one of the few to be made available in almost all EU official languages (twenty-two of the twenty-three at the time) was launched to gather reaction to the Green Paper on the regulation of shadow banking.<sup>38</sup> 140 responses were received, of which the overwhelming majority were from the financial sector. The Commission's legislative follow-up is expected later in 2013.

#### Bank recovery and resolution:

Work on a bank recovery and resolution framework continued, culminating in the Commission's proposal for an EU framework on 6 June 2012.<sup>39</sup> The earlier consultations on creating "An EU framework for cross-border crisis management in the banking sector" in January 2010 and on "audit-policy Lessons from the Crisis" (see above)<sup>40</sup> were followed in January 2011 by a consultation on the "technical details of a possible European crisis management framework" which exclusively targeted the banking sector.<sup>41</sup> The consultation particularly targeted experts in the field, notably Member

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<sup>35</sup> European Commission, "Consultation by the Commission on the Structural Reform of the Banking Sector," 16.05.2013-11.07.2013. Accessed September 29, 2013 at [http://ec.europa.eu/internal\\_market/consultations/2013/banking-structural-reform/](http://ec.europa.eu/internal_market/consultations/2013/banking-structural-reform/). Results were not yet available as of September 29, 2013.

<sup>36</sup> European Commission, "Public consultation on possible measures to strengthen bank capital requirements for counterparty credit risk," 09.02.2011-09.03.2011. Accessed July 18, 2013 at [http://ec.europa.eu/internal\\_market/consultations/2011/credit\\_risk\\_en.htm](http://ec.europa.eu/internal_market/consultations/2011/credit_risk_en.htm).

<sup>37</sup> European Commission, "Counterparty Credit Risk," 8. Accessed July 24, 2013 at [http://ec.europa.eu/internal\\_market/consultations/docs/2011/credit\\_risk/consultation\\_paper\\_en.pdf](http://ec.europa.eu/internal_market/consultations/docs/2011/credit_risk/consultation_paper_en.pdf).

<sup>38</sup> A conference on the issue was also organised on 27<sup>th</sup> April 2012. European Commission, "Consultation on Shadow Banking," 19.03.2012-15.06.2012. Accessed July 23, 2013 at [http://ec.europa.eu/internal\\_market/consultations/2012/shadow\\_en.htm](http://ec.europa.eu/internal_market/consultations/2012/shadow_en.htm).

<sup>39</sup> European Commission, "Proposal for a Directive of the European Parliament and of the Council establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directives 77/91/EEC and 82/891/EC, Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC and 2011/35/EC and Regulation (EU) No 1093/2010," 2012, 280 (3). Accessed July 23, 2013 at [http://ec.europa.eu/internal\\_market/bank/docs/crisis-management/2012\\_eu\\_framework/COM\\_2012\\_280\\_en.pdf](http://ec.europa.eu/internal_market/bank/docs/crisis-management/2012_eu_framework/COM_2012_280_en.pdf).

<sup>40</sup> European Commission, "Public Consultation regarding an EU framework for Cross-Border Crisis Management in the Banking Sector," 20.10.2009-20.01.2010. Accessed July 23, 2013 at [http://ec.europa.eu/internal\\_market/consultations/2009/banking\\_crisis\\_management\\_en.htm](http://ec.europa.eu/internal_market/consultations/2009/banking_crisis_management_en.htm).

European Commission, "Public Consultation on audit Policy-lessons from the Crisis," 13.10.2010-8.12.2010. Accessed July 23, 2013 at [http://ec.europa.eu/internal\\_market/consultations/2010/green\\_paper\\_audit\\_en.htm](http://ec.europa.eu/internal_market/consultations/2010/green_paper_audit_en.htm).

<sup>41</sup> European Commission, "Technical details of a possible European crisis management framework," 06.01.2011-03.03.2011. Accessed July 18, 2013 at [http://ec.europa.eu/internal\\_market/consultations/2011/crisis\\_management\\_en.htm](http://ec.europa.eu/internal_market/consultations/2011/crisis_management_en.htm).

State authorities (crisis management, supervisory, judicial), banking industry, bank stakeholders (customers, creditors, shareholders, employees), federations, and the non-financial industry. An overview of the results was published with only 140 responses received.<sup>42</sup> A consultation on a possible framework for the recovery and resolution of non-bank financial institutions was also held, with most of the 67 responses coming from the business sector.<sup>43</sup>

### Surveillance of the banking sector:

As a result of the call for a banking union by the heads of Eurozone states in June 2012, on 12 September 2012 the Commission made proposals for a Single Supervisory Mechanism (SSM) for banks led by the European Central Bank (ECB) in order to strengthen the Economic and Monetary Union. This first step towards an integrated "banking union" concerns 2 regulations and a communication outlining the Commission's overall vision for rolling out the banking union, covering the single rulebook, common deposit protection and a single bank resolution mechanism.<sup>44</sup>

Neither regulation proposal was subject to a public consultation, although according to their proposal, the Commission "took into account the analysis done in the context of the adoption of the "supervisory package" creating the European Supervisory Authorities (ESAs)."<sup>45</sup> Precisely what taking the analysis into account means, and how much weight it was given, however, is far from clear, as there is no further detail on this. The preparation of a formal impact assessment was not possible within the timetable set by the aforementioned Euro area Summit of 29 June, 2012. As with the 6-pack (see below), the time constraints imposed by the Council may explain the lack of fresh public consultations.

