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**THE PUBLIC ACCOUNTABILITY OF BUSINESS ASSOCIATIONS
UNDER CONDITIONS OF EU POLICY PARTICIPATION**

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A thesis submitted in partial fulfilment of
the requirements of

The Robert Gordon University
for the degree of Doctor of Philosophy.

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List of Abbreviations

CSO	Civil Society Organization
EU	European Union
NGO	Non Governmental Organization
INGO	International Non Governmental Organization
EP	The European Parliament
EPS	European Public Sphere
DG SANCO	European Commission's Directorate General for Health and Consumers
UNESDA	Union of European Soft Drinks Associations
EAHF	DG SANCO's European Alcohol and Health Forum
EPACA	European Public Affairs Consultancies' Association
PPP	Professional Practices Panel
SFP	The Smoke Free Partnership
EASA	European Advertising Standards Alliance
SRO	Self Regulatory Organisation
WFA	World Federation of Advertisers

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Abstract

Set in the context of wider problems of EU popular legitimacy, the thesis explores a participatory model of EU policy making based around business associations as agents of participation. Policy participation implies public accountability, where there is an abundance of literature on the role of non-governmental organizations exercising mechanisms, but without a specific focus on business associations.

This topic addresses the participatory role of business associations acting within an applied public accountability mechanism. The analysis of the literature leads to the identification of an accountability model grounded in the origin of the mandate to act and to judge. Applied to business associations, the model reveals newly combined conditions for the existence of public accountability, pointing notably to the reliance of external processes on internal means and the deliberate choice to act beyond legal compliance.

The public quality of the outcome of the application of the model rests on structured deliberation with the wider EU public through active participation of civil society organizations and arises as questions of reputation management are addressed for business associations active in sensitive product or service sectors. As the multiplicity of actors increases, the relationships within the public affairs networks will become more complex, and the dividing lines between private commercial interests, citizens, and the state more blurred. The public accountability credentials of those actors operating through governance models in this specific context allows for clarification of purpose and transparency of outcomes, thereby providing for a model of engagement.

Chapter 1: INTRODUCTION AND RESEARCH METHODOLOGY

1.1. Background to the thesis :

Accountability evokes notions of representation, transparency and legitimacy and has become an icon of good governance. But what is the meaning and purpose of accountability? How is it applied as a mechanism of public accountability and do private commercial interests such as business associations participate in accountability practices under conditions of EU policy participation? This thesis addresses the existence, nature and function of public accountability as practised by business associations in the context of the multi level governance structure of the EU.

1.1.2. Contributions of the thesis

Set in the context of wider problems of EU popular legitimacy, the thesis topic explores solutions aimed at identifying a participatory democracy model of EU policy making based around business associations as agents of participation. Policy participation implies public accountability, a governance concept addressed in the literature but focused on a particular type of 'non-governmental' transnational organization acting in the public interest. This thesis addresses the participatory role of business associations acting within an applied public accountability mechanism and its potential to yield the desired outcomes. To that end, the varied nomenclature of accountability is analysed and cross referenced with a focus on identifying when accountability questions arise as well as the rationale for the application of a process.

The analysis of the literature leads to the proposal of a generic accountability model then applied to transnational business organizations operating under particular conditions of EU participation where issues of reputation management present engagement challenges. The quality of the process and hence the potential for legitimacy that it might yield rests in the public credentials of civil society organizations acting as proxies for the EU public.

The selection of the units of analysis is deliberate, dealing with business associations currently applying monitoring processes under condition of EU policy participation. The deep case analysis uses process tracing as the method to yield empirical data. This method will permit the tracing of the link between the application of the proposed generic process of accountability and the outcome. The results of the case studies reveal newly combined conditions for the existence of public accountability, pointing

notably to the reliance of external processes on internal means and the deliberate choice made by these EU business associations to act beyond legal compliance. They also reveal the weaknesses related to the “public” nature of the process and the limited remit of its function within the EU policy development ‘bubble’. Public accountability within such a conceptual framework addresses deficits of democratic participation, via a process of internal monitoring and independent assessment submitted to public scrutiny. The process applicable to transnational actors addresses the public vocation of private commercial interests and proposes a model for accountable democratic engagement in EU policy participation.

The original contribution of the research to discussions on democratic participation in the EU lies first in the choice of business associations as the unit of analysis placed in the context of the EU. Secondly, the literature on accountability deals with differing nomenclatures but as yet has not sought to define the context and set of circumstances of public accountability, or the rationale supporting the need for the practice of accountability. Thirdly, this last analysis led to the proposal of a generic model of public accountability which is then applied to the units of analysis. The results of this application in turn bring about a refining of the formula to reflect the elements which would increase democratic accountability, such as the use of independent audits, public participation in forums and the need for structured deliberation on the part of civil society actors with a public interest mandate. Finally, the core data derived from actual accountability processes as practised is discussed to ascertain the extent to which the application of the process yielded the desired outcomes.

1.1.3. Structure of the thesis:

This introduction chapter deals with the original contributions of the research and sets out the logical thread underpinning the narrative. The second part of this first chapter addresses the choice and justification of the research methodology applied.

Chapter 2. 1., describes the context and focus of accountability and clarifies its meaning and rationale in the EU specific set of circumstances. The EU political construct is uniquely supra national and suffers from a democratic deficit due, amongst other reasons, to weak democratic participation in policy making, and to which civil society organizations are sometimes identified as a potential means of solution (Heidbreder 2012). This chapter first addresses the emergence of civil society in the EU polity and their expected role. It then discusses the need for accountability of civil society actors and identifies varying types of such actors grouped under the nomenclature by leading authors, thus placing business

organizations acting in EU policy development. This focus on business associations acting alongside CSOs reveals the challenge of reconciling private commercial interests with a public vocation.

Chapter 2.2., first centres on the meaning and purpose of accountability by untangling the plethora of accountability denominations to distinguish between context and desired outcomes. The argument is made for accountability as a governance choice lying beyond legal compliance, where internal processes provide the basis for external account giving. Also, the case is made for the application of a generic process with modified emphases. In the second part of this chapter I track the shift from democratic accountability to public accountability as a process applied in a transnational context to EU business associations and ascertain where and when accountability questions arise to draw up a more accurate assessment of accountability measures.

In Chapter 2.3., the constitutive components of a public accountability process are presented and discussed in some detail to gain an accurate understanding of the roles and stages of the process. Maybe the greater challenge is to derive a public element from the process for a private commercial interest specific organization. The contention is made that this element is acquired through the composition or mandate of the forum. The lack of enforcement of sanctions after the account giving is also highlighted. The result of the analysis of the components is the proposal for a generic accountability process that can be applied to ascertain the existence of accountability in a given relationship. The new emphasis of this process lies in the nature of the principal and the forum, and the origin of their respective mandates of the principal and of the forum. The focus of this research on “public” accountability leads to the need to identify public elements within the mandates of these components.

Chapter 3, describes the application of the generic accountability process to three case studies of business organizations acting under conditions of EU policy participation. The analysis first seeks to ascertain the existence of the accountability process steps and then the type of accountability encountered. The data derived allows for a greater understanding of the role of accountability and its legitimizing potential when practised by transnational actors in the specific circumstances of the EU political and legal structure.

The choice of these units of analysis is deliberate in that each was expected to yield greater insight into the rationale behind and the consequences of the application of an accountability process. The units of analysis are presented in detail in the methodology chapter at 1.2 below. The first is UNESDA (Union of European Soft Drinks Associations), a hybrid membership organization encompassing national

associations as well as direct company membership (at Chapter 3.2.). Its participation in the European Commission's DG SANCO (health and consumer rights Directorate General) EU Platform for Action on Diet and Physical Activity is central to the accountability analysis. The second unit is the European Public Affairs Consultancy Association, the members of who adhere to a code of conduct related to their professional activity (at Chapter 3.3.). The third and last organization, the World Federation of Advertisers participates in a DG SANCO Forum on reducing alcohol related harm (at Chapter 3.4). Each case study conclusion is presented at the end of each of the relevant subsections respectively. These initial conclusions deal with the answers to the main study questions relating to the existence of an accountability process, the potential link with the public and the effectiveness in bringing about the desired outcome.

Chapter 4 presents a cross case study analysis and final conclusions, first identifying how the identified accountability components play out in practice, identifying a link with the EU public and the source of the mandate from the principal to the actor and for the forum to hear an account and pass judgment. The origin of the public nature of the process and the importance of the activity and participation of pure civil society organizations are underlined. The account giving element of the process and the nature and enforceability of the sanction is discussed. The consequences or perspectives of the application of an accountability mechanism are presented before a final subsection that sets out the initial case study propositions against the findings.

1.2. Research methodology:

1.2.1. Approach to research question:

This Chapter 1.2. , on the research topic presentation and justification of the thesis subject, presents the qualitative research strategy and the approach to data collection, analysis and reporting. The study is a case oriented comparison, focusing on a large number of characteristics in order to develop the application of the concept of accountability via a process. This approach allows for causal complexity to be addressed through the “development of an extensive dialogue between the researcher’s ideas and the data in an examination of each case as a complex set of relationships” (Della Porta and Keating 2008 p. 369).

There is an adequate amount of both literature and empirical data on most key terms applied in the thesis subject, such as “EU policy participation” or “lobbying” or “business association”. There is however no core data on accountability practices applied to EU business associations under conditions of EU policy participation. A greater part of scholarly literature focuses on the need for increased participation of civil society organizations (CSOs) claiming to represent the priorities of the European public. When business associations are examined in the light of accountability in the EU policy process, only certain aspects have been studied such as their transparency and presence in the public eye. Altides and Kohler Koch (2009) analyze the communication performance of certain business organizations by measuring the number of times they appear in selected publications but do not address the rationale supporting the need for accountability mechanisms nor how the constitutive elements of accountability are dealt with in practice. Piewit et al (2010) also deal with the accountability of CSOs through observing its relations with members and beneficiaries. The authors enumerated the differing types of procedures regulating the relationships described, though this did not include the public. The organizations responding to the survey undertaken refer to complaints procedures, internal codes of conduct, mission statements or philosophical or religious values and even legal compliance. However, the authors do not focus on accountability measures in business organizations, the rationale behind their adoption and the desired results of the link with the EU public in the context of the quest for greater legitimacy. There is also no evidence of the application of such accountability mechanisms observed in practice.

In order to gain greater insight into the actual workings of accountability mechanisms in practice for business associations in the EU policy process and to probe the processes applied, I have developed the

basis for in-depth case studies of three different types of relevant associations. The selection of these units of analysis was made on the basis of their potential to yield salient outcomes and, is intended to illustrate the variety and depth of the accountability relationships in hybrid (direct company membership as well as association membership) or multilayered organizations (dealing with international, European and national alliances). The intended diverse associations participate in EU policy development through a process presenting the characteristics of public accountability. This deliberate approach flows directly from the thesis subject and requires a business association to be engaged in an exercise contributing to EU policy process or development, where the ensuing discussions might involve the EU public, albeit sometimes represented by civil society organizations, and where the mechanism of engagement presents the elements of an accountability mechanism, including a sanction.

I set aside some earlier identified units of analysis due to their missing elements of the above structure, in particular the presence of a formal, monitored engagement with the EU that includes a potential sanction mechanism, and the willingness to be subject to accountability to the EU public, whatever form that might take. For example, the European Sugar Industry has promoted corporate social responsibility and social dialogue since 2004 which takes the form of a code of conduct and covers emission trading schemes, apprenticeships, aid to sugar producing developing countries and other trade issues. Whilst the scheme is closely monitored by the industry which then reports to the European Commission, it failed to include the “public” element and was limited to the participation of both the industry and social partners.

Similarly, manufacturing industries using silica (sand) such as in glass or ceramics have adopted a cross-sectoral industry Agreement on Workers’ Health Protection through the Good Handling and Use of Crystalline Silica and Products containing it. This Agreement arose as a response to the European Commission’s Scientific Committee for Occupational Exposure Limits’ recommendations and applies to workers across the EU. However, as above, it does not include an element of engagement, for approval or sanction, with the EU public.

The European Lighting Companies’ Federation representing 95% of the total European production of lamps focuses on climate change and energy efficiency and as such initiates and promotes schemes aimed at increasing the awareness of intelligent street lighting or switching from gas discharge lamps to the energy saving products. This in turn gives rise to codes of conduct and monitored programs notified to the European Commission but not formally a part of the ongoing consultation for policy development.

More importantly, the engagement with partners outside the membership included technical and environmental stakeholders but no group that claimed to represent the voice of EU citizens.

Finally, I also scrutinized the Federation of the European Sporting Goods Industry since some prominent members of that organization, notably Nike and Puma, maintain sustainable business performance targets against business, social and environmental goals. The association does not however take up the representation of the industry sector for these initiatives which are also global and not limited to the EU policy process. The case studies finally chosen are described at point 1.2.3.below.

The choice of methodology based on case studies and empirical inquiry is due to the exploratory nature of the research and the methodology's efficiency in identifying causal processes. Accountability mechanisms, which are defined by their specific components and are described in detail in the next Chapter, might include a variety of known processes such as complaints panels or self regulation, however their existence and potential are as yet unrecognised. Research is currently limited to discussions on the definition of public accountability and its role. This state of affairs renders a quantitative methodological approach uncertain. The qualitative approach however will yield grater insight into the role and potential of such mechanisms. The case studies will answer the questions of "how" and "why", being asked about a contemporary set of events over which the researcher has no control, as per Yin (1994). The design arises as a logical consequence that will connect the empirical data to the research questions and ultimately, the conclusions. The procedure applied is that of process tracing, "designed to identify processes linking a set of initial conditions to a particular outcome," (Della Porta and Keating 2008 p. 399). Process tracing is particularly adapted to within-case analysis as in this research and allows for both the positivist and interpretivist research design where the goal is to analyze the relations between possible causes and observed outcomes. Indeed, the accountability process identified sets out components and criteria tested against the practice of the units of analysis.

1.2.2. Providing the framework and presenting the design rationale:

The thesis seeks to ascertain the existence, nature and function of the public accountability of business associations under conditions of EU policy participation. Three overriding questions are addressed hereunder prior to setting out the detailed breakdown of the research method, with a view to better framing the context of the research and pointing to the interesting complexities of the structured approach.

Internal and external accountability; how the puzzle fits:

As described in the section above, the literature analysis mainly revealed the existence of discussions focused on public accountability predominantly debated in the context of democratic legitimacy where an elected politician becomes the “actor” or “agent”, the defined electorate or constituency is “the principal” and the sanction mechanism applied is the failure to be re-elected of the said actor. Chapter 2 of this work recounts the shift from this form of democratic accountability to the consideration of public accountability for private business interests. For the association concerned, this shift reflects an application of internal accountability mechanisms to an external context, monitored by an EU created platform which acts as a meeting point between public and private interest oriented CSOs.

Given the nature of the debate, the unorthodox choice of business associations as the unit of analysis;

- i. reflects the importance of the role of these organizations as participants in the EU policy process
- ii. seeks to provide a link between the mainly private commercial considerations of business organizations active in the EU context with an overriding public interest above and beyond that of members,
- iii. highlights the need for a sustainable internal governance structure tailored to the composition and mission of the organization and allows for an examination of the inter-relation between internal accountability arrangements and mechanisms intended to bring about public accountability

Point ii) would deal with accountability issues arising from the public impact of policy participation with the consideration of varying levels of interaction in a wider context. Indeed, as an example, business organizations interact with other such organizations, with consumer groups, and with upstream and downstream stakeholders. They also interact with the public, as specialists of that particular business topic, for example through trade magazines, or with non specialists, for example through general market standards.

Point iii) anticipates the question of the existence or not of the need for public accountability of private commercial considerations. But EU policy process participation entails an element of public “consideration” in view of the wider impact of policy decision making above and beyond the limited constituency of the association’s members and even identified stakeholders.

In a given interest representation exercise, the agent or “lobbyist” would be handed a mandate by the membership of the association, the “principal”, to convey a position to and seek to influence a decision maker. The association would no doubt have elaborated some form of reporting system to hold the agent to account and the general membership, acting in this case as a forum, would either approve or not the activities undertaken in their name. A suggested sanction that might fall should the agent prove to have been lacking in any way would entail loss of mandate, removal from office and maybe loss of employment.

This internal process would maybe be enshrined in statutes of incorporation (or equivalent registered document containing the mention of the legal status of the organization whether for civil responsibility or fiscal reasons), the rules of procedure or operating guidelines and, or, the minutes of earlier such occasions which can be construed as constituting a practice of accountability. Other documents of relevance for internal processes can include the contract of employment of the agent, service level agreements between members and the agent(s), compliance with given professional standards, and memoranda of understanding for alliance partnerships between two or more entities carrying out e.g. a combined interest representation campaign.

A key proposition of the research methodology rests on the expectation that any *public* accountability mechanism identified in the case studies can only exist when carried out hand in hand with or reflecting an established internal process. Indeed, the recording and documentation tracing required to provide an external account to a public would constitute the steps for an internal process. The tracing arises from the need, for the public purpose, to provide answers to detailed internal questions as to who are the main players in the activities undertaken, the mandate and representation handed down and the existence and viability of enforcement of sanction mechanisms. The questions of the case studies will therefore have a holistic purpose where the existence, nature of and relationship between internal and public mechanisms will be examined together.

Focus on existence and practice of public accountability: the limits to assessing efficiency for legitimizing purposes:

It is not the aim of the research to provide finite answers to the question of the legitimizing consequences for the EU decision making machinery of the participation in the EU policy process of publicly accountable business associations. The matter of the EU’s democratic deficit and how it fits into this accountability debate is succinctly addressed at Chapter 2.1 of the thesis.

The purpose of the case studies as outlined in the propositions below is to:

- identify the existence, if any, of public accountability mechanisms in the chosen units,
- the context in which a need for this means arises,
- how the mechanisms are applied, and,
- to assess the quality of the link with the public, and
- if the application brings about the desired consequences.

The context of the research presents accountability as a practice; a mechanism or process which is repeated and borne in mind as association leaders undertake relevant tasks. The repetition of the process allows for an assessment over time, the possibility to monitor improvement and compare the “before” and “after” situations. Bovens (2007 p. 462), captures this aspect, citing Aucoin and Heintzman (2000) when he writes that “accountability is important to provide a democratic means to monitor and control government conduct, preventing the development of concentrations of power, and to enhance the learning capacity and effectiveness of public administration”. He develops three perspectives (2007 p. 463) from which to assess accountability arrangements; democratic, constitutional and learning. These perspectives will be applied in the assessment of the case study accountability processes, however with the added consideration of the adequacy of the instrument in relation to the purpose for which it was created. The questions thus arise; “even if the accountability mechanism applied allows for controlling government, preventing a concentration of power and learning from past mistakes, does it fully provide the answer as to why the association uses the accountability system in the first place? From where did the impetus to use one arise? Has this been adequately addressed by the accountability mechanism applied?”

The nature of many business associations, a grouping of market competitors, can sometimes entail slow and cumbersome decision making procedures which discourage a regular adaptation of the internal operating rules. It might be envisaged at this stage that a case study organization includes accountability rules in its operation that were placed there for a specific and limited purpose, which has now been widened to encompass other situations. Conversely, a “one size fits all” accountability mechanism might not be the most appropriate and effective instrument to be applied by the organization. Therefore the adequacy or effectiveness in relation to its intended purpose will be taken as a key

analytical criterion, setting aside the question of legitimizing consequences for the EU for discussion as a desired outcome.

Accountability in the EU policy process: differing levels, actors and mechanisms:

Finally, the case study organizations have been selected to provide a cross sectoral insight into business associations. They are diverse in their composition which therefore allows for interpretation based on a large number of characteristics. Indeed, UNESDA is a hybrid European federation regrouping national associations from EU member States as well as direct company membership. EPACA represents European consultancies or public affairs agencies which currently are all present and operating in Brussels, and offers direct company membership alone. Finally, WFA is a global organisation with over 70 of the biggest global marketers and some national associations. Direct company membership is often found in highly concentrated sectors, while in other sectors it may be a choice based on a view that it allows the organisation to be more nimble in decision making and increases its geographical reach via the international activities of the member companies. Another important feature is the variety of levels at which they interact with the EU institutions and third party organizations, be it on a local or global level. The federative structure allows for better grass roots engagement via national and local associations, such as for members of UNESDA. In contrast, the company membership composition of WFA ensures direct coordination on action related to the association's goals without the extra involvement of national level associations. The point of interaction with the EU might vary from participation in a forum to discuss public health issues with other organisations from a business or public interest source, to direct interest representation to adapt legislative wording to allow for a business friendly market environment for the relevant service or manufacturing sector represented. The deliberate choice of these business associations also rests in their potential to yield outcomes through application of an accountability process which reveals the public vocation of these private commercial interest groups. The "public" element of the type of accountability researched calls for a link through EU policy participation with the public at large. UNESDA's link arises out of their claim to act in the public interest; WFA's is derived from a self fulfilling mission which takes the form of self regulation to reduce alcohol related harm to the public; the link for EPACA rests in the nature of the professional activity itself in that lobbying impacts legislation, with which we must comply as law abiding citizens.

1.2.3. Research design components:

The study's key empirical questions are:

- Is there evidence of the existence of an accountability process?
What mechanisms of accountability internal and public are used in the organizations? How and why were these adopted and chosen? Are these applied in the context of EU policy participation? Which mechanisms matched with which participatory processes? How and when are they applied?
- Does the accountability process link with the public?
How the key players (actor, forum, public) are defined and involved in the process? To whom is the account to be rendered? What is the quality of mandate from the public to the actor? What is the origin and quality of the mandate to pass judgment and to sanction?
- How effective is the process in bringing about the desired outcome?
What are the consequences / sanction derived from the process? Is the process adequate?

The study's initial propositions:

Though this is essentially an exploratory study, some initial propositions or expectations are set out below in order to better guide the questions for salient data collection and provide depth to the criteria for analyses. They are derived from a consideration of the use of accountability and its expected value assessed from a focus on the actor, the business association.

The first initial proposal is that public accountability mechanisms are desirable in particular given contexts of policy development dealing with issues of a sensitive nature for the public, combined with concerns of reputation management and a highly competitive interest representation environment e.g. lobbying of the EU institutions. Reputation Management involves activities related to the organisation's identity and perception in relation to stakeholders, including the wider public. The term is derived from the sphere of public relations and is not clearly defined in academic literature although Hutton et Al (2001 p.247) refer directly to, "what is traditionally termed "public relations," which in recent decades has become known commonly, in a corporate context, as "corporate communication," "corporate affairs," "corporate relations" and similar terms".

The second initial proposal is that all business organizations that comply with public accountability arrangements boast internal governance structures which allow for accountability mechanisms to be applied.

The third initial proposal is that business organizations have had little call for developing processes of public accountability and have been reluctant to assert a public role that might impact market stability.

The fourth and final initial proposal is that existing accountability mechanisms in business associations engaged in EU policy participation were historically not widely promoted towards the EU public.

Justification of the choice of units of analysis:

The choice of business associations as a generic type of unit is addressed above at 1.2.1. . These organizations are inherently complex and have a vocation to fulfil an increasing role in EU policy development, witnessed, amongst others, by the increasing number of association registrants to the EU Register of Interests and the EU's growing role in a globalised business market. Their rise in importance means that they must cater to a particularly varied nature of stakeholder or possibly "account holders", and engage with the EU on actions that are intended for the public interest. It is expected that this variety of "holders" will be central to the study in order to ascertain accountability types or required components common to all such processes, or to a given set of circumstances.

The case study units described below have therefore been selected based on their participation in an EU policy process via a prescribed participatory structure, on the wide variety of association types and relationships they present and the potential for added value to the research scope:

UNESDA the soft drinks association has a hybrid membership encompassing national associations as well as direct company membership. It is one of the founding members of the DG SANCO EU Platform for Action, Diet, Physical Activity and Health to which it provides commitments that are independently monitored by third parties. The results are then presented to a forum including civil society organizations acting in the public interest and posted on the Commission's web site. The actual case study that I have chosen to focus on provides relevant detail thanks to the internal organization and quality of monitoring involved. The added value of this unit is its status as a founding member and hence the participation in the historical development of the platform, the prominence of the brands involved and a co-related response from civil society.

The European Public Affairs Consultancy Association deals with representing professional lobbying companies. The employees of these companies represent interests and input into the EU policy process as professionals. EPACA had adopted a code of conduct regulating the behaviour and standards of its members in its relations with the EU Institutions. The particular case study used involves an NGO that registered a complaint against an EPACA member using the code of conduct, leading to the setting up of a disciplinary panel and a hearing. The added value of choice of this case is that it demonstrates the impetus to use accountability means in this context. It provides insight into a “living” shift in use of accountability mechanisms for a profession that suffers from a poor reputation. Indeed, the results of the panel’s deliberations and closing of the case led to a voluntary widening of the scope of the code to all “stakeholders”.

The World Federation of Advertisers represents some of the most well known brands in the world today; four companies from the spirits sector and four from beer. They are members of the European Alcohol and Health Forum and as such commit to the maintaining and development of high advertising standards in particular to identified sensitive audiences such as young adults. The forum itself interestingly struggles with retaining relevant civil society organizations as members, in contrast with the first case study. The added value of WFA lies in the global nature of their remit, their prominence in the debate and ability to adapt to changing public attitudes. Questions arise however with regard to their representativity of a sector, maybe more adequately covered by other organizations.

Following the initial document based investigation, the approach to the organizations will be mainly interview based and focus on ascertaining the role of the organization in the EU policy processes in which they operate and gaining an understanding of the frequency and depth of their participation

The logic linking the data to the propositions and the criteria for interpreting the findings:

The data yielded by the case study questions will either support or set aside the propositions as presented above. Since the study is essentially exploratory in nature, all relevant data provided will contribute to a better understanding of the thesis subject. The propositions if supported will enable us to ascertain whether the existing mechanisms are mature and adequate enough to bring about legitimizing consequences.

The criteria for interpretation of the findings will be based on the identified accountability components and conclusions on the consequences of the application of the mechanism (s). The case studies should

reveal how the currently identified components play out in practice and shed light on the importance, or not, of the missing elements such as those related to;

- The nature and frequency of the account to be given ;
- The public nature of the exercise;
- The mandate of the forum to question and pass judgment involving consequences;
- The nature of the sanction and its enforceability;
- The effectiveness of the identified accountability mechanism in bringing about the desired outcomes;
- The appropriateness and adequacy of the chosen mechanism;

1.2.4. Case study method design:

The method to be applied is adapted to multiple case designs but with a limited element of replication in that each unit of analysis has been chosen for its particular features for providing a widespread assessment of accountability mechanisms of business association participating in the EU policy process. Therefore, although there are three units, the list of case questions has a revelatory purpose, just as for single case designs.

<i>Definition and Design</i>	<i>Preparation, collection and examination</i>	<i>Analysis and Conclusion</i>
<div data-bbox="105 802 342 1339" style="border: 1px solid black; padding: 5px;"> <p>Research Frame</p> <p>Selection of units of Analysis</p> <p>Development of research propositions</p> </div> <div data-bbox="342 945 544 1297" style="border: 1px solid black; border-radius: 50%; padding: 10px; display: inline-block;"> <p>Design case study protocol</p> </div>	<div data-bbox="552 730 912 940" style="border-left: 1px solid black; border-right: 1px solid black; padding: 5px;"> <p>Case study 1: UNESDA Union of European Beverages Association</p> </div> <div data-bbox="552 940 912 1417" style="border-left: 1px solid black; border-right: 1px solid black; padding: 5px;"> <p>Case study 2: EPACA European Public Affairs Consultancies' Association</p> </div>	<div data-bbox="928 735 1287 1396" style="border: 1px solid black; border-radius: 50%; padding: 10px; display: inline-block;"> <ul style="list-style-type: none"> -List all conclusions -Write individual case reports -Draw cross case conclusions -Write cross-case report </div>
	<div data-bbox="552 1423 912 1688" style="border-left: 1px solid black; border-right: 1px solid black; padding: 5px;"> <p>Case study 3: WFA World Federation of Advertisers</p> </div>	

Figure 1. Case study method design

1.2.5. Primary data collection and case study protocol:

Since each unit of analysis chosen for the case studies deals with a different organization, an initial primary data collection phase and analysis is necessary prior to the interview stage being carried out. The focus of the research question is on governance issues, and, after preliminary research leading to selection of the units of analysis, it is understood that formal documents can largely be obtained through public sources or the organization's web site. Such documents would include, where readily available, the articles or statutes of incorporation, the legal status, the mission and vision statements, the membership and fields of activity, organigramme, policy positions, alliance partnerships, rules of procedure / operating guidelines and annual program.

In order to increase the validity of the case study research, the case study protocol set out hereunder will be used.

Overview of the case study project:

The case study is exploratory in nature and aims to reveal the existence and practice of accountability mechanisms in three associations. The first complexity of the investigation lies in the identification of the components and roles of the mechanism. The second lies in the assessment of the adequacy and effectiveness of the application of the mechanism.

The purpose of the study is to ascertain the existence of these accountability practices and their effectiveness in relation to stated goals, in the context of EU policy participation.

Procedures:

The interviewees of each of the units of analysis are approached individually addressed within their formal roles linked to each case respectively. They are fully apprised in writing of the context and academic purpose of the request and the subject title of the thesis. The scheduling of visits was undertaken as each case was analyzed in turn. Interviews typically lasted one hour at a time.

The review of the preliminary information was desk based with most salient information contained on the web sites of the respective associations and that of the European Commission. The burdensome information gathering exercise involved in the fulfilling of the UNESDA commitments was not contained in detail on the association's web site but was gathered thanks to their cooperation. The WFA site, as per that of UNESDA presented all the relevant wording for commitments undertaken but did not present in a

succinct fashion the ideal placing of the organization on an international level, representing a majority of the European alcohol producing market. This positioning and its consequences for influence were apparent from conversations with the Director for Public Affairs. I was also able to attend a plenary meeting of the Alcohol Forum at the European Commission's DG SANCO in November 2013 with the purpose of observing interaction between participants and gaining a better understanding of the expected outcomes of participation. The observations gathered are not however intended to describe continued practice since this cannot be derived from a single attendance.

Finally, the EPACA web site was complete in that it contained documentation describing the history of the case brought by the Smoke Free Partnership as well as its consequences leading to the amendment of the statutes.

With regards to the determination of persons to be interviewed, I selected first-hand observers of the processes examined, who were equally actors or decision makers. For UNESDA, this involved the secretary general, the main consultant to the association and a key member. For EPACA, I interviewed the defending firm representative who attended the hearing, the plaintiff NGO leader and the Chair of the professional practices panel. Finally, for WFA, I interviewed the Director for Public Affairs, the equivalent role in Spirits Europe, and the Policy Director of the NGO Active Europe. These discussions were complemented by further desk research on the sites of other participating organizations.

Case study questions:

The questions set out below are derived from three main enquiries linked to the propositions discussed at point III "research design components" above. This list is not exhaustive but covers all key elements of the research and can be adapted to each case study. The purpose is to maintain this core set of questions for all 3 cases.

How does your organization deal with accountability issues? Is there an understanding of both internal and external accountability issues? Is there a set process used to deal with internal accountability issues? Is there a set process used to deal with external accountability issues? What if any is the relationship between internal and external processes? How are the two sets of circumstances related? Has this been put into practice? When and how was the process devised and implemented?

Was the process applied in the context of EU policy participation? What type of participation, and at what level? What criteria of a given context call for the application or use of an accountability mechanism?

What and who are the components of the accountability mechanism? To whom is the accountability to be owed? Describe the public nature of the account giving? Can you qualify the obligation placed on the actor to provide an account? From where is it derived? What are its other features and characteristics such as timing, regularity, participants, follow up? How is the account given? How is the forum composed? How is it mandated to receive an account? How does the forum decide on the consequences that can ensue? How is the forum invested with the power/ mandated to pass judgment?

Can the imposition of sanctions be effective in correcting behaviour or a process? How does this play out? What is the mandate to sanction? What is the nature of the sanction? How is it enforced? Is the process adequate and does it bring about the desired results? Are you aware of any assessment of the process by other civil society organizations?

Analysis plan and case study reports:

The case studies were addressed individually and analyzed respectively based on descriptive and explanatory information. The outline of the reporting follows this format:

Mechanisms of accountability: existence, rationale, choice and application efficiency

Constitutive components: the relationships, forum and public nature

Process: appropriateness and limits

Consequences: Sanctions mechanisms, enforceability and effects

Other features

1.2.6. Collecting the evidence:

The first stage of evidence collecting was based on documentation available to the public or, at least not restricted to members only. The sources include legal documents such as articles of incorporation, statutes, operating rules / rules of procedure, fiscal status, alliance partnerships, memoranda of understanding, etc. The web site of the association and where appropriate, of the European Commission yielded adequate levels of information with which to draw up data fiches. Any further salient

documentation was requested of the interviewee. The information gathered as such constitutes the descriptive information.

The explanatory information gained through the interviews (the questions are set out above) sought to initially complement the descriptive type and then provide reasoning in support of the statements made.

All data gathered is divided on the descriptive and explanatory lines as above. This system also eases cross case analysis and rapidly highlights similarities, contrasts, missing evidence as well as any complementary questions to be put.

1.2.7. Case study analysis:

The analysis undertaken needs to address the most significant aspects of the case study and hence the study's key empirical questions as set out under the research design components above. The main purpose is to arrive at the answer to the question: is there an accountability mechanism that qualifies as "public" and is it adequate and effective in bringing about the desired consequences?

The quality of the analysis needed to be high enough to produce compelling analytical solutions which are underpinned by the research design. The method of process tracing yielded pertinent empirical data through tracing the link between the application of the proposed generic process of accountability and the desired outcome. It allowed for the positivist perspective of the recognition of causal patterns, such as accountability mechanisms and the discovery of solutions, the interpretivist perspective through analysis of the outcomes. The research therefore examines the "preferences and perceptions of actors, their purposes, their goals, their values and their specification of the situations that face them" (Della Porta and Keating 2008, p. 414). In order to achieve this, all relevant evidence was taken into account.

The analysis was undertaken per organization. There were variations on *the process* applied according to the type of accountability outcome desired.

- In order to gain an optimal understanding of the "*process of accountability*", a mapping of each respective process is carried out per organization in the form of a flow chart at Figure 3. , which allows for ease of comparison per process, per organization.
- Parallel to the above mapping, and in order to gain optimal understanding of the set of circumstances that call upon an accountability process as well as the identifying of relevant components (e.g. forum), a matrix of categories was drawn up and analyzed at Figure 4. This allows for matching of content of process and set of circumstances giving rise to the said

process. This same analysis will establish causal links between process and outcome and present the case study findings.

- Bearing in mind the Bovens' perspectives as described above; constitutional, democratic and learning, the propositions (at research design components above) needed to be verified or set aside. This assessment was carried out using the elements revealed through the completed tools of flow chart mapping and pattern matching. It is an overall assessment which takes into account the conclusions as a whole, and presents a more discursive tone. The propositions from the literature were evaluated against the findings such as the extent to which they measure up to the definitions highlighted in the literature analysis. Further questions arising were addressed as to their application or set aside. These include application of the denominations and typology derived from accountability authors and their juxtaposition to the context of the case studies.
- Finally, the study's initial propositions were compared to the findings from the three case studies. The propositions mainly address the context in which the questions of accountability arise and how outcomes contribute to legitimation.

1.2.8. Drawing up the case study comparison:

This section of the research methodology will be limited to the stages and expected caveats.

- Each case study report is addressed individually by identification of context, components and outcomes. The focus of each case is on an actual process that is recorded, evidenced and analyzed. Missing evidence was complemented by interviews. After each individual conclusion, the reporting addressed the cross case analysis of the multiple cases.
- The comparative structures are clearly set out. The emphasis lies in identifying commonality across the context and components per process. Where possible, findings are set against the affirmations derived from the literature as far as typology is concerned. A verification of the roles of participants beyond the main protagonists is presented.
- The drafting and composing of the report has been carried out at the earliest possible stage, with the gathering of primary data as a first step. This allows for building an evidenced picture of the processes at hand and verifying initially if they reflect scenarios highlighted in the literature.
- The validating procedure occurred with each interviewee (minimum of two per organization) examining his/her case, and then overall conclusions drawn from the case studies together.

Final comments address evidence gathered and verified against earlier findings. The analysis of the conclusions addressed the existence or not of evidence of measures of public accountability for business associations under conditions of EU policy participation. It contributes ancillary findings and literature affirmations. Finally, the analysis clarifies the context in which accountability questions arise and whether they yield the desired outcomes.

This chapter has set out the research question and provided the focus for an original contribution. After describing the thesis structure the research methodology and design was identified with a justification of choice and reference to relevance for the case oriented study at hand.

Chapter 2: CONTEXT AND FOCUS : WHAT IS ACCOUNTABILITY?

2.1. Introduction

This chapter presents the concept of accountability as discussed in the literature and its further analysis. The purpose is to lay the conceptual foundations for assessing the mechanisms of public accountability measures as applied to business associations in the EU policy context.

There are three parts to this chapter. The first part identifies and analyses a framework for the concept of accountability in the context of the EU governance debate. It addresses in particular the role of civil society organizations, their characteristics and activities within this framework and assesses these with other actors such as business associations.

Secondly, and in order to define accountability in the above context of analysis, I describe how the core concept sits with the distinctive or overlapping notions of responsibility, representation, transparency and legitimacy. In the second part, 2.3.2., I discuss the definitions of accountability as presented by six authors, who have sought to qualify the nature of an accountability process in a given set of circumstances. The definitions from the literature vary according to whether or not the concept is a mechanism – that is, holding an actor to account as part of a process – or, a state of affairs or mind – that is, simply being accountable. A certain typology emerges according to the purpose of the process as opposed to another criterion such as the role of the actor.

The above parts establish the context of the EU governance debate and discuss the core concept of accountability through an analysis of the literature. The third and final part, 2.4., breaks down the definition of accountability as a process to question the relevance of each stage in relation to reaching the goal of the accountability mechanism. It also identified outstanding questions on the detail of the process such as the composition of the forum and the content of the account giving. I focus on deriving from the literature the potential for the public nature of an accountability process and how this can be achieved for a business association in the EU policy context.

2.2. Contextualisation in the EU governance debate

The political structure of the EU is unique both through its institutional design and supranational nature. It departs from the classical governmental structures of nation states where the key accountability relationship resides in the ability of the public to hold their representatives to account through the choices they make in national elections. The participants in the EU's multilevel governance structure are both formal such as Member States and European institutions, mandated to act as such through statutes and treaties, and more interestingly, informal. Advocates of participatory democracy have hailed non state actors and in particular civil society organizations as the potential solution to the EU's democratic deficit. These actors would address the deficit through participatory democracy.

