

# The Guarantors in Public Consultations:

*Achievements, Challenges and Perspectives*



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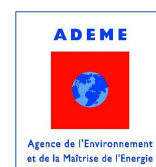
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## The Guarantors in Public Consultations: Achievements, Challenges and Perspectives

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# Presentation

Over the past two decades in France, legislation and demand from society have led to the organisation of mandatory and voluntary consultations on a wide range of subjects: major development projects, town planning, transport, economic development, environmental matters, etc.

But consultation as a dialogue process is sometimes disputed by participants, who complain of incomplete information, biased expert assessments, insufficient consideration for certain viewpoints, lack of neutrality on the part of the meeting moderators, limited effects on the final decision, and more.

Whether or not they are well-founded, these criticisms require a response, and independent “guarantors” are increasingly being brought in to improve the process and outcome of consultations.

Guarantors are individuals or small teams who, without expressing any opinion of their own on the substance of the debate, help to construct and enforce a framework applicable to all parties. By improving the level of trust in the setup, they facilitate discussion between participants and contribute to the legitimacy of the decisions reached.

France has several years of experience in such matters.

Experience shows that these guarantors are effective; however, practices vary widely, their role is rarely formally defined, and they have no specific status, no training or spaces for discussion helping them to enhance their skills.

Improving guarantors’ practices and, more broadly, the mechanisms intended to “guarantee consultation”, is an important issue for everyone who believes in the necessity of dialogue between public decision-makers, project owners, stakeholders and local residents.

# *Overview of practices*

## **Consultations and guarantee processes**

Many consultations take place on French territory under the impetus of regulation and demand from society. They concern matters such as:

- Major development projects (infrastructures for roads, railways, waterways and airways; wind turbines; high-voltage power lines, etc) and economic activities (e.g. quarries, harbours, various industries);
- Urban planning projects and all kinds of public policies (town planning documents, district regeneration, public transport, waste management, etc);
- Environmental questions (relating to resource management, conservation areas, pollution, etc).

Certain consultations are required by the regulations, while others are held voluntarily in order to take residents' views into consideration; others again become necessary when opposition or conflict arises.

However, the consultation processes are sometimes disputed, and this compromises the validity of the outcome. Well-founded or otherwise, the criticisms require a response.

For this reason, use of “guarantee mechanisms” has become more widespread in the last few years, for example:

- Introduction of project-specific consultation charters; these charters lay down the procedures and rules for dialogue and are sometimes co-constructed by the participants;
- Formation of consultation monitoring committees, consisting of a few selected representatives of participants. Their task is to ensure respect of the principles and rules defined by the charter, when a charter exists, or arising from current knowledge on the subject;
- Creation of permanent bodies to monitor and/or assess the consultation practices used by a public authority, generally consisting of local residents, sometimes in association with experts. Such bodies exist, for example, in the Greater Bordeaux authority (Sustainable Development council), the City of Paris and the City of Grenoble;
- Appointment of guarantors, who are individuals (or teams of two or three individuals) engaged to enforce application of the principles and compliance with the rules. The guarantors can make an active contribution to creating an atmosphere of trust.

## What does the guarantor do?

The guarantor participates in public meetings, plus in most cases, the preparation and monitoring process for the consultation.

He/She observes the progress of meetings and may intervene if the conditions for listening and dialogue are considered unsatisfactory, or if someone asks a question about the methods of the consultation.

The guarantor draws up one or more reports on the quality of the consultation process, including a final report, and can ask for these reports to be publicly released.

He/She may be involved in preparation of the consultation, and may advise the organisers throughout the process on the measures they should take to ensure good quality dialogue. These measures concern matters such as information sharing, the number of public meetings and their procedures, the need for second opinions if the experts' objectivity is challenged, etc.

He/She may organise an appeal or bring in an arbitrator if there is a dispute over the quality of the consultation process.