A consultation was later launched on 26 April 2013 as part of the review of the European System of Financial Supervision which was open to all interested stakeholders until 31 July 2013.<sup>46</sup> Although the Commission mentioned that responses can be sent in any language, both the background document and questionnaire are only available in English. The report is quite technical insofar as it requires an extensive knowledge of the wide reaching impact of the new legislation in order to answer the questions. For example, question 1.1.a asks, "How do you assess the impact of the creation of the ESAs on the financial system in general and on (i) financial stability, (ii) the functioning of the internal market, (iii) the quality and consistency of supervision, and (iv) consumer and investor protection in particular?"<sup>47</sup> A report on the consultation is pending.

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<sup>42</sup> "European Commission, "Overview of the results of the Consultation on technical details of a possible EU framework for bank resolution and recovery," 5.5.2011, 2. Accessed July 18, 2013 at [http://ec.europa.eu/internal\\_market/consultations/docs/2011/crisis\\_management/consultation\\_overview\\_en.pdf](http://ec.europa.eu/internal_market/consultations/docs/2011/crisis_management/consultation_overview_en.pdf).

<sup>43</sup> European Commission, "Consultation on a possible framework for the recovery and resolution of nonbank financial institutions," 05.10.2012-28.12.2012. Accessed July 18, 2013 at [http://ec.europa.eu/internal\\_market/consultations/2012/nonbanks\\_en.htm](http://ec.europa.eu/internal_market/consultations/2012/nonbanks_en.htm). Summary of replies can be found at [http://ec.europa.eu/internal\\_market/consultations/2012/nonbanks/summary-of-replies.pdf](http://ec.europa.eu/internal_market/consultations/2012/nonbanks/summary-of-replies.pdf), 2.

<sup>44</sup> All of these documents can be found here under the subheading 12.09.2012: [http://ec.europa.eu/internal\\_market/finances/banking-union/index\\_en.htm](http://ec.europa.eu/internal_market/finances/banking-union/index_en.htm).

<sup>45</sup> European Commission, "Proposal for a Council Regulation conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions," COM(2012) 511, September 9, 2012, 3. Accessed July 29, 2013 at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2012:0511:FIN:EN:PDF>.

<sup>46</sup> European Commission, "Consultation on the review of the European System of Financial Supervision," 26.04.2013-31.07.2013. Accessed September 29, 2013 at [http://ec.europa.eu/internal\\_market/consultations/2013/esfs/index\\_en.htm](http://ec.europa.eu/internal_market/consultations/2013/esfs/index_en.htm). Results had not been posted as of September 29, 2013. The Consultation document can be found at [http://ec.europa.eu/internal\\_market/consultations/2013/esfs/docs/consultation-document\\_en.pdf](http://ec.europa.eu/internal_market/consultations/2013/esfs/docs/consultation-document_en.pdf).

<sup>47</sup> *Ibid.*, Consultation document, 3.

## Other reforms affecting the financial sector:

The new regulation on credit rating agencies, proposed by the Commission in November 2011 and finally adopted in May 2013, refers to the public consultation on this issue.<sup>48</sup> The content and questions were of a technical nature and only 93 answers were received. Question 3, for example, reads: *'Do you agree that the requirement to use at least two external ratings for calculating capital requirements could reduce the reliance on ratings and would improve the accuracy of the regulatory capital calculation?'*<sup>49</sup> No report was made of the results of this consultation.

A corporate governance framework was the subject of a public consultation from 5 April 2011 to 22 July 2011<sup>50</sup> based on the Commission's Green Paper and feeding into the Commission's Roadmap, published in February 2013. The consultation was open to all but of the substantial 409 responses, 85% were from organisations (9% of which were from "Other associations/Civil Society/Code Committees").<sup>51</sup> The results were presented in a report.

The Commission's legislative proposal on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms refers to the public consultation on reinforcing national sanctioning regimes in the financial sector. The consultation elicited 63 responses, of which 70% represented either public authorities or industry.<sup>52</sup> Meanwhile, only 10 responses were received to the consultation regarding acquisitions and increase of holdings in the financial sector.<sup>53</sup>

The Commission organised 2 consultations on UCITS (Undertakings for Collective Investment in Transferable Securities), a popular category of regulated investment vehicle that accounts for around 85% of all European investment fund assets. The consultations targeted the financial sector. One of these, which received 97 responses, was launched in July 2012 and aimed to maintain the confidence of investors and to continue promoting UCITS inside and outside Europe as the best fund legislation.<sup>54</sup> The results of this consultation fed into the Commission's March 2013 Green Paper on the long-term financing of the European economy, itself the subject of a public consultation which ended in June 2013.<sup>55</sup> Results are not yet available.