Whilst experience since the White Paper on Governance of 2001 (WPG) has revealed that the inclusion of civil society in policy making, albeit it in its inevitable form of organized civil society, has not provided the expected solution, the initiative has however shifted the debate to question the public quality of these organizations, their representativeness and accountability (Heidbreder 2012 p.8).

The legitimacy sought by the inclusion of civil society and the limits to that legitimizing potential are discussed in the first and second parts below at 2.2.1., and 2.2.2. The third part deals with accountability relationships between CSOs and national and EU decision makers. In chapter 2.4., I focus on business organization type CSOs and highlight the conceptual "distance" between this interest specific type and the hypothetical EU public. The fifth and last part discusses how a private commercial interest can render itself accountable to an EU public in the framework of an EU policy process.

2.2.1. Participatory democracy and the emergence of "civil society":

The topic of civil society participation was formalized in the Treaty on European Union, signed in Maastricht in 1992. This statute created the political union beyond its economic form and sought to address concerns of a growing democratic deficit. The treaty formalized different types of decision making including granting greater powers to the European Parliament, the only EU institution to be elected by direct universal suffrage, through the Article 189b co-decision procedure. The treaty triggered further European integration and brought about the politicisation of decision making. At the same time, the EU sought to reduce over regulation seen as costly to business and viewed unpopular in the respective national governments due to increased competence moving to Brussels.

The inclusion of civil society was structured through its interplay with the European Commission. This relationship was provided for in the White Paper on Governance which set out a general policy of participation giving rise to various entrance points for civil society in particular in policy formulation. Magnette succinctly summarises the salient argumentation:

“Participation is supposed to enhance both the efficiency and legitimacy of European governance: it is said to respond to ‘the expectations of the Union’s citizens’ (p.35 WPG), it should connect Europe with its citizens’ (p. 3), help follow a ‘less top-down approach’ (p.4) and make the policy-making ‘more inclusive and accountable’ (p.8). All this in turn, should enhance ‘the quality, relevance and effectiveness of EU policies’, ‘create more confidence in the end result and in the institutions which deliver policies’ (p.10) and generate a sense of belonging to Europe’ (p. 11). In other words, efficiency and legitimacy do not simply derive from the output dispensed by the system, they also depend ‘on involvement and participation’ (p.11).” (Magnette 2001 in Heidbreder, 2012 p.15)

The inclusion of civil society was seen as a vehicle for promoting democratic legitimacy and increasing the acceptability of the EU’s output whilst ensuring the “public” accountability of decision makers and hence their decision making.

The quality of that output derived from the inclusion of civil society rests partly on the expected deliberation brought about by participation and partly on the ability of civil society to act as a substitute for an EU public. The actual practice of deliberation in this EU context and the quality of the representation of the civil society actors is however questioned by such authors as Kohler Koch (2010a) and Steffek et al (2009) thereby shifting the spotlight onto the heightened need for accountability of these participating organizations themselves.

2.2.2. The limits to the creation of deliberative democracy through CSO participation:

CSO participation intended to enhance the legitimacy and efficiency of the EU would have done so partly through virtue of a deliberative process. Writing in the context of the EU, Tanasescu (2009 p.17) identifies a series of key elements conditional to deliberation:

- a) “Deliberation is about reason-giving about providing arguments for one’s position
- b) All parties potentially affected by the decision or representing all relevant points of view need to be represented

- c) Participants should be free and equal
- d) The outcome of the deliberative process should be a binding decision (deliberation is more than a talk show)
- e) Deliberations should be public, both for reasons of transparency and accountability”.

The practice of deliberation in a decision making procedure can bring about a greater acceptability of the final result on the part of the dissenting minority. It would also lead to a more practical outcome in that the deliberation would not only include the principles underpinning the argument but also the implementation questions. In order to achieve a greater legitimacy of output however, the deliberative element carries several conditions clearly identified by Fischer (2012 p.464) discussing the constitutive components of participatory governance.

In presenting the empowerment of participatory governance, Fischer points to principles and institutional design characteristics and the background condition that there should be rough equality of power among participants. The political principles cover;

- 1) “the need of such experiments (of deliberative democracy) to address a particular practical problem
- 2) a requirement that deliberation rely upon the empowered involvement of ordinary citizens; and
- 3) that each experiment employs reasoned deliberation in the effort to solve the problems under consideration”.

Fischer’s institutional design characteristics specify:

- 1) “the devolution of decision making and the powers of implementation to local action oriented units
- 2) that these local units be connected to one another and to the appropriate levels of state responsible for supervision, resource allocation, innovation and problem solving; and
- 3) that the experimental projects can colonize and transform state institutions in ways that lead to the restructuring of the administrative agencies responsible for dealing with these problems”.

Whilst the set up of the decision making bodies and the entities that input to the process as described might be identified in the EU context, an “empowered involvement of ordinary citizens” does not reflect usual practice. Furthermore, the involvement of ordinary citizens implies an ability for effective

participation and therefore a reliance on individual effort, as well as a lack of entrance barriers such as the complexity of the EU governance structure.

Upon a closer analysis of CSO participation in consultation procedures, Heidbreder (2012 p.16) remarks that, “despite the outreach to a European civil society at large, organized, professionalized groups remain the standard representation of civil society in EU policy making. This is mainly due to the demands for expertise and resources – ranging from language skills, access to information, and time availability – needed to contribute in the procedures offered by the Commission’s traditional consultation regime”. She notes later (2012 p. 16) that this situation appears to persist also in the online consultation system. Smismans (2003 p. 491) adds to the argument by stating that civil society discourse shaped by the Commission and the European Economic and Social Committee favour a functional, output-oriented conception of civil society involvement. This would result in a greater number of contacts with Brussels based confederations of associations and stimulates the creation of large NGO networks covering a broad range of issues.

Do CSOs interact with the EU public for the purpose of deliberation? In their study on 60 transnational CSOs, Steffek et al (2009 p. 31) claim that, “while CSOs’ members are involved in the long term strategic decisions, with regard to daily business and tactical issues, CSOs seem to rely more on their consultation with peers, namely other international CSOs, and the international secretariats often act autonomously”. They found little evidence of deliberation with citizens and their direct empowerment through participation.

The Commission’s efforts in providing funding sources for civil society actors to redress a perceived imbalance in representation, has not brought about the desired consequences either. To a certain extent it has impaired the CSO’s ability to deliver a “public message” and raised the question of legitimacy of input. The complexity of the decision making procedures, as well as the sophistication of the means of influence, mainly through coalitions that are composed of individual groups catering to each level of decision making, require a level of education and professionalism which might be seen as elitist and a barrier to participation itself.

Kohler Koch notes (2010c p. 335), “the promise of ‘involving civil society’ has not bridged the gap between Europe and the people, but rather sponsored a Brussels based CSO elite working in the interests of deeper integration”. Civil society organizations would need, on the one hand, to be highly professionalized Brussels activists and, on the other, remain deeply rooted in their respective national or

local stakeholder contexts. As Heidbreder states (2012, p.19), “in brief, the conditions civil society has to meet to participate limit the very virtues for which the Commission pursues its normative and material activation strategy”.

The absence of the expected engagement with the EU public and even more so the ruling out of a lateral equivalence between CSOs and the EU public leads to a discussion on the potential role of an European Public Sphere, according to Habermas (1998). Habermas considers CSOs as the institutional core of civil society. The expected debate and deliberation created by CSOs in their diverse roles of inputting to and interaction with the EU institutions – be it with peers or grass roots activists - might contribute to the composing of the deliberative character of a European Public Sphere, when underpinned by an accountability mechanism.

2.2.3. The role of CSOs and the accountability conundrum:

The governance debate switched the focus from public actors and hierarchical decision making to the interaction of both public and private actors and their peer based political structures. Civil society as such has no “actor” quality; this role is taken up by organized civil society. CSOs might claim a role contributing to input legitimacy, through limited discourse and interaction in the public sphere, and output legitimacy with the technical quality of public policies since they give some societal interests a voice.

What is the defining role of CSOs? According to the wide definition of Manin, Przeworski and Stokes (1999), democratic representation is achieved when the outcome of politics matches the interests of the represented, as they see it. This model can better be applied to a nation state but does not reflect the EU’s disconnected structure or diversity of opinions due to lack of a common language and culture.

In the European political structure, the European Parliament (EP) derives its political legitimacy through democratic representation and universal suffrage. The Council from the principle of federal representation, through the democratic legitimacy of nation states and both are subject to democratic accountability. The Commission has no such direct link, hence their need to rely on CSOs to remedy their representational deficiencies. Indeed, the Commission has been the main driver in giving CSOs a key role in EU governance.

In their output, CSOs would express citizen preferences to the Commission which would take these up in policy formulation. Responsiveness at both stages – input to the CSO position, and then its own input to the Commission – would underpin the democratic legitimacy of EU governance. Accountability can be described as being the mechanism with which to induce the responsiveness of the actor. But there is no formal accountability link between the Commission and civil society. There is horizontal accountability between the EU institutions in that the EP and the Council ensure that the Commission acts in accordance with the Treaties. And what of the responsiveness of the CSO to citizens at input stage? What of the representativeness of the input procedure itself?

A perceived bias in the representation of interests and their influence has been a concern for CSO researchers. An example of this is the study undertaken by Dür and de Bièvre (2007) on NGOs and business groups in European Trade Policy which found empirical evidence to support their proposition that newly mobilized societal interests in the form of NGOs did not influence the policy. The focus of research however has now moved away from scrutinizing the transparency and responsibility of individual business organizations to examining the transparency of representativeness of all CSOs, notably through the EU Transparency Register.

The criterion of representativeness needs to be assessed in relation to the plurality of societal actors and not just per each individual organization. The current representativeness of actors is said to be uneven due to market/economic considerations related to the history of the EU, though the data derived from an analysis of the Transparency Register below questions this assessment. Despite providing funding and making attempts at redressing the imbalance, representation of societal interests is qualified as still weak by Steffek in 2010, referring to Transparency Register statistics.

In fact, Kohler Koch (2010a, p.112) believes that “the rhetoric of CSOs and the explicit request of EU institutions convey an image of representation that is in contrast with reality. European CSOs are distant from stakeholders, in the case of NGOs even more so than in the case of trade associations and direct communication down to grassroots level is – except for extraordinary events – marginal (Altides and Kohler Koch 2009)”.

On a national level, CSOs are formally organized and national decision makers are subject to political accountability processes. This is not the case for the European Commission. Kohler Koch (2011 p. 266 in Heidbreder 2012 p.19) believes that European NGOs are not delegated to implement the interests of

their organizational members but, “see themselves as executors of a mission to communicate with their member organizations and a basis to fulfil the mission together”.

Indeed, civil society has no formal decision making role in the EU. The consultation regime to which CSOs input does not carry with it an obligation on the part of the Commission to justify inclusion or exclusion of a given position. Mainly viewed as useful sources of industry or issue specific expertise, CSOs cannot hold the European Commission to account in relation to public participation in policy making procedures. There is no process, nor forum, for asking questions and demanding explanations of the EU executive. There are also no sanctions or other consequences.

Short of being able to hold the executive to account and therefore act as a public hold on the activities of the European Commission, could CSOs emphasize the legitimacy of their own input to the EU policy process by application of accountability measures ? As Lord and Pollack ask, “if the Commission, during the drafting of a legislative proposal, consults civil society groups and /or representative associations, the question is how the individual citizen can hold those groups to account” (2010 p. 983). This salient question assumes an existing link between the individual citizen and the civil society organization in question. Knowledge of the CSO and its activities would be a pre requisite to any citizen holding that CSO to account. Whilst it might be assumed that an EU citizen is aware of the existence of say, Amnesty International, the same cannot be assumed for business related non state actors or CSOs such as Business Europe. Therefore, in the context accountability relationships, establishing a link between the wider public and the private commercial interests of a business association constitutes a greater challenge.

Accountability authors have not as yet focused on the accountability of business associations in their CSO role but have drawn some comparisons between types of civil society actors in relation to the scope of their interest or income sourcing. Kohler Koch, for example, in her description of “two level social accountability”, compares NGOs and market organizations to point out that, “market related actors have a long history of dealing with the EU and their predominantly hierarchical structure makes communication across levels easier. Furthermore, it is also quite evident that those who have a specific interest and have existential economic and professional stakes are more attentive than those with a diffuse interest”, (Kohler Koch 2010 b, p. 1129).

Organisations with a specific interest also enjoy a certain independence of finance and direction, tending to be membership supported and driven. As Piewitt et al remark (2010 p. 254) in their analysis of

transnational CSOs, “One type of CSO is usually exclusively member financed: special interest groups (i.e. social partners including business associations and trade unions)”. Also, these interest groups such as business associations, due to the market sensitive nature of their members, practice a strict application of EU competition law rules. This in turn, coupled with culturally ingrained business organization methods, makes for highly regulated associations operating under strictly applied guidelines and sometimes codes of conduct. Governance issues tend to rate high on the agenda of business organizations, both for cost efficiency/ effective use of time reasons and to aid in avoiding liability for legal non compliance.

2.2.4. Business organizations and CSOs:

Some authors might argue that pure civil society organizations campaign for a public interest cause or one that is clearly rooted in the public domain, such as health. However, in the EU context due in no small part to the complexity of the EU procedures and the level of education required to interact effectively with the EU institutions, civil society has become “organized” into interest groups with differing remits and constituencies. The Transparency Register is an increasingly precise reflection of that organized civil society which encompasses special interest groups such as business associations.

This upcoming section first deals with clearly establishing business associations as falling under the heading of CSOs. Then, an analysis of the Transparency Register provides insight into some characteristics of the respective types of CSOs; those focused on the public interest and those dealing with private business interests.

Data generated by research into the publicly accessible Transparency Register (Greenwood and Dreger 2013) reveals that there were, at 6th January 2013, 1710 “trade, business and professional associations” registered and 1304 “non-governmental organizations”. Paradoxically, business associations are of course also “non-governmental”, though they do not usually espouse the commonality of NGO causes and remain “specific” in their business related interest. Moreover, Belgian law, applied to all Brussels based organizations which constitute a majority of the registrants, requires that business associations be incorporated as “not for profit” organizations. Also, the official definition of CSOs includes organisations representing economic players as set out at page nine of the Opinion of the Economic and Social Committee on, “The role and contribution of civil society organisations in the building of Europe”(OJ C329, 17.11.99 p.30). In line with this formal definition, up to this section and henceforth, my reference

to CSOs is inclusive of all types of CSOs, business organizations included. I refer to “pure” CSOs when indicating organizations with a public cause at the core of their activity.

Greenwood and Dreger compare the spending and lobbying personnel data of producer organizations and NGOs. They found that (2013 p. 151), “each of the 104 organisations in the NGO category claim to have more than 50 people engaged in EU lobbying activities; by way of comparison, the best staffed EU business association, CEFIC, is at the high end in a declaration of 72 such staff”. When comparing the last two categories of entrants to the Register and focusing on the Belgian based registrants only, the authors found that 88% of Category II (business related and trade union interests) had between one and ten lobbying personnel, whereas Category III (NGOs) had about 82% of entrants with lobbying personnel of between one and ten people.

Upon examining the data on EU institutional grants and the declared recipients, narrowed down to the constituency of organizations with a Brussels address and a European interest field, the authors revealed that 41.2% or 169 NGOs received a grant during the previous 12 months. Only 10.7% or 84 trade/business/professional associations “received an EU grant in the preceding 12 months, although these mostly relate to participation in the EU’s research and technology development programmes, often alongside University partners”. One Brussels based NGO called Food and Water (Watch) Europe receives grants totalling 6.4 Million Euros from the EU, constituting 96.7% of its total budget (2013 p. 154).

Finally, to complete a data based and current (January 2013) picture of interests in Brussels actively seeking to influence EU policy outcomes, Greenwood and Dredger estimate that around 75% of business related organizations, “active in engaging EU political institutions are in the Register”, with around 60% of NGOs with a European interest (p.147).

These figures reveal fundamental similarities between NGOs and business organizations – in particular in the number of lobbyists per organization. They also point to differences in funding sources with some “pure” CSOs depending sometimes heavily on Commission funding.

A further fundamental difference comes to light when assessing the accountability relationships of the respective types of organization. Organisations claiming activities “in the public interest” should have the ability to demonstrate accountability to that public. As we have noted from above though, several obstacles, not least questions raised about the level of deliberation and representation, might impair that claim. However, as Steffek et al observe (2009 p. 35), “Many transnational CSOs have at least some

grounding in the citizenry and some potential to establish a communicative transmission belt between citizens (understood as their members, supporters and beneficiaries) and international organizations”.

Business associations are tagged as special interest groups with a private commercial focus. Their independence from governmental bias is not questioned. Moreover, they do not usually suffer from a lack of representativeness or transparency due to the business concerns of their members and the need for trust between direct business competitors. For the same reasons, they might enact procedures, codes of conduct and follow stringent guidelines regulating the daily activities of the association, with governance structure preferences that reach beyond mere legal compliance. But what is the quality of their accountability if any to the EU public? These organizations clearly have a say in the development of legislation or policy which then affects the daily lives of EU citizens. Their participation in the policy process implies public accountability.

2.2.5. A private cause and public vocation:

In this last part of subchapter 2.2. , I discuss the potential for the accountability of business associations in their roles as CSOs, and identify the need to establish a public link for a private cause, such as that which drives a business association. I refer to academic works by Piewitt and Steffek which are the two I can currently identify providing quantitative information on the existence of governance measures, which might bring about the public accountability sought, in CSOs participating in the EU policy process.

The case studies in the second part of this work explore a possible public accountability link in given EU policy input circumstances for business associations. This link must be verified by the application of an accountability process or mechanism. The public element might take the form of a “public” representative taking part in a complaints panel. It might come about also when “pure” CSOs together act as a forum. The verification can only take place ex post facto and should assess not so much that an actor has acted in an accountable way but has knowingly acted in such a way as to be held accountable. But what instruments exist and are used by CSOs as accountability measures?

In their focused study of 2009 on 60 CSOs, (including NGOs and business organizations and their beneficiaries, Steffek et al ask which formal processes were used as accountability measures, such as codes of conduct. They found that ten out of 60 CSOs had no code of conduct, and that 12 did. Out of these, eight had internal organizational codes of conduct, three CSOs had signed the INGO Accountability Charter (discussed in the next section) and a fourth had signed the Charter but the policy officer interviewed was not aware of it (Steffek et al. 2009 p. 26). So what is the daily practice of

accountability, which can be verified ad hoc? What types of CSO practice accountability using which measures, and when?

Piewitt et al (2010 p.252) in their CSO study (an earlier version of which was Steffek et al's 2009 article) counted the number of CSOs of their sample of 60 which claimed to have a form of self regulation. They found that, "only 20% of CSOs claimed to have a written code of conduct, and in most cases this was an internal organizational code of conduct, such as "code of ethics" (WWF International). Four organizations claim to be committed to philosophical or religious values, such as the "Quakers' testament" (QUNO) or "Franciscan values". The remainder indicated that they adhere to other documents or regulations, such as their organisation's mission statement or staff manual, or to donor or national regulations for non-profit organizations (e.g. "Belgian Law" for EuroCommerce or "European Commission" regulations for IHEU)".

The data presented does not provide a further break down between the different types of CSOs using self regulation so that we are unable to provide figures in relation to business associations. It does however provide information on the differing types of tools used under the heading of self regulation. These are codes of conduct, mission statements and staff manuals. The choice of use of these tools can reveal a certain level of intention on the part of the organization to render itself accountable to the EU public or not. For example, an application of the rules of the "internal codes of conduct" might indeed be used in a public accountability procedure when the rules affect engagement with that public. "Mission statements" however are normally intended to state the purpose of the organizations and what it hopes to achieve though this seems far from a form of self regulation. "Staff manuals" might indeed address accountability in practice but are they freely consultable by the public? Indeed, they might miss that vital element of transparency in order to link with the EU public.

One of the organizations mentioned "legal compliance" as a form of self regulation. However, legal compliance is not a matter of choice. Governance structures can indeed be set up to ensure legal compliance, but accountability measures go beyond the minimum legal requirements and therefore act as deliberate demonstration of the will to render oneself accountable. Therefore, legal compliance cannot be equated to a choice or preference of governance structure which encompasses an accountability mechanism; it is a minimum level of administration from which any organization can act.

Piewitt et al also looked at the existence of complaints procedures which are fundamental for members of the public to act upon any measure emanating from the organization in question. From the 60 CSOs

interviewed 17 responded that they had no formal mechanisms, 13 of which stating that they deal with conflicts informally usually internally through discussion and debate with members concerned, but without a particular forum. The 19 that have formal complaints procedures pointed to (p. 253), “a designated body (e.g. the Steering Committee, the Board, or the Secretary General) entrusted with resolving disagreements within the organization”. But how effective would such internal bodies be (to the association in question) in solving a dispute involving a third party, rival CSO or a member of the public ?. An external element to the planned process would bring aspects of neutrality and transparency to any such procedure.

The research undertaken by Steffek and Piewitt et al demonstrates a lack of cohesion amongst CSOs in understanding self regulation and overlapping roles in complaints procedures. The research gathers differing accountability measures which deal mainly with aspects internal to the organizations such as resolving disputes between members. However, the authors do not focus on accountability measures in practice in business organizations, the rationale behind their adoption and the desired results of the link with the EU public. Kohler Koch pointed to this gap when discussing grass roots accountability (2010b p. 1135). She states that, “it seems as if the positive image of civil society as a political actor, forcing decision makers “to put matters right” results from a methodological research bias. Scholars have concentrated on the role of CSOs in extraordinary events... but have not looked in a systematic way at the daily business of EU accountability”. This “daily business of accountability” evokes a way of operating as opposed to a willingness to render oneself accountable for a one off cause.

Conclusion to 2.2.:

Chapter 2.2. has described the emergence of civil society and its expected role in the EU’s embracing of participatory democracy. There are however limits to that participation on the part of CSOs, not least in relation to the expectations of deliberation. I then describe the role of CSOs in the framework of accountability before focusing on interest specific type CSOs such as business organizations. This focus in turn reveals the challenge of reconciling the private commercial interests of business associations with those that are perceived to be in the public interest.

This chapter 2.2., has given rise to questions which will be addressed in chapter 3 in the case studies. The questions arising will focus on establishing the existence or not of a link between business associations and the EU public. They will first seek to qualify the unit of analysis within the CSO landscape of types and define the “specific interest” represented, the stakeholders and the funding

sources. The questions will seek evidence of deliberative practices as framed by Tanasescu and conditioned by Fischer, and ascertain the level – national or EU - at which these are undertaken. I will then map the accountability relationships of the business organization examined and identify the tools or means by which the accountability is practised, as well as the regularity of the practice (although this is also determined by the rationale behind the practice, addressed below).

The next sub chapter addresses the meaning of accountability, its purpose and the context in which accountability questions arise.

2.3. Providing a framework for Accountability

Chapter 2.2. established business associations as CSOs in the EU governance context of participatory democracy and the quest for legitimacy. The legitimising potential of greater civil society participation in EU policy rests on the public accountability of those actors. Yet, accountability, often confused with “responsibility” evokes promising notions of representation, transparency and legitimacy which need to be aligned with and distinguished from the core concept itself.

The following initial analysis discusses the concepts above drawing on literature in order to clarify how each one relates to accountability. I then address the emergence of accountability as a governance concept in a historical context which sheds light on its current applicability and indeed growing importance for multilevel governance structures.

In the second part of this section I seek to untangle the plethora of accountability definitions and types by distinguishing between contexts and desired outcomes of the application of an accountability process. The argument is made for accountability as a governance choice or preference, lying beyond legal compliance. The difference between internal and external forms of accountability as set out in the literature and how they relate to each other is described. Finally, the case is made for a generic process to be applied to transnational actors and its potential to yield public accountability. This section centres on the meaning and purpose of accountability.

2.3.1. Distinguishing the core concept of Public Accountability; its emergence in the governance debate:

The work of Bovens, a leading author on accountability in an EU context, has been decisive in shaping the debate in hard terms (Papadopoulos 2007, Curtin 2006, , Kohler Koch 2009, Persson 2009, and more). He believes “accountability has become an icon for good governance both in the public and private sector” (Bovens 2006 p.7).

Bovens defines accountability as “a relationship between an actor and a forum, in which the actor has an obligation to explain and justify his or her conduct, the forum can pose questions and pass judgment, and the actor may face consequences”, (Bovens 2006 p.9).

The author’s definition is prescriptive and detailed. In the next section, I make the case for the generic application of a modified definition with a focus on the origin of the mandates to act and judge.

The Bovens definition refers to a voluntary process applied ex post facto in a governance context, for a specific purpose and desired outcome. The focus of this author on the process and not the context

widens the empirical application of this particular definition. There are potentially multiple accountability relationships within an organization be it public or private with as many reasons for seeking accountability. The analysis below distinguishes public accountability from other forms, its internal application for an external outcome. It also presents an understanding of how the definition was derived, what is and what is not accountability, and how it fits into the governance debate.

2.3.1.a. Accountability v. Responsibility

In seeking to underpin the origin of the word, Bovens, (2005) identifies a shift in terminology from the traditional bookkeeping function of accounting in public administration to performance auditing and public accountability. This shift would date back to the early 1980s when the UK's Thatcher government introduced New Public Management and the US Clinton-Gore administration adopted the Reinventing Government Reforms. According to Scott (2000) writing about the UK approach, (2000 p. 44) the shift "is, in part, a response to the recognition that "total control" models of state activity fail to deliver desired outcomes. The problem can be expressed in a number of ways: the limited capacity of central state institutions to know what is best provided by state intervention; the tendency of highly active states towards fiscal crisis; the risk that state actors will be diverted from pursuit of public interest outcomes to the exercise of public power for the pursuit of narrower private interests; and the limited capacity of the instruments of state activity (and notably law) to effect change in social and economic systems".

Private sector practices of outsourcing previously "public" activities led to a need for auditing the efficiency of newly created "public agencies" using key performance indicators and efficiency benchmarks. Commenting on the US reinvented government reforms in 1998, Deleon (1998 p. 539) states that, "whether reinvented government implies worker empowerment, managerial discretion, or decentralization, it is widely thought to mean diminished accountability". In her article she discusses types of accountability as applied in both the public and private sectors, to conclude that (p. 553), "different accountability mechanisms are appropriate in different circumstances, depending on an organization's structure, which is in turn dependent (at least in part) on the type of problems it is designed to handle".

Deleon focuses on professional accountability to single out a distinction with personal responsibility, and to reason as to the emergence of professional compacts (1998 p. 549), "the answer is that the way individual professional workers are held accountable is an internal, or organizational matter. But the way the profession itself is held accountable to society is an institutional matter". Would this suggest that accountability is an intrinsically "public" notion, with "external" properties and applied,

in a professional context, to a homogenous “group” of individuals? The co-related features of responsibility would therefore be “private”, internal and applied to an individual alone? Yet, individuals such as senior civil servants are called to account for their carrying out of their responsibilities.

Bovens (1998) sheds some light by providing a distinction based in time. He argues that the basic significance of being made responsible lies in the fact of being liable to be held to account before a forum. This would refer one presumes to task and role allocation within an organization, where hierarchical accountability might apply, and the manager has direct responsibility for the worker’s own acts. The reference to a time lag is maybe more helpful when Bovens (1998 p.28-30) defines accountability as being a passive form of responsibility since occurring after the fact. The post facto element of a calling to account is vital and undeniable since the deed needs to have occurred in order for the “agent” to describe the event.

The author identifies four criteria of, “accountability as responsibility” (1998 p. 29); i) transgression of a norm, ii) a causal connection iii) blameworthiness, iv) the relationship with the agent. Examining each of these in turn, it would appear unnecessary to require a transgression in order for an individual to be “accountable”. The recounting of how a given responsibility is discharged might suffice. The causal connection between the conduct of the person held to account and the transgression need only be tenuous in a situation for example of corporate accountability and therefore this criterion cannot be universally applied. The notion of blame is sensitive and subjective, directly linked to responsibility as opposed to accountability. It arises only when a norm has been transgressed with undesired consequences and not in the context of an account giving based on “how” type questions. Finally, the relationship between the principal and the agent is a condition sine qua non without which there is no relationship on which to base the enquiry and therefore no expectations to be met. This criterion would best be considered as a premise for the existence of an accountability mechanism. One might argue however that the closer the relationship, the greater the responsibility incurred.

The UK and US managerial styles of devolved governance are more prominent in EU countries with a historical practice of free trade and a less intrusive and more devolved system of government. Bovens notes that, (2005 p.2) “countries with a strong tradition of administrative law and a strong “Rechtsstaat” such as France, Germany and Italy, have on average been less vigorous in adopting these more managerially oriented styles of governance and auditing. Countries like The Netherlands, Sweden and Finland are intermediate cases (Pollitt et al. 1999 p.197)”. The less centralised the

government structure, the more likely it is to delegate “public” powers to external agencies which in turn need to be held publicly accountable.

In his reflections on the interplay between accountability and democracy, Papadopoulos (2010 p.1031) describes the shift from government to governance in an EU context where policies are “formulated or implemented by networks involving public actors together with non public actors of different nature”. He goes on to provide an example, “EU structural and regional policies exemplify multilevel governance”. In brief, multi levelness (a technocratic version of which would include comitology) blurs the centre periphery divide and network governance blurs the state society divide.

Papadopoulos further describes a distancing of networks from parliament by stating that “if decisions are prepared by policy networks the legislative function of parliament is affected; if they are implemented by them, it is their control function that is weakened” (p. 1034). He then makes an interesting point on the chain of accountability, presuming that the longer the chain, the weaker the accountability, again placed in the context of democratic accountability with elected politicians. He states that (p. 1035) “members of the bureaucracy are accountable to their political superiors who are subject to electoral sanctions; however, the length of the chain of delegation combined with the magnitude of administrative discretion makes their democratic accountability fictitious”. One would argue that this need not be so; again, with efficient accountability mechanisms in place, it would be naïve to suppose that a sanction can and will only fall at election time on the head of the parliamentarian and, that civil servants remain thus immune from the “consequences”.

However, the following observation by Papadopoulos that “if multi level governance is uncoupled and remote from representative government, there are attribution errors in responsibility” ... “the effectiveness of the democratic feedback loop is thus undermined” would appear pertinent. This need not be so if the accountability mechanism caters to this typical state of affairs and addresses accountability throughout the decision making chain, as “internal accountability”. The implementation of political decisions often depends on a network of actors ranging from civil servants to quangos which might act remotely from the “democratic” source, but this has long been a fact of political life in modern democracies.

2.3.1.b. Accountability and Representation

This concept of distance from the delegating entity or principal is addressed by Pitkin (1967) in the context of the election of public officials. She uses a nomenclature (1967 p.144) in which she contrasts the role of a delegate, where a representative is strictly bound by a mandate, with that of an agent, representing a principal. From the perspective of accountability and the rendering of an

account, the delegate in the former, “closer” relationship would be “merely” required to demonstrate that he/she has respected the wording of the given mandate to the letter and is able to tick all the boxes provided. In the latter set up, he/she would be required to demonstrate that he/she acted in the best interests of the represented.

The greater the measure of freedom or distance, and, in the absence of a clearly delegated path to follow, the more salient the need for an accountability process becomes. As Harlow (2008, p.177), writing about the need for a network concept of accountability, state, “The rapid proliferation of European agencies, and hiving off of policy responsibility to transnational and international network agencies (Gérardin, Munoz and Petit, 2005), renders a new theoretical approach the more necessary”. The need for a focus on accountability also arises in the context of the EU where the perceived democratic deficit has led to increasing citizen participation in the decision making process since this greater inclusion of civil society in the policy making is said to offer, according to Persson (2009 p.3), a “promising complement to representative democracy (Smismans 2006; Finke 2007; Kohler Koch and Rittberger 2007)”. However, civil society as such presents no “actor” quality; this role is taken up by civil society *organizations*.

Kohler Koch (2010a p.104) argues that representation was not addressed in the governance approaches linking democratic participation and civil society organizations and deliberation. “Representation and governance do not go well together”; Kohler Koch states that this is true from two perspectives. The first rests upon the fact that in the EU system, the Parliament and the Council are the decision makers and are therefore concerned with democratic legitimacy and representation. The Commission as the “executor” is more concerned with governance and hence representativeness. The author therefore states that, “democratic representation is not an issue for concern in relation to EU governance”. She points to a particular historic-political context, to highlight that representation was absent from the governance debate around the White Paper on Governance of 2001. The notion of the involvement of civil society was fashionable and favoured by Prodi, the incoming president of the Commission, due to the state of Italian politics, and easily encompassed, due to lack of need for Treaty reforms. This approach also had the advantage of responding to popular discontent at the failures of the Santer Commission.

The input for the Prodi position was sought from, amongst others, the Forward Studies Unit of the European Commission which pointed to i) doubt that experts can solve all problems and allow for smooth policy making; and the fact that ii) accountability applies only for formal decision making and parliamentary democracy is limited. Therefore the solution was to involve more stakeholders,

allowing for a new mode of governance with wider involvement, and to redress inequalities of access and participation whilst increasing collective learning.

With the input of internal working groups and interest groups in the consultation, the civil society debate moved towards a focus on better regulation and away from the need to make good the democratic deficit. The result was that the final version of the White Paper pushed for greater involvement of civil society for more efficiency and democracy but did not address problems of wider democratic legitimacy for the EU and the need for a measure of accountability of these civil society actors.

Papadopoulos in his observations on civil society (2010 p.1037) notes that NGOs in particular act as surrogates and use “self authorized” representation; “if representation is not based on any form of formal authorization ex ante, it requires at least some form of consent ex post on behalf of the represented”. A more general point can also be applied to business associations which are usually specific interest organisations; the more an organization claims to represent diffuse interests – and thus legitimises itself by asserting that it is immune to capture by particular interests – the more its accountability to the population of reference becomes distant and fictitious. However, the challenge for specific interest business associations whose mandate is traditionally derived from the membership is to legitimise its output in the wider governance context by engaging with civil society and rendering itself accountable through a process that links to the wider public.

Papadopoulos focuses on another problem related to representation which goes beyond the mere identification of the constituent basis when he states that “empirical work (Saurugger 2008; Warleigh 2006) shows that NGOs involved in EU policy making lack adequate internal democratic structures and that their supporters do not manifest a will to monitor their action” (2010 p.1037). He states that “in order not to remain toothless (Schedler 1999 p.16-17), soft pressure necessitates strong norms. Norms of appropriate conduct must be unchallenged by a community displaying strong cohesion – or, at least, persuasively defended by their advocates – so that power holders would have no other serious option than adhering to them. This is not always the case.” (2010 p.1038). For NGOs maybe, but not for business associations where contractual obligations and stringent internal accountability rules can be used as the missing “pressure” link.

Another aspect of decentralization of power from a national structure to that of the EU, in relation to representation, requires debate. It is the correlated increase in difficulty for citizens, the electorate, to identify the origin of the power, the decision and hence to attribute responsibility to an actor. This difficulty, which is absent in the classical form of political or electoral accountability, gives rise to the

newer form of “stakeholder accountability”. Lord and Pollack (2010 p.981) term this shift of the core of the problem as a shift from the problem of the accountability of a representative to that of the accountability through a representative. They provide an example, “Thus in the case of the EU, the Commission is forced to compensate for its own limited ‘problem solving capacity’ (Bohman 1996 p. 240) by accounting to groups whose active cooperation it needs to deliver its objectives. Indeed, the Commission itself has been eager to present its procedures for consulting citizens and civil society groups as potential forms of ex ante accountability (European Commission 2001)”. Thus, the nature of EU decision making relies on the activities of a buoyant multiplicity of actors competing for executive approval in a policy making context of vying priorities. This also indicates that the current EU political governance challenges call for greater clarity on the meaning of accountability for differing forms of social or political relationships.

2.3.1.c. Accountability v. Transparency

The questions surrounding the interplay between accountability, representation, representativity and the identification of actors, calls for a focus on transparency. Benner et al (2004) writing about the accountability of actors (p. 200), assert that networks are a composite of their individual parts and that these parts need therefore not only be identifiable but transparent. They underline transparency as of key importance in particular information on internal responsibilities, voting rules, procedures and funding. They claim that the greater transparency of individual actors will allow for a greater public scrutiny of the network actors and lead to higher standards of transparency. However, transparency is a pillar of the accountability edifice, a concept inherent but not equivalent to the accountability relationship discussed. The greater transparency of individual actors will allow for a greater public scrutiny of the network actors and lead to higher standards of governance.

In his cross referenced breakdown, Bovens does not dwell on the all important aspect of transparency of the forum which Vibert (2007 p.5), in an assessment of the Accountability Charter for NGOs, defines as a classic dimension of accountability and as, “the importance of bodies to operate under well defined terms of reference so that outside observers can see that they are operating within their set of responsibilities”. He, however, refers to transparency later in his section on “what is not accountability” to state that transparency indeed, is not accountability, since it excludes the constitutive notion of scrutiny.

Benner et al (2004 p.201) discuss transparency in some depth - to the extent that it appears to be considered as quasi synonymous with accountability - and emphasize the need for all internal procedures and structures to be open to scrutiny. They write that, “this applies to government

agencies, international organisations, corporations, foundations as well as NGOs. Information on the internal division of responsibilities, voting rules and procedures and most of all on funding (sources and spending patterns) are crucial in this context”.

Persson (2009) clearly positions transparency in this all encompassing web of defining components of accountability. He writes (2009 p.144) that “transparency and accountability are intimately connected. For citizens to be able to hold those wielding power to account, they must at the least have access to information on policy deliberations, decisions and the policy making process. Hence, transparency can be considered a necessary but insufficient condition for accountability”.

Papadopoulos (2007 p. 473) points to the distinguishing factor; “transparency lacks the element of sanction; it induces the accountability holdee to provide justifications for his or her action, but if these justifications are not considered satisfactory, the accountability holder has no possibility of imposing any sanctions”.

The calling of actors to account therefore implies that the holder of accountability is sufficiently informed to have the data on which to base such a calling. The data could be gleaned from procedures of openness, transparency and access to information. Esmark (2008) refers to this forum related aspect of accountability as “publicity”. The process of decision or policy making itself requires monitoring, providing a continuous and transparent forum for observance of the process. Esmark (2008 p.285) speaks of the documenting of decisions echoing a contemporary challenge with the trend of seeking a policy footprint, and of access to these documents.