For example, if some participants believe that the minutes of a meeting do not reflect what was actually said, the matter may be taken to the guarantor, who can if he/she considers the complaint justified ask for amendment of the minutes or a change in the methods for drawing up the minutes.

The guarantor may chair public meetings, or leave that role to another person.

He/She may privately exhort certain participants to adopt an attitude that is conducive to good dialogue.

He/She may ask the public decision-makers about what they will do following the consultation, and how they will report their decisions.

The guarantor's stance thus varies, from that of a discreet observer to that of an active facilitator or even a mediator.

In practice, past experience has shown the effectiveness of guarantors, and their involvement is generally positively perceived by all participants, especially in situations marked by conflict.

## Who are the guarantors?

Guarantors are neutral, independent individuals. They are often specialists in consultation issues, academics, former civil servants... There is no standard profile for a guarantor.

In some local authorities in France (such as Greater Bordeaux and the City of Grenoble), these roles are occupied not by a person but by a group, respectively a Sustainable Development Council consisting of local residents, and a group of randomly-selected volunteer residents. As this shows, the figure of the independent guarantor is a relevant channel for guaranteeing effective consultations.

Use of outside guarantors has been recommended in France by:

- the Ministry of Ecology (Charter for Consultation, 1996)
- the "Grenelle 2" environmental law (2010).
- The Council of State (report entitled "Consulting differently, participating effectively", 2011)
- The National Commission for Public Debate (Methodology Statement, 2013)
- The Economic, Social and Environmental Council (report entitled "Consultation between stakeholders and economic development", 2014)

# Observations and issues

The members of the Steering Committee have drawn up the following statements of position.

**1. Mechanisms intended to “guarantee consultation” are necessary today** in a large number of cases, as they are an effective response to the rise of procedural criticism.

**2. A wide range of guarantee mechanisms exists.** They are often mutually compatible and have several principles in common, although the proposed modes of application may vary. The Steering Committee has focused its attention on the guarantor because he/she has become a rising figure in recent years, but recommends special attention to residents’ groups that fulfil a similar role. These groups may grow in number in the next few years, and the experience of pioneering local authorities in such matters is very instructive.

**3. Guarantee mechanisms must have three objectives.**

The first is to help establish a sufficient level of trust between participants, allowing them to express their divergences so that genuine dialogue can take place.

The second is to make the consultation process credible, i.e. robust, fair and equitable, in the eyes not only of the participants but also of decision-makers and external observers.

The third is to bring participants in the consultation to move forward in dialogue, by suggesting improvements to the process when necessary and

asking each person to display the required qualities of attentive respect despite the inevitable divergences of opinion on the issues under debate.

**4. The existing situation needs improvement.** The roles and missions of guarantors, the methods for their appointment and remuneration, their skills and their training: none of these is clearly defined. However beneficial the latitude left to actors (project owners and guarantors) may be, it leads to great diversity in practices, with an underlying risk: the risk of discrediting the guarantor in the long term. That would rekindle protest, with no certainty of any new responses.

**5. The aim is not to normalise and restrict, but to define standards and guiding principles for action.**

These must be developed collectively by the actors concerned, based on successful real-life consultations: that is the source of their legitimacy. The aim is not a “lowest common denominator” strategy, but a move to foster better practices inspired by effective real-life methods.

**6. In the future changes we are calling for, certain principles are essential:** change will come gradually; coordinated action by public and private actors is vital; high quality in consultation processes is an absolute necessity.

To foster debate and encourage involvement by all actors concerned, the Steering Committee for the “Guaranteeing consultation” project wishes to share the following propositions.

# Propositions

The Steering Committee presents thirty propositions to improve current practices in guaranteeing consultations and the missions of the guarantor. The propositions relate to the following themes:

- **Guarantor's roles and missions**

These propositions aim to define “minimum core practices” for the guarantor, encouraging him/her to play more than the role of a mere observer: an active role in the installation of favourable conditions for dialogue.