A public consultation<sup>56</sup> also formed part of the process leading to the Commission's proposal for a directive on a common system of financial transaction tax (FTT), published in September 2011. There were 213 total individual submissions, or 3624 including a petition strongly supporting the

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<sup>48</sup> European Commission, "Consultation on the Credit Rating Agencies (CRAs), new initiative," 05.11.2010-07.01.2011. Accessed July 18, 2013 at [http://ec.europa.eu/internal\\_market/consultations/2010/cra\\_en.htm](http://ec.europa.eu/internal_market/consultations/2010/cra_en.htm).

<sup>49</sup> Consultation document, "Consultation on the Credit Rating Agencies," 05.11.2010, 9. Document accessed July 18, 2013 at [http://ec.europa.eu/internal\\_market/consultations/docs/2010/cra/cpaper\\_en.pdf](http://ec.europa.eu/internal_market/consultations/docs/2010/cra/cpaper_en.pdf).

<sup>50</sup> European Commission, "The Corporate Governance Framework," 5.4.2011-22.07.2011. Accessed July 23, 2013 at [http://ec.europa.eu/internal\\_market/consultations/2011/corporate-governance-framework\\_en.htm](http://ec.europa.eu/internal_market/consultations/2011/corporate-governance-framework_en.htm).

<sup>51</sup> European Commission, "Summary of responses to the Commission Green Paper on the EU corporate governance framework," Brussels, November 15, 2011, 3. Accessed July 23, 2013 at [http://ec.europa.eu/internal\\_market/company/docs/modern/20111115-feedback-statement\\_en.pdf](http://ec.europa.eu/internal_market/company/docs/modern/20111115-feedback-statement_en.pdf).

<sup>52</sup> European Commission, "Consultation on reinforcing national sanctioning regimes in the financial sector," 08.12.2010-19.02.2011. Accessed July 18, 2013 at [http://ec.europa.eu/internal\\_market/consultations/2010/sanctions\\_en.htm](http://ec.europa.eu/internal_market/consultations/2010/sanctions_en.htm). Results found at [http://ec.europa.eu/internal\\_market/consultations/docs/2010/sanctions/feedback\\_en.pdf](http://ec.europa.eu/internal_market/consultations/docs/2010/sanctions/feedback_en.pdf), 1.

<sup>53</sup> European Commission, "Consultation on the application of Directive 2007/44 EC as regards acquisitions and increase of holdings in the financial sector," 08.12.2011-10.02.2012. Accessed July 18, 2013 at [http://ec.europa.eu/internal\\_market/consultations/2011/acquisitions\\_en.htm](http://ec.europa.eu/internal_market/consultations/2011/acquisitions_en.htm).

<sup>54</sup> European Commission, "UCITS: Product Rules, Liquidity Management, Depository, Money Market Funds, Long-term Investments," 26.07.2012-18.10.2012. Accessed July 18, 2013 at [http://ec.europa.eu/internal\\_market/consultations/2012/ucits\\_en.htm](http://ec.europa.eu/internal_market/consultations/2012/ucits_en.htm).

<sup>55</sup> European Commission, "Consultation on the Green paper on the long-term financing of the European economy," 25.03.2013-25.06.2013. Accessed September 30, 2013 at [http://ec.europa.eu/internal\\_market/consultations/2013/long-term-financing/](http://ec.europa.eu/internal_market/consultations/2013/long-term-financing/).

<sup>56</sup> European Commission, "Consultation on financial sector taxation," 22.02.2011-19.04.2011. Accessed July 18, 2013 at [http://ec.europa.eu/taxation\\_customs/common/consultations/tax/2011\\_02\\_financial\\_sector\\_taxation\\_en.htm](http://ec.europa.eu/taxation_customs/common/consultations/tax/2011_02_financial_sector_taxation_en.htm).

implementation of an FTT.<sup>57</sup> It is unclear which number the Commission took into consideration: the results give both figures but do not elaborate on whether they gave increased weight to the petition given its considerable response.<sup>58</sup> Apart from this, the proposal for an EU-wide FTT gathered insufficient support in a Council discussion on 22 June 2012. Eleven member states have decided to press forward with an FTT, although it has also been met with stiff resistance from several areas, delaying its inception.<sup>59</sup>

In contrast to the above consultations, the review of the Markets in Financial Instruments Directive (MiFID), resulting in the Commission's proposal in October 2011, elicited over 4,200 responses.<sup>60</sup> No report was made of the results. A large and well-attended public hearing was held over two days on 20-21 September 2010 and input has been obtained through extensive meetings with a broad range of stakeholder groups since December 2009. The revision of MiFID constitutes an integral part of the reforms aimed at establishing a safer, sounder, more transparent and more responsible financial system, as well as to ensure a more integrated, efficient and competitive EU financial market. The proposal is made up of a Regulation and a Directive, revising the original Directive established in November 2007.