Finally, Benner et al (2004) link transparency to legitimacy by defining internal accountability as related to process and external accountability as related to outcomes. They describe the accountability of processes as such: “networks are process oriented forms of governance” and the process will affect the form of accountability to be applied. After this statement, the authors assess the transparency of a selection process for which they identify reputational accountability as an important mechanism. Beyond this, they underline that there needs to be “clear terms of engagement in terms of common goals and guidelines for cooperation, clear timetables and decision making procedures” (p. 201), in other words, good management. They point to the need to sometimes “in source” expertise and consult transparently. Again the clarity as well as public information on the sources of funding is mentioned. “Cooperation should not lead to collusion”, and again the authors feel the need to specifically refer to some features of good management (as consideration for elements of accountability mechanisms, without any clear differentiation between these features) in stating that, “a measure of competition and mutual checks and balances is healthy for accountability” (p.201).

The authors state that external accountability is related to the *accountability of outcomes* in which the focus becomes one of output legitimacy. Since the work of such networks often does not translate into hard law, the effectiveness of networks will rely more on the persuasiveness of the results as judged internally and by the public. It is said at this point of the argument that “the accountability for outcomes in networks is important for the re-embedding of results” (p.205), i.e. seemingly that accountability affects the legitimacy of outcomes and hence the eventual public “buy in”. The text then mentions the possibility of independent evaluations which can help to assess the process and outcomes of a network from an accountability viewpoint and that this is usually carried out ex post facto (for example, the World Commission on Dams conducted by the World Resources institute), but adds quixotically, that results can be monitored at different stages of the cycle.

All this to conclude that different networks will use different accountability systems with differing emphases, depending on the intended purpose of the exercise and desired outcomes. Benner et al state however that transparency is the central element of any accountability system for multi-sectoral networks (p. 205). Efficiency is not mentioned until the next paragraph where a lack of empirical evidence is deplored. Indeed, using the right yard stick to improve legitimacy is important.

2.3.1.d. Accountability and legitimacy

“Accountability has come to be considered as a hallmark of democratic governance”, (Mulgan 2003), but it does not lend legitimacy per se. So, in the light of the above argumentation how does accountability provide legitimising consequences?

Risse asserts that (2006 p.7) “while accountability focuses on a particular relationship between actors, legitimacy refers to the particular quality of the social and political order. Institutions and rules are legitimate, not actors”. However, Risse goes on to argue (2006 p.8), that input legitimacy consists of both internal and external accountability since, “if the agents involved in governance arrangements are both internally accountable to their “clients” – be it shareholders of firms, or citizens of governments – and externally to those who are affected by their decisions – the various “stakeholders” – input legitimacy should be assured”.

Finally, accountability is also held by Risse (2006, p.8) to affect output legitimacy, in that if the governing actors have to justify their actions towards those who are affected by them, “this is likely to enhance the perceived problem solving capacity of governance arrangements.”

2.3.1.e. The emergence of accountability as a governance concept

In exploring the etymological roots of accountability, Bovens refers to Dubnick (2002), according to whom the word originates in Anglo Norman and dates back to 1066 and the requirement by William I, that all landowners render an account to him of their possessions and chattels. These were then assessed by the Crown and listed in the Domesday Books. William's original intention was to hold the population accountable to the Crown. Our current understanding of the term however is a reflected image of its origin: the populace or civil society is to hold the "powers that be" accountable to them.

Due to the EU context in which I am writing, it is worth noting that there is no exact equivalence for "accountability" in Germanic or Latin languages. A German or Dutch term for answerability "Verantwortung", touches upon and captures the hard aspects of the concept of accountability in evoking a process involving possible sanctions as well as a principal to agent relationship.

Papadopoulos (2007 p.472) writes that "answerability strongly induces the rulers to anticipate the retrospective control by the governed. The damoclean sword of control fosters responsiveness to the preferences of the accountability holder: the more decision makers feel that they act in the shadow of possible sanctions, the more it will be rational for them to endogenise the preferences of their "principal".

The four main steps described by Bovens (2005) as constituting the historical transition from financial accounting to public accountability provide insight into the original purpose of accountability and its transformation into a governance concept.

From compliance to performance: the classical accounting methods were set aside to make way for "value for money auditing" (Harlow 2002 p.19), where qualitative performance indicators prevail and no longer the application of quantitative criteria. The focus has shifted from following a procedure to assessing the efficiency of an outcome.

From internal to external accountability: the audience or forum for whom the exercise is carried out has changed from being the management hierarchy of an organization to external stakeholders, which, for public organizations or those that engage in quasi-governmental decision making as members of civil society, encompasses the public at large. Bovens (2005 p.186) goes even further, describing a compulsion or obligation *felt* on the part actors, "agencies or individual public managers should feel obliged to account for their performance to the public at large or, at least, to civil interest groups, charities, and associations of clients". The inclusion of this compelling need on the part of the individual seems superfluous. The recognition, on the part of all citizens engaged in a

public activity of responsibility, that providing an account is part and parcel of the job would appear to suffice, foregoing the need to examine the moral inclinations of that same individual. In discussing the forum, Bovens refers to public reporting and the increased use of the internet as a window for presenting audit results, and uses the UK's National Health Service trusts or school leagues tables as examples. The internet is indeed a wonderful platform of indefinite magnitude for engaging with the public. However, limited to publication, it does not of itself provide the opportunity for investigation which accountability promises.

From financial to public goals: This stage describes the move from publicly reporting essentially on financial activities to reporting about a much wider set of public concerns. This trend includes reporting on Corporate Social Responsibility on the part of private corporations. Many such companies base their exercise on the Global reporting Initiative (<http://www.globalreporting.com>) although critics would state that this reporting is little more than a Public Relations stunt (Bovens 2005 p.188).

From vertical to horizontal accountability: Bovens describes the classic, traditional accountability system based on the doctrine of ministerial responsibility to Parliament as "vertical". With the proliferation of public agencies, public managers have taken over operational responsibilities whilst ministers might only be directly involved in policy formulation or institutional arrangements. The heads of agencies, who might be required to appear before legislative committees, national audit officers or be subject to administrative scrutiny bodies, are said to be practicing diagonal accountability. The further step of horizontal accountability is therefore towards the media, interest groups or the public at large.

In refining his own definition, Bovens et al point to a transatlantic divide and sets aside that interpretation known in American political discourse where, "accountability is used predominantly as a normative concept, as a set of standards for evaluation of the behaviour of public actors", (Bovens, Schillemans and T'Hart, 2008 pp.226-227). He focuses on a more narrow sociological definition referring to a specific social relation "following amongst others, Day & Klein (1987 p.5), Romzek and Dubnick (1998 p.6), Lerner and Tetlock (1999 p.255), Mc Candless (2001 p.22) Scott (2000 p.40), Pollit (2003 p.89) and Mulgan (2003 pp.7-14)", (Bovens 2006 p.9). The purpose of the system is to ascertain whether an agent can be held accountable after the fact, and not whether he or she has acted in an accountable way (Bovens et al 2008 p.227).

The above analysis sets out what is and what is not accountability and positions each respective concept in relation to accountability as framed in the governance debate. The questions raised

regarding representation looked at the circumstances in which the need for an accountability process might arise. It is suggested that the greater the distance of the location of activity from the mandating body, and the wider the mandate, the greater the need for public accountability becomes. However, an NGO claiming to represent diffuse interests such as animal rights will experience difficulty in deriving a mandate from those animals and hence identifying a key component of the accountability relationship. For specific interests such as those promoted by business associations, the difficulty is not in identifying the mandator but in linking the cause to a mandate from the population at large; the public. One of the means by which this problem has been addressed by the European Commission which is not directly elected by universal suffrage of the EU population is to seek ex ante accountability by accounting to groups whose cooperation and support it needs. The case studies will demonstrate whether this scenario arises or not with EU business associations.

Transparency is a pre-requisite to accountability. It provides the principal with enough information to ask pertinent questions and to probe the behaviour of the actor. Calling to or providing an account cannot occur without transparency. This last also allows for a greater involvement in number of principals or participants in a forum; it provides a window for the public. Accountability allows the public to break through the glass and interact with the scene in “asking questions”.

Legitimacy is not an interchangeable term for accountability but the latter aids in bringing about the former. If a specific interest organization participates in a greater governance process such as the elaboration of an EU law affecting the wider public, the outcome would be more legitimate if a causal link can be established between the interest and that public. The aim of the case studies is also to ascertain the existence of that tenuous link in the internal processes adopted by the specific interest.

The emergence of accountability in the narrow sense as a governance concept is linked to historical developments. Accountability developed an external perspective potentially embracing the wider public and aims to assess performance or outcomes and no longer merely to verify if a given procedure was followed.

But the literature refers to multiple kinds of accountability, the denomination being dependent on the given situation and the relationships involved. The diverse typology and terminologies used are discussed below in 2.3.2. with a view to refining our understanding of when and where accountability questions arise.

2.3.2. Typology and definitions: denominational drivers and functional commonalities

In this second part of the section, I seek to identify definitions of accountability and match them to contexts or expected outcomes of accountability measures. Accountability terms are often used interchangeably, leading to confusion on its value and weakening the possible effect.

This part of the chapter identifies and aligns commonalities in the scenarios described in accountability literature. The aim is to track the shift from democratic accountability to public accountability as a process applied in a transnational context to business associations. It is also to ascertain when and where the accountability questions arise. A greater understanding of public accountability definitions and contexts allows for a more accurate assessment of accountability measures in the case studies below.

The analysis below is based on the works of six leading accountability authors. These authors were chosen because they directly address accountability as a governance concept taking the form of a process or mechanism as opposed to a possible “status”. Their respective contributions shed light on the outcomes of accountability measures thereby providing a clear rationale for their application, but they also provide insight into the greater potential of accountability and its transferability to hitherto unconsidered structures.

Accountability literature provides varying definitions according to different criteria including context, scenarios, aims and demands, actors and forums. The first author, Bovens, provides the most prescriptive approach defining the main steps of the process and providing the basis for a possible generic definition requiring specific components for a procedure to qualify as that of accountability. The order of literature presentation thereafter highlights accountability definitions, aspects which ascertain when and in which context an accountability question arises, how the concept has evolved to encompass more recent transnational governance models and the assessment criteria giving rise to accountability classifications. The conclusions drawn and the proposed generic model set out at 2.4 will be deployed in sections below on the case studies to qualify the accountability process examined and verify the criteria.

2.3.2.a. Bovens: towards a generic accountability process? :

Mark Bovens, as previously referred to in 2.3.1. above, provides a prescriptive definition of accountability in his article; “analyzing and assessing accountability, a conceptual framework” (2007 pp 447-468).

Bovens sets out the premise by arguing that the development of appropriate accountability systems has not kept pace with that of European policy making and that the gap appears to be widening, leading to growing accountability deficits. He states that the concept of accountability is elusive, yet it is increasingly used and conveys an “image of transparency and trustworthiness” (Bovens 2007 p.448).

Bovens claims that it is the type of forum, the nature of the obligation or the nature of the actor which will dictate the form of accountability sought. These breakdowns merely point to the denomination referring to the context in which the question of accountability arises but do not modify the above Bovens definition.

In asking to whom the account must be rendered Bovens identifies five different forums as venues for public organisations and officials as the chosen actors for this part of the argument (though this choice is not explicit). Bovens states that the forums differ in the kind of information demanded and the criteria agreed as to what constitutes “responsible” conduct. These five forums, named as “political”, “legal”, “administrative”, “professional” and “social” presented and analysed below.

Political accountability: This type of accountability complies with the principal agent relationship. Voters delegate sovereignty to representatives, who delegate to a Cabinet of ministers, who then delegate to civil servants or administrative bodies. Indeed, Bovens states that “political accountability operates precisely in the opposite direction to that of delegation”. The author refers to the media as an informal forum for political accountability (2007, p. 455) which provides some degree of transparency to political proceedings. But does it fulfil a deliberative role as democratic credentials would require?

Legal accountability: This description (p. 456) concludes by stating that it is the most unambiguous type of accountability since the standards and process are written and available to all. The examples used take for granted that the actor is a public servant, but do not address an overriding constituent of the court system; that the public servant is first and foremost a citizen and that all are subject to the law. Different types of court are evoked e.g. special administrative courts set up to witness the HIV contaminated blood products scandal. Bovens makes no mention of the fact that the type of

accountability forum which will hear the account, or court in this case, is dictated by the nature of the act or crime. Also, “legal accountability” would seem to carry a double emphasis in that the purpose of the law is intrinsically to call to account and then allocate responsibility. I would suggest that an accountability process is therefore redundant when legal means, with written rules and established practice in dedicated structures such as courts are foreseen. This analysis is addressed below discussing Ebrahim where I argue that governance choices such as the application of accountability mechanisms lie beyond legal compliance (which is not a “choice” itself).

Administrative accountability: New forums have arisen in past decades; ombudsmen, audit offices and chartered accountants are mentioned amongst others. Bovens claims that they mainly exercise financial and administrative scrutiny based on written rules. This form of accountability, however, can also be said to be linked to the profession exercised by the actor.

Professional accountability: Public managers who work in professional public organisations may in practice need to render account to professional associations or at disciplinary hearings. The author states that these professional bodies promote standards of practice that are “acceptable” and “binding” on all members, though one might add that they also often develop “best practices” which are “recommended” to members. Again, this type of accountability defined by Bovens is intrinsically linked to the nature of the work undertaken by the actor and might not be of wider public interest.

Social accountability: This form is the least structured in the sense that it does not stem from established political, legal or administrative practices. Bovens states that “agencies or individual public managers should feel obliged to account for their performance to the public at large, or at least, “to civil interest groups, charities and associations of clients” (note the term “feel obliged” discussed below which contradicts the true nature of an obligation where there is no place for “feelings”). He points out a limit to the audience’s powers in that the possibility to sanction is sometimes lacking thereby removing this forum from the narrow definition of accountability. Yet it is the element of sanction and the willing submission of the actor to face the consequences as a result of the process which renders the process “narrow”. It is this form of accountability which is also referred to as “public accountability” by Steffek whereby the actor responds to the “public”. The quality of that “public” acting as the forum, whether it be composed of citizens at large or representatives (mandated or not) of civil society organisations, is of key importance to the validity of the desired consequences. The democratic credentials of the forum are directly linked to the legitimising potential of the entire accountability process.

This form of accountability is indeed a governance choice unlinked to the requirement of legal compliance. It does not arise from a specific profession, contractual obligation, or set practice and can be adapted to all situations that comprise the components as presented in the Bovens definition of the accountability process.

Bovens writes that the nature of the actor will also point to an accountability denomination and that there are four accountability strategies for overcoming the problem of many hands, supposedly prevalent in the hierarchies of governmental agencies.

Corporate accountability: The author draws several parallels between private corporations and public organisations which enjoy independent legal status. Corporate type liabilities are also extended to these last, with the exception of criminal liability (though, in more recent legal developments, environmental damage can lead to penal redress). In fact, only Norway, Denmark and Ireland accept criminal liability for governmental bodies. The tradition of transparency in Scandinavian countries might be related to this fact. Bovens states that the organisation as a whole is to be held to account for the collective outcome. Practically speaking, does this mean that the highest person in the hierarchy would feature in the rendering of that account? Whose head might fall in retribution? These questions are not explored.

Hierarchical accountability: This form of accountability seems more credibly applied to the situation described above where a collective approach just appears impractical at the least.

In the current system, the highest official is called to publicly account although he might seek “internal” accountability in the lower ranks thereafter. The middle managers are a forum for holding the lower ranks to account and can also be actors in turn to render account to the upper levels.

Collective accountability: With this approach, every member of the organisation can be held accountable for the organisational misconduct. This is however limited in application and morally unclear since one would suggest that this strategy can only be fairly applied to small collegiate bodies such as the European Commission.

Individual accountability: A means by which one might resolve the moral acceptability problem described above is to hold each person accountable for his or her actions only. This is said to be a characteristic of professional accountability.

Moving on to denominations derived from the *nature of the obligation*, Bovens refers to yet three more types of accountability. “Vertical accountability” is noted when the forum has the power to compel or summon the actor to provide an account. Examples are a hierarchical professional relationship or a court of law summoning a witness to appear. When the forum cannot compel the actor to render an account, due to a lack of hierarchical relationship, the term “horizontal accountability” can be used. This is typical of when a public agency feels morally obliged to account for deeds. “Diagonal accountability” is typified by an audit office which is hierarchically independent but reports to a minister from whom the informal power is acquired.

I would suggest that the weight of the obligation, its compelling nature, the “stick or the carrot” might also be explored here. One usually speaks in terms of legal and moral obligations. A legal obligation includes all processes covered by the courts of law and professional tribunals by virtue of the contractual relationship between employer and employee, or membership of a regulatory body for independent professionals. A moral obligation would include all the above “political relationships” and the activity of the forums described as civil society groups.

Having set out accountability denominations according to the nature of the forum or the actor in the process Bovens then seeks to assess the effects of accountability by setting out perspectives of assessment. He quotes Aucoin and Heintzman (cited in Bovens 2007 p. 462) and discusses the three perspectives which arise from the quote; “Accountability is important to provide a democratic means to monitor and control government conduct, for preventing the development of concentrations of power, and to enhance the learning capacity and effectiveness of public administration”. The three perspectives are discussed below.

The Democratic Perspective: popular control

Public accountability is an essential tool for a democratic process and rests upon the principal agent relationship whereby citizens vote for representatives who appoint ministers, who entrust them with tasks for public bodies populated by civil servants who will render the account. Accountability here provides the citizen with information and the means to judge governmental conduct.

The Constitutional Perspective: prevention of corruption and abuse of power

An accountability forum such as a Chamber of Audits or an independent body with judicial powers can provide the necessary checks and balances to the inappropriate use of excessive power applied by a government supported entity. Although the notion of good governance is touched upon here, the question of legitimacy is sadly absent.

The learning perspective: enhancing government effectiveness

The purpose of accountability mechanisms can also be inscribed in the striving for optimal efficiency of an organisation. This arises from being subject to public scrutiny or a public process, as well as its result, combined with the threat of punishment. Bovens states that the existence of an open process in which governmental delegates or administrators justify their acts and in which citizens can put questions increases the acceptability of that government and confidence in the administration. Whether it inherently lends more legitimacy to that administration is not addressed.

The Bovens approach to interpretation of accountability yields a definition, five “types” of accountability identified according to the nature of the forum, four types identified according to the nature of the actor, and three types according to the nature of the obligation. Add to this three perspectives from which to assess the effects of accountability.

This is the most prescriptive approach examined in literature addressing accountability and appears somewhat overworked. It does however provide an essence of accountability through identifying commonality in the given situations addressed in the types. This essence led Bovens to draw up the definition applied.

The EU context of the role of civil society organisations in multilevel governance structures is not addressed directly. The Bovens examples are based on classical western national government structures with no reference to the transnational potential of organisations in accountability models.

The selected authors below adopt differing governmental structures for their assessments of accountability. Their insights better qualify where and when accountability questions arise and justify the use of accountability as a process.

2.3.2.b. Ebrahim: the inducement theory and accountability beyond legal compliance:

Ebrahim, writing about the practice of accountability as mechanisms for NGOs, categorises a tool or process against the beneficiary of the accountability process. Interestingly she lists the “inducement” for each category and finally the result or response, this last mimicking the Bovens perspectives. Ebrahim’s study is limited to NGOs operating in an international context and addresses concerns of the lack of accountability of NGOs and a “series of highly publicized scandals that have eroded public confidence in non profit organisations”, (2003 p. 813).

Her conclusions (2003 p. 824) address the dual perspective of internal and external accountability, not unlike the classical interpretation of democratic accountability. She deals with the definitions of accountability which include “being held responsible” by others, thereby corresponding to the external dimension and “taking on responsibility”, which corresponds to the internal dimension. Ebrahim (2003 p. 813) quotes Edwards and Hulme (1996, p.967), who define accountability as “the means by which individuals and organisations report to a recognised authority (or authorities) and are held responsible for their actions.”

The external and internal aspects are examined respectively as “inducements”, acting as the motivation behind the adoption of the accountability mechanism. For example (from table 1 “characteristics of accountability mechanisms” page 825), if the tool or process applied by the NGO is “disclosure”, the internal inducement is that this is a legal requirement in order to gain not for profit fiscal status. The external inducement element is derived from the funding requirement or the “external threat of loss of funding or tax status”. The accountability target, which answers the question of “accountability, to whom?” is defined as being “upwards” to funders and oversight agencies and “downwards” to clients or members who read the reports. Finally, the element of “organisational response” is said to be either “functional”, or “strategic” and interpreted as addressing short term needs and long term positioning respectively. For the example of disclosure, the organisational response is said to be “primarily functional”.

As with Bovens, above, there is little distinction in these interpretations between legal requirements imposed by statutes or contractual obligations and voluntary practices designed to address long term goals such as reputation management. The legal requirements are indeed functional and tend towards addressing compliance with the law of the land. Legal requirements posing as accountability mechanisms fall short of the connection with the public at large in the guise of individual citizens, and

not “the Public” in the guise of the State. Indeed, the “forum” which hears the disclosure account takes the form of the State or the Internal Revenue Service (for the UK), or its agency.

Ebrahim’s fourth example of an accountability tool or process in her table 1; is “self regulation”, clearly positioned outside statute books. She answers the question of accountability to whom by stating that NGOs render themselves accountable to themselves, “as a sector” and “potentially to clients and donors” i.e. currently including members of the public at large. There is no mention of “upwards or downwards” for this example. The inducement is said to be both internal and external, the risk being the “erosion of public confidence due to scandals and exaggeration of accomplishments (external loss of funds and internal loss of reputation)”. The organisational response for this non statute based tool is clearly strategic “in that it concerns long term change involving codes of conduct”.

In summary, public accountability lies outside statute books and caters to the public as individuals and citizens, not the State. This might also explain why Ebrahim did not qualify the forum (“accountability to whom?”), which should include or represent the public, as being upward or downwards. The organisational response when the need for public accountability arises is clearly strategic and to take the form of a long term practice. It goes beyond the functional purpose of legal compliance. The Ebrahim inducement for public accountability might be closely related, as that of the tool of self regulation, to the core purpose and activity of the organisation in question. An NGO needs to enjoy a good reputation if it relies on donations from the public and a business association needs to continue to support the business or industry in question through its activities.

2.3.2.c. Goodin: results based market accountability:

Writing in the context of not for profit organisations, Goodin discusses typology derived from accountability regimes. His approach of analysis is based on identification of a sector or political context. This contextualisation however points directly to the type of actor in the accountability exercise, thus reflecting the Bovens approach of first identifying the actor and then the forum in order to classify accountability types.

He states that “accountability is a concept that takes a three part predicate. Accountability is *of* some agent *to* some other agent *for* some state of affairs,” (2003 p.364). He notes that the subject of accountability, what people would be held accountable for, centres on actions, results or intentions. The system by which people can be held accountable is also broken down into three categories which he then illustrates with three different sector based scenarios.

The first addresses the state sector and accountability of public administrations, the actors of which are civil servants. State sector actors are the subject of accountability through their actions. The system by which they are held accountable is hierarchical in that the actor must demonstrate that he/she has acted within the mandate. Goodin sets out the internal chain of command by stating that; “subordinates are accountable to superiors, who are accountable to higher officials in turn, who are (after however many links in the chain) accountable to elected officials who are accountable to the electorate. The electorate thus sits at the pinnacle of a large set of nested hierarchies that constitute “the state””, (p.369). Interestingly, Goodin interprets the practice of what might be termed “public administrative” accountability as resting on hierarchical systems applied within the public administration which might equally be applied to the private sector. The Bovens reference to corporate accountability also includes this system of internal scrutiny.

In the market sector, therefore where corporations are key actors, Goodin refers to the subject of accountability as being “results based”, or dealing with “the bottom line” measured by income and profit. The internal process of accountability can be described as that of the firm’s officers facing the shareholders, whereas the external side can be “the way in which the market sector justifies itself both to society at large and to consumers in particular”, (p. 371). The author defines the mechanism of this type of accountability as competition based. Market accountability based on demands and expectations of consumers takes on a wider public dimension which might indeed encompass society at large when consumers enjoy ease of access to information about the actor and can make choices based on their analysis of that information. I would suggest that this form of market accountability could equally be applied to non-governmental organisations, pure CSOs, seeking and competing for funding from the general public or from governmental or intergovernmental donors sensitive to public perception. If the market encompasses the general public then, in certain circumstances, market accountability might shift closer to “public accountability”, the circumstances resting on the importance of transparency and participation to be able to hold actors to account.

The third and last sector addressed by Goodin is named the “non-profit sector”. He again speaks of sectors but refers quickly to actors, in this case “non profit managers and workers”, (p.373). He places emphasis on the intentions of these actors and states that they are “responsible for – their subject of accountability – is, to a much greater extent than in the other two sectors, manifesting good intentions appropriate to the non profit’s formal goals”. But what of the accountability mechanism applied? Goodin proposed that non profits hold each other accountable through network based mechanisms. He

suggests that “the real solution to securing accountability in such settings is through monitoring and reputational sanctioning among a group of like minded others. The key agents, here, are networks of people sharing a common core of norms and values, mutually internalising the views of one and other” (p. 375). Goodin (p. 376) writes less of the actual steps in the process of accountability than Bovens (2007) and quotes Keohane and Nye (2002, p. 239-240), “professional associations create and maintain transnational norms to which IGOs, NGOs and government officials can be judged accountable”.

The practice, by non-governmental organisations and the Press, of “naming and shaming” of transnational corporations with valuable brand names, also provides a sort of accountability. In this example of a form of sanction, not of a process, Goodin focuses on an outcome arising in effect from two opposing international actors said to be operating in the same network. Although I believe some form of peer pressure is inevitable and successful in networks for gearing actors towards best practice the effectiveness of this form of “soft” accountability would all but disappear in overlapping networks. Goodin acknowledges the other limitations of network based accountability (p. 387) when writing that networks “can be conspiracies against the public or cosy cabals covering one another’s incompetence as easily as they can be collaborations in pursuit of true public goods”.

In summary, basing himself on a given political context Goodin, as with Ebrahim, notes the internal and external aspects of the accountability. Moving away from the classical form of democratic or electoral accountability, Goodin introduces market accountability not identified by Bovens. This last form operates equally for NGOs mindful of and vulnerable to reputational deficits which might impact donor generosity, as for business related entities such as associations. Indeed, business associations composed of competing members are equally vulnerable in that their reputations might depend on the good behaviour of each and all of its members active in a highly visible consumer market.

2.3.2.d. Bluemel: matching functions and types of NGO accountability:

Bluemel (2005 pp. 141-206) directly addressed the role of accountability for NGOs operating in an international context and argues that it is the function of the NGO and not the actor which defines the type of accountability to be applied. He writes that, “as NGOs perform different functions, the level of power they wield over an international governance system changes, and therefore the strength of controls based on internal accountability and external accountability to the regime itself should vary according to the importance of its function and level of control over outcomes” (p. 156).

The author seeks to position the discussion away from concerns over the *democratic* accountability of NGOs covering questions such as representativeness, elections and the activities of the actor, towards an analysis of the functional roles of NGOs in a governance context and how these roles relate to accountability theory. Bluemel quotes Keohane (2002 p.144); “accountability refers to relationships in which principals have the ability to demand answers from agents to questions about their proposed or past behaviour, to discern that behaviour, and to impose sanctions on agents in the event that they regard the behaviour as satisfactory”. This definition refers to the need for answerability of the account holder to the account holder. Its construction, referring to the relationship between principal and an agent or actor, the ability to ask questions and the reference to a sanction, is very close to that of Bovens.

Moving beyond democratic accountability, Bluemel relies on control mechanisms derived from the delegatory system of governance referenced by Grant, Nye and Keohane which centres on NGOs operating in an international context (<http://www.ksg.harvard.edu/prg/nye/ggajune.pdf>). These identify no less than seven types of accountability relevant to NGOs operating in an international context; fiscal, market, supervisory, legal, peer, reputational and hierarchical. Bluemel matches these types to the function in which they might be used, divided into three categories; political activities, administrative duties and enforcement. These three categories then each give rise to tasks; e.g. “agenda setting” is one of three political activities. He then identifies three groups of accountability holders as the “internal membership”, “external beneficiaries” and “external regime” (by which he means the set of rules required for national legal compliance). The importance in relation to both the membership (internal accountability) and the beneficiaries and the regime (external accountability) is proposed per function as well as the type of accountability to be applied. For example, “agenda setting” is of high importance to members which can apply hierarchical accountability to this function but of lesser importance to the beneficiaries of the regime where hierarchical and peer accountability could be applied respectively for that same function.

Having analysed this breakdown, which is indeed very relevant to the aim of a deeper understanding of when and where accountability questions arise (but may be most appropriate to international NGOs only) the author then advocates standardising the accountability procedures per function of the NGO, divided into the three above mentioned categories of political activities, administrative duties and enforcement. Whilst Bluemel recognizes and describes a multiplicity of differing accountability situations both internal and external to the entity examined, he fails to address the overriding question

of the purpose of the application of a procedure or the desired outcome, such as verifying legitimacy claims in order to obtain more state or public funding.

Some of the internal function examples provided by Bluemel such as “training and information” could be understood to be inherent to a professionally run organization whether it is an international NGO or business association seeking to follow best practice. Other such functions listed by the author such as certification are in fact mainly founded in legal compliance with the purpose of obtaining a fiscal advantage and should maybe not be attributed to internal governance issues which imply optimization beyond mere compliance. In fact, for this function of “certification”, and in the column defining the accountability holders as the “external regime”, Bluemel equates two different accountability types which sit strangely together; fiscal and supervisory accountability. These would appear, in practice, to be intrinsically internal since dealing with mainly administrative tasks and obligations.

In summary, the matching of functions to accountability types provides insight into the pervasive nature of accountability and its applicability to both internal and external scenarios alike, this aspect being also identified by Ebrahim and Goodin. Bluemel creates a confused setting with overlap between both scenario types but points to the interplay between them and their inter-reliance. In his section on harmonising domestic procedures (2005 p. 189) Bluemel notes that internal accountability controls are best complemented by externally imposed constraints such as advisory boards or financial conditionality. The author addressed the situations in which accountability questions might arise in some detail but did not discuss the breakdown of actions to be carried out, or guidelines to be applied per procedure limiting himself to reiterating why the type of accountability is important for each function.

2.3.2.e. Deleon: professional accountability and its limits

Deleon discusses accountability in the context of the US re invented government (1998 pp.539-558), where central government devolves power to external agencies which are, in effect bureaucracies. Holding these closely to account for all minor actions would defeat the purpose of devolution and stifle quality in output. She explores different types of accountability based on Romzek and Dubnick (1991) and focuses her analysis on professional accountability as a means of building public trust.

She writes that (1988 p. 546), “for the purpose of this analysis, the important point is that accountability for results is possible only where goals are clear, and accountability for process is possible only where there is general agreement as to which processes are the most (or only) appropriate ones – the “best practices” in management vernacular.” This distinction seems to overlook the rationale behind the

existence of an accountability question, in that accountability arises when there is a doubt that desired results might be obtained. The effort would therefore lie in the process followed in order to increase the chances of obtaining the desired results. On the other hand, rigorous application of the process would whitewash any result obtained. Accountability questions also tend to arise concerning tasks of an “expert” as opposed to those of a low skilled worker, amongst other reasons, because the administrative effort or burden required to carry out an accountability process would discourage the organization from applying it on a daily basis for “mundane” tasks.

Echoing Blumel, DeLeon states that the “clearest conclusion that can be drawn from the analysis is that different accountability mechanisms are appropriate in different circumstances, depending on an organisation’s structure, which is in turn dependent (at least in part) on the type of problems it is designed to handle.” (1998 p.553). Indeed, an organisation’s structure will usually depend on its purpose as will the skill set and experience of the people who work in it. But again, accountability mechanisms are likely to apply in a given set of circumstances where the process applied or undergone by the actor needs to be verified against the expectations of the principal. The mechanism and steps themselves can be generic and conform to the Bovens definition; the circumstances of the activity as well as the outcomes might not.

DeLeon draws a second conclusion from her analysis (1998 p. 554); “overlapping accountability mechanisms....may be the result of differences in the way problems are perceived at different times or by different groups”. Certainly, accountability mechanisms can centre on a particular aspect of the mandate or activity. But this could be the focus of the type of questions asked in a forum and not really impact the steps themselves in the application of a mechanism. Different groups might hold different perceptions but the purpose of the exercise should be a matter that all involved agree upon. The expected or desired outcomes can denote an emphasis just as Bovens evokes in his description of perspectives; learning, constitutional or democratic.

DeLeon addresses the matter of internal or external accountability for professional organizations very succinctly; “the way individual professional workers are held accountable is an internal, or organizational, matter. But the way the profession itself is held accountable to society is an institutional matter”. She neatly draws a line between the individual accountability of a professional and the public accountability of a profession. One might draw this argument further by stipulating that each professional conducts himself in a professionally accountable way by adhering to internal rules. The adherence of each professional to these rules will provide a sum equivalent to external or public

accountability of the profession. This would underpin the proposal, in this context of a “professional society” type organisation at least, that public accountability cannot exist without internal accountability.

But what of the adherence to a prescribed set of rules? Deleon writes of an “organizational philosophy” or a “basic set of principles of operation”, (p. 550) for professionals who can justify their actions by proving that they acted in compliance with those same principles. She points out that Codes of Conduct have been used in the professions for many years but it is their enforcement, or the credibility of their enforcement which poses problems. “Codes are only a small step, however. A much more important second step is to enforce them, and most experience with professional review panels is discouraging, since professions tend towards lenience when clients or citizens allege wrongdoing against a practitioner”. Might this lack of credibility which undermines the rationale of the application of an accountability mechanism be overcome by looking at the composition of the said review panel and ensuring a “public” representative as well as transparency of the process and results?

In summary, Deleon’s focus on professional accountability refers to codes of conduct as the tool for measuring compliance during an accountability process. This self same tool in an internal context can take the form of a service level agreement annexed to a contract of employment. Adherence to this agreement however would merely result in legal compliance. It is when an external assessment is required to have an effect on the public at large that an accountability mechanism might be applied. However, that external exercise would be not practicable without the prior existence of the internal one.

2.3.2.f. Koenig –Archibugi: public accountability for transnational actors :

The above cited authors have written about accountability concepts in the context of national governments (Goodin and Bovens) or international relations (Bluemel and Ebrahim) mainly from the view point of NGOs (pure CSOs in the examples provided) or government agencies. Commonalities in relation to typology and drivers which point to an accountability type and its application have been identified. The form of accountability process, leading to use of certain terminology, is dependent on a trigger such as the nature of the actor, the forum, the inducement or the outcome. Despite this, differences in vocabulary between different types do not change to a great degree the steps of an accountability procedure, as set out by Bovens. The literature on the actual process itself, as opposed to its nature and hence type, is sparse.

The inter reliance, overlap and co existence of varying mechanisms is indeed taken up by the authors and the internal (professional accountability) and external types (social, market or public accountability) are defined as such in relation to the respective drivers (actor, forum, outcome). The internal types of accountability for NGOs, for example, which might lead to classification of non-profit status for fiscal reasons, are sometimes based in legal compliance with national laws and hence outside the context of governance structure preferences; a particularity which is not addressed.

Deleon alone, discussing professional accountability, points to an accountability “format” as being a code of conduct. She underlines that it is the enforceability of that code and the credibility of the outcome which underpins its viability. The enforceability of a system depends intrinsically on the “consequence” or sanction component of the process. Ebrahim writes of inducements which bring about a positive “consequence” for NGOs, for example, seeking that not for profit fiscal status. There is little reference however in the above analysis to sanctions or negative consequences of accountability procedures which in effect would justify their application. It might be argued that the voluntary nature of NGOs would mean that the threat of a sanction for any given actor would risk discouraging all activity and taking on of responsibility. Does the sanction element become more prevalent for public actors that do not qualify as “pure” CSOs or NGOs in view of a lack of need for the voluntary nature of activity?

What of the public accountability of non NGO transnational actors? Do the Bovens definition and its prescriptive steps apply to such scenarios?

Koenig Archibugi (2010) tries to ascertain whether there is something inherently distinctive about accountability in transnational spaces as compared to domestic contexts. He argues that accountability can be used as a means to better elucidate relationships of communication and power and clarify core features, dynamics and implications. This is certainly true for complex governance models inherent to the relationship between business associations and the EU.

Koenig Archibugi examines conceptualization of accountability and concludes that there are no great differences between the public administration (Bovens), democratization studies (Schedler 1999) and international relations (Grant and Keohane 2005) definitions of accountability. He notes that the substantial overlap in typologies identified is a “further indication of significant similarities across the domains” (2010 p. 1144). I would assert that it also supports the proposal for a generic definition of accountability as set out by Bovens. There are however two types of accountability presented by this

author which are of direct relevance to the role of business associations in the EU policy process; market and surrogate accountability.

The first, “market accountability”, was discussed in the context of NGOs by Goodin. Interestingly, the Bovens definition does not include the market as a mechanism for accountability. Koenig Archibugi remarks (2010 p. 1144) that “market based power relationships are important in a political domain that lacks overarching stateness”, which is true to the activities of business associations in an EU policy context. He points out that International Relations authors Grant and Keohane (2005) go even so far as to exclude electoral accountability from their list of accountability mechanisms due to its lack of relevance to global institutions. Koenig Archibugi adds that (2010 p. 1144), “This exclusion rests on the argument that there is no global public that could function as a forum for global democratic accountability”. There is also no EU demo, identified as a public.

Keonig Archibugi refers to a second distinction of greater interest to how business associations work in practice, drawn up by Rubenstein (2007) between standard and surrogate accountability. In standard accountability, “the accountability holders endorse standards, receive information about the power wielder’s compliance with those standards and help to sanction power-wielders. In surrogate accountability each of these actions...can be performed by a third party on behalf of the accountability holder”. Here, accountability holders cannot sanction the surrogate and surrogates are not links in chains of accountability. This distinction as applied to the role of an accountability forum assessing the activities of an association executive raises interesting questions not least in relation to the level of surrogacy an actor can carry, and whether the forum is a power wielder able to sanction or not. Koenig Archibugi points out that the distinction is usually difficult to apply in practice “because of the difficult of determining empirically when an actor genuinely acts on behalf of another, less powerful actor, instead of simply promoting its own interests and values”.