- **Criteria for recruiting guarantors**

These propositions state that the guarantor's mission can be open to any citizen with an interest and experience in consultation. They reaffirm that the guarantor must adopt a neutral stance, undertaking not to favour any particular viewpoint or interest, and thus declare any conflicts of interest.

- **Appointment and objections**

The appointment of the guarantor, and any objection to that appointment, must be made early in the process, which must be transparent and as far as possible decided collectively by the participants in the consultation. The outside guarantor must be in attendance continuously from the beginning of the consultation until the project is implemented.

- **List of guarantors**

Creation of a public, open list of independent guarantors would help to make the mission accessible to a diverse range of people as regards gender, age and occupation. Here again, the aim is to make the recruitment process more transparent.

- **Charter**

A national charter of consultation guarantors setting out principles, instruments and ethical rules would contribute to clarification of the guarantor's role.

- **Training and feedback**

Creating channels for sharing feedback, mentoring, spreading good practices, training and networking by guarantors is necessary to ensure quality in execution of the guarantor's mission.

- **Remuneration and status**

More transparency on these factors is necessary. The level of remuneration must also make the missions accessible to people who are still in work.

## 1. Guarantor's roles and missions

### *Basis for the propositions*

Several key roles are expected of the guarantor: creating trust between stakeholders, encouraging them to engage in dialogue, making the process clear and credible to outside parties, reporting on progress in the consultation. The quality of the process is central to the guarantor's mission.

A variety of tasks can help to achieve this, from assistance in design of the consultation process to establishment of a final consultation report. Participants in consultation are not always familiar with the diversity of these tasks, or even the exact mission of the guarantor.

### *Propositions*

1. 1. The guarantor must be prepared to display personal independence and assert him/herself as the constructor of dialogue. He/She must create an appropriate environment for sincere dialogue between stakeholders. This requires active involvement outside the consultation meetings, particularly in situations of conflict. The guarantor may instigate bilateral discussions with stakeholders, and the content of such discussions may remain confidential. During the consultation, he/she may call in (or recall) actors who are not (or no longer) participants in the process. He/she may call in the project owner if the situation has reached a stalemate or become conflictual.
1. 2. The guarantor must be present, available and accessible to participants during the consultation. The project owner must set up non-personal contact channels for the guarantor: email address, PO box if necessary, telephone number.
1. 3. The guarantor must be introduced, and his/her missions explained, to all participants, who must be able to contact the guarantor directly throughout the consultation period. All communications on the consultation must therefore mention the existence of the guarantor and indicate how he/she can be contacted.
1. 4. The guarantor plays a role in assessing the information under debate (its full and comprehensive nature); if he/she is not competent to do so, he/she calls on experts with the skills necessary to verify the information, or instigates an assessment process, especially if the information concerned is disputed.



Guarantors do not all carry out the same tasks, and as a result various conceptions of their mission are visible. In particular, the guarantor can also play the role of facilitator.

The guarantor appears to have a major role to play in the background of the consultation (away from the public eye). He/She can do mediation work there, i.e. facilitate agreements on the consultation process, and pay attention to the positions of stakeholders who are unable to express themselves openly in the consultation framework.

Producing one or more reports on the consultation procedure is considered important by guarantors; some of them consider this work as their main “weapon”. These reports are often crucial for project owners, who see them as a way to provide assurance and make the process secure, including from a legal standpoint. The public, in contrast, do not truly appreciate their importance.

...

**1.5.** The guarantor is not necessarily the meeting moderator. The moderator’s role should not be exercised to the detriment of the observation role or affect the quality of the guarantor’s reports on the consultation. As a result it is wise where possible to separate the two functions. If this is not the case, care must be taken over the following points:

- This question must be clarified at the time of choosing the guarantor, and discussed with the guarantor once selected,
- Out of concern for transparency, the guarantor must be very clear with participants when necessary about his/her dual role as guarantor and moderator.

**1.6.** The guarantor must report on the consultation procedure without giving an opinion on its content. He/She issues a report at the end of the consultation if it is short, or several reports at key stages if it is long. The report remittal dates must be clearly defined in the guarantor’s contract at the start of the mission. These reports must be released publicly, and where relevant are included in the public inquiry file<sup>1</sup>.