What sets the MiFID consultation apart from many of the others described above, however, is not simply the high volume of responses: in this case, the vast majority of the feedback actually came from EU citizens. Despite this, it should be stressed that the highly technical and complex nature of the questions being asked in the MiFID consultation were very similar to earlier consultations which received few responses, meaning that they did not easily lend themselves to general citizen feedback.

The overwhelming majority of responses were centred on questions that involved two topics: food speculation and potential reforms to "execution-only" investment services. In the former, citizens were mobilized by a civil-society campaign which sought to curb investors from speculating on food prices, a practice which has arguably contributed to the increase and volatility of food prices around the world. The responses of the 3250 citizens who addressed this issue are largely identical and as such, they were posted on the Consultation results website as one document.<sup>61</sup> It would have been very difficult to elicit such a large volume of responses (which were so numerous at one point that the Commission was actually forced to close its inbox for a short period of time to deal with all of the messages)<sup>62</sup> without a coordinated effort.

In this case, the World Development Movement, a UK NGO working to reduce poverty and inequality worldwide, provided one. They organized the letter-writing campaign and wrote the detailed responses which clearly required a substantial in depth knowledge of investment and investment regulation, as they went through the 83 page, 148 question document to answer eight different

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<sup>57</sup> "Petition for introduction of a Financial Transaction Tax in Europe: EP Plenary vote on 8 March 2011," April 5, 2011. Accessed July 23, 2013 at <https://circa.bc.europa.eu/sd/d/c6178ad0-a6bd-4ee7-a559-7c9a9e9f992e/Petition.msg>.

<sup>58</sup> European Commission, "Summary Report on the Consultation on financial sector taxation," 2. Accessed July 23, 2013 at [http://ec.europa.eu/taxation\\_customs/resources/documents/common/consultations/tax/financial\\_sector/summary\\_results\\_en.pdf](http://ec.europa.eu/taxation_customs/resources/documents/common/consultations/tax/financial_sector/summary_results_en.pdf).

<sup>59</sup> Tom Fairless, "European Financial Transaction Tax Delayed," *Washington Street Journal*, Brussels, June 25, 2013. Accessed July 23, 2013 at <http://online.wsj.com/article/SB10001424127887323683504578567192034185964.html>.

<sup>60</sup> European Commission, "Consultation on the review of the Markets in the Financial Instruments Directive (MiFID)," 08.12.2010-02.02.2011. Accessed July 18, 2013 at [http://ec.europa.eu/internal\\_market/consultations/2010/mifid\\_en.htm](http://ec.europa.eu/internal_market/consultations/2010/mifid_en.htm).

<sup>61</sup> "Reply from 3250+ citizens on speculative activities in commodity derivative markets." Accessed July 19, 2013 at <https://circa.bc.europa.eu/sd/d/450b5eec-fba6-40a3-8fb3-d13afc2e6d2c/Reply%20from%203250+%20citizens%20on%20speculative%20activities%20in%20commodity%20derivative%20markets.pdf>.

<sup>62</sup> Email correspondence with a representative of the World Development Movement, "MiFID and Food Speculation," *World Development Movement*, July 26, 2013.

complex questions that pertained to food speculation.<sup>63</sup> For example, question 62, responded to by the citizens involved with the letter-writing campaign asks, “What is your opinion about extending the disclosure of harmonised position information by type of regulated entity to all OTC commodity derivatives?”<sup>64</sup>

The other portion of MiFID which received considerable feedback was the potential removal or changing of “execution-only” investment services, which received 675 responses from citizens.<sup>65</sup> This batch of responses was not identical but there were several common themes which emerged from them. It seems that the responses came largely from individual investors who were well-versed in MiFID regulation and how potential changes would affect their ability to invest, again indicating the high level of expertise required to respond to the consultation. A useful comparison can be made here with the 2010 consultation on the *Green Paper towards adequate, sustainable and safe European pension systems*” (above). Here, too, a high response was received: 1647 responses, out of which 1234 came from citizens. However, while the subject undoubtedly affected a large target group, most of the contributors were involved in the campaign on UK State Pensions.

### Analysis

It is firstly important to recognise the high level of public consultations on issues regarding the financial and banking sector at EU level. With the notable exception of the Commission’s proposals on the SSM, most of the key reforms brought about by the EU have been subject to some public consultation, although it is very difficult to judge the extent to which this has influenced the decisions eventually taken.

The Commission for the large part also conforms to most of the principles and minimum standards for consultation as set out in 2002. In most, although certainly not all, cases, consultations have been organised during the policy-forming stage, presented in a clear and open manner, open for at least 8 weeks and followed by feedback.

Nevertheless, a key flaw in the Commission’s approach to public consultations is the lack of measures taken to ensure an ‘inclusive approach’ in this field. The consultations examined here are generally characterised by their highly complex and specialised nature, resulting in a very limited response, usually from the financial industry itself. While exceptions to this trend in reactions do exist, as the food speculation campaign in MiFID colourfully highlights, they are usually explained by a corresponding campaign organised by those with the necessary specialised knowledge which enables the mass mobilisation of citizens on the issue in question. This is not to discount the efforts of the NGOs who organise these efforts—rather, it further underscores how complex these consultations tend to be, as this seems to be one of the few ways the Commission has received a substantial response.