The ability to impose sanctions is crucial for the performance of an accountability mechanism. Koenig Archibugi states that the threat of sanction is the essence of surrogate accountability but points to a major obstacle for the transnational context. Indeed, the greater physical and social distance between surrogate sanctioners and the intended beneficiaries “reduces the ability of the former to understand the preferences and situations of the latter” (2010 p. 1157).

The author notes that surrogate versions of accountability are particularly common in transnational relations, as opposed to a national domestic context, for three reasons (p. 1150): “1)structural

inequalities in the global system mean that the power differentials between accountability holders and power wielders are usually greater than domestically; 2) at the transnational level there is a lack of formal institutions that would allow the operation of standard accountability; and 3) the larger social and physical distance between accountability holders and power wielders reduces the breadth and depth of common life world experiences as well as the intensity and velocity of communication, which hinders standard accountability”.

But what of the aim of accountability in a transnational context? The above cited authors write in terms of typology, triggers and desired outcomes specific to a process. The granting of a fiscal not for profit status however is particular to legal compliance with national fiscal requirements, the compliance with which will bring about the desired outcome in a clear causal link. But what of transnational actors, legally compliant in their country of main activity, and which use due process in their existing governance structures? What is the incentive to render oneself accountable in an international context, by adopting structural governance preferences? Koenig Archibugi directly addresses the purpose of the application of an accountability process by arguing that accountability is aimed at enhancing legitimacy.

“Accountability is demanded, supplied and studied mainly because of the expectation that it will contribute to establishing, maintaining or enhancing legitimacy. Arguably, accountability is neither necessary nor sufficient for legitimacy... But there are reasons to believe that accountability is likely to enhance the legitimacy of power in the eyes of those who have delegated it and of those who are affected by it – as well as being normatively desirable from a more impartial point of view”.(2010 p.1146).

In contrasting the domestic and transnational relations context, the author argues in line with Steffek (2003) that states are subject to special demands of legitimacy “as the relationships of domination they embody are largely involuntary” whilst, since transnational governance arrangements do not possess that characteristic and “thus the demands on their legitimacy are different and generally weaker” (2010 p. 1153). I would take this last conclusion with great caution as applied to the EU governance context which operates under close scrutiny and less obscurity for the EU population than maybe an international organization. Indeed, the higher the level of authority – in particular for the EU’s supranational infrastructure – the higher the demand for legitimacy.

Koenig Archibugi (p. 1158) writes that, NGOs have been, “hailed as agents able to stimulate and sustain democratic accountability”, and that civil society organizations may promote transnational democratic accountability by contributing to the establishment of governance arrangements that operate independently from state power”.

What form would these rules take? The author notes, (p. 1153), that accountability mechanisms can be built into the constitutions of the governance of an organization or added on after as reporting requirements. Another invective for accountability regimes to be added to the voice of the principals or the supporters is that of competition between agencies for funding, policy input credibility or simply popularity, applicable to all CSOs EU business associations and pure CSOs alike.

Conclusion to 2.3.:

This chapter 2.3., has set out the core concept of accountability and initially identified how the notion sits with overlapping and included concepts such as Representation or Transparency. The multiple definitions of accountability tend to refer to a context based on the role of the Actor or a Forum but do not denote the desired outcome of the application of an accountability mechanism. It has also tracked the historical development of accountability as a governance concept and its growth from democratic accountability to the multiple forms of accountability addressed.

Despite the literature based discussion on various triggers which will lead to a specific typology, I found that the actual process steps as set out by Bovens can be applied, with inclusion of the emphasis on mandates, in a generic way, whatever the intended result. The application of the mechanism would certainly require internal activity such as monitoring of actions or recordings of decisions taken. The goal of the exercise, however, is to engage externally in a public way, beyond transparency.

Transnational actors, legally compliant with national law in a given state, but operating in a multi level governance context, can seek to enhance the perception of their credentials through accountability mechanisms. This is of particular importance in competing network structures. The means of enhancement is accountability based governance preferences which can take the form of codes of conduct coupled with disciplinary or compliance measures.

In order to complete this in depth examination of accountability, its types, roles and purpose, the constitutive components of an accountability process and the questions they raise are the subject of the next section below.

2.4. Constitutive components of a public accountability process and the role of CSOs

This last part to Chapter 2 on the context and focus of accountability will address and question the constitutive components of an accountability mechanism. The components are derived from the Bovens definition though the corresponding elements identified by other leading accountability authors are discussed at some length.

The analysis is undertaken with the purpose of applying the modified definition to the transnational context of business associations in an EU policy process. Maybe the greater challenge is to derive a “public” element from the accountability process itself, in particular when the unit of analysis is a private commercial, interest specific organization. My contention is that this element can be potentially found in the nature of the relationship, in particular related to the nature of the mandate, or in the composition or mandate of the forum. I also focus on the “consequences” or sanction element to point out the lack of enforcement of the consequences. Another related aspect is the unease with which authors address sanctions in the not for profit sector. The questions derived from this final part on the steps of an accountability procedure are set alongside those from chapters 2.2., and 2.3.

The Bovens definition gives rise to a number of questions to be addressed herein under four sub headings (Harlow and Rawlings, 2008, break the Bovens definition down into the last three sections, only. I believed it important to also provide a focus on the “relationship” at hand);

- *The relationship (e.g. between the principal and agent, where the latter is a minister mandated by Parliament):*
How does one qualify the central relationship? How does it lead to external account giving?
How does one identify the actor in a complex organisation? How does one deal with the problem of “many hands” ? Who are the accountability holders and holdees – who responds to whom? How can one address accountability issues and where do they arise in a relationship based on representation?
- *The forum:*
The mention of a forum, which might act on behalf of the “EU public”, to which an account will be given raises questions as to its legitimising role, its composition (whether they are members of the EU public or professionals acting on their behalf) and purpose. Does it act sui generis as the “public” factor in the account giving, assuming that the process is “transparent” and in the public domain? Or, should it act as a conduit to the EU citizen, a form of administrative verification process? Is the need for a “public” account giving

satisfied by mere transparency of the process? What is the role of the EU media – if there is one - in acting as a platform for rendering public? In the EU context, might it be hampered by the underdevelopment of a European Public Sphere?

- *The account giving and the obligation to provide it:*

The obligation on the actor to justify his conduct is said to be “formal” or “informal”.. An *informal obligation* seems to be a contradiction in terms. Just as for the actor, should the forum not respond to an obligation to ask questions, and not enjoy a mere “possibility” to do so? This possibility could imply that the account rendering is equated to an administrative process without active participation, which stands in contrast to the level of “obligation” placed on the actor and might not serve the “public” element of the process. Does the information which the actor is obliged to *provide in the explanation* or justification lie in the respect of a set procedure to be followed by a civil servant? Is this part of a contractual obligation in which case would this undermine the compelling nature of the process?

- *The passing of judgment and meting out of possible sanctions:*

How is the forum invested with the power to “pass judgment” and bring about “consequences” or impose a sanction? From where does it derive this public mandate and how does it justify its own legitimacy and independence? Who is scrutinising the scrutinizers (Persson 2009)? The weight of the suggested public mandate will bear directly on the forum’s option to pass judgment. In the absence of a law setting out the answers to the above questions, we remain within the realm of soft law, such as codes of conduct, which, due to their nature and although they might carry a form of sanction, usually lack a means of effective enforcement of that sanction. More importantly, can the forum ensure that the actor accepts this sanction and acts in a more accountable way, without which the whole exercise would appear to be futile?

In the next section I will examine each phrase of the definition with a view to complementing and underpinning its meaning.

2.4.1. The relationship giving rise to accountability:

The relationship described by Bovens above, between the forum and actor, is that of a principal to agent, the forum being the principal, e.g. parliament delegating powers to a minister, the agent, who must be held to account about his performance in office. It is social in nature.

Bovens (2006 p.14), describes the relationships as being possibly occasional or contingent. He distinguishes this form from accountability *arrangements* which involve rules, standing practices and processes which might present an institutional character, whereas, an accountability *regime* would be linked, for example, to the members of a Cabinet in a parliamentary democracy where a system of standardised rules is followed.

The relationship under scrutiny is categorized by Mulgan who speaks in terms of “core accountability” (2000) identifying key components of the term, which “carries with it most of the major burdens of “governance””. He states that the first meaning of accountability is “associated with the process of being called to account to some authority for one’s actions” (Jones 1992 p. 73). Mulgan (2000 p.555) places his interpretation on this definition of accountability to note that it;

- *is external*, “in that the account is given to some other person or body outside the person or body being held accountable;
- *involves social interaction and exchange* , “in that .. the side calling for an account seeks answers and rectification while the other side .. responds and accepts sanctions”;
- implies the *rights of authority*, “in that those calling for an account are asserting their rights of superior authority over those who are held accountable, including the right to impose sanctions and demand answers”.

Mulgan’s responsiveness element at the second bullet point appears to be of key importance to identifying the relationship which gives rise to issues of accountability. He focuses further on the relationship between the actor and the forum to underline two particular aspects. The first is where public agencies are expected to be responsive to elected politicians. The second is where these agencies are expected to be responsive to their “clients” or the public. In this last case, the responsiveness of public officials is directly to the public, yet the latter cannot hold the former accountable without charters and complaints procedures etc.

Responsiveness can also be defined in this context as a form of control since, “accountability implies that accountability holders have some level of control over the actions of accountability holders,” (Esmark, 2008 p.290). Esmark writes, .. “the real touchstone of any system of accountability is the level of responsiveness of the accountability holdees to the accountability holders”. He states that the first challenge in identifying an accountability relationship is to identify these holders and holdees, in particular in the context of network governance where the nature of the structure itself will fudge the clearly defined roles (2008 p.290, this problem is referred to as that of “many hands”, discussed below). He rejoins Mulgan on the notion of “rights of authority” and clarifies that (2008

p.283), “the accountability holder is in a superior position – based on popular sovereignty – to the holdee and stands in judgment over the holdee”. This element is of key importance to the author’s study of accountability in networks which, he states, “ought to first and foremost be considered representative forums of accountability holdees”.

Indeed, accountability is inherent to democratic representation. Discussing Pitkin in the context of her study on civil society and EU democracy “Astroturf representation,” Kohler Koch (2010a p.107) notes that “authorisation and accountability are the well tried mechanisms with which to enforce democratic representation, and the core criteria with which to measure it are representativeness and responsiveness”. Pitkin herself (1967 p.113), whilst describing the institutional arrangements that precede and initiate formalistic representation, directly links accountability to the “ability of constituents to punish their representative for failing to act in accordance with their wishes (e.g. voting an elected official out of office) or the responsiveness of the representative to the constituents”. To close on the concept of representation at this stage it is worth commenting on the mandate versus independence controversy highlighted by Pitkin to clarify further where the accountability issues arise in this social relationship.

Pitkin states (1967 p.146), “that a mandate theorist will see the representative as a “mere” agent...with the constituents’ purpose in mind and not his own”. Independence theorists see the representative “as a free agent, a trustee, an expert who is best left alone to do his work”. In providing an account, the mandate theorist’s agent would be required to demonstrate that he/she has closely followed the detailed mandate. His obligation is to implement the means provided. The forum would therefore merely need to be satisfied that all appropriate steps were followed, reducing the account giving to a possible box ticking exercise. The independence theorist’s expert, who will have acted more as a free agent, will need to justify the choice of course adopted as well as all decisions taken in order to reach the required outcome, which is where his obligation lies. The more independent the representative, the more fundamental accountability questions arise and the more complex the account giving is rendered.

Having identified the nature of the relationship and causal connections in which accountability issues arise, we need to finally focus on the identity of the actor, which gives rise of itself to the “problem of many hands” (Thompson 1980 p. 905, in Bovens, 2006). As we scrutinize governmental or policy decisions it is becoming increasingly pertinent to trace a policy’s developmental footprint. Who really pulled the strings? And, at which stage? Who is ultimately responsible for the resulting policy? The naturally long drawn out process of adoption of EU legislation, now mainly evolved under the new Lisbon procedure will usually take between two to four years. The stakeholders, multiple

levelled decision makers, influencers, movers and shakers in the course of the foetal developments of the policy will change quite drastically. The consensus and committee based nature of EU legislation renders the picture even more complex, let alone the 28 Member States' input.

2.4.2. The forum:

The role of the forum is central to the understanding and assessment of accountability. It is suggested that it is the nature of the forum, or the entity to which the account is rendered, which acts as a key legitimising component via its "public" aspects. But who is that "public" and can the media act as a forum in this context? What is the role of civil society organizations? The transparency of the process would equally depend upon and hence be derived from the forum.

Bovens (2006 pp. 16-17) allocates elected representatives, political parties, voters and the media as the forum for political accountability; the courts for legal accountability; auditors, inspectors and controllers for administrative accountability; professional peers for professional accountability; and interest groups, charities, and other stakeholders for social accountability. But what of public accountability?

The traditional definition of public accountability is "democratic" based on the political relationship of the elected, the actor or agent, to the electorate, the public and is recognised by "the giving and demanding of reasons for conduct" (Roberts and Scapens 1985 p. 447).

This type of public or democratic accountability focused on how the elected use the authority granted to them by the public and possible abuses of that authority can be contrasted with the newer type of accountability; managerial or corporate focused on performance and output. There is common ground shared by both concepts in that, other than responsiveness to the electorate, the elected are expected to conduct themselves "properly" and this conduct is assessed using managerial techniques such as financial auditing, judicial review and hierarchical control in public administration. As Steffek (2008 p. 3) notes, this assessment can only be carried out retrospectively; "with the emphasis on retrospect and assessment of performance, the term accountability also in the public-democratic context shifts the focus of analysis from the input dimension, which is the main concern of much of democratic theory, to the output dimension and ex post control of office holders. This emphasis on ex post performance assessment circumscribes the common ground with managerial types of accountability".

Managerial accountability centres on performance and results, as do new modes of governance which Steffek describes as "functional arrangements of collective problem solving, whose regulatory scope is quite narrowly circumscribed" (2008 p. 4). He cites Grant and Keohane (2005 p. 37) who

argue that traditional notions of democratic accountability should be set aside here because they would not make us see that “multilateral institutions are, indeed, highly constrained by accountability mechanisms”. Steffek's point is essentially that the “public” in public accountability is being redefined in the new context of international governance.

On this same point, the role of a potential public sphere, according to Esmark (2008 p.276) is to bring about a deliberative process which sustains communication; “a proper public sphere not only implies procedures of making decisions public, but also a particular way of justifying these decisions, which in some way or another makes reference to universal rationality or morality in the process of deliberation”. We turn to Habermas (1998 p.160) to qualify this reference to a public sphere; “The core of a European communicative context is formed by a political public sphere which enables citizens to take positions at the same time on the same topics of the same relevance”. Does the EU currently boast a public sphere as defined? This does not seem self evident and leads to the question as to how the link between CSOs and the “public” of public accountability might be better described.

Public accountability has so far been equated to democratic or political accountability. Steffek (2008 p.7) seeks to reconcile this traditional interpretation with post Westphalian new governance structures and makes a case for another, more purist form of public accountability “as a specific type of accountability relationship that functions through critical debate in the public sphere and that contributes to the broader task of democratic accountability”. This form of public accountability would be more directly linked to the public in that it seeks citizen input to an ongoing discussion but is also less formal than democratic or electoral accountability.

How does this newer form of public accountability relate to democratic or electoral accountability? Accountability through elections presumes that citizens have had access to and absorbed enough information with which to create an impression on which to base their electoral choice. As Steffek (2008 p. 8) puts it, “for electoral accountability to function, there needs to be an intermediate sphere of public communication that enables citizens to review what is happening in government. In turn, public debate enables office holders to observe and react to changing expectations of their constituency. This is why public accountability taking place through public discourse is central for the functioning of a democratic polity.”

To further illustrate the point, we turn to the Habermas et al (1974 p.51) definition of a public sphere, “as a realm of our social life in which something approaching public opinion can be formed”. Habermas distinguishes between the centre of democratic decision making and judicial review which

includes the courts, parliament, governments, and the periphery consisting of processes of public communication that surround and besiege the formal institutions.

How does this description of the periphery relate to the EU disparate structure of decision making? Steffek (2008 p.10) sets the scene by quoting Fraser (2007 p.19) at length; 'Public spheres are increasingly transnational or postnational with respect to the elements of public opinion. The "who" of communication is no longer Westphalian national citizenry..." but dispersed interlocutors, who do not constitute a demos. The "what" of communication" is no longer Westphalian national interest but "now stretches across the globe in a transnational community of risk""The "where" of communication...is now deterritorialised cyberspace. The "how", once Westphalian national print media, "now encompasses a vast translinguistic nexus of disjointed and overlapping visual cultures."

Steffek (2008 p.12) refers in particular to CSO activities prevalent in interest representation, a role often taken up by business associations. He refers to "1)monitoring of public governance, 2)translating highly technical discourse and flagging of issues, 3)framing issues and formulating alternatives."

Purposely disconnected from the nation state and focused on often widely defined issues, CSOs do not constitute per se the "public" as understood in Steffek's definition of public accountability but contribute to a European Public Sphere as active components generating debate and discussion within the sphere which then transmits topics to the wider public via media and news outlets. Another means of putting the public back into Public Accountability might be derived from the nature and composition of the forum. Any civil society organisation fulfilling a role as a forum in the application of an accountability procedure would not only require bringing a "public" element to the process but also demonstrating its aptitude to following and understanding the context and activities involved. Just as for courts of law the composition of such forums can present different remit allocations according to the priorities to be derived from the process, with a representative for the "public" element, correctly mandated to act as such and with internal accountability checks and balances in place that ensure the necessary consultation of an informed public. The discussion and deliberation centring on the allocation of the mandate from the public to their forum representative, short of being all encompassing of all "public" issues might be construed as also constituting a certain element of the European Public Sphere (EPS).

To conform to identified features of an EPS and therefore seek to emulate the "public" in public accountability, CSOs would require transparent internal governance structures and modus operandi and internal accountability mechanisms. Their output and information on internal activities and

monitoring of governance structures must be accessible in order for a calling to account to take place. Maybe more contentiously the representativeness of these actors – often doubted – should be linked directly to the EU 'public'. When the advocacy of these CSOs is undertaken "on behalf" of voiceless causes, such as the protection of nature or animals, the desired link becomes more tenuous, relying on the "interests of" the EU public.

In the Habermas deliberative approach, CSOs are seen as the institutional core of civil society (Habermas 1996 p.367). CSO generated debate and activity might constitute a public sphere. CSOs deliberate and relate experiences from the private sphere to formal political decision making processes but can they "represent" the public? This question brings us back to the issue of mandate and the use of clear internal accountability procedures to ensure that wide and deep consultation of informed EU citizens is carried out on given issues and on a regular basis.

In order for this forum to function, conditions of transparency and access to information need to be met. It is also of note that the role might require specialist knowledge whilst still aspiring to represent the public at large. Differing actors and accountability situations will dictate the appropriate mandate and composition of the forum. Civil society organisations, taken in the context of the definition of public accountability discussed can actively contribute as a section of the European Public Sphere.

In conclusion, CSOs cannot per se constitute the "public" in public accountability. They do however take up issues arising from their respective topic focuses and then generate information and debate which can reach national media and hence be aired to the wider EU public.

CSOs might develop this role further and, under the application of clear internal accountability guidelines focusing on consultation of EU citizens, request a mandate of their members to more formally act as conduits of public EU opinion and thus contribute to the desired informed debate which of itself can develop viable media platforms for general consumption.

The above analysis of the interplay with the European Public Sphere has brought us a step closer to putting the "public" back into public accountability.

2.4.3. The obligation to provide an account and the account giving itself:

In his definition of accountability, Bovens (2006) underlines the fact that "the actor has *an obligation* to explain and justify his or her conduct". He goes on to widen the scope of the definition of the key term "*obligation*" by stating that it can be "formal" or "informal". . The demise of Edith Cresson which brought down the Santer Commission is presented as an example of a "formal" obligation to

render account to a Belgian penal court and the European Court of Justice. A given example of an “informal” obligation might be a press conference or a voluntary audit. From a purist view point, one might question whether an “informal obligation” is not a contradiction in terms. A strictly legal interpretation of the term “obligation” is highly likely to refer to its compelling nature, the absence of the possibility to escape from that action required; and hence its “formal” nature. Bovens’s approach would likely include what is commonly referred to as a “moral” obligation, yet one might question whether this last type of “informal obligation” is weighty enough to give rise to accountability issues which carry with them the possibility of retribution.

According to the Bovens narrow definition of accountability, the actor is obliged to provide a justification for his conduct. The type of justification will often depend on the forum e.g. an audit by the Chamber of Audits. The weight of the obligation to provide an account, its compelling nature, the “stick or the carrot”, might be better framed. Indeed, a moral obligation would include all the above “political relationships” and the activity of the forums described as civil society groups. Is there room for such a term in the context of social accountability?

For Keohane (2005), the weight of the responsibility does not lie with the actor to respond to his inner compulsion but with the “holder” of the accountability who “makes demands”. According to Keohane “accountability refers to a principal-agent relationship in which an individual, group or other entity makes demands on an agent to report on his or her activities, and has the ability to impose costs on the agent”. Keohane further distinguishes between internal and external accountability, where external accountability refers to people or groups outside the acting entity who are nevertheless affected by its activities. It is suggested that the Keohane definition, which avoids the fuzzy notion of personal feelings and the need to define a compulsion in this context, would duly encompass the set of elements of social accountability and hence the “relationship” as presented by Bovens.

Mulgan equally discusses the external nature of the account-giving at this juncture but points to an internal moral sense, based on one’s own judgement, which would lead the individual to the external act. Admittedly though, he chooses a hybrid example to illustrate this by referring to accountability as the sense of individual responsibility and concern for the public interest expected from *civil servants*. A clear chain of command and task allocation with hierarchical accountability prevailing might be more effective. Mulgan also singles out an unusual aspect of the theory which is related to the “ability” of the actor to provide an account, and arises around the question of the “problem of many hands”. Is the actor indeed, “able” to provide the relevant account?

Ebrahim prefers to use “inducement” over “an obligation” to provide an account. In practice, Ebrahim (p.825) states that the legal requirement, or the inducement, to justify an NGO’s tax status leads to the use of fiscal disclosure or tax reports as an accountability tool. The accountability forum is made up of the funders and oversight agencies, acting “upward” to the NGO, and the clients or members who read the report, acting “downwards”. In this last example, the inducement is legal and entrenched in law. Another example from Ebrahim of a non legal inducement would be the erosion of public confidence due to scandals and exaggeration of accomplishments which could be dealt with by using process based self-regulation as an accountability mechanism, providing an account to the NGOs themselves as a sector or potentially to clients and donors.

One may note, moreover, that where there is a legal requirement as the inducement, it will dictate the mechanism to be applied which is of itself, directly linked to the forum. The forum in turn, boasts a very wide constituency, potentially encompassing the wider public. The sanction of the loss of the not for profit tax status is tangible and flows directly from the accountability process. Where no legal “inducement” (though this should be better termed “requirement”) is observed, the mechanism will be based in soft law, such as for codes of conduct and the forum members appear to be more limited and focused on other NGOs, in other words, the competitors for funding. The sanction of possible loss of funds or reputation, whilst potentially fatal, appears less measurable and less intrinsically linked to the accountability process.

2.4.4. The questioning and passing of judgment with possible consequences:

This last section regroups both the possibility of passing a judgment with that of bringing about consequences since it would seem futile, in this context, for a decision to be taken as a judgment without consequences ensuing. The possibility to ask questions, granted to the forum is inherent to the exercise of participation and scrutiny, which goes beyond the mere “reporting” process which lacks the active nature to qualify it as an accountability process under the Bovens definition. Clearly, accountability theorists are uncomfortable with the notion of a sanction and its legal overtones. This might also explain the lack of discussion on a mandate granted to the forum to pass such a judgment leading to consequences. Note that there is only a mere “possibility” for the forum to question the adequacy and legitimacy of the conduct and no “obligation”- whether formal or not – on the part of the forum to question and scrutinize. The all important elements of enforcement without which the effectiveness of the accountability process is undermined are not addressed in literature either, yet it is intrinsically linked to the fundamental issue of the mandate of the forum.

Bovens (2009 p.10) mentions that the inclusion of a sanction as a constitutive element of accountability has been questioned. He settles therefore for the “possibility” of sanctions stating that this mere possibility “distinguishes the non committed provision of information and being held to account”. Again, though, it is more difficult to distinguish the “informal” obligation to account, included in the author’s definition, from “being held to account” which might imply the voluntary nature of the forum to seek that account or not.

The opting for the expression that the actor “may face consequences” as opposed to using the word “sanction” in the definition is explained by Bovens who argues that the latter would exclude the role of an ombudsman who merely seeks “redress” or “reparation”. It is also conceivable however that whoever has to carry out that redress or pay that reparation would define it as a “sanction”. In that sense it might have been more constructive to argue for a wider definition of “sanction”. This tentative approach contrasts starkly with the definition put forth by Pitkin of the institutional arrangements for formalistic representation; authorization and accountability, where accountability is described as the ability on the part of constituents to *punish* their representative.

Harlow and Rawlings (2008 p.313), also interpret the term “facing consequences”, as the possibility for sanctions to be imposed. The inclusion of this last element renders the accountability “thick”, whereas any mechanism which does not include this last element would be deemed “thin”. The authors discuss a case study of the European Ombudsman placed within the concept of “thin” accountability because he lacks the power to sanction administrations. On the one hand, whilst the office itself carries essential elements of independence and public investigation it appears to act more as an alternative dispute resolution mechanism than that of accountability. On the other hand, these techniques applied by the ombudsman of hearing from an independent and public status and then passing judgment display the elements of a non judicial accountability machinery. The authors however deplore the lack of “teeth” in the post, and point to “non contribution by the ombudsman in the major crisis of accountability – extending to issues of corruption – under the Santer Commission”.

Translating these characteristics into civil society discourse, Kohler Koch (2008 p.15) writes that, “European civil society organisations, for their part have to give account to their members or constituencies and have to face severe consequences, either through the mechanism of elections or through donations. This I call “*material accountability*””. Later, Altides and Kohler Koch (2009 p.3) further states that, “Civil Society Organisations (CSOs) can pose questions and pass judgment, but it cannot be taken for granted that CSOs can impose consequences on the responsible actor “to turn

matters right". Furthermore, even if CSOs had the capacity to exert sanctions, it would constitute a case of accountability, but not necessarily of democratic accountability".

In his description of accountability as responsiveness, Esmark (2008 p.290) provides yet more food for thought. He qualifies the relationship in question, and nature of the sanction; "Sanctions can generally be understood as the means of punishment. Or in other words, the relationship between the accountability holder and holdee, is also a relationship between punisher and punishee. Legitimately administering punishment requires a negative outcome of a comparison between a mandate already given and decisions made by the accountability holder." He goes on to ask two vital questions; what is the legitimate mandate through which the accountability holder can specify the desired course of action to the accountability holdee? And, which sanction – or form of punishment – may legitimately be employed according to the accountability if the mandate is not followed? He says that for political accountability, sanctions means being voted out of office. Administrative accountability is (p. 291), "associated with mandates in the form of job descriptions and sanctions, such as warnings, being demoted, fired and the reorganisation of public administration units".

In his review of the International NGO Accountability Charter, a code of conduct signed by 11 international NGOs in June 2006, Vibert (2007) opens with a reference to the general nature of sanctions which can be defined as promoters of good behaviour and deterrents from bad behaviour. He mentions the requirement to disclose information as a form of discipline and the need to evaluate and monitor activities as another. He then argues that since the NGO world is voluntary in nature, a penalty based system should be avoided. He repeats that the Charter itself is voluntary. This raises the question as to what the purpose of the Charter itself is and to rationale. What was the real impetus for its existence and adoption? Similar to business standards, will the Charter give rise to a register of complying NGOs which will then be favoured by governments and individuals alike? Which independent body will audit compliance with the Charter's provisions? If there is a gain, should there not be a correlated sanction? It is suggested for example, if the purpose is indeed to draw up a register of "respectable" and accountable NGOs, that any infraction of the rules be sanctioned by removal from the register.

In the absence of a sanction mechanism Vibert focuses on softer, more administrative means of redress such as disclosure (note that Ebrahim referred to disclosure as an accountability mechanism, tool or process and not as a sanction), monitoring or evaluation. On this last, Vibert states that a system of evaluation that is penalty based is "more likely to cover up what really happened rather than to reveal the lessons that need to be learnt". One would submit that a penalty based system would not only ensure that the infringing behaviour does not happen again, it is also more likely to

lead to the necessary procedural changes to make that behaviour a thing of the past. An isolated lesson learning focus will not be effective in the NGO competitive environment of the future. The virtues of self assessment do not win the argument over the merits of independent external review, and sanctions for that matter.

It would appear that the weight of a sanction might vary according to the type of organization and relationship examined. In their study of multisectoral networks, that is, including both NGOs and multinational corporations, Benner et al focus on reputational accountability and point to “naming and shaming” as a key strategy in this context. They believe that (2004 p. 200), the “loss of credibility is one of the more effective negative sanctioning mechanisms, to further accountability in and of networks”. One might conclude that it is the impact and consequences of the sanction on the particular organisation at hand that should be a determining factor in the choice of sanction type.

The importance of the role of civil society organisations and their fulfilling of their potential for lending greater legitimacy to EU decision making are conditional upon this assessment of the hard components of accountability. Internal accountability to the constituency duly represented might be addressed through strict internal procedures of consultation, representativeness, transparency and mandate giving. However, the prized external accountability to the public at large, the process of which is developed and examined herein calls for more direct linkage to the legitimisation theory, justifying the relationship to both input and output legitimacy.

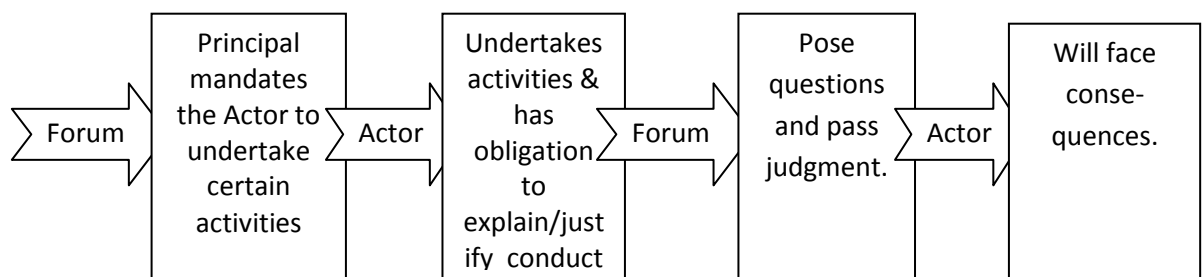
Conclusion to 2.4:

The above discussion has identified the existing definitions of accountability, what role it carries out and in which context. This gave rise to setting out the constitutive components as well as complementing the gaps noted from the analysis. Qualifying the nature of the relationship giving rise to accountability sheds light on the related social aspects but also points to a means of control or responsiveness and a right of authority of the holder of accountability over the holdee. The variety of definitions is discussed in how they construed the impetus leading to an account giving, ranging from a near compulsion on the part of the account giver, resting in personal responsibility, to a calling for an account practised by the holder. Indeed, the provision of an account itself, in the form of disclosure has even been equated to a sanction. The public nature of accountability is reflected in the choice of forum which in turn is often ascribed by the nature of the social relationship. Finally, the legal conundrum of the lack of mandate on the part of the forum to impose a sanction, or at the least to bring about the desired effects of redress is focused upon.

The careful approach of cited authors to this last vital component and the noted differentiation between civil society actors according to their voluntary status or not, points to the need for further empirical research in particular in relation to the use of codes of conduct as a soft law means for bringing about accountability.

Having examined and underpinned each component of accountability, I highlighted the missing considerations of the definitions. This led to a focus on the question of the origin of the mandates to act and to judge in particular. I have also questioned the inclusion of the term “obligation” on the part of the Actor to provide an account. The commonality between definitions used, coupled with above considerations lead to the proposed generic process as set out below, at Figure 2.

Figure 2. The proposed Generic Accountability Model:



This model, derived from the analysis of the authors’ conclusions and process components will be applied to the case studies at Chapter 3.

2.5. Conclusion to Chapter 2:

This chapter has addressed and discussed the literature on accountability, and the related role of business associations as civil society participants in the EU policy process.

Chapter 2.2 first described the emergence of civil society and its role in the EU's practice of participatory democracy. It found limits to that practice not least in the limited evidence of deliberation and consultation on the part of organized civil society. As specific interest organizations, business associations promote a private commercial interest and can be seen as "distant" from matters that lie in the public interest. Ascertaining whether a business association might render itself publicly accountable will therefore first lead to defining the specific interest at stake, the stakeholders and contributors. Questions then arising from this section to be applied to the case studies will include whether the unit of analysis engages in deliberative practices with members of the public, pure civil society organisations or not. Also, to what extent the practice if there is one contributes to the efficiency and legitimising of the output and corresponds to the design characteristics set out by Tanasescu and the key conditions of Fischer.

Chapter 2.3.1. dealt with distinguishing the core concept of accountability and mapping its relationship to other related governance concepts. This analysis gives rise to several questions on representation and the quality of the mandate derived for action that is then subject to accountability. Does the lack of a clear public mandate indeed heighten the need for an accountability process? Organisations that claim representation of wider interests and hence more freedom from capture by particular interests also struggle to link directly with that wider public and derive a mandate from it. Similarly, struggling to link with that wider public, business organizations however represent a specific narrow interest though their activities are usually clearly mandated by an identified set of members. Representative but de facto weak on public accountability, business associations might rely on accountability processes to establish that link with the organizations more representative of the public in the civil society spectrum. The "public" credentials of organizations are in part reliant on transparency; a necessary quality for accountability to proceed. However, transparency lacks the essential element of scrutiny and therefore does not allow us to draw reliable conclusions based on observed practices.

Transparency allows however for public involvement and this potential establishment of a causal link with the public will enhance legitimacy. In effect, input legitimacy can be achieved according to Risse (2006), when the actors are held accountable by their internal constituents. But accountability

developed as a governance concept with an external effect of potential legitimization, based on internal accountability processes that engage at some stage with a “public” representative.

Chapter 2.3.2. examines the differing types of accountability as described by leading accountability authors and seeks to align definitions and nomenclature where viable. Where possible, this exercise ascertains commonality in drivers, circumstances and expected outcomes. There is some overlap in contexts studied by the authors which tend to focus on international NGOs. I justify the particular choice of business associations again in this argumentation by pointing to their own need of reputation management, as per INGOs, their transnational activity, and their role in policy making. Accountability processes can be common to both organisational types. Bovens offers a definition of an accountability process in several steps which I have questioned and sought to re-balance with differing emphases (see Figure 2.). The combination of the defining of accountability as a governance concept and its mapping into a process as applied to a business association allowed me to draw further key conclusions from leading authors.

The first is that the application of an accountability process is a governance choice. It is strategic and political, and lies beyond legal compliance. Its application therefore is deliberate and should yield an outcome or satisfy an expectation. On a practical level this also entails adoption of this process or mechanism as a deliberate choice on the part of the actors and also wider stakeholders. The setting out of the process would be found in internal documents that take the form of “operational rules” or “codes of conduct”. The key question lies in the existence and quality of the “public involvement; where and when does this occur and in what form? Does deliberation takes place?

The second conclusion relates to the context in which accountability questions arise. Goodin identifies “market accountability” as linked to the management of reputational deficits which I assert is a concern common to most civil society organizations, business associations included. The need for reputation management arises in circumstances related to obtaining funding from the public directly or from public authorities. Business entities engage with the public as consumers and also rely on a market reputation management. But what is the quality of that relationship and how is it measured? Is this the motivation behind the use of accountability mechanisms?

The third conclusion lies in agreement with Bluemel’s (2005) reference to the interplay between the internal and external aspects of accountability mechanisms. Bluemel relates accountability types to the function that the organisation was carrying out which then gives rise to a denomination. Although I

believe that the classifications arrived at do not point to any greater emphasis of a procedural stage or of a particular actor, thereby allowing us to further refine a definition of accountability, Bluemel points to a clear advantage in complementing internal controls with externally imposed constraints such as advisory boards. But how “external” must that constraint be and is this a formal basis for public involvement, interaction or consultation?

Deleon also emphasizes the interdependence of internal and external aspects of accountability by stating that the “professional” is individually accountable whilst the profession is publicly accountable. I carry this thinking further by claiming that the adherence of all professionals to internal rules of accountability will realize the sum total of public accountability of that profession. Is there any evidence of tracking of individual behaviour in business associations, professional societies in particular? She refers to codes of conduct as the tool for individual accountability but points to the problem of leniency of experts towards their own kind. I ask whether this might not be overcome by that public element in the process, such as participation in the review panel and note that the question arises only in the context of external assessments and reputation management.

The last conclusion to this part of the chapter is that the notion of a sanction and its enforceability are dealt with by accountability authors in a tentative way. This is partly explained by the voluntary nature of the not for profit sector actors and the risk of bringing about inaction through fear of retribution. I therefore ask whether the sanction element becomes more prevalent for public actors that are not volunteers. I also agree with Koenig Archibugi’s claim that accountability is likely to enhance legitimacy and is “normatively desirable from a more impartial point of view” (2010, p. 1146). These conclusions, however, need to be tried against the case study findings.

Chapter 2.4 has focused on the steps and components, as described by Bovens, of an accountability process for analysis and to identify the outstanding questions to be applied to the observed practice of accountability. Concerning the relationship, the responsiveness of the account holder to the holder is identified as of importance as well as the measure of independence of the mandatee in the fulfilment of the task. Key questions on the forum centre on its mandate to hear the account and to pass judgment as well as its composition. Is the public element derived from the presence of a “public” representative on a forum panel? This in turn raises the questions related to the public quality of CSOs and their ability to represent the public interest or not, as well as satisfying the correlated expectation of deliberation to emulate a public sphere.

The obligation to provide an account is questioned to the extent that the weight of an obligation sits uncomfortably with the voluntary nature of the not for profit sector. Also, there is no mention in literature of the co-related obligation to call to and hear the account on the part of the forum. The frequency, content and format of the account giving itself are referred to, to the extent that it would be either the nature of the act or of the forum which would point to the rules to be followed. Does the account giving follow a prescribed set of rules? Are these generic or specific to the act or the forum, or to another component or actor in the process? What are the consequences of the application of the rules in relation to the expected outcome?