**1.7.** The guarantor’s reports must meet minimum requirements regarding content. These can be laid down in the contract.

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<sup>1</sup> The public enquiry is a regulated public consultation procedure that must take place before work begins on projects that are likely to affect the environment. It particularly concerns public amenities, infrastructures, roads, etc.

**1. 8.** The link between the consultation and decisions must be explicit in the decisions. This principle is referred to in France's "Grenelle 2" environmental laws (articles L121-9 and L121-13) and can be reasserted, including at the guarantor's initiative, at the beginning of the consultation. The decision-maker should write the decision in such a way that:

- The aspects of the decision that are in line with the outcome of the consultation are highlighted;
- The aspects that differ from the outcome of the consultation are clearly presented, stating the main arguments that guided the choices made.

**1. 9.** It is necessary that the guarantor should meet with the public decision-maker(s) and the project owner when his/her mission ends but before the decision is made. The objective for the guarantor is to ensure that all the results of the consultation have been taken on board, even when those results diverge. He/She may give his/her own analysis of the consultation outcome and remind the decision-makers of the need to take this outcome into consideration in the decision statement. The decision-maker must meet with the guarantor if requested, particularly when the consultation and decision-making process is long.

**1. 10.** The guarantor may also, where relevant, make him/herself available to the public enquiry commissioners and provide any information necessary for the commissioners' mission, in addition to supplying the guarantor's report(s).

**1. 11.** The quality of explanation of the link between the consultation and the decision must be assessed by all participants in the consultation, and is not the responsibility of the guarantor. This assessment can be collective, in which case it may be instigated and/or supervised by the guarantor, who will be attentive to the environment for dialogue in this stage in the same way as for the consultation. In special cases where the guarantor is given this mission, the details of the mission (particularly its duration) must be explicitly stated in the contract or included as an amendment.

How far does the guarantor's role go? Should the guarantor make sure that the public decisions reflect the views expressed during the consultation? This question is hotly debated, because the link between the consultation and the ultimate decisions is crucial. Associations, local residents, guarantors and project owners see this as a factor in the effectiveness of the consultation. It is thus vital to ensure that there is a real link. Nonetheless, it is important to remember that the decision-maker remains responsible for decisions after the consultation, which is considered as a support for decision-making.

The Steering Committee draws the attention of all actors in consultation to the importance of the link between the consultation and the decision, and asks them to seek pragmatic solutions that take account of the diversity of real-life situations rather than pushing for new regulatory obligations. Feedback must be collected on this subject, especially by the guarantors (this relates to the propositions on training and feedback for guarantors, presented later in this document).

## 2. Criteria for recruiting guarantors

### *Basis for the propositions*

Several qualities are expected of the guarantor, first and foremost knowledge of, and belief in, consultation. The following are also useful:

- While not being an expert in the subject of the consultation, having the capacity to acquire a certain knowledge of the subject at the start of the consultation;
- Interpersonal skills, especially the capacity to be attentive to others and show empathy;
- Moral qualities such as courage, a sense of fairness, independence of mind and humility.

This determines both the guarantor's effectiveness in the job (because these qualities lead to better understanding of the subject and the interplay between actors, help to elicit useful contributions, etc) and his/her legitimacy (they help to forge a positive attitude to the guarantor by consultation participants).

Coming from outside the area concerned by the consultation enables the guarantor to take a fresh view, and limits the risk of becoming involved in local actors' strategies and interactions. On the other hand, a guarantor living in the area is easier to recruit, has lower travel costs and better understanding of the actors' interactions, but is also viewed with greater suspicion of partiality. A local guarantor must therefore, like any guarantor, declare any conflict of interests. A local guarantor and a non-local guarantor working together can make a complementary team.