When critiquing the questions posed in consultations, some allowance should be made for the fact that banking and finance are, by their very nature, technical fields. Nevertheless, such low levels of response in a period in which economic matters are at the top of the political agenda demonstrate

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<sup>63</sup> Ibid.

<sup>64</sup> European Commission, “Review of the Markets in Financial Instruments Directive,” 40. Accessed July 19, 2013 at [http://ec.europa.eu/internal\\_market/consultations/docs/2010/mifid/consultation\\_paper\\_en.pdf](http://ec.europa.eu/internal_market/consultations/docs/2010/mifid/consultation_paper_en.pdf).

<sup>65</sup> “Reply from 675 citizens citizens on execution only services.” Accessed July 19, 2013 at <https://circa.bc.europa.eu/sd/d/b7ca3c5a-1f03-405a-8852-c0717724c06a/Reply%20from%20675%20citizens%20on%20execution%20only%20services.pdf>.

weaknesses in the consultation process. For instance, of all the consultations organised by DG Internal Market during the period concerned, only two included documents were translated into any language other than English. Both of these notably occurred after the European Ombudsman's criticism of the Commission regarding this matter in October 2012<sup>66</sup> and, even then, were only available in French and German in addition to English. Issues of technicality and specialisation aside, this language barrier is clearly at odds with the Commission's 'inclusive approach' and is indicative of clear shortcomings in attempts to reach out to European citizens on these questions.

In terms of the nature of questions posed, examples above demonstrate the regular use of complex and specialised terms such as 'gross margining' that implicitly target specialists in the financial sphere who are *au fait* with such concepts, while excluding the vast majority of European citizens without experience in this field. The simpler nature of the questions in the High Level Group's consultation on "Reforming the Structure of the EU Banking Sector" goes to show that, while the areas of consultation may be inherently technical, it is nevertheless possible to increase the accessibility of such debates if appropriate efforts are made.

The High Level Group's consultation also begs the interesting question, why did no one respond to an understandable consultation relevant to the lives of EU citizens? It suggests that the nature of the questions alone may not be adequate for garnering responses and the Commission may need to do more to make their consultations accessible and known.

In conclusion, the assessment of the consultations held on financial and banking issues during this period highlights a discrepancy between the application of two of the principles established in 2002, with 'effectiveness' having prevailed over 'inclusiveness'. While the high level of consultations indicates a willingness to involve stakeholders at the policy-forming stage on many of the issues in this area, the nature of the consultations continues to limit their accessibility to a select and specialist group.

### **3) Sovereign debt crisis**

From the very start of the turmoil in 2008, the Commission's role has been limited in dealing with the sovereign debt crisis. In terms of providing support to the Member States most affected by the crisis, the bailout of Greece was decided on by an emergency summit of European country leaders on May 10<sup>th</sup> 2010. After the first bailout, temporary measures were taken by the Council in order to ease the borrowing of money from Member States in difficulties via the new *European Financial Stability Facility* (EFSF).<sup>67</sup> The EFSF enabled the subsequent financial assistance to Ireland and Portugal, as well as the second package provided to Greece. The *European Stability Mechanism (ESM)*, a permanent support measure for states in the midst of economic difficulties, was created by an intergovernmental Treaty in September 2012.<sup>68</sup> Without the involvement of the Commission in this decision-making process, the usual framework for public consultations has been bypassed.

Since 2010, meanwhile, focus has switched to more long-term measures to strengthen the Economic and Monetary Union in order to end the current crisis and prevent future economic turmoil. Three

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<sup>66</sup> European Ombudsman, "Ombudsman criticises Commission's restrictive language policy for public consultations," 11.10.2012. Accessed July 19, 2013 at <http://www.ombudsman.europa.eu/en/press/release/faces/en/12029/html.bookmark>.

<sup>67</sup> European Financial Stability Facility, "About EFSF." Accessed July 19, 2013 at <http://www.efsf.europa.eu/about/index.htm>.

<sup>68</sup> For more information about the ESM see here: <http://www.esm.europa.eu/>.

very significant policy packages have come into effect in this area, in each case without any official public consultation, even when Ordinary Legislative Procedure (COD) has been followed.