Finally for this section, the important element of sanction or the passing of judgment is discussed. Several vital questions are raised here, not least the origin of the mandate to pass such a judgment on the part of the forum and the potential for a link with the “public interest”. However, the tool used for application of the process such as a code of conduct can also constitute a form of de facto mandate from stakeholders. The nature of the sanction and its severity tend to vary in the literature although I contend that loss of reputation can be a “consequence” across all CSO types. The enforcement of the sanction is absent from the constitutive components and this would appear to weaken the choice of application of an accountability process. Further research on the existence and forms that judgments might take is required in order to ascertain their severity and impact on the actor and or organization concerned. The origin of the mandate and its scope needs to be identified as well as a means of enforcement. This section closes with the proposed Generic Accountability Model, at Figure 2. that I have derived from the above analyses focusing on the origin of the missing mandates to act and to judge and setting out each step as a separate component in the process.

The next chapter is empirical and deals with three case studies involving four business organizations engaged in the EU policy process in diverse ways. The questions as derived from the above analysis of literature and the generic model will be applied to the units of analysis in order to better qualify accountability contexts and the detail of the application of an accountability procedure. The data will allow for us to better ascertain the role of accountability and its legitimizing potential when practised by transnational actors in the specific circumstances of the EU political and legal structure.

Chapter 3: ACCOUNTABILITY IN PRACTICE UNDER CONDITIONS OF EU POLICY PARTICIPATION

3.1. Introduction

This chapter presents the three case studies of this thesis. They are complex in structure due to the mapping of the relationships inherent to the respective activities of the associations examined. As stated in the chapter on methodology, the choice of these units of analysis is deliberate in that they yield greater insight into the rationale of use and consequences of an accountability process. The search for these units also demonstrated that these questions arise in perceived circumstances of public concern and in relation to the activities of business sectors that strive to enjoy public support.

The first unit to be presented is UNESDA, the EU soft drinks association, which has a hybrid membership encompassing national associations as well as direct company membership. Its participation in a European Commission led and managed Platform is the focus of the study.

The second organisation is the European Public Affairs Consultancy Association (EPACA) which deals with representing professional lobbying companies. The employees of these companies represent interests and input into the EU policy process as professionals. The study focuses on the application of a complaints procedure against a member company and the ensuing consequences such as amendments to the EPACA Code of Conduct.

The third and last association is the World Federation of Advertisers (WFA) which represents some of the most well known brands in the world today. WFA are members of the European Commission's European Alcohol and Health Forum and as such commit to the maintaining and development of high advertising standards in particular to identified sensitive audiences such as young adults. Their interaction with pure civil society organisations and the polarising effect of the Forum's topic are addressed in the analysis.

The accountability aspects as presented and identified in the literature are referred to throughout the respective studies. The aim is to evaluate these aspects of accountability such as to what extent they measure up to the definitions. The analysis at the end of each case study addresses the main key case study questions resting on the existence or not of a mechanism of public accountability under conditions of EU policy participation. Finally, the conclusion of each study deals with the mapping of the constitutive components of the generic accountability process.

3.2. Union of European Soft Drinks Associations and the EU platform for Action on Diet, Physical Activity and Health

3.2.1. Introduction:

This case study generates and analyses core data on the Union of European Soft Drinks Associations (UNESDA) practices undertaken as part of an identified EU policy process. The methodology, based on a case study and empirical enquiry and described in detail at Chapter 1.2., leads to ascertaining the existence and practice of accountability arrangements.

The choice of unit and practice followed highlights the conditions under which accountability practices might be identified. As the business association participates in the “Platform” based EU policy process, it seeks to further a reputation based goal, to enhance the image of its members and to be seen to rub shoulders with civil society organizations that might have been vocal in their condemnation of the effects on health of the association members’ products. In this context, participation would serve as a means to an end of reputation management.

This accountability justification mechanism, where information and transparency alone do not suffice, firstly raises questions addressed in the case study as to the public mandate of the principal which is intended as the forum, since this is the central relationship. The public credentials of the Civil Society Organisations present in the forum raise questions of representativity, although it is understood that UNESDA acts “in the public interest”. The identity of the Actor might be in doubt in situations of “many hands” and his /her “obligation” to “justify and explain” the conduct sits uncomfortably with the voluntary nature of such Commitments as addressed here. The accountability authors cited in chapter 2 do not dwell on the type of account to be given although this would be crucial to the fulfilling of the mandate or the judgment of the forum. Light will be shed on the composition and mandate to ask questions and judge of this last and the needs for a deliberative process to constitute that same forum will be discussed. Finally, the nature of the consequences and their use as an incentive or threat to participants in the Platform are described through interview results and evaluations of the Platform.

The accountability mechanism applied binds a group of private actors to elicit an essentially public outcome. This can only be brought about by the bringing together in the Platform - which takes the form of a very wide issue based stakeholder coalition - of all public and private actors concerned, “committed” to a common cause. This “bringing together” was initiated and is administered by a public regulatory body on a topic that escapes a classical regulatory approach, in that one cannot regulate against obesity.

The European Commission therefore stands to gain from being notably active on this sensitive agenda through responding to calls from health related CSOs and avoiding the development of costly legislation which would be less than welcomed by producers operating in a free market.

Therefore, this self regulatory approach, applicable to private commercial actors and civil society players representing varying facets of the public interest alike, is administered by a regulatory public body using soft law means. The accountability process identified is that causal link between the commitment of activity made and the actual carrying out of it. The accountability elements are not limited to the monitoring process but include the debate and discussion generated by the reporting in the Platform meetings. It does not suffice for participants to commit but an account has to be made in some detail through the monitoring mechanism, under the threat of removal from the register. The account is then reiterated and renders itself subject to immediate scrutiny in the Platform presentations. It does not suffice to undertake “general” activities but actors must tailor and refine the content of their pledges to match them to the overall goals of the Platform, under the potential threat of poor publicity generated by civil society participants or a public naming and shaming in meeting reports kept online on the Europa institutional site.

The case study questions first ascertain the context in which an accountability mechanism might operate. Is the process applied in an EU policy context? Is it prescribed by inclusion in a system?

They then map out the process by asking what and who are the components of the accountability mechanism? To whom is the accountability to be owed? They seek to identify the quality of the “public” element and the origin of the mandate to hear the account, to question and pass judgment based on the account and generated discussion.

How can one qualify the public nature of the account giving; what means are used and is the process transparent? What is the composition of the forum and its role and how is it mandated to receive the account?

The questions finally focus on the sanction. Does the process include the necessary sanction element and if so, how is it meted out and which body enjoys the mandate to sanction? How is the forum invested with the power to pass judgment? Finally, what is the added value of participation in the process and is there a competitive advantage derived from participation?

The study's key empirical questions are addressed through an analysis of documents related to the association as well as to the European Commission's DG SANCO and relevant website for the EU Platform. An in depth discussion addressing all questions arising at Chapter 1 part 2 on Methodology is presented at the end of this case study.

The two points of particular interest in this study centre on seeking to provide a link between the mainly private commercial considerations of a business organization active in the EU context and an overriding public interest, and the existence or not of a sanction mechanism as an integral part of this process based on soft law. Indeed, the involvement of the "public" can be identified at several levels both in the form of civil society organizations participating as members of the Platform and engagement with members of the public albeit in their professional roles as head teachers of schools which house large vending machines which in turn present UNESDA member products. The UNESDA commitments related to schools also seek to engage parents in the choice of products to be placed in vending machines. Varying forms of sanction mechanisms can be noted at different stages in particular the policing of the database by the European Commission for inactive commitments and the negative publicity, or potential for it, generated by the Platform actors.

The format of the analysis below is adapted to a presentation of the data to firstly set the unique context in which this organisation operates with a focus on detail of the UNESDA Constitution and the process of participation in the Platform with particular attention to the all important monitoring process and its evaluation. The relationship between the association and the Platform itself is described since this period covers some six years with a focus on the 2010 commitment to not advertise in schools and limit advertising in secondary schools. The final part of this Chapter deals with outstanding questions and mapping this process to the identified components of the generic accountability mechanism.

3.2.2. Union of Soft Drinks Associations: an accountability actor:

UNESDA was founded in 1958 and represents the European non-alcoholic beverages association. Its members are soft drinks companies who conduct their business in at least five EU Member States, as well as national associations from across the EU27. Their declared mission statement is to "support the growth, development and understanding of non-alcoholic beverages at a European level". The association claims to provide technical expertise and input to legislators and influencers in Brussels and, when requested, expertise to international organizations, such as the World Trade Organization (WTO)

and the Codex Alimentarius of the World Health Organization (WHO) (all UNESDA related documents are at <http://www.unesda.org/about-unesda> - accessed 16 June 2014).

Although active since 1958, the association was incorporated as an “AISBL” (“Association internationale sans but lucratif” or “international not for profit association”) under Belgian law by Royal Decree awarded on 29th June 1993. The statutes were last amended in November 2007. The association’s declared purpose at article 3.2 of the UNESDA Constitution is to “engage and dialogue with each of the institutions of the European Community and the broader stakeholder community, on all matters scientific, regulatory, economic, environmental, commercial, technical and corporate social responsibility relating to the non alcoholic beverages industry”.

Of relevance to the analysis of the EU process hereunder is the declaration in the UNESDA Constitution article 3.2. that, the association, “ shall in particular carry out the following activities:

a) gather and represent its national member associations and corporate members, enabling them to work together in a spirit of cooperation and solidarity; b) coordinate the policy positions of individual association and corporate member; c) advocate in the interests of the non alcoholic beverages industry and to promote its actions and initiatives; d) work together with other stakeholders on issues of common interest.”

UNESDA has a federative structure regrouping the national associations of the EU and beyond for the non alcoholic beverages industry. It also presents a hybrid nature in that companies can benefit from direct corporate membership as well as being members of the diverse national associations. This practice is not unusual for a large consumer brand facing reputation management issues on a global scale and identifying a need to enhance their opportunities for influencing policy and regulatory outcomes.

Interestingly for questions concerning internal accountability, the Constitution sets out the principle of rule compliance in this membership clause, stating at article 4.4, “No-one shall be admitted as a member who does not agree to abide by the Constitution, the rules and the policies of the association.” This implies equally that a current member who does not comply with the rules can no longer be admitted as a member. Indeed, at article 4.5, the constitution provides that membership of the association can be terminated by resignation or expulsion.

The administration of the association befalls the Board of directors composed of 10 directors, each respectively appointed by an ordinary member. The Board sets guidelines for the Secretary General and will “instruct him/her in the actions to be taken in conformity with the purposes of the association”, (article 7.2 of the UNESDA Constitution). The amount of administration required to implement and monitor the voluntary commitment undertaken by UNESDA requires a quasi daily check with oversight which can only be carried out by an empowered delegate such as the Secretary General.

3.2.3. Presentation of EU Platform for Action on Diet, Physical Activity and Health: an accountability forum

Consumer protection and health are included in the competences of the EU thereby conferring on the European Commission (henceforth, the Commission) a public health mandate. In 2003, to address the rise of obesity in the EU, the Commission recognised the need for a coordinated action in this sector and sought expert input through a network composed of Member State experts, the World Health Organisation, and nongovernmental organizations dealing with health to develop a strategy to deal with the growing public health concern, obesity. The debate generated conclusions to which the Commission responded by setting up in 2005 the EU Platform for Action on Diet, Physical Activity and Health (henceforth, the Platform). The aim was to, “develop best practices and encourage voluntary action on consumer information, labelling, advertising, marketing and food composition, and on education and promotion of physical activity...”(European Commission, DG SANCO, 2011).

The Platform’s Founding Charter of March 15th 2005 convened food manufacturers, retailers, the catering industry, advertisers, consumer and health NGOs, health professionals and public authorities. The main objective was to discuss informally and openly ways of achieving binding commitments to tackle obesity and other diet related diseases. The Platform thereby provides a forum for all interested actors at European level where, Charter point 2, page 2: “a) they can explain their plans to contribute concretely to the pursuit of healthy, nutrition, physical activity and the fight against obesity, and where those plans can be discussed; (b) outcomes and experience from actors’ performance can be reported and reviewed, so that over time better evidence is assembled of what works, and Best Practice more clearly defined”.

The creation of such a forum where discussion (at point a.) is encouraged, thereby allowing for questioning and the need to provide answers and justifications on future plans, opens up corporate decisions to civil society input.

The Platform members, described as actors, would unilaterally commit on an annual basis to address in as concrete a manner as possible to further the fields of action identified in article 3 of the Charter. The means by which this “furtherance” could be assessed and measured is through a monitoring process. The crucial monitoring of actions was addressed in 2005 in the Charter at point 5; “actors will monitor their own performance in a transparent, participative and *accountable* way, so that there is a degree of stakeholder involvement in reviewing progress and outcomes that creates trust in data....there is a general desire amongst participants to develop not only participative self monitoring, but also some more ambitious best practice on monitoring, including aspects such as self evaluation” (European Commission DG SANCO, Platform’s Founding Charter of March 15th 2005).

The Platform principle was that each member annually proposes and commits to specific activities designed to halt or reverse the obesity trend. These commitments must be recorded, and outcomes are monitored in such a way that they might be fed back to the Platform. This all important monitoring process and how the results are now shared and acted upon will be addressed later at the end of this section on the process.

The platform was evaluated and assessed in a thorough exercise carried out by independent consultants, The Evaluation Partnership, in July 2010 (European Commission, DG SANCO, The Evaluation Partnership 2010) which gave rise to other important developments regarding communication and advocacy and highlighted the need for deeper public as opposed to civil society organization buy - in to the activities and their benefits.

Measures of public accountability require involvement of that self same public which should be defined in as wide a sense as possible. Transparency is necessary for communication to the public but does not bring about accountability per se. Persson (2009 p.144) writes that “transparency and accountability are intimately connected. For citizens to be able to hold those wielding power to account, they must at the least have access to information on policy deliberations, decisions and the policy making process. Hence, transparency can be considered a necessary but insufficient condition for accountability”.

If actors are called upon to provide an account, the holder of the accountability must benefit at the least from the minimum of data required to decide to hold the actor, the holdee, to account or not. This data can be gleaned from procedures of openness and transparency and access to information. Esmark (2008 p.285) defines these procedures as “publicity” when he refers to the documenting of decisions. Indeed

the process of decision or policy making in itself requires monitoring, providing a continuous and transparent forum for observance of the process.

There are four levels at which the public can be identified in the prescribed Platform process. Firstly, as each member of the Platform commits to the cause of reducing obesity, the activities are undertaken in the “public interest”. The Evaluation assessed that, p 63, “the majority of commitments target groups such as Children and Adolescents, however more than one third of commitments target the general public”. Secondly, the Platform reporting is carried out in such a way as to render all results accessible to Platform members, themselves including civil society organizations. The solidity of the public mandate which these organizations might enjoy can be tested through scrutiny of their respective internal structures and their own use of transparency or public consultation practices.

The commitments and reports are themselves reported on annually and updated quarterly in the database of the Commission’s Platform web site. Thirdly, the monitoring process carried out by a given member might entail gathering data and evidence from members of the public and / or local civil society organizations. Finally, the Platform members themselves can act as conduits for the public by commenting on and publicizing Platform activity and results. If the civil society organizations cannot constitute per se the “public” in public accountability, they might however take up issues arising from their respective topic focuses and then generate information and debate which can then reach national media and hence be aired to the public.

3.2.4. The 2010 evaluation of the Platform:

This evaluation focused on questions of collective effectiveness; to what extent had the Platform collectively met its goal; had Platform members’ commitments been proportionate to the Platform’s initial goals; what was the impact generated in policy at national and European levels; the role and function of the Platform as a place for dialogue between different stakeholders and the level of satisfaction of different stakeholders. The conclusions of the evaluation were structured around four key themes; dialogue, action, impact and the future.

In order to retain the focus on the elements of the Platform’s work which reflect components of an accountability process, the analysis of the 2010 Evaluation Report (henceforth, the Evaluation) will centre on the quest for the “public” nature of the activities undertaken and therefore look at communication and dialogue based aspects first and then at the monitoring process.

In “Key conclusions” at page 2 of the Evaluation the authors point to the fact that multi-stakeholder groups are still “very rare, and this evaluation has brought to light that industry and NGOs have very different perceptions on a number of issues”. The report differentiates between industry members and NGOs through classification based on the for-profit or not for profit status (p.16). The report did indeed reflect many divergences of opinion on fundamental issues such as the rationale and purpose of the Platform itself (p.3). On assessing the relevance and proportionality of the commitments, the report argues that the monitoring system “succeeded in placing the issue of monitoring high on the agenda of Platform members and has forced members to be accountable in some way, it could be argued that it has developed more into an end in itself, rather than supporting the implementation of commitments.”

The members also disagreed on the appropriateness and relevance of some commitments bringing about difficulties in achieving general agreement on which messages might be placed in the public domain as part of a communication exercise. However, communication is desirable since (p.3 of the Evaluation) it is “likely to sustain and or increase the top level buy in of the members”.

One of the key recommendations highlighted on p. 5 of the Evaluation underlines that a “clear reward (such as the communication of the Platform’s achievements and key actions) needs to be provided to members in order to avoid platform fatigue.” On the other hand, not for profit members perceived some for profit members as “not putting enough effort and resources into their commitments, and choosing easy to implement commitments instead, using the Platform as a “public relations exercise” more than a real vehicle for change”(p. 47). This last would imply that industry committers are regularly undertaking these PR exercises with the wider public, yet the report notes a clear lack of *public* communication. This assessment might imply that the intended recipients of the PR exercises are the civil society organizations who are members of the Platform themselves and not the wider public. This in turn might mean that the entire Platform process is self defeating unless the civil society representatives can display real “public credentials”. The question brings us back to the issue of a mandate and the use of clear internal accountability procedures to ensure wide and deep consultation of informed EU citizens is carried out on these issues on a regular basis.

When assessing the impact on national or EU policy of the Platform’s activities and findings, the report (p.4) states that “part of the reason for this limited impact on policy may be that little is known about the Platform outside the Platform itself and its members’ inner circles. In fact, communication of the knowledge of the Platform externally has been limited and communication at the Member State and local level was considered to be particularly lacking”.

When asked in a survey for the Evaluation, to what extent has knowledge generated by the Platform been communicated to the right people, in the right way at the right time, Platform members replied that they only “occasionally” communicated internally (p. 94) and that the external communication should be improved (p. 96). Indeed, the fact that more external communication needs to be carried out was a point of near consensus among Platform members, observers and interviewed national platforms and national authorities. All in all, the internal communication of knowledge and results among members of the Platform and their respective member organizations was not frequent. The for-profit sector tended to communicate more frequently internally than the not-for-profit sector (p. 98).

One particular aspect of communication was highlighted by industry respondents in that all stated that contact and communication with the European Commission was either “very important” or “quite important”. A number of members viewed “knowing what the European Commission’s future plans are” as a benefit. The Evaluation states at p. 120 that, “being able to show “what individual sectors are achieving in the fight against obesity”, “being involved in the European dialogue on obesity” and a “unique opportunity for exchanging experiences and information” were also mentioned in the interviews as benefits. One member also referred to the issue of accountability in relation to the platform: “it creates a unique level of publicity, accountability and pressure to deliver”. This last mention of pressure brings to mind the “obligation” to explain and justify the conduct on the part of the actor, discussed above in the Bovens version of the definition of accountability.

The result of the assessment on Communication above was the setting up of a working group which decided to add a sixth field of action “Advocacy and Information Exchange” to the five fields existing so far (Consumer information and labelling, education, physical activity promotion, marketing and advertising, and composition of foods) (2011 Annual report p. 3).

Another working group focused on amendments to the monitoring process which the Commission rolled out in 2013. The current applicable monitoring system (for the year 2012) is described in full in a diagram below at *Figure. 3*. It is considered the tool through which accountability of members is demonstrated; “monitoring of commitment plays a vital role in developing engagement, accountability and trust, in mapping progress and confirming the commitments undertaken”, p. 1 of “Monitoring Framework”. The focus of the exercise is on measuring progress and learning from outcomes as opposed to a means for holding members to account. This might be due to the need for greater and more explicit communication as identified above as well as a demonstration of a lack of more tangible results in relation to obesity.

An interesting comment derived from the survey of for profit members was that the system “only monitors in how far the commitments have reached their objectives rather than the overall effect of the commitments which might include results and outputs that were not anticipated”. This would seem to indicate that the monitoring system *per se* falls short of an accountability mechanism because it focuses on the measurement of achievement in relation to a declared finite goal as opposed to the delivery of an account of what happened whilst trying to achieve that goal. Also of interest to the question of the nature of the actor is the comment made by not for profit members at this section on effectiveness of the monitoring system that, “different levels of monitoring could be required from profit and not for profit members, with not for profit members having to spend fewer resources on monitoring” (p. 73).

When asked whether the Platform had met their expectations, two thirds of not for profit members felt that the Platform had only somewhat met their expectations. Half of the industry representatives felt that the Platform had met their initial expectations. Both groups tended to agree that “the expectation that was fulfilled to the greatest extent was that the Platform produced a better understanding of each other’s positions in the debate on how to tackle obesity”, (Evaluation p. 113).

3.2.5. The Monitoring Process and Platform Rules: evidence of activities undertaken by actor:

The Commission produced the Monitoring Framework for guidance to Platform members (EUROPEAN COMMISSION DG SANCO, Monitoring Framework 2007) to update an earlier version of 2005. It does not currently reflect any changes to the monitoring system brought about as a result of the Evaluation of 2010. Its purpose is to guide Platform members to take forward the monitoring of their commitments in the context of this specific process. It states at page 1 that;

“Platform members agreed to monitor their own performance in a transparent, participative and *accountable way*, so that there is a degree of multi stakeholder involvement in reviewing progress and outcomes that creates trust in data.... Monitoring of commitments plays a vital role in developing engagement, accountability and trust, in, mapping progress and confirming the commitments undertaken”, (European Commission, DG SANCO, Monitoring Framework, page 1). On page 3, at Users Guide, the document urges participants to assess the progress on initiated activities in order to “identify the constraints for early corrective action”. The guide then sets out steps to indicate the minimum agreed requirements to monitor a commitment.

Administration, deadlines and milestones:

The process of making a commitment to this platform is owned by the European Commission's DG SANCO. The Platform meets in plenary 4 times per year. The 2012 dates for meeting of the Platform members were; 9th February, 24th May, 20th September and 14th November. The Platform members meet with the High level Group once per year. The minutes of these meetings and the annual reports are available on the Europa web site at (European Commission, DG SANCO, 2014).

The participation in the Platform of the current circa 300 members follows a fixed timetable on an annual/ calendar basis. The Commission is the guardian of this procedure and in the best interests of all parties, developed in 2008 the first visibly sanction based system related to the functioning of platform. A bottleneck type problem had developed in that organizations enthusiastic about participation in the platform had signed up and entered their names as participants without either specifying the detail of the commitment undertaken as required above or undertaking the monitoring process correctly and reporting in a timely way to the Commission in full respect of the procedure.

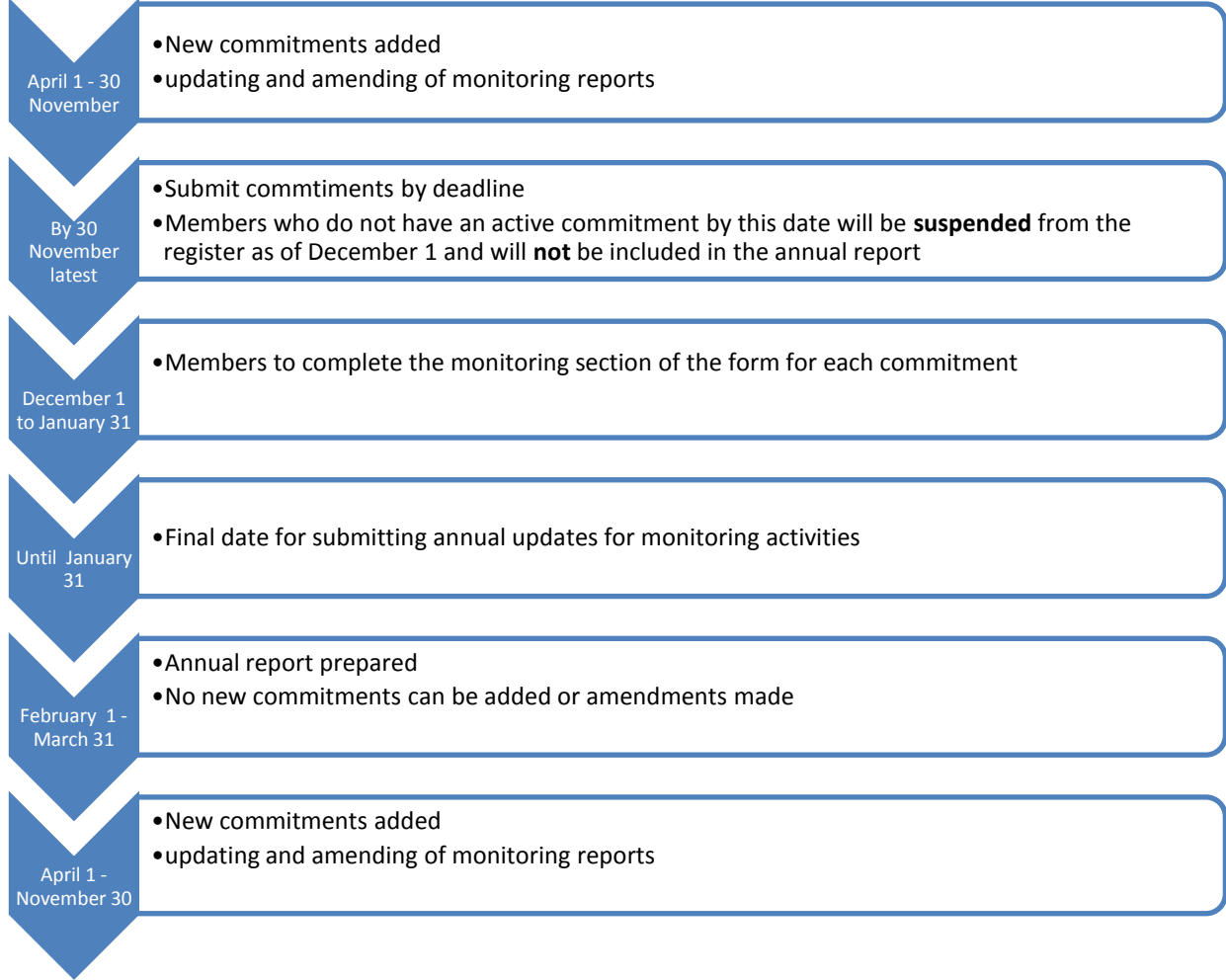
At the plenary meeting of the Platform on 23rd April, 2008 (European Commission, DG SANCO, 2009) it was reported at page 8", that the "Commission provided a briefing note on membership including as requested by the Platform, a proposal for dealing with delinquent members. The outcome is that those organizations who had not yet fulfilled their 2008 membership requirements (in terms of submitting commitments for the year) were to be formally reminded, with a deadline of 15 June 2008 by which to complete them, failing which, their membership could be terminated or suspended. It was agreed that suspended memberships might be reactivated in future upon the submission of appropriate new commitments and after consultation of the Platform membership".

The suspension from the register, although not broadcast by the Commission, would have been visible to the other platform members who access the Platform's database on the Europa website. More importantly, the non inclusion of the commitment in the Annual Report signals a real missed opportunity for the participating business associations who would need to wait another 12 months for participation and publicity of that commitment. Finally, the threat of the removal from the register acts as a co-relation to the "obligation" to provide an account. The reporting is more than a discharging of one's responsibility and becomes an obligation, or a condition to remain in the process.

The result of this updating of the rules of participation in the Platform is clearly marked at Figure 3. "UNESDA Obesity Forum Monitoring Process". Indeed, participants in the Platform can submit and

amend commitments from 1st April - here 2008 but it also applies to any given year – until 30th November. The entry in the chart reads; “30th November 2008: final date to submit commitments for 2008, members who fail to have an active commitment by this date will be suspended as of 1st December”. From 1st December the commitment owners are to complete the monitoring section of the form for each commitment.

Figure 3. UNESDA Obesity Forum Monitoring Process



3.2.6. How UNESDA deals with fulfilling the commitments and the obligation to provide an account:

UNESDA is a proud “founding member” of the Platform and appears as a signatory to the Charter. When asked how this came about, Alain Beaumont, Secretary General of UNESDA and a recognized association management professional in Brussels, stated that his motivation was based on a need to counter attacks that were made on the soft drinks industry “in a very unusual way” (interviews of 9/10/12, 25/10/12 . The organisation had previously worked on a “regulatory basis” but in the early 2000s “was attacked in the Press without the existence of any medial report or scientific basis”. The method of UNESDA dealing with such sporadic attacks was “traditional” according to Beaumont who would have recourse to no doubt other scientific evidence that counters the original argument. The basis of the “attacks” was the rise in obesity. The Press awareness raising led to an invitation to liaise with the World Health Organization’s Brussels office. Beaumont “sent a scientist” who would cooperate with the WHO on matters that impacted UNESDA members. However, as he states, “the articles in the Press continued”. A brief search of Foodnavigator.com which covers all food related press publications does not yield any such negative publicity although this might have taken place predominantly in the US where leading UNESDA members are headquartered and where obesity is more widespread than in Europe.

According to Beaumont, he then “went to DG SANCO to meet with Mr Madelin then Director General for Health and Consumer Affairs at the European Commission, to inform him that UNESDA wanted to be proactive and were willing to take on their own responsibility”. He had The Amsterdam Group (association representing alcoholic beverages) in mind as an example in which industry had proactively responded to negative publicity generated by drink driving campaigns. Beaumont told Madelin that UNESDA “should develop a Commission Programme for part of the obesity debate. Beaumont claims he initiated this approach despite the fact that he “understood this would eventually provide limitations to our industry”. He therefore sat round the table, “with major players who had suffered from bad press to see what limitations were acceptable”. The principle of the freedom to join and pull out of the commitment offered to all UNESDA members was according to Beaumont, central to the incentive to sign up to this self regulated initiative. Beaumont stated that he spoke to members to warn; “you can accept this if you want but you accept that this is a UNESDA commitment even if the entire membership had not joined...the reality is that they all followed later.” In fact he added, “the platform grew at the same time as the number of commitments”.

When asked about his perception of the sanction mechanism of the process, the co-relation to the motivation to join the Platform, Beaumont explained the overriding need for an independent monitoring system with key performance indicators (KPIs). He stated that it was the publicizing of the audit report which is perceived as the “sanction”. All Platform members are presented with the report and can decide to publicize it should they wish to do so.

Beaumont felt that the “NGOs were originally impressed by UNESDA due to our insistence on KPI and independent auditing, but there was also some skepticism ...soft drinks are an easy target...the critical articles and bad press continued”. A search of the foodnavigator site;

<http://www.foodnavigator.com/>for 2006 {accessed on 14 November 2012}, the first year the commitment came into force produced the following articles:

- “EC ‘names and praises’ committed food firms”, 14th November 2006;
- “Europe’s soft drinks firms ban adverts to children”, 26th January 2006;
- “Junk food marketers target kids with dirty tricks”, 30th January 2006.

When quizzed about the UNESDA system for dealing with press reports, Beaumont informed that UNESDA now monitors its press centrally as opposed to per national association per Member State. This system was put in place only in January 2012 and is subcontracted to consultants Fleishman Hillard. The relevant press of 20 Member States is monitored on a daily basis for mention of the industry, association, members etc. The organization has put in place a rebuttal system whereby they, upon receiving an press article which they deem requires a reaction, contact the national association which will deal proactively with the press involved.

This raised a question as to the visibility of UNESDA in the platform and the impact of its claim to be “leading by example”. Indeed, according to Beaumont, UNESDA struggled to retain the leadership position for their own commitment. This came about as a result of DG SANCO’s approach to the main European food association, now FoodDrink Europe, then known as CIAA. FoodDrink Europe “tried to take control” of the relationship but finally agreed that although the umbrella organization was the main representative for its sector of food and drink, UNESDA would always have a seat at the Platform table. FoodDrink Europe pledged to market “healthy foods” mirroring UNESDA. The pledge limits advertising to children to certain products whereas one of the UNESDA key pledges is to not advertise to children at

all in schools. Beaumont sees the pledge as “more ethical in philosophy; there is no good or bad food”. Whereas UNESDA’s philosophy was that children under the age of 12 cannot make “proper” choices.

According to the Implementation Manual for the Commitments to the EU Platform for Action on Diet, Physical Activity and Health, 21st December 2006, UNESDA represents a substantial part of the European non alcoholic beverages industry, uniting all major producers of non alcoholic beverages (carbonated and non carbonated drinks, juice drinks, ready to drink teas and coffees, bottled water, sports and energy drinks) as well as its national member associations in 25 countries. In January 2006 it made six commitments, which were implemented by the following member companies, later joined during the course of 2006 by a further 104 beverage companies throughout Europe:

- C&C Ireland
- The Coca-Cola Company
- Coca-Cola Enterprises
- The Coca-Cola Hellenic Bottling Company
- Gerber Foods Holding Ltd
- GlaxoSmithKline
- The Orangina Company (formerly: Cadbury Schweppes European Beverages)
- Pepsi Beverages Europe
- Unilever

The “original” six commitments made in 2006 covered five topic areas;

- Public education; healthy lifestyles and physical activity programmes
- Consumer Information
- Advertising and commercial communication
 - Responsible marketing aimed at not targeting directly to children under the age of 12
 - Commitment on Digital Marketing Communications:
- Promotions and choice
- Research

Concerning the third commitment, the definition of “audiences of children” related to an audience where more than 50% was age 12 or under. This definition was unilaterally changed by UNESDA to increase child protection, to a limit of 35% of the audience being 12 or under in 2011.

Having positioned themselves as founders of the Charter, UNESDA then progressed yearly, adding to their original list. In spring of 2010 UNESDA committed to extend its commitment to act responsibly to the digisphere:

- “UNESDA recognizes the growing use of internet and digital communications amongst children. While we believe the digital space can be a wonderful way to communicate, share and learn, UNESDA members commit not to market products targeting children through the internet and other forms of digital marketing communications”.
- UNESDA responsible marketing policy abides by the International Chamber of Commerce Consolidated Code on Advertising and Marketing Communication Practice, which is the global benchmark for widely supported self regulatory codes of conduct promoting ethical standards in marketing communications of all forms and across all channels.”
- UNESDA commitment on digital communications cannot substitute for parental guidance.”

The latest commitment undertaken by November 2012 is the UNESDA Code for Labeling and Marketing of Energy Drinks, revised by the UNESDA Board on 25th May 2012 and providing guidelines that go beyond Reg. 1169/2011.

The monitoring of the commitment is of utmost importance to underpin the engagement of the members to the Platform’s cause, to produce credible data to enter into the Commission’s database and leverage the value of the commitment to gain legitimacy in relation to the other Platform members, in particular Health related CSOs such as the European Public Health Alliance, EuroHealthNet and EUFIC (EU Food Information Council).

The Implementation Manual addressed monitoring based on a methodology derived from the “table of practices developed by the UNESDA self regulation working group; 15 interviews with in-house and agency experts on marketing, product development, packaging, digital marketing etc and other self regulatory initiatives”.

The Manual also provides incisive information of particular relevance to the credibility of the self regulatory approach (page 7 of the Manual) and the sense of responsibility to be borne by signatory companies;

“There are a number of basic thoughts and premises that are essential for the effective implementation of the commitments. They include:

- All practices need to be in full compliance with EU, national, regional, local laws and any other regulations that may apply.
- Self-regulation is as much about the letter – or the actual wording as it is about the *spirit or the intention* of the commitments. This therefore needs to be borne in mind when judging whether a particular practice is in compliance with a (the) commitment(s).
- Using common sense and reasonable thinking is also important.
- It is generally well accepted that all practices and commercial communications initiatives should always be prepared with a *substantial sense of responsibility*. All communications are interrelated.”

The manner in which this responsibility is shouldered, the self regulatory approach, is justified at page 2 as follows;

“One aspect of the debate on some of the health issues facing our societies today, in particular regarding obesity, is how to best regulate these concerns: through regulation at EU / national levels or through self-regulatory measures. UNESDA believes that, in many instances, self-regulation is the most appropriate, efficient and effective way, as it offers the right combination of standard setting rigour and flexibility demanded by the fluctuating and creative nature of brand and product positioning. It is in the interest of our industry to ensure that the self-regulatory systems function effectively. All practices and commercial communications need to be in compliance with both the letter and the spirit of legislation and these commitments”.

The veiled reference to reputation of the industry in the before last sentence reflects the initial incentive behind the commitments to the Platform. The motivation for rendering oneself voluntarily accountable through a burdensome, complex and costly monitoring system for UNESDA lies in “public concerns”. The threat of removal from the database for non compliance with the deadline imposed in the Commission’s timetable adds weight and renders the reporting obligatory as per the original Bovens definition.

“Background” at page 2 of the Manual refers to responsibility and the co-related link to the wider public. The unstated consequences of “concerns” already described by Mr Beaumont above, were impacting the industry’s reputation; “UNESDA and its members recognize *public* concerns about today’s health issues, particularly the rising levels of obesity and chronic diseases related to poor diets and lack of physical activity. The non-alcoholic beverages industry recognizes its responsibility to play a positive role in tackling these problems, together with other relevant actors. It has been developing and implementing initiatives to address these issues”.

A first monitoring report was undertaken in April 2007 by UNESDA. Beyond responsibility, the report clearly refers to “accountability” at page 2 (UNESDA, 2007). It covered five broad categories of commitment each set against a set of Key Performance Indicators. Independent auditors were appointed “to monitor compliance across key commitments and ensure transparency and accountability”. The aim is to “build trust among stakeholders in UNESDA’s ability to self regulate”. This sentence crucially encompasses the link between increased trust being derived from accountability and the need for a monitoring system in a self regulatory approach.

On a practical level, the commitment in relation to schools was monitored in 2007 for UNESDA by PriceWaterHouseCoopers (henceforth PWC). It covered: i) no vending in primary schools, ii) offering a full variety of beverages in unbranded vending machines in secondary schools, and iii) parents and educators to be involved in the selection of drinks offered in secondary schools. The commitment in relation to advertising and commercial communications was monitored by Xtreme Information. It covered no targeting of marketing communications to children under 12 (where children make up more than 50% of audience – later reduced to 35% to provide more stringent guidelines). Finally, the commitment in relation to provision of products, choice and portion size in the market was monitored by Canadean. It covered; on i) commitment to increase the number of new beverages with no or low calorie content, ii) calorie value analysis.