Two factors are thus particularly important in the choice of a guarantor: their qualities and skills, and their lack of personal stakes in the issues under discussion. Nobody can ever be completely neutral, but transparency is essential.

### *Propositions*

- 2. 1.** The guarantor must adopt a neutral stance and undertake not to favour any viewpoint or interest. He/She must declare any conflicts of interest.
- 2. 2.** A person who wishes to act as guarantor must be able during the recruitment process to demonstrate an interest and experience in consultation, at least as a stakeholder.

### 3. Appointment and objections

#### *Basis for the propositions*

The way the guarantor is appointed is a component of his/her legitimacy, as is the remuneration method.

Participants and project owners often ask to take part in appointment of a guarantor, either through involvement in a joint decision, or by submitting nominations to another body. They want to contribute to definition of the guarantor's profile, or interview candidates. The guarantors have no objections to participant involvement in the appointment process, but will also accept appointment by a third party, for instance the National Commission for Public Debate.

Should preference be given to a single guarantor or a team of guarantors? A team can offer greater availability and a possible distribution of roles, with more diverse skills and a comparison of views; but it also complicates the mechanism, opening the door to differences of opinion between guarantors, and can make the process more complex in terms of coordination and overall cost. The Steering Committee makes no proposition on this point, instead recommending a case by case approach, referring principally to the project's geographical scope and complexity.

The duration and timing of the guarantor's involvement must be set jointly with the project owner, stakeholders and the guarantor him/herself. Prior to the consultation, it is a good idea to hold dialogue between the stakeholders about the coming process (subjects concerned by the consultation, scope, and devices).

#### *Propositions*

- 3. 1.** The appointment process for the guarantor must be transparent.
- 3. 2.** Joint appointment of the guarantor (and/or joint definition of the selection criteria) by the project owner and stakeholders in the consultation is advisable.
- 3. 3.** A public call for applicants is desirable, setting out the guarantor's roadmap, the required skills and qualities, and exclusion criteria.
- 3. 4.** The project owner or consultation stakeholders must have the option of nominating a guarantor who knows the area because he/she lives there or has already worked there. There must be good reasons for such a step, which must be transparent to all participants in the consultation.
- 3. 5.** The process for objections to the selected guarantors must also be established with due transparency, and be decided jointly where possible, in the same way as appointment procedures.
- 3. 6.** The guarantor must be able to engage in the consultation early enough. This means that he/she should be appointed at a stage when the terms of the consultation are still open to substantial modification.
- 3. 7.** The duration of the guarantor's mission must be stated in the contract.
- 3. 8.** The time needed by the guarantor (for reading, meetings, interviews) to become familiar with the subject of the consultation before the public exercise of his/her functions begins, must be explicitly stated in the contract, quantified, and remunerated.
- 3. 9.** The consultation must have a guarantor continuously, from the outset until implementation of the project. If this duration is long, successive guarantors may be used and knowledge of progress on the consultation must be handed over between them.

## 4. List of guarantors

### *Basis for the propositions*

Creation of a list of guarantors, i.e. a public file of existing guarantors and potential candidates, serves several purposes: broadening and diversifying the current pool of guarantors; encouraging exchanges between guarantors; fostering transparency; showcasing and guaranteeing the skills of the people on the list.

### *Propositions*

- 4. 1.** An open list of guarantors should be created, in order to make their skills and references public.
- 4. 2.** The National Commission for Public Debate, as an institution that guarantees public participation, has legitimacy to form a joint Steering Committee for establishment and governance of this list, consisting of representatives of various actors (associations, research bodies, businesses, local authorities, qualified personalities, etc).
- 4. 3.** People interested in being included in the list could join it voluntarily, stating their motivation, skills and experience.
- 4. 4.** The joint Steering Committee must take a proactive approach, seeking out guarantor profiles that are currently under-represented, particularly in terms of age and occupation.