#### **A. 6-pack:**

The cornerstone of the EU response is the new set of rules on enhanced EU economic governance agreed to on 13 December 2011. It has four main components:

1. “Stronger preventive action through a reinforced Stability and Growth Pact (SGP) and deeper fiscal coordination.”<sup>69</sup>
  - a. When member states fail to adhere to their medium-term budgetary objectives, they can be forced to pay a 0.2% deposit to be returned once the issue has been corrected.
2. “Stronger corrective action through a reinforced SGP”:<sup>70</sup>
  - a. The launch of an Excessive Deficit Procedure (EDP) can now result from government debt developments that are considered to be unhealthy as well as from government deficit. “Progressive financial sanctions kick in at an earlier stage of the EDP.”<sup>71</sup>
3. “Minimum requirements for national budgetary frameworks covering all administrative levels. National fiscal planning should adopt a multi-annual perspective”:<sup>72</sup>
  - a. **Find what minimum requirements are.**
  - b. The latter part has to do with creating and adhering to the medium-term budgetary objectives mentioned above
4. Preventing and correcting macroeconomic and competitiveness imbalances:
  - a. the new Macroeconomic Imbalance Procedure (MIP) broadens the EU economic governance framework to include the surveillance of member states’ macroeconomic trends through a scoreboard with eleven different wide-ranging criteria.<sup>73</sup> The aim of the MIP is to identify potential risks early on, prevent the emergence of harmful imbalances and correct existing imbalances.

Enforcement is strengthened by the expanded use of 'reverse qualified majority' voting (RQMV). Under this voting system, a Commission recommendation or proposal to the Council is considered adopted unless a qualified majority of Member States votes against it.

An examination of the procedure employed to adopt the 6-pack reveals a significant absence of public consultations. The European Council agreed on the urgent need to reinforce the coordination of Member States’ economic policies and the first orientations as regards the SGP and budgetary surveillance in June 2010, encouraging the Task Force on economic governance (established by the European Council, chaired by the European Council President Herman Van Rompuy and composed of

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<sup>69</sup> European Commission, “EU Economic Governance.” Accessed July 31, 2013 at [http://ec.europa.eu/economy\\_finance/economic\\_governance/](http://ec.europa.eu/economy_finance/economic_governance/).

<sup>70</sup> Ibid.

<sup>71</sup> Ibid.

<sup>72</sup> Ibid.

<sup>73</sup> Eurostat, “Imbalance scoreboard.” Accessed July 19, 2013 at

[http://epp.eurostat.ec.europa.eu/portal/page/portal/excessive\\_imbalance\\_procedure/imbalance\\_scoreboard](http://epp.eurostat.ec.europa.eu/portal/page/portal/excessive_imbalance_procedure/imbalance_scoreboard). Amongst the criteria are indicators such as current account balance - % of GDP, Share of world exports, private debt, unemployment rate, and more.

the finance ministers of the 27 member states) and the Commission to move quickly to implement concrete reforms within this framework.

The Commission's proposals, dealt with and passed via the Ordinary Legislative Procedure, were published in October 2010, thereby making no time for the public consultations that usually precede a Commission proposal, as set out in the consultation framework of 2002. The Commission nevertheless refers to its "commitment to fostering dialogue with Member States, the European Parliament and all stakeholders, while at the same time delivering concrete proposals for action,"<sup>74</sup> pointing to two official communications: 'Reinforcing economic policy coordination' of 12 May 2010 and 'Enhancing economic policy coordination for stability, growth and jobs – Tools for stronger EU economic governance' of 30 June 2010. While these Communications, addressed to the ECB, the EESC and the Committee of Regions among others, give a clear indication of the Commission's plans, they do not provide the opportunity for direct citizen input, as is the case in a public consultation. The Commission emphasises its preparedness to 'follow-up swiftly with legislative proposals.'<sup>75</sup> Having received the finalised proposals, the Council and Parliament worked together to amend and finally agree on the legislation in November 2011.

In contrast, one public consultation was launched as a direct result of the six-pack. The Council Directive on requirements for the budgetary frameworks of the Member States called for the Commission to carry out an assessment of IPSAS standards for EU member states by the end of 2012.<sup>76</sup> An assessment of accounting standards is in line with improved fiscal and budgetary surveillance. Only 68 contributions were received; many had a direct interest and wanted to raise their concerns about the potential positive or negative consequences on their professional activities.<sup>77</sup>

The pattern that emerges from the procedure used to introduce the 6-pack demonstrates an important and startling trend. While no public consultation was launched for the 6-pack, a set of legislative proposals which reform the very nature of economic governance in the EU, a consultation was launched regarding the more technical issue of accounting standards, relevant to only a small and select target group.

## **B. Treaty on stability, coordination and convergence (TSCG)**

The Treaty is an Intergovernmental agreement (not EU law) signed by 25 EU Member States (all but UK and the Czech Republic). It was therefore agreed by the heads of Member States without consultation with the European Parliament or public consultations. The TSCG will only be binding for all euro-area Member States, while other contracting parties will be bound once they adopt the euro or earlier if they wish (they are allowed to choose provisions they wish to comply with). Its features are:

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<sup>74</sup> European Commission, "Proposal for a Council Directive on requirements for budgetary frameworks of the Member States," Com (2010) 523, 2010. Accessed September 30, 2013 at [http://ec.europa.eu/economy\\_finance/articles/eu\\_economic\\_situation/pdf/com2010\\_523en.pdf](http://ec.europa.eu/economy_finance/articles/eu_economic_situation/pdf/com2010_523en.pdf).