A most recent comprehensive report was undertaken by PWC and Xtreme Information for UNESDA in 2011 using data from last quarter of 2010. It covered the commitment in relation to schools and advertising (now broken down into 4 elements, the unbranded nature of vending machines now being “stand alone” and also the newer 2010 commitment to “behave responsibly in the digisphere”. The next assessment would cover the new elements adopted in June 2012, where the threshold for audiences under 12 is lowered to 35% of child audience to provide more stringent targets.

Mr Beaumont estimates the costs of monitoring the commitments made by UNESDA at circa 1 million Euros every three years. This figure only covers the consultancy fees to external service providers such as PWC and does not include costs incurred by the members of the organization nor the press monitoring fees.

3.2.7. The monitoring of the 2010 commitment of non advertising to children in schools:

This case study focus looks at how UNESDA undertook its monitoring duties and its reporting obligations for the above commitment, in the year 2010/2011. The project was developed in October 2010 and launched in November 2010.

The data is gathered and audited by PWC using a monitoring form of 26 questions sent directly to schools in the monitored sample. The responses are elicited, recorded and compiled into data to assess compliance which is expressed in the form of a percentage. The findings are inputted into the Commission database and maybe more importantly from an accountability viewpoint, presented in a powerpoint created by PWC to underline the independence of third party monitoring at the plenary of the Platform members. The UNESDA secretariat summarised the data into a document, "Upholding our commitments five years on", which also covers the results of the study on compliance with the commitment on non advertising to children through commercial communications and not targeting children in the digisphere (UNESDA, 2012).

The wording of the Commitment was first broken down into Key Performance Indicators. The monitoring approach selected centred on direct contact of the independent auditors with the schools involved; the member companies of UNESDA were not involved directly in the data gathering, their role being to have undertaken the activities they had committed to do within the set time frame.

Three different types of European countries were selected:

- Germany : a large northwestern European country
- Spain: a large southwestern European country, and
- Czech Republic: an eastern European country

The targets in all three of these countries received the monitoring questionnaire from PWC in their own respective languages. The recipients of the survey questionnaire were school headteachers who were invited to participate in an online multiple choice questionnaire with closed questions.

On 12th November 2010, a sample of 900 invitations to participate in the survey was sent to both primary and secondary schools respectively in the Czech Republic. This country has 3961 Primary schools and 1143 Secondary schools. On the same day, 988 out of 13 520 Spanish Primary schools, and 955 out of 7842 Spanish Secondary schools received the invitation to participate in the survey. These were sent out by email with reminder email invitations following on 19th November 2010.

Over 900 German primary (out of 16 392) and 900 German secondary schools (out of 13 542) received the same invitation by letter on 26th November. A reminder letter to fill in the survey was sent on 3rd December 2010.

A reminder letter this time was sent to the Spanish sample on 3rd December followed by a reminder telephone call on 10th December which also acted as a telephone interview if the respondent did not wish to complete the form him/herself.

The response rate was expressed in percentage form by PWC as follows:

German primary schools: 15, 33% or 138 responses;

German secondary schools: 15% or 135 responses;

Czech primary schools: 25,78% or 232 responses;

Czech secondary schools: 17, 78% or 160 responses;

Spanish primary schools: 8, 68% or 84 responses;

Spanish secondary schools: 8, 27% or 79 responses.

The results were analysed by Key Performance Indicators and summarized in the UNESDA secretariat documents; "Upholding our commitments five years on". The authors provide interesting information missing from the formal PWC report, due to their knowledge of the wider European market. It includes two comments at page 2 of the document;

"It should be noted that some countries, including France and the UK, have in place legislation that is in line with our commitment, and does not allow for the sale of soft drinks products in primary schools". And later on the same page, "We experienced a number of challenges in monitoring schools in the Czech Republic due to the specific education system with many schools

actually being mixed primary and secondary. Many secondary schools for pupils of ages 15 to 19 are regarded as further education establishments, and so are more liberal in their choices”.

On KP1 – that is; “no direct sales of soft drinks products in primary schools”, an overall rate for 2010 of 95% compared to the 2006 rate of 93.9% was noted.

On KP2 – that is; “A full range of drinks is offered in secondary schools”, an overall rate for 2010 of 84% compared to the 2006 rate of 66.9% was achieved.

On KP3 – that is; “Ensuring that parents and teachers are involved in the decision as to what beverages to sell in schools”. This made for an overall rate for 2010 of 83% compared to the 2006 rate of 53.5 %. UNESDA rather coyly states where this information is presented, “We have to raise our hands here and admit that this is a difficult commitment for this industry to uphold, as clearly, we have no influence over how schools consult on the food and drink they sell. However, we have been pleased that having raised the issue of consultation there has been a significant uplift compared with 2006 in the percentage of schools choosing to consult more widely and involve parents and teachers in the important decisions about what pupils should be offered to drink in schools. As a stakeholder in the debate we believe it is really important that these decisions are taken after due consideration. ”

On KP4 – that is; “vending machines must be unbranded, or display neutral health messages’, UNESDA underlines the amount of work changing the display panels on vending machines across all school outlets in the EU. “UNESDA members have changed literally thousands of panels on the fronts and sides of vending machines to ensure that they carry no commercial branding other than neutral, lifestyle pictures”. In order to gather the correct type of information from the head teachers of the schools, the survey includes 6 answer choices with photographs of types of images that can be found on vending machines. For this KPI, 90% of German schools, 93% of Spanish schools and 36% of Czech schools were compliant. The Czech data is asterisked with a repeat of the earlier comment, “Note that the vast majority of non compliance instances have been found in schools that cater for 15-19 year olds and are regarded as further education establishments, with a more liberal approach to the choice they provide pupils. Corrective action will be taken. “

UNESDA then reiterates its wish to continue driving a multi stakeholder approach to promote healthy and balanced lifestyles.

3.2.8. Outstanding questions and mapping the process

This final part of the section will discuss whether participation of UNESDA in the Platform on Obesity qualifies as a mechanism in which a business association renders itself publicly accountability. Is the mechanism applied for the public benefit? Does it feature the necessary components of public accountability as set out in Figure 2. ?

One of the key attributes of public accountability is its close relationship with transparency. Persson (2009 p. 144) writes that, “transparency and accountability are intimately connected. For citizens to be able to hold those wielding power to account, they must at the least have access to information on policy deliberations, decisions and the policy making process. Hence, transparency can be considered a necessary but insufficient condition for accountability”. The open nature of the Platform commitment process with the use of a database accessed by the public, and the presentation in plenary of the information gathered to evidence completion of the monitoring process amount to a high level of administrative transparency.

Vibert points to the use of a common set of standards, such as those set by the monitoring process of which the Commission is an “independent” guardian, as a classic dimension of accountability. In an assessment of the Accountability Charter for NGOs, Vibert (2007 p. 5) points to the “importance of bodies that operate under well defined terms of reference so that outside observers can see that they are operating within their set of responsibilities”. And he underlines that transparency excludes the all important notion of scrutiny, thus agreeing with the Bovens “possibility to ask questions” which is indeed present in the Platform’s system.

The presence of the monitoring process and the independent auditing requirements undertaken by PWC for UNESDA correspond to the call by Benner et al (2004 p. 201) for “all internal procedures and structures to be open to scrutiny” and reflects their assertion (2004 p. 200) that networks are “a composite of their individual parts and that these need therefore not only be identifiable but transparent”.

Another important attribute of public accountability observed by Brenner et al lies in its links to legitimacy (p. 201). The authors describe the process oriented form of governance favoured by networks as an accountability of processes or internal accountability. External accountability is referred to as the accountability of outcomes. Internal process based accountability will affect the legitimacy of the

outcome, or the public buy-in. Hence, the efficiency of the monitoring process and the co-related providing of an account, impact directly on the accountability of the outcomes. The authors then claim that this last is important in networks for the “re-embedding of results” (p. 205), a notion which lies close to Bovens’ “learning and constitutional perspectives.

This highlights a notable weakness in the outcomes of the Platform exercise in that, as the Evaluation of 2010 reveals, the Platform process contains no means for directly measuring its impact on the rise or fall of obesity in the EU. It is limited to an ex post facto examination of the activities that the actor stated he would undertake in committing to the Platform. In this aspect in particular, the Platform system matches the Bovens definition and his assertion that the purpose of a system is to ascertain whether an agent can be held accountable after the fact, and not whether he or she has acted in an accountable way (Bovens et al 2008 p. 227). Another reference to a time lag is made when Bovens (1998 p. 28-30) defines accountability as being a passive form of responsibility since occurring after the fact. The post facto element of a calling to account is vital and undeniable since the deed needs to have occurred in order for the “agent” to describe the event.

The multi-stakeholder nature of EU policy making and the cost of legislation are both key factors behind the success in the number of participants of this voluntary approach adopted by DG SANCO. As related above, the incentive for UNESDA to join the platform as a founding member lies in its need for reputation management for its business sector and the existence of poor press coverage linking the members’ products with obesity and an unhealthy lifestyle.

UNESDA, “the actor”, claims to act ‘in the public interest’. Its members mass produce branded and recognisable products for the public at large on a global scale. The market is highly concentrated and direct competitors are active within the association notably Coca Cola and Pepsi. The nine signatory companies of UNESDA represent 80% of that beverage market. The question of representativity might be addressed through that market portion but that of “representation” arises here in relation to the mandate handed the actor by the principal.

From an internal accountability perspective, the member companies have clearly mandated and empowered the secretariat to monitor and report and participate in the Platform. Whilst not all members of the organisation participate, and there is no internal governance document other than the Constitution, the web site of UNESDA is mostly devoted to the Commitments. The wording of all

statements refers to the organisation and its nine participating companies and the relationship is transparent with no apparent ambiguity.

From the viewpoint of public accountability, the principal, according to UNESDA is the “public”. UNESDA claims to act in the public interest for the cause of the “public health”. The arm’s length system of a unilateral voluntary commitment by which a governmental body, through its executive institution, deals with promoting public health is also a consequence of the lack of legal personality of the European Commission and DG SANCO. Hence, a “commitment” as opposed to an agreement. The other instance of involvement of the association with the public lies in its contacts via PWC with the greater public in the monitoring process. This can be identified at two levels; firstly with the head teachers of the over 5000 schools contacted and secondly with the parents of the children concerned when flagging their need for involvement in choice of soft drinks for secondary schools.

Therefore, although a direct and clear mandate from the public appears to be lacking, the consumer and branded nature of most of the products concerned places any consequences of their being marketed in the public domain. This conclusion might differ for a more obscure product aimed at a small component of wider society. One might argue however that as the commitment continues over the years, an expectation is developed by the consulted public who tacitly mandate the association to deal with the problem within the Commitment process.

The minutes of the Platform meetings analysed are not verbatim and show no record of the civil society organisations on public health granting a verbal mandate at the close of the reporting for UNESDA to go away and do more to reach the goals of the Platform and, “come back next year for more encouragement”. However, as per above, a continued participation creates expectations from which a mandate might be gleaned.

This particular case study identifies a clear forum, in that the Platform process carries several discursive and public characteristics. The initial step of seeking to propose a commitment and inputting this into a database to which the public have access, points to the existence of a forum. The nature of the Platform plenary meetings at which the civil society members attend, the publication of the data and minutes on the web site and the fact that the purpose of the whole initiative is in the public interest, confirm the “public” nature of the accountability process but also of the forum itself.

If we consider the Platform meetings to constitute the “live” forum component of the process, does it satisfy the conditions of being able to “ask questions” and “pass judgment”? The interactive elements of accountability aimed at differentiating mere transparency from accountability seem satisfied by “public” dialogue over several levels. Chronologically in the process, the participants input their commitment at the beginning of the calendar year and, if they have been inactive, their commitment will be withdrawn from the database but not without due warning on the part of the European Commission. Also, the presence of a given business association’s commitment in the database and its possible subsequent withdrawal are all in the public domain. The consequent participation in the Platform plenary meetings offers an opportunity for the Commission and the civil society organisations to ask questions and expect replies. UNESDA reports annually but, like all other participants, presents its data in plenary only every 2 and a half years. To underpin their role as a founding member and pre-empt any negative comments, UNESDA sends its annual report proactively to all its peers and presents the results in person to each leading pure CSO concerned with their subject matter i.e. the European Public Health Alliance, EuroHealthnet, and the Bureau for European Consumers (BEUC) amongst others.

On the “obligation to explain and justify his/her conduct”, the Platform process includes certain points of interest. Whilst most soft law based systems do not “oblige” an account to be given, the process by which the Commission checks activity on the Commitments and deletes the inactive ones from the database, creates a co-related obligation to provide that account via the monitoring process. The relationship between the actor and the forum, or principal and agent in an accountability process is, according to Jones (1992 p. 73, in Mulgan 2000), as, “associated with the process of being called to account to some authority for one’s actions”. Mulgan provides detail on his definition of accountability in that it is external; “the account is given to some other person or body outside the person or body being held accountable”. This does not reflect the Platform system whereby the Actors are also members of the Platform. The nature of the types of participants, “for profit and not for profit” creates a clear divide in an already very heterogeneous group. However, the entity calling to account might also point to the Commission as the Platform administrators, policing the database and obliging committers to report on their promised activities, under threat of removal. Mulgan adds that the relationship involves social interaction and exchange “in that the side calling for an account seeks answers and rectification while the other side responds and accepts sanctions”. These “sides” might be constituted by the for profits sector and the CSOs purportedly acting on behalf of the EU public. This same interpretation of a divide would fit with Mulgan’s final qualification in that accountability implies rights

of authority since “those calling for an account are asserting their rights of superior authority over those held accountable, including the right to impose sanctions and demand answers”.

The element of responsiveness described by Mulgan at the second defining aspect above can also be interpreted in terms of control. Esmark (2008 p. 290) finds that “accountability implies that accountability holders have some level of control over the actions of accountability holders”. He adds that, “the real touchstone of any system of accountability is the level of responsiveness of the accountability holders to the accountability holders”. He goes on to qualify (Esmark 2008 p. 283) that “the accountability holder is in a superior position – based on popular sovereignty – to the holdee and stands in judgment over the holdee”. UNESDA as an actor in the Platform system is held to provide an account or be removed from the register through mere compliance with the system prescribed. They render themselves administratively accountable through marking their willingness to commit through a database entry. There is no ad hoc deliberation on the need to call for account carried out by the public or representatives of the public at this stage. The element of responsiveness of the actor to the principal would be witnessed however at question time in the plenary meetings or in individual meetings between UNESDA and CSO members of the Platform. The deliberative nature of the meetings, or the possibility to ask questions, fits with generic definition of an accountability process where mere reporting would lack the requisite active nature.

Interestingly the monitoring process should not be confused with the accountability mechanism per se. The monitoring is the means by which the actor is held to account but does not completely, alone, fulfil the conditions for an accountability process. The cost in man hours, fees and expenses incurred for the monitoring itself is probably the factor responsible for that interpretation. The “account” itself is the means by which the organisation sought to make good its commitments. This is presented in the monitoring system, which constitutes the account given by the business association in plenary and kept on their website annually whether presented or not.

Although the forum might be empowered to ask questions through the nature of the system itself, it is not mandated to “pass judgement” based on the account provided. The reporting of the meetings reflects just that and does not qualify the forum / Platform for a mandate to pass judgment. This might be taken up by the CSO type members themselves through their own public communication. A scan of the web sites of ten of the food related organisations that are not for profit reveals that, at the most, participation in the Platform is mentioned in the annual report of the organisation. This might merely be

for the purposes of justifying time and expenses spent towards the CSO type members' funders, such as the European Commission itself.

One interpretation of the public mandate to sanction might be based on the hypothesis that CSOs enjoy a public mandate and act as bodies promoting and defending the public interest, as opposed to the forum per se emulating the EU public in this accountability process. But Altides and Kohler Koch considered this interpretation and sheds doubt, stating that (2009 p. 3), "Civil society organisations can pose questions and pass judgment, but it cannot be taken for granted that CSOs can impose consequences on the responsible actor "to turn matters right". Furthermore, even if CSOs had the capacity to exert sanctions, it would constitute a case of accountability, but not necessarily of democratic accountability". This, one would argue, would need to be derived from a greater public involvement brought about by increased publicity and media engagement to be undertaken by the CSOs. This increased publicity would create a framework in which the question of the public nature of the forum via CSOs activity in the public interest would be answered and also solve the matter of the mandate to pass judgment and to sanction.

The ensuing consequences of the case study analysed on soft drink sales in schools, described by Mr Beaumont as poor press on the business sector, has not materialised. This might be partly explained by how the pure CSOs view their own role and partly because of the generally uneventful nature of the business examined.

Jo Wills executive Director at EUFIC supports essentially the need for a scientific basis to information about food. She advocated the greater and wider use of communication tools such as podcasts to "name and shame" when Robert Madelin (former Director General of DG SANCO) chaired the meetings. She pointed out that there has never been a communications strategy linked to the Platform. The current Chair, Despina Spanou requested that she draw one up but did not respond when this work was finalised and sent to DG SANCO. The following are extracts from Ariane Moret, Communications officer for EuroHealthnet;

"EuroHealthNet commitment relates to the improved information exchange about the Platform. Through its Policy Action Group, EuroHealthNet fits into the EU Non Communicable Diseases agenda and explores the linkages with other EU political initiatives. Concrete examples of the connections between public health and other fields at EU level include the School Fruit and Milk Schemes as well as the Most

Deprived Persons Scheme which give real social and equitable value to Public Health promotion efforts at EU level.

Our aim is promote and inform about such initiatives (i.e: School Fruit and Milk Schemes – our Slovenian member is very active about this). We also attend the platform and communicate about the exchanges held in this frame to our members via our communication tools (internal and external newsletters). Promoting healthy nutrition and physical activity, we promote our position via our participation in the EC work and via the diffusion of our research outcomes (publications / participation in high level conferences).

We took position towards the industry once - one year ago - when (as I told you on the phone) some of the industry representatives argued that the “sin tax” could harm vulnerable people. It’s true that we communicate about our projects and their outcomes and do not really position ourselves *vis-à-vis* of the industry. However, I guess we would certainly take position if we see a strong communication we’d consider as harmful for citizens’ health (i.e.: pizza seen as a vegetable in the US. This is something that has not come to Europe..-)”

So, the possible imposition of a sanction does not draw its mandate from the process itself but from pure CSO organisations drawing on their individual mandates to “act in the public interest”. This mandate would become clearer and more direct through enhanced external communication and greater engagement of the CSOs with the wider public, be it to highlight positive or negative examples of a business association engaging in the process. The Platform, European Commission and DG SANCO do not enjoy a punitive mandate either save for the administrative based obligation to “activate” the commitment and report via the proscribed monitoring system. This should not detract from the real “damage” that a bad press report might generate for this beverages business sector. All pure CSOs have their own press relations and the ability to engage with the media. The cost of monitoring for the Brussels based association alone is prohibitive at over 1 million Euros every two and a half years. This cost would not be incurred without the consequences of non participation in the Platform having been monetised. And, in that, UNESDA is held to account.

3.3. European Public Affairs' Consultancy Association : accountability in the lobbying profession

3.3.1. Introduction

This case study presents internal insights into accountability in practice arising in particular from the nature of the profession examined. Public affairs activities encompass both internal and external facets in that standards set by the profession can be viewed as internal to that profession but the effects of the activities undertaken can have a public impact. It is inherent to lobbyists to deal with public representatives who take decisions impacting the Public, based on the messages conveyed in the lobbying process. The conduct under scrutiny is *individual* whilst the *association* represents the profession via consultancy firms. The overlap between professional and public accountability is part of the analysis below.

Another aspect to highlight is the use of the learning perspective from which to assess the accountability arrangements. In March 2013 EPACA adopted wide ranging amendments to its Code of Conduct and Guidelines as a result of the recommendations made by its Professional Practices Panel. These changes bring the association closer to consideration of the Public as key “principal” but would require further changes to the composition of the Panel and closed nature of its proceedings. This, as yet, is not the intention of the organisation which focuses, it seems with genuine good faith, on high professional standards in public affairs.

3.3.2. EPACA, an accountability actor:

EPACA is the European Public Affairs' Consultancies Association, based in Brussels. According to the FAQs of the web site (EPACA 2013a), EPACA was launched in January 2005 and it was the “first time Brussels Public Affairs consultancies agreed to a formal self regulatory structure, with a professional practices panel and procedures for dealing with complaints”. The panel and complaints procedure are inherent to the organization from the outset.

The FAQs refer to a Code of Conduct Group, “an informal long-standing association of Public Affairs Practitioners” as the ascendant of EPACA. The timing of the creation of EPACA is said to be due to the need for updating the long standing informal association coupled with the start of a new Commission and Parliament and another enlargement (taken to refer to that of 2004).

In answer to the question, “what is the background to this Code group?” the statement provided covers procedural matters related to the EU institutions taking note of the content of the Code and its adoption as the basis of the original European Parliament code of conduct. There is no reference in the answer to the rationale behind the creation and then adoption of this professional code of conduct; just to its serendipitous timing in relation to the evolution of the European Union. The adoption of the Code is not described as a response to a particular set of circumstances that might have arisen in the public affairs community or to a demand made by the EU Institutions or the wider public for that matter. The FAQs further refer to the possibility of improving on the code and also to SEAP, the Society of European Affairs Professionals and the difference between this last and EPACA.

The EPACA web site also provides a narrative on “Lobbying - The Concept”, with a historic description of the activity as well as the term “lobbyist”. The paragraphs entitled, “from “lobbying” to “public and government affairs” are of note. The explanation of the transition in vocabulary is based on the unpopularity of the “lobbying” label as witnessed in an “American survey of US non-profit organizations” (EPACA 2012a.), “Lobbying - The Concept”; “organizations were asked what activities they undertook to influence policy: 29% said they never lobbied, 15% never advocated and 12% never educated. Simultaneously, 86% answered that they did participate in the public policy process”. The explanation goes on to state that in order to avoid the negative connotations linked to lobbying – in this case involving participation in the EU policy process - , most lobbyists in Europe now use the term “public affairs”. The statement then refers directly to the European Commission’s recognition of the profession and its evolution in terminology, thus setting out the role of the activity in the EU policy process.

Even the European Commission has dropped the term “lobbying” used in its 2006 Green Paper, to become “interest representation” in its Communication establishing a voluntary Register in 2008 and in the current Transparency Register set up in 2011, it is being referred to as “European Institutions’ interaction with citizen’s associations, NGO’s, business, trade and professional organizations, trade unions, think tanks etc”, now referred to as “interested parties”. Indeed, the nature of the activity of the members of this professional society is to participate in the EU policy process or act under conditions of EU policy participation.

An interview on 7th February 2014 with Tom Spencer, who chaired the decision making panel, provides insight into how EPACA dealt with their only complaints case.

“Is the practice of public affairs a profession? It implies legitimacy and status; public affairs professional practitioner sounds safer than “lobbyist”. These professionals aspire to the status of lawyers and doctors. EPACA bought into the concept of profession. The bad side of a profession is a closed shop. Stanley Crossick had wanted to create a golden profession, like a guild.

When there is the changeover of institutions, it is a great opportunity. The drift towards professionalization was intensified in the public debate on the Transparency Register. This was my entry point into EPACA. At the time I was leading ECPA (European Centre for Public Affairs) and it only had academics and corporate representatives as members. I brought in the associations and consultancies and we held our first meeting on ensuring access to the profession. The EP had always been in favour of the profession thanks to their ability to amend proposals and therefore it depended on its ability to get new information with which to challenge the Commission and to be lobbied by Member States that are not in line with the Commission proposal. I am in favour of any measure that strengthens integrity.

The Kallas proposal was based on the US model, i.e. finance focused. Public access to the legislator is legitimate and goes to the heart of parliaments in northern Europe”.

Thus, Spencer sets the scene of awareness of the lobbying actors in Brussels of the need for improving the reputation of the sector. The initiative of the Transparency Register placed the lobbying firms, members of EPACA, under a spotlight.

3.3.3. EPACA and its Code of Conduct:

EPACA is a not for profit organization registered in Belgium. The Articles of Association are complemented by Internal Procedures and Guidelines adopted by the General Assembly in 2006 and amended in 2007, 2010, 2011 and 2013. These guidelines set out rules on the membership criteria for joining procedure, the EPACA Code of Conduct and guidelines to its application and the disciplinary rules and complaints procedure. All official documents pertaining to the organisation as well as the report of the disciplinary hearing discussed below are on the EPACA web site: <http://www.epaca.org>.

The Guidelines were updated and amended in March 2013 for several reasons explained below but in particular to reflect a change in the Code of Conduct arising from the case of the Smoke Free Partnership

v. Interel, the focus of this case study exposed later in this section. The Code of Conduct amendments gave rise to related changes to the Professional Practices Panel and the Disciplinary Procedures.

The Code of Conduct is at the core of EPACA. It is the rationale for the existence of the organization and its main tool and deliverable. The membership criteria refer to the “signature of the Code and credible agreement to adhere to it in both letter and spirit and accept EPACA disciplinary rules and procedures;” as the first condition of membership (EPACA 2013b).

The joining procedure of the organization refers explicitly to the signing of the Code at point a. of the Internal Rules whilst, point c. states that one of the requirements is a, “Meeting with a representative of the Management Committee ...to ensure full understanding of the Code of Conduct and principles underlying the Code by the enquiring in firm, in particular: I. presentation by applying firm of membership criteria being met; II. Issues arising from the Code of Conduct; III. Process of staff signing of Code of Conduct; IV. Process for implementation of internal training on the Code of Conduct”.

The Internal Rules then deal in part II with the Code and the guidelines on its application which can be used as interpretation and implementation guidance. The Preamble of the “Guidelines”, at point 10., states that, “it is the duty of the Association to promote awareness of the obligations arising from signature of the Code, and observance of its requirements by all members”. The rules are applicable to all employees, part or full time, and trainees of the signatory companies.

The Guidelines then refer to the six chapters of the Code; Transparency; Conflict of Interest; Financial Inducement; Illegal Actions, Political Activities and, lastly Sanctions. The first of these is “transparency” where a particular accountability aspect is worthy of comment. The code requires that a consultant identifies himself correctly, meaning being clear about the interests represented. This touches upon the “many hands” problem identified by Bovens but from an inverted perspective. Identifying the actor would appear straight forward but identifying the principal for this form of agent-principal relations might prove more difficult. A typical situation of a public affairs consultant or consultant from an association management company representing an association is directly addressed at point 17: “Consultants acting as the secretariat and /or carrying the cards from interest groups should be transparent about their dual role in contacts with EU Institutions. Websites of such groups should also be transparent about such roles and secretariat support”.

“Illegal actions” at pt 23 clearly sets the context of the application of these rules as being beyond legal compliance, “we take it as a given that public affairs consultants must obey the law of the country where they operate,” and, “our code concentrates on defining what is regarded as ethical behaviour”. The code and these guidelines provides the process by which to hold the signatories to account. The use of the process is optional, and qualifies as a governance structural preference.

The Sanctions chapter at Part II of the Guidelines states that the “signatories agree to be subject to the disciplinary rules of EPACA in case of alleged breach of the Code”. And, later, that, “they also agree to enforce the code within their companies”. Adherence to the code is therefore linked directly to application of the disciplinary rules and the possibility of a sanction.

3.3.4. The disciplinary rules and complaints procedure of the Code of Conduct:

Five pages of the Guidelines are devoted to the rules and complaints procedure dealing with great detail on the process, delays, actors and outcomes of the application of such a procedure.

Each of the titles will be dealt with below.

- “Causes of Complaints”: refers to any alleged breach of the Code or its related rules by any staff of signatory companies. The alleged breach must not be more than six months’ old for EPACA to consider it.
- “Complainants”: refers to any legal or physical entity.
- “Complaints procedure”: refers to the quorum of 50% + 1 of members of the management committee for its dealings related to the disciplinary procedures and a fast track process to be used for a decision to be reached within 24 hours.
- “Filing a complaint”: the complaint is to be filed with the secretariat which would notify the management committee that is the Board of EPACA, the complainant and the accused consultancy within 7 days. “All those in receipt of this information will be reminded that the process is strictly confidential until a final determination is made. Should any information be leaked, EPACA will not comment on the complainant until the procedure has been completed”. The actual registering of the complaint is therefore not in the public domain and this rule in effect closes the door to any public comment or input to the process while it is ongoing. Importantly also at this pt 35. is the acceptance of the complainant that “he will accept the final decisions and appeals provided for in the EPACA rules. He also agrees, by his participation in the complaints procedure, that he will not have any other rights or remedies of whatsoever nature

against EPACA”. This last addition emphasizes the optional nature of adherence to the code and indeed its consequences. The rules deal with ethical behaviour beyond compliance with the law of the land. There is therefore no hierarchical structure of appeal against the decisions made by the Professional Practices Panel. This underlines that the discussion lies clearly in the realm of governance preferences.

- “Acceptance of a Complaint”: once a complaint has been received, the Management Committee has up to 30 working days to decide by a 2/3 majority whether the complaint falls within the EPACA scope or not. If it does, the Management Committee will refer the case directly to the Professional Practices Panel. Again, as per a legal process, the complaint must not be discussed between the parties or members of the Management Committee. Furthermore, “Communications between the Association and the member concerned by a complaint, once the complaint has been received shall be confined to practical exchanges with the Chair/acting Chair and Secretariat on organization of hearings, acceptances of formal responses / evidence etc”, (point 39). This last requirement seeks to ensure the outcome of a fair hearing in that the member company would not be able to exercise influence over the dealings and process. The simultaneous notification of all parties concerned and transparency of the procedure as well as its prescriptive setting out in the guidelines all point to a willingness of the organization to treat these matters in a fair and balanced way.

The professional practices panel (PPP):

The PPP is a core feature of the complaints procedure. The Guidelines provide for the appointment of 3 members ‘from outside the profession, appointed on the basis of their experience of the EU institutions and public affairs’. Point 46 states that the Management Committee “shall look for professionals of high reputation among, for instance, former MEPs, former Commission officials, professionals from the corporate, legal or service sectors, representatives of NGOs, or members of Brussels think-tanks”. The section dealing with the PPP in the Guidelines then sets out provisions to ensure the independence of the panellists. The PPP enjoys an ad hoc advisory role as well as one of hearing a complaint. This allows for improvement to EPACA rules outside the context of a complaint. However, the advice provided in this manner will not necessarily be made public. An agreement between the Management Committee and the PPP reached by consensus is required.

The Process of the Complaint and Sanction System:

This step by step process is very detailed both in relation to the appointment of decision makers, how they arrive at decisions and the all important communication aspects. For example, point 52 prescribes how, once the Management Committee has referred a complaint to the PPP, the Chair of the Committee then contacts the members of the PPP to determine their availability. The three PPP members will appoint their own Chair who is therefore not appointed by the Management Committee. This arm's length distance to avoid influence on how the PPP organizes itself internally is clearly important from both a process and perception viewpoint.

The PPP then has 30 working days from the referral from the Management Committee to "conduct its investigation and reach its conclusions", with the possibility to request more time if necessary (point 54). The PPP determines whether a clause of the Code has been breached or not and will then make a recommendation back to the Management Committee.

The conduct of the work of the PPP and the format of the hearing to be held is set out below (point 52 of the Guidelines);

- " I. Review the facts of the complaint;*
- II. hold a 'hearing' with all parties present. The format of the hearing would be as follows:*
 - i. The complainant explains its case*
 - ii. The defendant responds*
 - iii. Time is given during both parties' pleadings to allow questioning by the Panel*
 - iv. The Panel then meets without the parties to discuss the case and to reach a decision*
- III. Undertake any further research or investigation deemed necessary*
- IV. In the process of its work the Panel may seek to resolve the complaint without recourse to the disciplinary mechanisms and sanctions set out herein".*

Of note in this process is the holding of a hearing of a complaint and of an account. This account is provided by the defendant company. The Panel members can then put questions to both parties and then deliberates in private. The reference in, "IV." to the possibility that no sanction be meted out or that there be no need to use the disciplinary mechanisms leaves open the possibility for consequences, that might not necessarily have a punitive goal.

Should the Panel decide that the Code has been breached, it will recommend, only, to the Management Committee one of four sanctions which range from providing guidance on best practice to expelling the member consultancy from EPACA. This last however requires an Extraordinary General Meeting of the Members. The recommendation is communicated simultaneously to all parties and is kept confidential until “a final determination is made”, (Point 57).

It is the Management Committee of the association that takes the final responsibility for decision making on the application or not of the sanctions. Should they wish to depart from the recommendations of the PPP, a two thirds majority of those present is required, with an explanation made to the Panel of the reasoning and an attempt to meet with the Panel representative to explain the intended decision. This re-referral of the PPP recommendations might appear odd. However, the Management Committee is an official body of the Association whilst the General Assembly is the demos of the organization and hence its “supreme” decision making group in this not for profit organization under Belgian law. The PPP is a body created by the General Assembly upon recommendation of the Management Committee.

Point 61 of the Guidelines provides factors that must be taken into account should the sanctions be applied. These factors are considerations based on the nature of the alleged breach such as was this an isolated case or a practice? Did it involve a junior or senior member of staff? What internal disciplinary measures are taken by the company? Most salient for the association is the consideration of the impact of the case on the “reputation of the profession”. These factors seem to demonstrate the will of EPACA “to get to the bottom” of the problem and to ensure to the extent that it is possible, that the same problems will not be encountered in the future. It is only once the case has been closed that the decisions of the Management Committee, recommendation of the Panel and if an expulsion is agreed, decision of the Extraordinary General Meeting, are published on the EPACA web site.

3.3.5. The Complaint of the Smoke Free Partnership and how it was processed:

The EPACA complaints system and process has been put to the test (EPACA 2012b). The PPP has met and decided on a case, referred their recommendation to the Management Committee and the case was closed and published on the EPACA web site. The follow up to the case and its ramifications are particularly interesting from an accountability viewpoint and the Bovens leaning perspective. However, I will first summarise the procedure undertaken in relation to this case involving Interel European Affairs.

The case is based on a complaint made by the Smoke Free Partnership (SFP) against the member company Interel, concerning the conduct of an intern who was seeking information from Ms Kemp and Ms Brassard of the SFP via Facebook. It was reported in the case summary that the intern “did not communicate clearly who he was working for or the purpose of his research, namely an enquiry for his employer Interel in the framework of a pitch for a potential client in the packaging industry”.

The complainant, Ms Berteleti-Kemp described in an interview on 18th April 2014, how she decided to submit a complaint. The intern in question had previously worked at the SFP led by Ms Berteleti-Kemp before being taken on by Interel. He was working on a pitch, which is an oral presentation of a proposal for services, for an entity related to the tobacco industry though focusing solely on the packaging aspects of the product and had asked SFP for confidential information. Ms Berteleti-Kemp said that she;

“..knew of the EPACA rules through a consultancy member of the association. I was furious about the case and wanted to complain. I wrote the complaint alone and submitted it to EPACA which took it very seriously and I was asked to come to a hearing. We were heard separately. The Panel listened first to the Interel team who had brought their own lawyers and were clearly worried.”

The EPACA Management Committee referred the complaint of the SFP against Interel to the PPP on 7th December 2011. As per the process, the PPP members, Messrs Spencer and Perroy and Prof. Coen were contacted and indicated their availability to examine the complaint. They agreed between each other that Mr Spencer would chair the proceedings. The actual hearing took place at the EPACA offices on 10th January 2012 and took the form of a disciplinary committee with 2 EPACA members (the Chair and Vice Chair) observing. Mr Spencer stressed that this was the first time that there had been a referral to the PPP and the need for close adherence to the Guidelines. The Management Committee members also made a statement at the outset of the procedure recognizing the responsibility of the Committee, “to both protect and enhance the professional reputation of public affairs practice and to reassure EPACA members concerning the transparent and rigorous nature of the complaints procedure”.

Tom Spencer recalls the context of the setting up of the Panel;

“I was perceived by EPACA as an independent figure giving legitimacy to the issue and seen as an academic (I was teaching at Brunel). I was out of the control of any obvious lobby, not on a Board and not a public official.

EPACA approached me to set up the PPP for this complaint from the Smoke Free Partnership. I did not enquire as to if there had been any cases discussed or complaints submitted prior. Other panelists were appointed. I received a briefing from the Chair of EPACA and told that I need to do justice to the complainant and defendant. I was aware at the time that there would be wider ramifications. Also, the threshold for submitting a complaint had been lowered 12 months earlier. I knew that changes might be needed to the Code of Conduct, there were expectations that we would learn things that would lead to amendments of the existing code. I also suspected that the greater use of interns (as quasi consultants) due to the economic downturn might lead to a risky practice. The interns were very competitive amongst each other because of the limited number of jobs going.”

Spencer then chaired the Panel and was instrumental in guiding the results towards a revision of the Code. Following the prescribed procedure, the Committee had to first rule on whether there had been a breach of the Code or not, and so heard both parties. The defendant consultancy were accompanied by a lawyer who provided a rebuttal to the complaint and the Interel team also claimed that the Code did not apply since the exchanges did not involve a member of the EU Institutions and did not count as lobbying because the request for information on behalf of the intern was for preparation of a pitch.

The Panel Chair then launched into “an extensive process of questioning” which sought to establish in particular the extent to which the intern was being supervised or not. Questions were therefore put on the basis of the argumentation heard and answers were duly provided. The Committee also then heard the SFP who also answered questions on the calls subsequent to the complaint.

Ms Berteleti-Kemp recalls;

“There were separate hearings; I waited. I was not vengeful but nervous. When my turn came it lasted a long time. After about an hour, they understood my point of view.”

EPACA's PPP then decided on the facts that the intern had been ambiguous about the purpose of his request; that he was indeed acting on behalf of Interel and that this was not a private matter and that the use of Facebook was not innately improper for a business matter.

On the matter of the breach of the Code, the Committee decided that there had been none and accepted Interel's contention to the extent that the matter did not involve "dealings with the EU institutions" as set out in the preamble of the Code. The PPP however made some noteworthy recommendations that were taken up by the Committee and gave rise to the amendments to the Code and the Guidelines as adopted by the General Assembly of EPACA in March 2013.

Again Tom Spencer provides insight into the case at that time;

"I made a distinct attempt to understand the details of the events of the case. I followed the existing procedure. I heard both parties. The PPP focused on how the presentations were made. There was a conflict on evidence. The NGO presentation rested on the fact that EPACA should not give a positive account to the consultancy.

The PPP decided unanimously that the complaint was legitimate but that changes were needed to the code to make for credibility...even though the consultancy got off the hook.

I had no input as to how EPACA should change the rules but I anticipated a strengthening of rules. We upheld the complaint but were not able to sanction since the complainant did not qualify.