### *Propositions*

- 5. 1.** Introduce a national charter for consultation guarantors, laying down principles, instruments and ethical rules to which guarantors could voluntarily adhere.
- 5. 2.** This charter could, for example, include a commitment by the guarantor that he/she is not involved in local actors' interactions, and has no interest in encouraging any particular solution. It could also list the criteria for the guarantor's removal or resignation.
- 5. 3.** Information about the guarantor's mission or the guarantee mechanism should be included in specific charters for consultation, to be developed jointly at the start of the process.

## 5. Guarantor's charter

### *Basis for the propositions*

Drawing up a "Guarantor's charter" would fulfil several objectives: showing and clarifying the guarantor's role in the consultation; helping and protecting the guarantor by affirming his/her role and prerogatives; and additionally affirming the guarantor's duties, which also enhances his/her credibility.

## 6. Training and feedback

### *Basis for the propositions*

Training of guarantors and support (in the form of help with capitalising on experience and sharing practices) meets several objectives: acquiring skills, perfecting practices, creating spaces for reflexive discussion between guarantors (who often act in isolation), diversifying profiles by making access to the function easier for people who do not come from the usual spheres.

It would also be helpful to raise awareness, in all actors in the consultation, of the guarantor's role, its usefulness and the boundaries of the guarantor's mission.

Specific times for guarantors' knowledge-building and training appear necessary, and these times should be interconnected with existing training programmes offered by public and private institutions.

### *Propositions*

- 6. 1.** Introduce channels to facilitate experience-sharing between guarantors, and their own reflection on their practices: practice discussion groups (reflection between active peers); sharing good practices; mentoring (an experienced guarantor provides support and advice for a new guarantor); job shadowing or other forms of learning by experience; creation of a network of guarantors.
- 6. 2.** Propose formal training sessions intended specifically for guarantors.
- 6. 3.** The National Commission for Public Debate must play a key role as a driver for introduction of these measures.

## 7. Remuneration and status

### *Basis for the propositions*

The indemnity scale set by the National Commission for Public Debate (in 2014: €76 per hour for public meetings; €38 per hour for other activities, up to a limit of €9,000 gross per year) is low in view of the commitment required by certain missions, and the skills brought into play. The guarantor's function thus finds itself undervalued in some cases, given the low remuneration in comparison to external service providers. The cost of the guarantor also remains modest in relation to the cost of certain projects. The Steering Committee suggests that this scale should be revised, in order to make the guarantor's function accessible to a wider variety of people. It is useful to have a scale as a reference, but the amounts should be considered as a minimum rather than a norm or ceiling.

There is no reason why a guarantor should not exercise the function on a pro bono basis, or be paid without reference to the remuneration scale, which is only for guidance. However, for equal work for the same organization, the remuneration should be equal.

In France, the guarantor's function does not benefit from social security coverage, and is not always insured. The Steering Committee suggests that this point should be examined in future, with a view to broadening the pool of guarantors, especially if the function is open to people who are not currently in paid occupation or a pension system, and therefore are not covered by the social security system.

### *Propositions*

- 7. 1.** Transparency is the aim, with equal remuneration for guarantors in similar situations, for similar requirements in the same organization.
- 7. 2.** The level of remuneration must be sufficiently attractive to diversify the profiles of guarantors and raise the status of their function.
- 7. 3.** It is recommended that every organisation using the services of guarantors should set a remuneration scale and define a specific status for exercising the mission.

# Authors and contributors

These propositions were drawn up by the Steering Committee for the “Guaranteeing Consultation” project, which is an independent group whose members belong to various bodies that are active in the French field of consultation.

The Steering Committee has involved around a hundred people in its reflection process, particularly between July 2013 and November 2014: members of associations, private citizens, project owners, representatives of public institutions, guarantors, elected officers and employees of local authorities.

The work process was as follows:

- Three workshops that led to clearer definition of the issues, based on the practical experience of a hundred participants (2013-2014): the first was with private citizens and associations’ representatives, the second with project owners, the third with guarantors.
- A consensus conference for preparation of the propositions (2014).
- Public presentation of the propositions in Paris in November 2014.

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