<sup>75</sup> European Commission, "Reinforcing economic policy coordination in the EU and the Euro area," 2010. Accessed August 25, 2013 at [http://ec.europa.eu/economy\\_finance/articles/euro/2010-05-12-reinforcing-economic-policy-coordination\\_en.htm](http://ec.europa.eu/economy_finance/articles/euro/2010-05-12-reinforcing-economic-policy-coordination_en.htm).

<sup>76</sup> European Commission, "Assessment of the suitability of the International Public Sector Accounting Standards for the Member States - Public consultation," 17.02.2012-11.05.2012. Accessed July 22, 2013 at [http://epp.eurostat.ec.europa.eu/portal/page/portal/public\\_consultations/consultations/ipsas](http://epp.eurostat.ec.europa.eu/portal/page/portal/public_consultations/consultations/ipsas).

<sup>77</sup> European Commission, "Public Consultation – Assessment of the suitability of the International Public Sector Accounting Standards for the Member States," December 18, 2012, Luxembourg, 2-3. Accessed July 22, 2013 at [http://epp.eurostat.ec.europa.eu/cache/ITY\\_PUBLIC/D4\\_2012/EN/D4\\_2012-EN.PDF](http://epp.eurostat.ec.europa.eu/cache/ITY_PUBLIC/D4_2012/EN/D4_2012-EN.PDF).



- Respect/ensure a merging towards the medium-term objective (MTO) of each individual country, as defined in the SGP, with a lower limit on structural deficits. Compliance with the rule should be monitored by independent institutions.<sup>78</sup>
- These budget rules shall be implemented in national law through provisions of "binding force and permanent character, preferably constitutional."<sup>79</sup> The European Court of Justice (ECJ) may impose financial sanctions (0.1% of GDP) if a country does not properly implement the new budget rules in national law. Compliance with the rule implementing the MTO in national law will also be monitored at the national level by independent institutions.
- Other provisions aim to reinforce the implementation of the Stability and Growth Pact
- Foundations for a reinforced surveillance and coordination of economic policies, detailing the structural reforms needed for an effective and durable correction of excessive deficit.
- The TSCG also includes a part on economic governance in the euro area, e. g. Euro Summits at least twice a year; reinforced economic cooperation.

### C. Two-Pack

As in the case of the 6-pack, no consultations took place in preparation for the Commission's proposal for the two-pack, published on 23 November 2011. The Commission's press release states that the 2012 Annual Growth Survey "includes a list of pending or future proposals aimed at boosting growth, which the Commission wants to be fast-tracked through the EU legislative process."<sup>80</sup> The 'two-pack' will take the form of two Regulations applicable to euro-area Member States only (based on Art 136 TFEU) and aiming at further strengthening the surveillance mechanisms and coordination within the euro area. It was confirmed by the Council at the end of February, and by the Parliament shortly thereafter on March 12, 2013. The measures are:

- "a regulation on enhanced monitoring and assessment of draft budgetary plans of euro area member states, with closer monitoring for those in an excessive deficit procedure;
- a regulation on enhanced surveillance of euro area member states that are experiencing or threatened with serious financial difficulties, or that request financial assistance."<sup>81</sup>

The Commission's proposal was accompanied by the publication of a Green Paper on the feasibility of introducing Stability Bonds.<sup>82</sup> The public consultation was open to all individuals and organisations but only 40 responses were received.

<sup>78</sup> European Commission, "Six-pack? Two-Pack? Fiscal Compact? A short guide to the new EU fiscal governance." Accessed September 30, 2013 at [http://ec.europa.eu/economy\\_finance/articles/governance/2012-03-14\\_six\\_pack\\_en.htm](http://ec.europa.eu/economy_finance/articles/governance/2012-03-14_six_pack_en.htm).

<sup>79</sup> "Treaty on Stability, Coordination, and Governance in the Economic and Monetary Union," 12. Accessed July 22, 2013 at <http://www.consilium.europa.eu/media/1478399/07 - tscg.en12.pdf>.

<sup>80</sup> European Commission, "New action for growth, governance, and stability," Brussels, November 23, 2011. Accessed July 22, 2013 at [http://europa.eu/rapid/press-release\\_IP-11-1381\\_en.htm](http://europa.eu/rapid/press-release_IP-11-1381_en.htm).

<sup>81</sup> Eurozone Portal, "Economic Governance: Council confirms agreement with EP on 'two-pack,' February 28, 2013. Accessed July 22, 2013 at <http://www.eurozone.europa.eu/newsroom/news/2013/02/economic-governance-council-confirms-agreement-with-ep-on-two-pack/>.

<sup>82</sup> European Commission, "Consultation on Stability Bonds," 23.11.2011-08.01.2012. Accessed July 22, 2013 at [http://ec.europa.eu/economy\\_finance/consultation/stability\\_bonds/index\\_en.htm](http://ec.europa.eu/economy_finance/consultation/stability_bonds/index_en.htm).

## Analysis:

A distinct lack of public consultations is evident when studying the decisions taken at EU level regarding sovereign debt and deficit levels. In some cases, as with the TSCG and individual national bail-outs, decisions are taken by heads of state at intergovernmental level without consultation with the Parliament, let alone via public consultations.