Here, the need for public credibility for a professional code overrode the legal reasoning i.e. that the Smoke Free Partnership did not have locus standi. There should also be a proper use of interns and related training for them."

Ms Berteleti-Kemp comments on the outcome of the hearing and her assessment of the application of the rules, as the complainant.

"I lost the case but I also won the case; concerning the inclusion of stakeholders. They recognised there had been an injustice. Both parties were treated equally. My case had been so clear. The panel wanted to look at the case from every single angle. During the hearing, the Chair of EPACA gave a long lecture on how the case might ruin the reputation of the consultancy. I kept to their own rules and guidelines in my answers to the questions. The panel was very fair

and really wanted to find out what was right and wrong. After, I felt legitimised because the rules were changed. I want to see a case that wins.”

This statement is interesting in that the sense of justice felt by the complainant is derived from the fair application of the existing procedure and not its result. This might support the application of accountability procedures as instruments of legitimization.

The recommendations arising from the decisions of the Panel as referred to the committee were threefold and, combined, led to a substantial widening of the scope of application of the Code of Conduct both in terms of people involved as and the activities covered.

The first recommendation would in effect remove the basis for the decision that the Code was not breached. It calls for an extension of the Code to include “all relationships with other stakeholders” and not just be limited to contact with officials of EU Institutions.

The second greatly widens the scope of application of the Code and hence the disciplinary process to the activities. The PPP members noted that the scope was intended to be limited to lobbying activities defined as, “actions in pursuit of particular objectives in relation to specific policies or legislation for a client or group of clients”. They however decided that preparatory work for a pitch could fall within this definition, though this had not been the original intention of the drafter. They therefore recommended an explicit inclusion of this type of activity in any redraft of the Code and Guidelines.

Finally, the third recommendation focused on the person who initiates the above described activities and their intentional inclusion in the definition of employees. The PPP recommended that further training on the Code be given to member company employees and that a clarification in relation to the status of interns was required.

3.3.6. Outcome of the Complaint and Professional Practices Panel recommendations:

Upon receiving the recommendations of the PPP, the Management Committee decided to revise both the Code of Conduct and the Guidelines, not only to reflect the recommendations but also to update the Code to current business practices such as social media used in the Smoke Free Partnership case (but not taken up in the recommendations).

The press release (also on the EPACA.org site) announcing the adoption of the new Code only refers to the scope of activities and not directly to the co-related widening of the potential complainants pool, the inclusion of social media as a consideration and clarifications on the respective roles of the Management Committee and Professional Practices Panel as regards the disciplinary process.

There are 6 main amendments to the Code, adopted by the EPACA members at their General Assembly of March 2013. These are examined hereunder after an analytical textual comparison.

Code of Conduct amendments

- Amendment 1 to first line of Code:

Old text:

“This code of conduct applies to public affairs practitioners dealing with EU institutions”.

New text:

“The code of conduct applies to all activities undertaken by EPACA members in the context of their EU Public Affairs work”.

This widening of the scope was motivated by the recognition that there could be a negative impact on the profession emanating from activities that fell out of the scope but nonetheless were carried out by EPACA members in their daily work. It is a courageous move with very wide implications. Indeed, public affairs practitioners undertake many activities other than lobbying of the EU Institutions including: lobbying of other decision making bodies such as the UN or national member government representatives on the part of their EU clients, engaging with stakeholders on behalf of their clients in particular in relation to setting up alliance partnerships, undertaking research in any form to draw up positions or to identify recipients of these through to preparation of pitches etc. The widening of the scope of activities de facto brings with it the widening of the scope of potential complainants, that is “any physical or legal person”, now, having cause for complaint on a much wider array of activities than prior to the above commented case.

Amendment 2 to paragraph 2:

Old text :

“In their dealings with the EU institutions public affairs practitioners shall:”

New text :

“When carrying out the activities described above, public affairs practitioners shall:”

- Amendment 3:

Old text (point c):

“Neither intentionally misrepresent their status nor the nature of their inquiries to officials of the EU institutions nor create any false impression in relation thereto;”

New text (point c):

“Neither intentionally mis-represent their status nor the nature of their inquiries nor create any false impression in relation thereto;”

This merely reflects the change enacted above at Amendment 1. This last Amendment 3, which is a deletion of the limiting of the scope, demonstrates, through the absence of a mention of a specific group of interlocutors, the potential breadth of the basis for complaint and the complainant.

- Amendment 4:

Old text (point j):

“neither directly nor indirectly offer nor give any financial inducement to:

-any EU official, nor

- Member of the European Parliament, nor

- their staff”;

New text (point j):

“neither directly nor indirectly offer or give any financial inducement to any elected or appointed public official, or staff of their institutions and political groups;”

This text extends the ban on offering/giving any financial inducement (i.e. to persuade him/her to act in a certain way) to any elected or appointed official, whether at local, regional, national or EU level. It again reflects the scope widening to any person legal or physical which has dealings of any professional nature with public affairs consultants.

- Amendment 5

Old text (point m):

“avoid actions likely to bring discredit upon the profession or the Association”.

New text:

Deleted

In view of the scope widening of the activities, line (m) would appear redundant and in fact slightly loosely worded. The deletion would appear wise in the circumstances.

- Amendment 6

Old text (Para 4):

“All signatories agree that they and all their employees of their company will adhere to the above code...”

New text (Para 4):

“All signatories agree that they and all individuals acting on their behalf of their companies will adhere to this code and will avoid actions likely to bring discredit upon the profession or the Association”.

This extension of the scope of potential actors beyond employees only reflects the recommendation of the PPP to include the intern situation encountered in the commented case. The criterion for inclusion is the link with a member company. Other than inclusion of interns this would also extend to service providers specifically mandated by the company, undertaking activities within the new scope. It also clearly places responsibility for training and awareness-raising in the hands of the member companies and EPACA. The phrase committing members and all their co-workers “to avoid conduct likely to bring discredit upon the profession or the Association” was replaced here from point (m) to also emphasise the joint responsibility to avoid “discreditable behaviour”.

3.3.7. EPACA Internal guidelines and procedures amendments:

The Guidelines of the Association were also amended to reflect the changes in the Code and to address other developments including:

- to allow for future considerations and technical adaptation such as use of social media, internet etc, as

Facebook was used by the Interel intern.

- to clarify the respective roles of the Management Committee and the PPP in relation to legal limitations in that the PPP is not legally responsible for the actions of the association, by the Board of Directors as mandated by the General Assembly is, and
- to ensure that all language is coherent and in line with the thrust of the decisions taken at the Management Committee.

There are four areas in which the Guidelines were modified subsequent to the Smoke Free Partnership. They are examined below.

Membership Criteria and joining procedure:

The earlier requirement of two years of business prior to joining was removed just as that of joining national associations where they exist. The main change at this section of the rules is the requirement that members agree to abide by the Code of conduct “in letter and spirit”. This evokes notions of accountability in the sense that signatories would be willing to adhere to the rules and the disciplinary process through this “abidance”. Also, to address the need for depth of understanding of the rules and adherence to them in all professional activity for all employees, including interns, and service providers, applicant member companies are now required to meet with a member of the Management Committee to explain the appertaining procedures.

Membership fees:

A clarification for companies that do not have offices in Belgium was added to the effect that fees will be calculated on total turnover of EU work.

Code of Conduct Guidelines:

The changes in this section were the most detailed. They clarify the roles of the Management Committee and the Professional Practices Panel and also provide for when information related to a disciplinary process is placed on the EPACA web site. Other changes reflect the recommendations of the PPP with regards to the breadth of inclusion of employees of signatory companies and the depth to which the code must be taken into account in their daily activities of EU public affairs.

This is evidenced in the first change at point 27 of the guidelines which note that disciplinary procedures can be launched for a breach of the Code of Conduct or the Statutes (or a regulation implementing the statutes), or for a conduct which gives cause for complaint, having regard to the letter and spirit of the Code. Point 28 marks the greater inclusion of service providers to member companies, referred to as “contractors” in the scope of the Code and hence as potential subjects of a complaint.

The changes clarify that EPACA will not comment publicly on a complaint until the procedure is completed. Furthermore, if there is a referral to the PPP, the parties are informed that a complaint has been referred, but without naming the parties to the case. The final decision of the Management Committee and if deemed appropriate, the recommendations of the PPP, will be published on the EPACA web site once the case is closed.

Finally, the changes clarified the nature of the members of the Panel to the effect that each of the three members must come from outside the profession and are appointed on the basis of their experience of EU Institutions and public affairs (point 45). The next point stated that “the Management Committee shall look for professionals of high reputation among, for instance, former MEPs, former Commission officials, professionals from the corporate, legal or service sectors, representatives of NGOs, or members of Brussels think tanks”.

3.3.8. Analysis of accountability context and identification of components:

The EPACA code of conduct and linked disciplinary panel process constitute an accountability mechanism as part of a preferred governance structure. The set of rules are applied above and beyond legal compliance and are not a practical requirement for regulating or having access to a market or profession: they are a choice.

EPACA, though its members are consulting firms or agencies, seeks to act as a professional society setting standards and regulating the professional conduct of its members. Although, this is not mentioned in public documents, the impetus for its existence is likely to lie in the need for reputation management of the profession.

The professionals operating in “public affairs” and inputting to the EU policy process play an interesting role in relation to the accountability questions at hand. It is inherent to the job of a public affairs consultant to input into the decision making procedure, the outcome of which will result in legislation or a policy decision impacting all or a section of the EU public. The consultant will not own the message,

the client of the consultancy firm does. However, the choice of listener, the format it will be presented in, the policy and legislative context, the place, timing and packaging of the lobby position will be part of the professional's expertise paid for in fees to the consultancy by the client. The exercise of the profession is inherently linked to a public outcome. This can be contrasted with other professions that hold disciplinary panels such as the medical profession where an identified patient / consumer or at most stakeholder group will benefit or suffer from the performance of the professional. This last impact is likely to be smaller and more homogenous than the EU wide population.

The causal link and position in the professional process is different however. A lobbyist might only constitute a one thousandth of the parties involved in the EU legislative process. The distance of that input from the final outcome can be great, both in impact and time. This would not be the case for a medical surgeon. In brief, the practice of public affairs can lead to a public outcome, though the link might be indirect. Public participation entails public accountability, so how does the Code of Conduct and Disciplinary panel measure up to a matching of public accountability components? Or, does the qualification stop at professional accountability?

EPACA adopts the use of a Code of Conduct, the adherence to which is regulated by a disciplinary panel as an organ of the association, as an internal accountability mechanism. The public nature of the process is only evident at the close of the process when the result of a hearing and decision making is posted on the EPACA web site. These codes and disciplinary measures were adopted, in my view, with the aim of managing the reputation of the profession but also to stave off any EU legislation that renders mandatory any reporting or rules of access to the profession. There are many practical and legal barriers for such EU level legislation however, which render it unlikely.

The application of the measures and hence the timing and regularity of account giving at a hearing is triggered by a complaint. The account is rendered to the PPP but by whom? There are two levels of actors in this context, the consultancy itself but also the profession. This duality might be the consequence of the profession based rules, for a profession with an inherent public impact. DeLeon (1998 p. 549) draws a line between internal and external accountability for professional organizations in that she notes that the way individuals are held accountable is internal but the way the profession is held accountable is public. What is clear in this case study is that there would be no public accountability of EPACA, however tenuous the link with the "public" elements might be, without the internal accountability system practised by EPACA members.

The consequences of the application of the process are clearly set out in the rules, for the “positive” consequences in that the PPP can make recommendations which in effect will enhance perception of the profession as with the Smoke Free Partnership case, or, for the “sanctions” as set out at points 59 to 62 of the Guidelines.

I will map out the constitutive components of the Bovens accountability definition against the process as presented and discuss the presence and relative strength of the “public” elements. The members of EPACA, in drawing up the disciplinary process, are responding to both member and public driven expectations. Member awareness is very high, that of the public is not. When a process is applied, it can be understood to be part of the profession’s reputation management activities.

Moreover, the process itself is triggered by a complainant acting in his/her *or* the public’s interest to the extent that good professional practice is in the public’s interest. Whilst the actor for the profession is the association itself, it is not so clear that the public is the principal. However, if one combines the public’s interest in good professional practice with the fact that there is a distant link between the activities of the lobbyists and the wider public, the combination brings us closer to the qualifiers for “public accountability”. In the case of “professional accountability”, the association would be defined as the principal and the lobbying firm in question as the actor. There is of course another level of “hierarchical accountability” where the employee or service provider of the member firm might be held to account internally. The account is therefore to be owed in turn to the public, the association and the line manager.

The obligation to provide the account is derived from adherence to the Code of Conduct and is therefore directly linked to the membership of the organization. This explicit obligation has been made clearer through the application of the PPP’s recommendations, the reference to the letter and spirit of the code, the internal Code training requirements, the requirement of annual re-adherence, and the all-important widening of the scope to encompass all types of member firm “employees” and service providers.

The body that hears the account is the PPP, composed of “professionals of high reputation”. The reference to professionals tends to diminish the “public” nature of the intention of the hearing and outcome. They are however, not members of the association and have to comply with rules of independence as set out at point 48-50. The academic and former MEP who chaired the Smoke Free Partnership hearing was not placed there because he enjoys a pseudo public mandate. He would nonetheless be concerned with the conduct of the profession and its impact on the democratic public

process of law and policy making. The Guidelines are also quite detailed with regard to which and when parties are informed of the launch of a procedure. They are equally prescriptive about what and when any information is disclosed on the web site; namely “once the case is closed”. This does not demonstrate a will for public involvement or awareness during the application of the accountability process. Finally, the small number of participants, kept to one Chair, two Management Committee observers, the complainants and the complaine member firm make for a more private than public account giving to the forum. The nature of the account giving itself will depend on the nature of the complaint but it will certainly cover questions related to adherence to the letter of the code with respect to training requirements and the scope of public affairs activities.

The possibility to ask questions and to make deeper inquiries is clearly provided for in the disciplinary process which goes much deeper than transparency and, in fact, investigates. The forum can then pass judgment “with consequences”.

The nature of the sanctions, their availability and procedures of application are also provided for in some detail in the Guidelines without removing the power of choice from the PPP. It is also important to remember that the PPP can only make recommendations to the Management Committee which can still disagree with it. This provision allows for the retaining of control of outcomes within the profession and association. The source of the power to pass judgment also remains within the profession and association. The enforceability of the sanctions flows from adherence to the rules and the source of control is the same as above. Concerning the most severe sanction, EPACA has never had to expel a member and the Guidelines clearly refer to national Belgian law for not for profit organizations by requiring that an extraordinary general assembly be convened for such a measure to be applied.

The overall analysis of the above criteria would lead to the conclusion that this case study lies at the cusp of professional and public accountability. A determining factor for this assessment can be found in the nature of the activity of the profession which seeks to communicate to public organizations on matters that will ultimately impact the Public. The composition of the PPP is founded on expertise and individuals recognised thanks to their high professional standards and relevant knowledge; not because they are representatives of the Public. The closed nature of the proceedings also presents a lack of willingness to interact with the Public.

Despite this assessment, EPACA, in widening the remit of activities to “public affairs” work and the scope of the definition of employees have moved one step closer to that consideration of the Public at large. Indeed, stakeholders qualifying as complainants might also be a group of representatives of the Public. The learning outcome of the Smoke Free Partnership case and the related amendments adopted by the membership indicate genuine willingness to practice at a high professional level and to render oneself accountable in that regard. The learning perspective of the accountability exercise is certainly effective and adequate in bringing about the desired outcome.

I had initially wished to assess and examine EPACA at the same time as, SEAP, the Society of European Affairs Professionals. But this last have never received a complaint to be examined under their current complaints process. There are however some insightful comparisons to be drawn, summarized below. SEAP, the membership of which are individuals as opposed to companies as in EPACA, also owns a Code and Complaints procedure both of which are very similar to those of EPACA. However, the SEAP procedure relies on the Board of the organisation to hear the case after investigation on receivability (locus standi) and the facts, and is applied by the SEAP Policy and Codes Committee. Philip Sheppard, the chair of this last mentioned committee points to the difference in the composition of the hearing panels of the two organisations as reflecting the nature of the respective memberships. EPACA members compete for business and therefore need a neutral third party to decide on any dispute that might arise. The SEAP process is more based on mediation between members leading to the result of “happy members”. One could also state however that SEAP members compete for business. The European Commission recently launched a review of the Transparency Register with a view, amongst other points, to increase yet further the number of signatories which they see as a measure of success. SEAP would consider revising its Code and procedure to fall in line with any requirement arising from the review process; not otherwise.

3.4. The World Federation of Advertisers and the Alcohol Forum: cultural accountability?

This case study deals with a global level organization, the World Federation of Advertisers, participating in an EU level platform chaired by the European Commission's DG SANCO. As a global direct company membership association the WFA interacts frequently and collaborates with its EU level counterpart organizations that are federations representing the advertising industry sector regrouping agencies and media outlets. The topic dealt with in the EU policy process of this case study and the reason for interaction between these diverse organizations is the advertising of alcohol in particular towards younger adults and the use of social media as a means of advertising.

3.4.1. Introduction:

There are several important aspects related to accountability that arise from the analysis below. They will be drawn out through the presentation of the case study at each relevant stage.

The first accountability related aspect centres on the interplay between the internal accountability system and the external or public system under scrutiny in the EU policy process. The nature of the business of advertising is to reach the widest public possible. As a member of the public, the EU citizen acts as a consumer of products and services but also as a receiver of any form of information visualized or heard.

The advertising sector is highly regulated through self regulation, devised on both an international and European level but implemented in the respective signatory countries. The integrated system seeks to ensure accountability of advertisers through a process of adjudication that includes civil society. This applied, *internal system*, works alongside the activity related to the European Alcohol and Health Forum (EAHF) in which I identify the components of a public accountability mechanism.

The second question deals with the suitability of the actor to bring about the desired outcome of the accountability mechanism which also raises the question of representation. The WFA's commitment to the EAHF under scrutiny is worded very closely to that of the "Market Responsibly" commitment and guidelines drawn up by Spirits Europe (the EU association dealing with alcohol spirits) , currently applied and reported on in the monitoring system. What is the added value of the WFA Pact to the public?

Thirdly, the role of the pure CSOs and the joint decision of some of these to leave the Forum highlight the difficulties inherent to cooperation between business and civil society on issues of contention. Importantly, the action of these pure CSOs provides insights into the level of deliberation within sections

of civil society claiming to act in the public interest and therefore to the quality of the “public” components of public accountability.

The case study’s key empirical questions are addressed below through an analysis of the documents related to the WFA commitment and DG SANCOs initiatives. The advertising sector, which is the topic of this case study, is complex and deeply networked from an international to local level. It is necessary to gain an understanding of the diverse organizations and the self regulatory system itself to ascertain the overlap of the internal accountability and public accountability components. This is described in the first section.

I then present the unit of analysis, the World Federation of Advertisers (WFA) and the perspective of its Public Affairs Director on the rationale for participation, the association’s goal of self regulation on social media on an international level and his assessment of the role of pure CSOs in the Forum.

The European Alcohol and Health Forum is described with its monitoring process and rules of participation. I then have focused on the 2012 independent evaluation of the Forum that used the actions of the Marketing Task Force working on commercial communications and sales as a case study. I have chosen two particular aspects for further analysis; the effectiveness of self regulation because it potentially relies on the public accountability of the participants, and the independence of the process which is related to questions about the quality of the public elements of the process.

The following section deals with the actual commitment made by the WFA, that is, the Responsible Marketing Pact. The content and wording of this commitment is very close to that of commitments made by Spirits Europe, in cooperation with other relevant EU level forum member organizations. Is there therefore an added value that is brought by WFA acting on an international level? This in turn raises the above mentioned questions as to the suitability of the actor who is in effect self-appointed.

This last brings us to the matter of public scrutiny and role of the pure Civil Society Organisations in the Forum. Do they act as the “public” in the context of a mechanism of public accountability? Furthermore, has the emphasis on self regulation, both in the Forum and in the nature of the commitments made by industry undermined the belief of some pure CSOs in the former’s motivation to reduce alcohol related harm? I have set out in this section an email discussion between WFA and a pure CSO copied to the full Forum group of participants, which highlights the tensions between the two sectors represented. The press reported exit of concerned pure CSOs from the platform is dealt with before last, including the

report of an interview with Active Europe. The focus of that last section is on the level and nature of deliberation and the relationship with a potential European Public Sphere.

Finally, I draw up a mapping of the process and an initial assessment of its potential to qualify as a public accountability mechanism.

3.4.2. The advertising industry's self regulatory system: internal professional accountability:

The internal accountability system of the advertising industry supports the contention that any public system is based on an internal process that allows for tracking, monitoring etc. The advertising industry derives its rules from the International Chamber of Commerce, to be applied through national advertising standards authorities. Compliance with these rules is closely monitored on a national and then European level and a well used system of complaints and adjudication is in place. The European Advertising Standards Alliance (EASA) representing the national advertising authorities and their respective self regulatory organizations (SROs) also operates a cross border complaints system which refers the complaint to the country of the origin of the advertisement and publishes reports on its web site every two months. All EASA members have signed a charter of Advertising Self Regulation.

The SROs are funded by the industry, a fact that the EASA web site, www.easa-alliance.org, refers to specifically, “the fact that self regulatory organisations are funded by the advertising industry creates an even higher incentive for these advertising watchdogs to oversee the code independently as they tend to be scrutinized more by consumer groups than organisations that draw their funds from government”.

The code applied for adjudication of a complaint is the national level transposition of the International Code of the International Chamber of Commerce. The core purpose of the WFA commitment to the EAHF discussed below is to add rules concerning social media and alcohol advertising to that code. Once incorporated into the wording the new rules would be transposed into the European and national set of rules and implemented through the respective level organisations.

When a member of the public complains because of the content of an advertisement, it is against the national Code that it is evaluated by a complaints jury. So, who assesses? The SRO complaints panel is usually composed of industry practitioners, lay experts and also representatives of civil society. Once a complaint has been registered, adjudication will usually take about three weeks. If a complaint is upheld, the advertiser responsible will be asked to modify the material so that it complies with the code,

or to withdraw the campaign and they should provide a written assurance that they will do so. All adjudications are published and can therefore badly damage an advertiser's reputation.

If the advertiser does not act on the adjudication, the media which runs the ad is asked to withdraw it. The media itself can see its license revoked if it continues to air or publish banned material. Repeat advertising offenders are required to have their marketing material pre cleared before airing or publication. In the most serious cases, the SRO can refer the matter to the public authorities to initiate legal proceedings.

3.4.3. World Federation of Advertisers (WFA), a summary:

The unit of analysis is the World Federation of Advertisers, an association incorporated in Brussels as an international not for profit association. It describes itself (WFA 2012a) as the global organization representing the common interests of marketers. The main activity of the organisation is to champion responsible and effective marketing communications worldwide. WFA claims to represent, "around 90% of global marketing communications spending, almost US\$ 700 billion annually".

The WFA operates within a network but does not act as an umbrella organization or federation. As a global organization it claims a network of around 60 national advertiser associations on five continents and over 70 of the world's top marketers. Its direct company membership allows for a high level club of the larger players who would seek to ensure more flexibility than maybe inherent to federations which will also cater to the smaller players in the industry. The WFA approach (see Lohan below) allows for the leaders to progress more quickly towards the declared goals and to create a path or platform for the other regional organizations that might be less nimble in decision making, to follow or join. The WFA includes the four largest Spirits and four largest Beer producers worldwide in their membership.

For purposes of comparison and to initially address the question of representation and most effective composition of membership for accountability purposes, it is worth noting that Spirits Europe (www.spirits.eu) represents all eight of the main Spirits producers marketing in Europe. It also concludes agreements on marketing with the Brewers of Europe and the Comité Européen des Entreprises Vins (respectively, the umbrella organizations for the Beer and Wine producers of Europe) and delivers pan sectoral best practice to the EASA.

After having summarized the key points related to the composition and constitution of the unit of analysis and highlighted the elements of contrast with Spirits Europe, which are of relevance to the

questions raised in this case study on the European Alcohol and Health Forum, I set out below the overview of the WFA and its relationship with the EAHF.

Malte Lohan, Public Affairs Director at WFA provided insight into the organisation's motivation for participating in the EAHF. Lohan saw participation as a means of avoidance of regulation and an opportunity to shape possible future regulation. He pointed out that participation does not exclude a regulatory option but that avoiding banning legislation is "avoiding costly legislation which is also costly to implement". Lohan stated that the EAHF builds a stronger political consensus around the notion that pure legislation is not the only way to fix a problem, "especially when there are transborder or cross border networks involved on EU and international level, and you consider the challenge of adopting global public health measures when regulatory models are all national. It is therefore necessary to mobilise business as transnational actors".

Lohan underlines the advantages of the platform approach in that, "anything that helps build a political consensus around what works can only be constructive; "co" or "self" regulation". He added that, "the platform showcases the added value of WFA and provides a degree of formalization and endorsement. The dynamics are inherently favourable to industry because it provides a forum to do so in a sober way as opposed to in an EP hearing where no one would be interested in the position of WFA. The forum has strengthened progress towards self regulation".

It is of note that Lohan makes no mention of reputation management of the industry as a goal for participation in the EAHF, as Beaumont and Spencer did respectively in the previous two case studies. The thrust of his description lies in breaking new ground in self regulation through pioneering rules on an international level. His mention of business as transnational actors relates to the work of Koenig Archibugi (2010) on accountability in a transnational context. Koenig Archibugi refers to surrogate accountability where accountability holders cannot sanction the surrogate and the surrogates are not links in the chain of accountability. WFA operates in a transnational context operating on an international, European and national level. However, in the EAHF, the accountability relationship with NGOs is indirect, DG SANCO acting as a form of buffer between both parties. The Commission however, unlike with the obesity platform, cannot sanction the association by removal from the database for failure to progress a commitment within the year. By contrast, the pure CSOs participating in the alcohol platform would indeed act as surrogates of the public by imposing a sanction on business associations through an accountability procedure. Koenig Archibugi (2010 p. 1145) points to a major obstacle to surrogacy in this transnational context which is revealing for this case study in that the greater physical

and social distance between surrogate sanctioners, here the platform participating NGOs and the intended beneficiaries, the EU public, “reduces the ability of the former to understand the preferences and situations of the latter”. This reflection highlights the importance of the interaction between pure CSOs and the public and the extent to which the flagging and monitoring that they undertake leads to deliberation sufficient enough to constitute democratic participation.

Lohan also positioned WFA as responding to the COWI evaluation report and the co-related need of DG SANCO to demonstrate progress to the NGOs. This identified need however fits well with the pre-existing WFA declared mission of championing responsible and effective marketing communications worldwide. Finally, Lohan mentioned the role of DG SANCO in dynamising and not judging the motivation behind the commitments made and its need to derive validation from the presence of NGOs in the Forum.

3.4.4. Presentation of the European Alcohol and Health Forum

The Forum was established by Charter in 2006 as part of the Commission’s EU strategy to support Member States in reducing alcohol related harm. According to article 2 of the Charter establishing the forum (European Commission, DG SANCO, 2007), “the overall objective of the Forum is to provide a platform for all interested stakeholders at EU level that pledge to take up actions relevant to reducing alcohol related harm notably in the following areas...”, which include as a last bullet point of 6, “cooperation to promote responsibility in and prevent irresponsible commercial communication and sales”. The Forum is based on the anticipated action of its stakeholders and is intended to complement and act alongside ongoing other activities undertaken at EU and Member State level.

The Charter addresses the operation of the Forum and emphasizes transparency as a manner of operating. Indeed, it provides for two plenary meetings of the Forum per year but also, once a year, that of an Open Forum “to give interested non-member bodies and organizations from the EU and beyond an occasion to follow the work of the Forum and to make their opinions known” (article 3). This article also provides for the setting up of a Science Group to provide scientific advice and Task Forces that would report to the Forum.

The Commitments made under the Charter by participating members must be in line with the stated objectives and be expressed in a detailed and measurable way. Of note at article 4 on Commitments is the level of detail requested on the realization of the activity and the fact that the action plans are made public on the Commission’s website and in publications.

The Charter prescribes the approach to monitoring and evaluation of the Commitments and underlines the importance of this approach as a means of creating trust. The rationale is that accountability (amongst other attributes – see below) will bring about greater involvement that will build the sought trust; “all members of the Forum agree to monitor and evaluate the performance of their commitments in a transparent, participative and accountable way, so that there is sufficient outside involvement in reviewing progress and outcomes to create trust in the process”. These members must, according to article 4, adhere to the Monitoring Commitment at Annex 2 of the Charter.

The logic behind the inclusion and the role of accountability in the DG SANCO system is clear in that transparent active participation that is monitored allows for a calling to account of the actor. The intention would be that this will build trust which would usually lead to enhanced cooperation and an increased quality of deliberation and commitments.

Before turning to an analysis of the key elements of the all important monitoring system, it is worth looking at the Charter’s wording on membership (at article 5) and its will to be all inclusive at both the EU and national level of relevant organizations or federations and their respective individual or group memberships. The Charter uses the term “umbrella organizations” which indicates the inclusive approach, an intention to attract a wide spread of participants beyond the formal boundaries of association memberships, and to be representative of actors sharing the concerns of the Forum. However, in adopting this approach to membership and the respective actions of the members, the Charter also permits overlap of members for different commitments. For example the same members of different organizations, can enter their commitments via the two differing organisational platforms, thanks to the last bullet point of article 4; “Commitments from umbrella organizations at European level may include actions taken by all or part of their membership. Commitment for action at European level made within the Forum process may need to be implemented in agreement with national or local stakeholders, and in varying ways at national and sub-national level”. In 2006 at the signature of the Charter, both the European Spirits Organisations and WFA appear as Founding Members. There were 26 founding members of which eight were public interest focused “pure” civil society organizations, amongst them, EuroCare and the European Youth Forum.

The DG SANCO specification of the type of organization to join the platform raises the issue of representativity of the organizations, business and NGOs alike. The definition implies that the Commission is not seeking to ensure the inclusion of all encompassing hierarchical federation type organizations, boasting national associations in all 28 Member States and carrying an overarching

secretariat on a European level. They seek the inclusion of all interested parties. It is possible that this choice has led to the stark divide between the two factions of business and pure CSOs. These last tend by their nature to be issue specific. The organizations dealing with sobriety and temperance are indeed likely to participate and stand in opposition to business producing or promoting alcohol. It is not likely that a pure CSO should embrace a tolerance towards alcohol consumption as a cause for promotion. The design of the platform draws out the elements of direct conflict between participants and intrinsically supports the divide. The creation of the Science Group was intended to provide participants with common neutral ground on which to base their actions and advise on directions to adopt in reducing alcohol related harm.

3.4.5. Monitoring Process and Forum rules:

These rules are set out at Annex 2 of the Charter and were recently updated to reflect the findings of the COWI Consortium's report on the results of the assessment of the quality of the monitoring of the commitments. The main changes are reflected in the current shift from a process based approach to an evaluation oriented approach (as described in more detail below).

Accountability and its expected benefits are clearly set out in the introduction to the Annex, "monitoring of commitment plays a vital role in developing engagement, *accountability* and trust, in mapping process and confirming the commitments undertaken". The key components of all commitments made must include relevance to the goals of the Forum, clear milestones in achieving the said goals, an indication of inputs or resources used and outputs, as in achievements made public. On the first element of relevance, accountability is again specifically addressed in that; "the primary purpose of describing the relevance is to ensure that there is clarity as to; how it achieves the aim of the Forum. This is an essential step in building trust and data and in supporting a transparent, participative and *accountable* process."

The actual process of monitoring itself is based on an annual calendar whereby the "owning" entity, the committing umbrella organization, inputs its commitment into the public database by 31st March and seeks to complete the commitment within one year. This annual process is somewhat lighter than that adopted for the obesity platform which is larger in remit and number of participants.

The Forum meets twice annually, once in November and once in April. The Open Forum day takes place after the April plenary meeting. At the time of writing, the last plenary took place on 21st November 2013 and I was able to be present as an observer. At this meeting, the consultants, COWI, presented a

report on the quality of the commitment holder's reports on the implementation and achievements of commitments to action under the EAHF. They noted problems on input and output indicators with limited information on outcomes and impacts. They also found difficulties encountered by members in assessing short, medium and long term effects and a focus on the quality of reporting and not on the measurement of the actions. They recommended that the evaluation method be set out at the time of submission of the commitment and that enforcement and awareness-raising be part of the activities anticipated. They suggested that the Commission provide more guidance to the members of the Forum and revise Annex 2 of the Charter to reflect agreed changes. They pointed out that the DG SANCO run platform on Physical Diet, Health and Obesity provides a user guide online and suggested that the new user guide for this Forum be tested prior to being placed online. They recommended the provision of definitions of "evaluation of commitments" and "impact measurement".

Page 7 of the updated submission of commitment form (European Commission, DG SANCO, undated) clearly mentions "evaluation details" with a request for tools and methods to be used in the description. It states at point 4, Interim Report Date, that "commitment owners are expected to report on the implementation of their commitment yearly and at the end of the period of operation. At least one interim report date needs to be filled in". I sought clarification on this interim report from the EAHF administrator at DG SANCO, Madalin Amzolini, who informed me that this was not an "obligation" for remaining in the database and that he was aware that this contrasted with the requirements of the Platform for Action on Diet, Physical Activity and Health.

3.4.6. The 2012 Evaluation of the EAHF and the Task Force on Marketing and Communications:

The Forum was independently evaluated at the request of DG SANCO in December 2012. The report entitled, "Assessment of the added value of the EU strategy to support Member States in reducing alcohol-related harm" (EUROPEAN COMMISSION, DG SANCO 2012b). Annex 3 of the report dealt directly with a case study on the marketing aspects of the Forum such as the work carried out by the Task Force on Marketing and Communication and the member commitments under the action area, "of cooperation to promote responsibility in and prevent irresponsible commercial communication and sales".

The report underlines that self regulation is framed by legal provisions at both national and EU level and that it acts at multiple levels. The Task Force on Marketing Communication of the EAHF was established to pursue the work initiated by the Advertising Round Table.

The Round Table defined four basic components for self regulation best practice in advertising; effectiveness, independence, coverage (of all forms of commercial communication) and voluntary industry funding. The following analysis of the evaluation report on the task Force will focus on commenting the aspects related to the *effectiveness* of the self regulatory system such as complaints handling and sanctions, and to the *independence* of persons involved in the development and application of these self regulatory codes. The assessment in the report is based on 2012 data and deals with information provided by the concerned economic operators, members of the EAHF, as well as the web sites of SROs.

- Effectiveness of the self regulation:

The Best Practice model of the Advertising Round Table section on effectiveness refers to provision of copy advice, complaint handling and consumer awareness (p. 140). The evaluation report findings show that extensive progress was achieved in the areas of sanction procedures for non compliance; provision of copy advice (prior to launching the advertisement), and commitment to publishing decisions. But only limited progress was reported on staff training on compliance procedures and evaluation of results.

The alcohol producers' commitments tend to involve activities aimed at spreading the implementation of existing self regulatory codes and further developing self regulatory schemes such as training. The spirits sectors noted that the Forum had enabled a long term comprehensive approach for the development of responsible practices in their commercial communication activities. This led to the adoption by the industry of a 2015 Roadmap which is an umbrella commitment spanning a five year period of new activities across the EU by 2015. The first objective of the Roadmap concerns the conclusion of national agreements to include a responsible drinking message on marketing communications.

The advertising media sector initiatives tend to involve gathering information on regulatory and self regulatory practices and disseminating that information across the sector. The most recent initiative of note is the Responsible Marketing Pact led by the World Federation of Advertisers which regroups the beer, wine and spirits sectors on three new activity areas including common standards for advertising in social media, implementing the 30/70 audience composition rules (avoiding advertising where the share

of under 18s in the audience is more than 30%) and reinforcing standards to ensure that minors are not targeted or appealed to.

The combination of strengthening compliance monitoring means and ensuring publicity of information was reported by EAHF members as being crucial to high levels of respect of the code. The report even underlines that, p. 152, “industry members indicated that, to a significant extent, this results from the way in which they have been challenged by both the European Commission and civil society organizations in the context of the Forum”. Members also noted how the Forum “contributed to mutual surveillance and cooperation in terms of observance of self regulatory codes”, p. 152.

There is a clear outcome of greater compliance in the words of the business sector itself, through the mere participation of the pure CSOs in the platform. Indeed, there appears to be little scrutiny per industry commitment practised by the pure CSOs which focus on the process of the forum and the underlying principle of participation or not. Can one assume therefore that their presence and participation alone of the pure CSOs have admittedly encouraged adherence to the commitment and hence might have had a beneficial if but indirect impact on the EU public?

- Independence of the process:

The Best Practice model of the Advertising Round Table section on Independence refers to the involvement of interested parties in code drafting and the involvement of independent persons in the complaints adjudication process. In contrast with the aspect examined above which relies on factual data on compliance or not, this second aspect appears more opaque from an assessment viewpoint.

Regarding involvement of independent professionals at the drafting and reviewing of codes stage, economic operators pointed to the Forum as a trigger for greater stakeholder consultation. However, the consultations undertaken have not been very successful in engaging Forum members that are not economic operators. According to EASA (EASA Charter Validation progress report 2005-2011), 87% of all advertising SROs were, in 2012, “consulting with external stakeholders when drafting or updating their codes”, p. 157. However, “non-industry EAHF members contended that the involvement of non industry actors in self regulatory code drafting had been limited thus far,” p. 157.

Interestingly, concerning the involvement of independent persons in the complaints adjudication process, there was disagreement amongst the members of the EAHF Advisory Group on the balance to be achieved between the expertise provided by each member of a jury and the stakeholder group they

claim to represent. The EASA 2011 figures quoted at p. 157 show that “91% of the SROs currently have a “number of jury members that are academics, consumer representatives etc”. Indeed, as industry representatives welcomed this as a sign of progress, non industry actors described the adjudication processes as presenting a representativeness deficit.

This remark highlights the question of the “public” credentials of participants in the sanction phase of the internal accountability system, through their participation in the adjudication process or in the devising of the codes.

Finally, transparency and consumer awareness elements need to be highlighted. Indeed, the best practice model points to the need to publish complaint related decisions and to conduct follow up satisfaction surveys amongst complainants. The sole source of monitoring for this element is the EASA web site which reports that “83% of SROs in the EU are actively involved in raising awareness of their organisation’s work and informing the general public of the possibility to complain free of charge about advertising content. Regarding the publication of jury adjudications, EASA reports that 21 SROs had incorporated this into their procedures as of 2011” p. 158. The EASA also includes on its home page, a “click through” entitled “tour for the general public – how self regulation keeps ads up to standard and how to complain if you’ve found one that is not”.