For the most part the role of the Commission, when involved at all in this field, is limited to that of proposing legislation in line with guidelines passed down by Heads of State or national finance ministers in the European Council. Public consultations have been bypassed at the policy-forming stage of the consultation process, thus denying citizens the right to make an 'effective' contribution, as guaranteed in the 2002 principles. Those consultations that have been held in this area are limited strictly to the technical implementation of these major policy orientations and therefore strongly resemble those affecting the financial and banking sector discussed above, targeted at limited and specialist groups of stakeholders.

Furthermore, the lack of responses to the Consultation on the creation of Stability bonds can be seen as a microcosm of the issues with the consultation process. First, the green paper, the questionnaire, and the results were only available in one language, while the memo was only available in three (English, French, and German). Further, one must ask how a topic which had been so widely discussed in the previous year received fewer responses than most of the technical documents examined in this paper. For example, by the time the Commission published its Green Paper, Eurobonds had been discussed (with widely varying opinions) by newspapers such as the Economist and the Guardian and also by influential think tanks such as Bruegel.<sup>83</sup> This disconnect between the wide body of public interest and the lack of responses was noted briefly in the results but not expanded upon.<sup>84</sup> The substantial discussion on Eurobonds should have been adequate for garnering interest in the consultation, and yet there seems to have been none. The Commission, in its analysis, concluded that "despite the relatively low number of replies, the public consultation has been a useful process for further reflection about Stability Bonds."<sup>85</sup> Perhaps, but it should have also concluded that receiving so few replies to a topic as important as Eurobonds was worthy of further consideration and its own investigation.

## **Recommendations**

ECAS would like to see several changes to address the various issues highlighted throughout this paper. Some potential solutions have already been discussed, and will be outlined more precisely here. It is important to note that the solutions are numerous because one response would not be sufficient for making the consultation process more representative and more effective. There are multiple issues with the process as it stands, and as a result, a multi-pronged approach is required.

### 1. Accessibility

- One of the main overarching issues with the Commission consultations on economic governance which has been stressed throughout this paper is their exclusive, highly

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<sup>83</sup> Jakob von Weizsäcker and Jacques Delpla, "Eurobonds: the blue concept and its implications," *Bruegel Policy Contribution* March 2011(2). Accessed July 22, 2013 at <http://www.bruegel.org/publications/publication-detail/publication/509-eurobonds-the-blue-bond-concept-and-its-implications/>. Other examples on Eurobonds being discussed by the media abound.

<sup>84</sup> European Commission, "Report on the public consultation on the European Commission Green Paper on the Feasibility of introducing Stability Bonds," May 4, 2012, 5. Accessed July 22, 2013 at [http://ec.europa.eu/economy\\_finance/consultation/stability\\_bonds/pdf/2012-05-stability-bonds-consultation\\_en.pdf](http://ec.europa.eu/economy_finance/consultation/stability_bonds/pdf/2012-05-stability-bonds-consultation_en.pdf).

<sup>85</sup> European Commission, "Report on the Green Paper of the feasibility of introducing Stability Bonds," 14.

technical nature. It is perhaps this factor which is most stifling in creating an open forum for discussion in which individual citizens can be actively involved. The consultations are currently used for very specific questions which rely on responses from well educated stakeholders, businesses, banks, national banks, and national governments while excluding the vast majority of people within the EU. While the specific nature of many of these documents is understandable in their desire to answer complex questions and create workable policies, a solution which includes citizen involvement is nevertheless possible. As the High Level Expert Group on Reforming the structure of the EU Banking Sector showed in their consultation (see above), basic questions can be used to gauge citizen opinion and formulate more complex policy. In this case, different sets of questions were used for different groups. This format used on a wider scale would allow for the Commission to gather pertinent information on highly technical matters while including greater input and having more extensive information on a topic, which would be highly beneficial for them.

- Most of the consultations looked at in this document are available in only English. Very few have been translated into other languages, which is quite problematic. There is a systematic lack of responses from countries in Central and Eastern Europe, and although this is surely not the only factor, accessibility of the documents in multiple languages would surely help.

## 2. Responses

- ECAS would like to see a more open discussion of which factors were taken into account when the Commission finally does (or does not) decide to propose legislation, so the impact of consultations on the legislative process becomes clearer. Thus, if they do not choose to adopt policies supported by citizens who provided input, they should nevertheless provide a justification for their reasoning. This would ensure greater accountability for the Commission.
- While many of the consultations had summaries of the responses, several did not. The Commission needs to consistently follow up with these after each consultation in order to show that the content of the responses have been seen and taken into account.

## 3. Visibility

- The Commission needs to ensure that consultations are actually being noticed by the public. Very few have received substantial responses, which indicates that they need to be more publicized. ECAS advocates an awareness raising campaign at both the European and national level in order to raise the profile of consultations.

With these changes, the Commission's use of consultations could be improved substantially and give it greater legitimacy. Upholding the standards set out in 2002 and improving upon them is a necessary step to ensure proper democratic accountability moving forward.