The WFA issued a press release on 30th September 2013 (WFA 2013). The release mentions the case study on alcohol marketing that WFA refers to as a “test case for the evaluation of the strategy”. The WFA chose to underline that the report indicates that the “EAHF process has motivated stakeholders to step up action in this area and has thereby contributed to the development and convergence of alcohol advertising self regulatory systems across the EU”.

3.4.7. The commitment of the WFA in the EAHF: the Responsible Marketing Pact

In April 2012, the WFA led alcohol beverage producers, regrouping major company players from the three sectors of beer, wine and spirits in a commitment to the EAHF to agree to extend common marketing standards to the entire alcohol sector and reinforce self regulation across the EU. They called this agreement the “Responsible Marketing Pact”.

Commenting on this period, Lohan said that the idea of the Pact was essentially a reaction to the way the forum was evolving when new “NGOs” came in. Different parts of industry had already undertaken commitments individually and via the EU umbrella associations as Brewers Europe and Spirits Europe.

He emphasised that, “the Commission at that time was under pressure to demonstrate results because the COWI assessment was coming up and NGOs were constantly shouting for results. Commissioner Borg came to the Forum and suggested that initiatives be taken on marketing. There was a need for a collective approach – to show we shared a common vision. Industry did not have a great choice”. The approach was that WFA should make a company driven commitment because it could bring the companies along. Lohan said that they thought they would start with the big operators and create a snowball effect large enough to already observe a change in what you see.

The Responsible Marketing Pact contains three pillars of action:

- Social media: to prevent minors from inadvertently seeing alcohol beverage marketing communications on social media
- Placement: to set a common adult demographic standard for alcohol beverage marketing communications across all media, thereby limiting undue exposure
- Appeal: to prohibit any alcohol beverage marketing communications that might be particularly attractive to minors by ensuring that the content of the ads appeals primarily to adults.

The press release issued on 16th April 2012 (WFA 2012b) refers to compliance monitoring once the industry standards have been agreed. This compliance monitoring would be undertaken independently by Accenture and national advertising self regulatory organizations (SROs across Europe) and would be “publicly reported”. The Pact was entered into the commitments database on the same day (see below).

In their press release, WFA point to their commitment as representing, “a turning point in the long standing commitment of alcohol beverage producers to responsible marketing. The Responsible Marketing Pact breaks new ground because it is the first time major companies from the beer, wine and spirits sectors have come together to seek unified responsibility standards for alcohol beverage marketing communications”.

The Responsible Marketing Pact was presented in Luxemburg to DG SANCO officials and participating parties to the commitments process. This presentation is succinct and caters to the audience in the sense that it highlights the added value aspects prized by the European Commission, namely; industry and Europe wide approach with reinforcement of use of existing structures, independent monitoring and public reporting of results. There are three aspects of the commitment worth a closer inspection in relation to accountability components; representativity, sanctions and transparency.

In the above presentation, the WFA points to their “multi tiered approach covering all parts of industry with an adequate framework of proportionate regulation” (WFA 2012c). The cover indeed touches “all parts”, that is the three sectors of alcohol production. However, it does so via the largest producers only; AB inBev, Bacardi Limited, Brown-Forman, Carlsberg group, Diageo, Heineken, Pernod Ricard and SAB Miller, which WFA claim represent a “majority of EU alcohol advertising spend”. What of the rest of the sector to ensure representativity and widest coverage? WFA defines their associated partners in the Commitment, that is the relevant associations representing the beer, spirits, wine, advertising agencies and retail sectors as a “broad representation of the industry”.

Sanctions are mentioned in the above mentioned presentation of the Responsible Marketing Pact commitment on the slide on “Implementation”. The first phase of implementation deals with development of the common standards and their application to the commitment co-owners. Phase 2 refers to the incorporation of those standards into national self regulatory systems across the EU that apply standards to the entire industry (not defined here, though). Finally, it provides for a mandating of the SROs to enforce the standards. Sanctions are set out as including “naming and shaming, requirement to amend/retract ads, mandatory copy advice (enforced pre submission for checking as a condition to advertise) and referral to the authorities”. The enforcers of this system are again the national SROs.

Thirdly, the transparency element is presented on the slide entitled “monitoring: ensuring accountability”. It informs that, “compliance will be measured in a transparent and accountable manner” and refers to the independent monitoring of placements of advertisements by Accenture. It might be expected that a form of deliberation is undertaken by independent external viewers as they validate the social media and appeal of the placements monitored in turn by the SROs. Finally, the system provides for the results of compliance monitoring to be “reported publicly” but does not refer to the medium to be used.

The commitments data base of DG SANCO requires entries for each type of action undertaken with specific identified objectives. The Responsible Marketing Pact therefore was broken down into several sub activities with the first of these on social media currently at intermediate stage. This first commitment is the most advanced for WFA so far and will therefore be the focus of the analysis below and the subject of the mapping process at the end of this case study.

3.4.8. Common standards for alcohol beverage marketing communications on social media:

This commitment (intermediate report from European Commission, DG SANCO 2012a) summarized by WFA in the database refers to the difficulty of enforcing and monitoring rules on social media mainly due to the novelty of this means. It however points to the advantage it presents in that social media is individual and therefore allows for more precise targeting towards adult consumers.

The description of the implementation of the commitment refers to the development of a list of tangible safeguards to be put in place by signatory companies on their owned sites and social media. These include age affirmation mechanisms and Responsible Drinking messages. The application of the safeguards would lead according to WFA to restricting access to alcohol marketing communications through restrictions of access to the actual web pages and providing solutions to actively encourage moderation in alcohol consumption and responsible drinking.

The committers are requested to render the activity directly relevant to the work of the Forum. WFA therefore states that it, “will improve the consistency and effectiveness with which standards for alcohol beverage marketing communications are applied across the EU also for social media. This will raise the bar for advertising standards, contributing to the goal of the Forum to ensure a high level of responsibility in alcohol beverage marketing”.

The resources to bring the above to fruition, the “input indicators”, have to be described in some detail according to the Forum Charter’s Monitoring Commitment Chapter. WFA have described this as 2.5 Full Time Equivalent (FTE), 1/day/week of an external consultant, 1 part time (not specified) person of EASA, 4 meetings of the “social media taskforce representing experts of the Pact companies, monthly meetings with “leadership groups” (not specified) and “in depth consultation with EASA”.

The output indicators must set out what would be achieved by the input indicators. WFA has described these as an extensive review of the company codes of practice, sector specific self regulation codes and advertising codes of practice. There would also be a gap analysis of the current status quo regarding codes, a review of current practices of the eight Pact companies and agreement on a strategic action plan with the social media task force.

Finally, the evaluation tools are described as an independent annual monitoring in a representative sample one year after adoption.

At the time of writing there has as yet been no such independent monitoring reported and no further detail on implementation means other than that entered at the original WFA submission and intermediate report.

3.4.9. The representativity question and the Spirits Europe Roadmap 2015:

In March 2012, Spirits Europe provided an intermediate report on their Roadmap 2015 programme developed to strengthen that sector's contribution to reducing alcohol related harm in the EU. The Roadmap is articulated around three pillars: the first seeks to enhance responsible commercial communication, the second to enhance responsible drinking and the third to engage more stakeholders.

Spirits Europe produced guidelines on the development of responsible marketing communications and published its brochure in December 2012 (Spirits Europe 2012). They specify at page 3 that, "the provisions of the Spirits Europe guidelines for Responsible Marketing Communications apply to every type of media, including "electronic media" defined as any media providing electronic, interactive communications, such as the internet, online services and electronic and communication networks including the telephone. These provisions apply to every type of promotional or marketing activity or event, including all product placements and sponsorships".

In March 2013, Spirits Europe reported on one year's activity supporting their Market Responsibly campaign through training road shows. The basis of the commitment lies in the Roadmap and a derived collective agreement between the spirits sector, the advertising agencies (EACA) and standards enforcement bodies (EASA) and WFA to organize training workshops on the Spirits Europe Responsible Marketing Communications guidelines with a special focus on digital and social media.

According to the monitoring intermediate report, the workshops took place in Helsinki, Riga, Athens and Madrid between August and December 2012 with 209 participants who were invited to act as relays of information for dissemination. As a result of the workshops, marketresponsibly.eu website registered 5337 unique visitors during 2012. The Director General of Spirits Europe estimates the cost participation of his organization in the Platform at approximately 250 000 Euros/year, excluding costs and fees incurred by members beyond the association's budget.

There is clearly an overlap if not a repetition of the goals of the respective commitments of Spirits Europe and WFA. Whilst this underlines the importance and priority of the endeavour, it might not be the best use of participation in the platform. Either one of the respective organisations might have

undertaken a different or complementary activity to the other's actions. Also, the Spirits Europe commitment gained the cooperation of a wider spectrum of participants than that of WFA, organized in inter-related sectoral associations. An overlap in the goals committed to and the responsibility of the actors for reaching them raises the question of representativity.

However, Spirits Europe representatives pointed to the added value of the global level standards as to be developed by WFA and the fact that leading large companies with products that are represented in several sectoral organizations spearheading the discussion might be more successful in bringing about agreement.

3.4.10. Participation and activity of Civil Society Organisations in the EAHF:

Participation in and membership of the Forum is carried out on a voluntary basis. There are four categories of Forum membership that represent organizations on a local, regional and national level, EU umbrella organisations and individual companies. They are;

- Advertising, marketing, media and sponsorship organisations
- Research institutes and others
- Production and sales organisations
- Non-governmental and health organisations

The Evaluation report of the Forum had found that in 2012, non-governmental and health organizations, research institutes and others represented 48% of the commitments made, or 33 actions in total. The categories regrouping advertising, marketing, media and sponsorship organisations as well as production and sales organizations accounted for 51% of the share, or 35 actions in total. About half of all members operated at EU level, the other half at national level with only one organization covering the EU12 (i.e. in each country). The conclusions on membership indicated that members saw a need for more participation from the retail and social insurance sectors.

Respondents to the survey for the evaluation divided clearly into two groups when asked whether the Forum had been a motivation for more action in this field. A majority of respondents in the category of economic operators stated that some or all of their commitments were due to participation in the Forum. By contrast, 41% of respondents from the NGO and health organization categories stated that

their commitments would have happened in the same way without Forum participation (p.17 of the Evaluation).

The Evaluation also dealt with the performance of the Forum as a “platform for dialogue, exchange and cooperation” and whether the initiative engaged participants on a new level leading to hereto unforeseen discussions between organizations on both sides of the issue divide. The survey of participants gathered information on the contribution of the EAHF process “to a deeper understanding of the issues on the part of members and to the exchange of good practices”. Whilst the economic operator category responded that the Forum had contributed to a great extent to their understanding, the NGO and health organization category stated that there was very little such contribution. At p. 85 of the Evaluation, a tentative reason for these findings is set out, “The differences arguably have to do with previous background and knowledge of the professionals surveyed. In the EAHF Advisory Group, participants from the NGO and health professional sector commented that this is because they already had a strong understanding of the issues”.

On the question of cross cooperation, 70% of respondents reported that participation had led to further cooperation with other Forum members. Although the respondents seemed to cooperate within their same sector, (p. 18) “economic operators also noted examples of commitments involving cooperation at national and local levels with a broad range of stakeholders, including NGOs, police authorities, healthcare organizations and local authorities”. This seems to echo the comments of Lohan about greater cooperation with NGOs on a national level rather than European when he stated on the topic of pure CSO cooperation that, “the WFA expectation is that they will not get much value from forum attendees so they have now spread their activity to national level where there is a real grass roots will to engage. There is a lot of cooperation with national level NGOs. They see a real benefit in cooperation with industry”. This might also be due to the greater number of pure CSOs on the ground dealing with very practical issues such as the provision of information about binge drinking at places of learning or the purchase of medical supplies for St John’s Ambulances that park within walking distance of pubs near large university campuses.

The report includes answers from respondents on why there was no greater cooperation across membership categories (p.86); “According to some interviewees, mainly the economic operators, at EU level, the main barrier to cooperation across sectors is the lack of willingness to cooperate on the part of EU-level NGOs and health professionals, stemming from fundamental disagreements regarding Forum membership as well as the acceptable remit of commitments. Conflicts of interest on the part of

economic operators were mentioned by NGOs and health professionals as the main reason for such disagreements”. Some economic operators expressed in turn their frustration at the attitude maintained by some non-industry members:

“We could use a better cooperation among the different stakeholders about the commitments. When we try to cooperate with NGOs; for instance in the evaluation of our commitments, they refuse.”

Lohan also commented on this topic, “With regard to deliberation, the NGOs see producers as a risk. They see the activity as a misuse of their own voice, putting their names to something they do not support. There is no subtlety, they are against self regulation. The attitude sometimes becomes disingenuous as with Nick Sheron” (see below about the exchange of emails and questions about the format of the consultation of stakeholders).

The cooperation between differing categories seems therefore to have been greatly limited for key ideological reasons which are rooted in the fundamental question of participation in the Forum. As per my earlier comments, the design of the platform in relation to the membership categories might also lead to two opposing factions. This in turn raises the questions of how the members interact or not at the actual meetings, and whether there is any deliberation which takes place within the respective civil society communities acting as components of a European Public Sphere.

I attended the Alcohol and Health Forum plenary meeting of 21st November 2013 in Brussels with the purpose of gaining a better understanding of the level of deliberation and exchange between stakeholders and if possible between non-governmental organizations. The meetings occur twice annually in April and November.

Out of some 40 participants in the room, there were approximately six Commission attendees with five consultants presenting (COWI, Milieu etc). The table was oval in shape. Interestingly, the Science Group attendees, some four people, sat to the right of the Commission representatives, the pure CSOs directly opposite and the industry representatives between these groups. The attendees from the pure CSOs all sat together. They were representing the Estonian Temperance Society, EuroCare, the Association of European Cancer Leagues, and Scottish Health Action on Alcohol Problems. The only intervention from this group during the morning session was made by Eurocare which underlined that the purpose of the Forum was not to make policy in response to an introductory comment from the Commission on the remit of the Forum. They did not react either when the Chair declared that several participants from civil society had recently decided to leave the Forum. He pointed out, however, that the evaluation had

demonstrated that the Forum was a good mechanism and deserving of greater visibility. The Commission had received two new applications from the Liver Patients' Association and Hotels of Europe.

Other than participation in the Forum meetings, the Forum members interact on email most notably with WFA as part of the latter's consultation process for the Responsible Marketing Pact.

I had mentioned above that the Pact had three pillars, the first of which I presented in detail as per the entry in the monitoring database. The third pillar of action of the WFA commitment is entitled "Appeal" and seeks to prohibit any alcohol beverage marketing communications that might be particularly attractive to minors by ensuring that the content of the advertisement appeals primarily to adults. The implementation of this element of the commitment requires a consultation with stakeholders on how they might identify "appeal" beyond obvious visual targeting or use of gimmicks. This element was seen by WFA as requiring more definition prior to the agreement of common standards. The inclusion of a consultation was also a means by which WFA sought pure CSO feedback at the outset to seek to ensure support for the later adoption of common standards by all stakeholders.

WFA therefore asked the Commission EAHF coordinators to circulate a link (monkey type survey) for a consultation process to all participants on the "appeal" element of the Pact. The coordinators did so on 18th November requesting feedback on the consultation by 2nd December, 2013. Nick Sheron of the Public Policy department of the University of Southampton responded later the same day to all participants (all members of the EAHF and registered stakeholders) saying that the link provided was related to a summary and that, "I did briefly wonder if perhaps the intention was for people to complete the consultation without having studied a detailed proposal, but I think it more likely I missed a link here". Kelly Walsh of Brown Forman, a member of WFA responded to Nick Sheron informing him where the relevant link was in the email (full information and detail being available through the link) and the process to be able to input. Nick Sheron then wrote,

"Dear Kerry,

I am truly astonished, you really do expect the health community to start entering feedback for a formal consultation without having had the opportunity to carefully study a detailed proposal. I would be very happy to take part in this consultation, but before doing so I would like to read the proposal carefully and in my own time, is that too much to ask?

Dear Philippe (Philippe Roux is a DG SANCO administrator for the EAHF) does this novel method of blind consultation come with the support of the Commission?

BW

Nick.”

Malte Lohan of WFA then responded with the information about how to follow the link and gave more information, writing in the text of the email, on the detail of the features on which they sought consultation. Sheron responded by requesting circulation of the detailed proposal so that, “we can study it in depth and discuss it with our colleagues”.

This episode of email exchanges is indicative of the relationship between the industry and pure health CSO representatives respectively with the Commission being placed in the position of a reluctant arbiter. The exchange was continued at the meeting of 21st November, when WFA asked for the floor to better explain the procedure of consultation related to the “appeal” elements of the Pact. The response from Sheron was that he wished to see the full detail and set of questions in one document and not presented sequentially. WFA pointed out that the survey allowed for navigation back and forth and that all addressees could reserve their right to respond. A “pdf” version of the full proposal was then circulated by Lohan.

The matter of participation of the pure CSOs in this type of exercise in which they will be brought to rub shoulders with industry representatives, participate in consultations, provide opinions and be seen as part of the decision making procedure highlights the role of these organisations and points to a conundrum: to participate or not to participate ? Furthermore, are these organisations’ roles limited to flagging and monitoring? If they are, then the deliberation and debate can be shifted to the general public by the pure CSO concerned. If the pure CSO in question limits its role to opposing or filibustering, the sought-after deliberation might only take place within the organisation’s membership itself.

3.4.11. Pure CSO coalition exit from the EAHF:

Press statements are one of the potential means of creating deliberation and debate in the public domain. The visibility of the EAHF and the potential for a means of public participation will certainly have been enhanced by the dramatic decision taken by the coalition led by Active Europe in October 2013.

The organisation, Active – Sobriety, Friendship and Peace, led the largest temperance society in Sweden, IOGT – NTO, the European Youth Forum and the UNF- the Swedish Youth Temperance Association to leave the European Alcohol and Health Forum and call for a revised structure and a renewed alcohol strategy (Active Europe 2013a). The release clearly calls for excluding industrial interests from the Forum and an abandoning of self regulation. Indeed it calls for stronger regulation. The coalition states that there are no tangible results from the EAHF, as shown by the evaluation report (that is, the “monitoring progress” annual report dated October 2013) and they strongly question, “the evaluation’s conclusion that the EAHF has contributed to strengthening the self regulatory systems covering alcohol marketing”.

The President of Active is quoted in the release as saying, “the EAHF...has become a platform where the work of the civil society is shared but the commitments of the alcohol industry are discussed. This orientation means stepping out of the course of evidence based methods that would lead towards alcohol harm reduction”.

Also as a consequence of the publication of the evaluation report on monitoring progress of October 2013, but maybe also in a direct response to the above CSO walk out, Paul Skehan, Director General of Spirits’ Europe wrote an open letter to the Parliament Magazine. He set out the policy of his organisation in dealing with the serious issues; “our heartfelt desire is to have 100% of our products enjoyed – in moderate quantities – by adult, healthy consumers in happy convivial settings”. His main statement however was that, as the Commission develops a targeted action plan on underage and binge drinking, “we strongly believe a solution lies in working together: enforcement authorities, health community, economic operators, parents and educators” (Spirits Europe 2013).

In a similar move to that of the Spirits sector, the Brewers of Europe also wrote an open letter to the Parliament Magazine but were more explicit in their target. They point to their enhanced cooperation with NGOs on a national level; National Societies of Gynaecology, Consumer Unions, national, regional

and local governments, Driving School Associations, Police Directorates, Dietician Associations, Road Safety Councils, Youth NGOs and Medical Associations. They also mentioned the partnership between Brewers Europe and the European Transport Safety Council, the premier EU NGO on road safety, as “the first ever joint Forum commitment by a pan European business association in collaboration with a pan European NGO”.

The letter points to the pure CSO, EuroCare’s call for action against alcohol misuse but states that, the choice of some organisations does not seem compatible with “action”. Similarly, the choice of some to oppose any partnerships with the brewing sector is not “action”. And bemoaning the presence of economic operators in the Forum is not “action”.However, we will continue to fight against alcohol misuse and demonstrate our commitment through dialogue, partnership – and above all – action. It’s what citizens and policymakers expect.” (Brewers of Europe 2013).

Finally on this series of public statements, Active issued a press release on 3rd December 2013, because they would “like to address some of the comments that have followed from the side of the economic operators and related parties”. They set out statistics on alcohol consumption and harm and the need for more independent research. The release clearly states that “the alcohol policy making processes need to exclude any commercial interests”. They then describe their own representativity referring to voices of more than 100 000 Europeans. They urge cooperation with stakeholders that have a genuine interest in health promotion, “meaning only representatives from the NGOs, researchers and representatives from the European Commission”. (Active Europe 2013b).

I spoke with Vasilka Lalevska, Policy Officer for Active – Sobriety, Friendship and Peace (Active Europe) about the organisation’s role in the EAHF and their decision to withdraw from the platform. Lalevska said that her organisation had participated in the Forum for the past 6-7 years. She described the Forum as a space to talk about alcohol policy and related actions. At every meeting, the commitments and progress reports were presented. The Commission stated that it did not want to discuss policy but actions. However, Lalevska commented, the commitments were not measured and outcomes weren’t related to anything – there was no means of measurement. Lalevska said that, “our members did a testing of a commitment. Eight to ten members in Denmark who were under the age for buying alcohol were able to very easily buy alcohol. The industry is stalling and distracting. They are for profit organisations and that they should go against their core business is debatable. These stakeholders are making

commitments whilst in parallel they are lobbying DG SANCO and the European Parliament. This is a contradiction”.

I asked about her organisation’s own work. Lalevska said that Active Europe participates twice a year in the Forum meetings. They also participate in other related consultations such as the recently launched DG CONNECT Communities of Practice initiative. They respond on consultations also on the independence of regulatory bodies. They believe that self regulation is not the appropriate method for alcohol marketing because research such as by Margaret Chan at the WHO shows that it is ineffective. Self regulation in general is not a way forward. Active Europe has done some awareness raising amongst its members on self regulation. (Lalevska sent me a video link:www.youtube/watch?v=DliT664b44U this is a short youth video with members making statements such as “self regulation is like asking Voldemort to run Hogwarts”, “self regulation is like letting Bart Simpson make the school rules”, or “self regulation is like asking Tom not to chase Jerry”.)

I asked Lalevska about the decision to walk out of the Forum. She said that after the April 2013 Forum meeting, the Active Europe participants held an internal debrief. They concluded that participation was not an effective use of time and that they were already covering this policy area therefore working on these policies, and that being present in Brussels entailed an unnecessary cost. They had tried to bring new elements to the table such as relating to composition and the need for more youth representatives. They contacted the other CSOs with whom they network at the Forum such as the Swedish NF Swedish Youth Forum) and held a joint meeting. They then debriefed internally and said that they would think again until September.

In September 2013, Active Europe still held the opinion that the Forum participation was not an effective use of time. They approached the Youth Forum to ask of their opinion. The leaders shared the concerns and also noted that alcohol was not a priority for them, so they jointly decided to step out.

Lalevska said that the main reason for leaving is that her organisation does not support self regulation. As Margaret Chan of the WHO they believe that industry has no place in this debate. They had participated so long in the Forum because they wanted to see what was discussed, listen, and then act. They did not want to go for passive participation and to hold grudges.

I asked about the internal decision making structure of Active Europe. Lalevska explained that the organisation held a congress of all members and related organisations every two years. There is a Board consisting of nine people. There was also a political committee which comprised the Board and the Policy Office members. The decisions to be taken are discussed at the Board and political committee. The Board then communicated to the full membership. The decision to leave the Alcohol Forum was brought from the Policy Office. EU issues continue to be of interest to all their members. Active Europe recently endorsed the position of EuroCare in their response to the new Member State strategy in reducing alcohol related harm.'

3.4.12. Analysis of accountability context and mapping of the process:

This final part of the Chapter will deal with mapping of the process described in the EAHF from the view point of the unit of analysis the World Federation of Advertisers. It will involve identifying the key components of the process. Does this process qualify as a mechanism of public accountability presenting the accountability features as set out in the generic model?

Beyond the mapping exercise which will ascertain the existence of the components of an accountability process there are also aspects of the case that are of particular interest. These will be addressed in the discussion regarding the components. The first concerns the internal accountability of the advertising industry and its links with the public due to the nature of the activity of advertising. How does this compare with the public accountability expected of the EAHF monitoring process? What are the interactions with the public inherent to each system?

The second aspect centres on the level of representation claimed by WFA and their representativity of the sector concerned. Whilst the membership of WFA is less large than that of Spirits Europe or other umbrella organisations in the same market, it might be more influential with regards to reaching the stated goals. What does this mean from an accountability perspective?

The third aspect seeks to ascertain the public quality of the forum via the interaction with pure CSOs. Does the activity generated by these CSOs, Active Europe especially, constitute the level of deliberation needed to contribute to a European Public Sphere, failing a mandate to represent the public at large?

The WFA, deals with accountability issues through self regulation. The functioning of the advertising industry rests on the integrated SRO system that is regulated from an international level and applied via the standards setting body, EASA. WFA stands out from the other related organisations in its industry sector due to its direct company membership and its international positioning. This system of self regulation in the context of this analysis acts as an internal accountability process that lies alongside the process of the EAHF. Unusually though, and due to the nature of this regulatory system that rests in professional codes, the internal system is widespread and effective. It is the basis of the functioning of the system, is more obvious and solid than the process derived from the EAHF.

Also of note is the three pronged presence of the “Public”, the advertisement consumers, in the internal system. We, as members of the public, all hear and see advertising material, and have the ability to complain about advertising as well as enjoying direct access to complaints mechanisms. The inclusion of “independent persons” in the drafting of the codes is actively encouraged according to EASA. Finally, the standards body encourages the inclusion of these “independent persons” in adjudication panels of the SROs.

The functioning of the alcohol Forum is similar to that of obesity in many aspects and presents some characteristics of a process of public accountability as analysed.

The actor, the WFA, does not directly claim to act in the public interest as UNESDA writes but believes that it must be part of the platform created by DG SANCO as a responsible industry representative. Is their mandate handed to WFA by the public, the principal? Their mandate to act as such rests in their mission of promoting self regulation and seeking to gain agreement on an international level for the wording of their rules on the use of social media. It can be argued that the participation therefore rests on empowerment of the public and their access to an effective complaints mechanism. The more compelling reason seems to rest simply on the promotion and use of self regulation in a sector that lends itself to this means more easily than hard law which would lack the speed and ease to deal with all complaints in a satisfactory and efficient way. Also, as Lohan points out, regulation in this sector is very costly and problematic to implement.

Although WFA makes no claim to act in the public interest or to derive its mandate from the public, there is a “public” nature to the business sector represented and therefore ensuing consequences in a public

remit. The “public” nature or notoriety of the products represented by UNESDA also led to their needs of reputation management. Unlike in the case study on UNESDA though, one cannot construe a tacit approval of the actions of WFA from the ongoing participation of the CSOs.

The representation of only eight major alcohol producers via WFA contrasts with the wider European spread offered by the alcohol related sectoral organisations. Yet, whilst the latter might claim more legitimacy in the actions, the former, thanks to a less burdened structure and higher level participation in association meetings, can be more effective in bringing about industry desired outcomes. The sought after solution for all business players on the matter of social media is that an agreement be reached on standards on international level. To that extent, WFA is the organisation most apt to become successful. Finally, there appears to be little vetting on the part of DG SANCO as to the representation of the participating bodies other than fitting within the Charter definition.

The accountability definition refers to the actor having an obligation to explain and justify his conduct to a forum. Does the Forum created through the EAHF have a mandate to hear the account, ask questions and pass judgment? What are the public credentials of the EAHF, the Forum?

Through the commitments system prescribed in the EAHF Charter, which is itself drawn up by DG SANCO for non regulatory purposes, each committer owes an account to the other stakeholders which is then placed on the public website. The actual mechanism for doing so is clearly provided in the system with a timetable which foresees that interim monitoring reports be submitted to the database in a timely way. The content of the reporting undertaken in writing is prescribed in detail as per the initial submission of the commitments, requiring input and output indicators etc. The use of the database which is fully accessible by the public renders the process and results transparent. By contrast with the obesity platform however, there is no process based obligation to report within a fixed time slot with the threat of removal from the database as a sanction. There is apparently no justification for this difference in approach on behalf of DG SANCO other than pointing to the greater number of participants on issues related to obesity than alcohol related harm and the correlated need to manage the database in an efficient way.

The participants also report in turn orally within the physical Forum meetings which take place in November and April of every year. These reports are included in the reporting undertaken by DG SANCO

as chairs of the meetings and duly uploaded for public consumption on the Commission's web site. The presence of participating stakeholders in the Forum allows for an ensuing discussion to take place and questions to be asked. However, in practice, this does not occur often due to a lack of time in the agenda. The other means by which greater input of a potential public nature might be included in the procedure is through the written consultation process as launched by Lohan and to which so far, few pure CSOs have participated.

The question of the origin of the mandate to hear the account and that of the possibility to pass judgement are intrinsically interrelated. The Charter of the EAHF does not provide for sanction mechanisms which might, nonetheless have been included through agreement between the founding members at the time of agreement on the Charter parameters. In the absence of a public mandate for the Forum to hear the account and pass judgment, can one consider the participating CSOs as enjoying a de facto public mandate? This question itself rests on the quality of deliberation and interaction with the public on the part of individual pure CSOs, as discussed below. Should a "pure" EAHF participating CSO claim a de facto public mandate, which in turn would lend some weight to a claim that the Forum can pass judgment in a public accountability mechanism; the pure CSO would not be able to enforce any sanction beyond a naming and shaming campaign.

The actual sanction mechanism, as per the obesity forum, would therefore lie in the vocal disapproval of participating pure CSOs; a "naming and shaming". This disapproval however, need not be exclusively collective to be effective. The decision to leave the EAHF on the part of Active Europe gave rise to press reports that were taken up by several and diverse news modes, amongst them the Parliament Magazine. Although, this might be viewed as "insider press" it has the merit of being mailed to all MEPs and staff and is widely distributed in hotel receptions, meeting venues and office receptions in Brussels.

Concerning the potential of pure CSO deliberation to contribute to the composition of a European Public Sphere, is there evidence of a process of deliberation that might qualify to create deliberative democracy as per the definition of Tanasescu (see chapter 2.1)? The representation in the EAHF of all concerned parties on the issue might be questioned when we point to the lack of presence of representatives from retail outlets, medical insurers and youth organisations, to name a few. All participants in the EAHF are free and equal. The deliberation does not lead to a binding decision in relation to passing judgment on a given commitment but can do so in relation to process. The deliberations are technically "public" in that

participants can openly report on the content and outcomes of the Forum and reports of the meetings are posted on the relevant DG SANCO web site. However, the debate has not reached news proportions to the extent that it guarantees the “public” characteristic alone.

Finally, this last part of the analysis looks to the activities of “public” consultation and interaction undertaken by Active Europe in their decision to leave the alcohol Forum. The decision was taken over several months and supported by their diverse membership “representing over 100 000 voices and 99 international non-governmental youth organisations and national youth councils across Europe” (see press reports). Unlike other stakeholder organisations that have a parallel purpose to their existence whilst regrouping members of the public, such as consumer organisations, youth organisations protect youths and promote youth programmes. Their members however include minors of under 16 years of age which reduces somewhat their respective qualifications to be able to debate and deliberate whilst representing the wider public. The more credible means of involvement of a public element in the forum would lie in the role of pure CSOs to monitor and flag issues, and shape the debate in a public sphere. The citizen preferences expressed through this pure CSO, that the Commission might take up in policy formulation, are expressed in the Forum and in the limited press coverage. It is to this extent that the accountability system might be termed as “public”.

Chapter 4: CASE STUDY ANALYSIS AND FINAL CONCLUSIONS

The case study conclusions presented individually at the close of each case dealt with the answers to the main questions relating to the existence of an accountability process, the potential link with the public and the effectiveness in bringing about the desired outcome.

4.1. Case study conclusions analysis:

The conclusions below will first reveal how the currently identified components of an accountability mechanism played out in practice across the studies. The literature pointed to the importance of the relationship between the principal and the agent and raised questions as to the strength and nature of that relationship as well as to the problems related to identifying which organization plays which role.

The literature also raised questions regarding the public nature of the accountability exercise. Is this derived from the mere participation of pure CSOs in a forum gathering that can ask questions and pass judgment? Or do the CSOs act as conduits to the public, acting as agents that flag, monitor and frame issues for deliberation in a public sphere? What is the quality and the structure of that deliberation, be it amongst forum participating CSOs or within each respective CSO, thereby generating a wider “public debate”? Concerning the account giving what format did this take, what was its nature and were questions put?

Addressing the last components in the definition; is there a sanction and is it commensurate and enforceable? Does the sanction or its threat bring about the desired consequences? How are these questions answered through the three case studies?

Secondly, the Bovens perspectives of “democratic, constitutional and learning” will be applied to the studies to ascertain the effects of the application of the accountability mechanism. Thirdly, the questions raised by or propositions made by the leading accountability authors in relation to the context of the application of a procedure will also be discussed.

Finally, the study’s initial propositions will be set against the findings for verification or setting aside.

4.1.2. Verifying the components:

The relationship giving rise to accountability:

Bovens describes the relationship as that between an actor and a forum, and it is social in nature. Other authors refer to a principal and an agent where the former calls the latter to account. The generic model applied for analysis of the case studies showed that whilst the identification of the actor in the three case studies has not posed any difficulty, centring on the activities of the respective business associations, the nature of the principal appears more debatable.

The principal would, in the application of a “public” accountability mechanism, represent that self same public. This act of representation should be supported by a mandate to act as such. However, as discussed in earlier sections, there is no identified European public to provide that mandate. In the absence of an identifiable demos, the principal takes on a less defined form or is constructed through putative CSO activity in a European public sphere where their activity draws the attention of the public, via media, to create deliberation and a mandate to act in the public interest. Mulgan (2000 p.555) clarifies that the actor is called to account for his actions, that the caller to account seeks answers and the other side responds and accepts, and that those calling to account assert a right of authority over those called to account. Esmark (2008 p. 281) focuses on responsiveness of accountability holders to the holders. This interpretation of the relationship in a hierarchical way reflects that of Keohane (2005 p. 37); “accountability refers to a principal agent relationship in which an individual, group or other entity makes demands on an agent to report on his or her activities, and has the ability to impose costs on the agent”.

In the case studies of the World Federation of Advertisers (WFA) and the Soft drinks federation (UNESDA), these hierarchical lines of authority are less clearly presented. UNESDA claims to act in the obesity Forum on behalf of the public interest; this is stated on their web site. The exercise of participating in the Forum appeared to be aligned more with industry profiling and policy management than a will to be held to account by the public. It does however offer linkage with the public via transparency of the activities of the Forum and the participation of pure CSOs in the meetings and ongoing debate.

UNESDA willingly participated in the Forum and hence renders itself accountable for the activities committed to under the monitoring system. However, the entity that effectively calls to account for the actions related to the commitment is the European Commission’s DG SANCO, acting as a potential

surrogate in this specific administrative role, for the public. DG SANCO in turn selected this platform format for discussion in response to expressions of concern from NGOs and Member States in relation to growing obesity levels in particular for Europe's youth. The decision not to regulate or ban certain products with a high sugar content will have been founded on many considerations including the need for more scientific research, consumer brand popularity and the overall cost of regulation and its implementation.

The WFA by contrast made no claims of public interest motivation for their endeavours and point to a need for reputation management. The self regulatory system of the advertising sector appears well established. This last system was set up to address a threat of a ban on advertising certain products including alcohol and the recognition on the part of the industry that self regulation would be more effective and speedy in dealing with complaints that can emanate directly from the public. The WFA involvement in the alcohol Forum would appear more self serving in that the wording of the commitment aligns seamlessly with the mission of the organization. Furthermore, WFA were able to respond directly to the call on the part of the Commission to better integrate rules on an international level to address new digital technology and its appeal to Europe's youth. WFA responded to DG SANCO, and were answerable, as UNESDA, to the Forum, represented by the European Commission. Both associations are held to account for their own commitments, mandated by their respective members to do so, but within the framework of the rules set up by the public institution. There is no evidence in the research undertaken of input from pure CSOs or public consultation in the formulation stage of the commitments. Both associations acknowledge however that the commitments have to be worth undertaking - no "window dressing" - and indeed pure CSOs would be quick to point out weaknesses in the ambition of the tasks. Although the Commission services can call participants to account within the framework of the agreed rules, acting as a form of secretariat for the Forum, all participants have equal access to the data and information and so carry the ability though might lack the formal right to do so.

This last point lies in contrast to EPACA where the ability, as far as information is concerned, to call to account on the part of the forum, or surrogate public, is not present. The Professional Practices Panel of EPACA, acting as the forum, was constituted ex post facto and was mandated to hear the account by the EPACA Management Committee who then transmitted the information to the Chair of the PPP. The information on the complaint registered was not in the public domain at the time of the sitting of the Panel which did not seek a "public" mandate or interaction with representative pure CSOs. EPACA the actor was called to account via application of its own rules.

As far as the form of representation is concerned, the three cases tend to reflect a certain freedom on the part of the actor to formulate and undertake the activities, as described by independence theorists (Pitkin 1967 p. 146). The independence theorist's expert bears an obligation to reach a required outcome; the account giving therefore centres on that obligation. Indeed, the choice of course adopted, as well as the means used to achieve diverse goals remain with the actor. However, the framework within which to achieve these goals can be quite prescriptive taking the form of the DG SANCO monitoring processes for both the obesity and alcohol platforms. These processes frame the activities in such a way as to derive a de facto mandate should the organizations fulfil the detailed conditions of participation. Again, for EPACA, the actor mandates itself to set up the PPP given a certain set of circumstances and decision making on the part of the Management Committee. The rules applied to the activity on which the account is given are those set out in the Code of Conduct which regulates the profession for its own benefit but also that of the wider public.

Despite the detail of the framework, such as the need to engage independent auditors to prove reaching of goals for UNESDA and WFA, and the prescriptive process for discussion in the PPP for EPACA, the actors were treated as experts with a strong measure of freedom in formulating the activities undertaken. This reflection supports my proposition that the more independent the representative, the more fundamental the question of accountability and the more complex the account giving is rendered.

The forum:

In this section, I will address UNESDA and WFA together before analyzing the EPACA case study. The Forum plays a pivotal role in the narrow understanding of accountability. It is also the component from the definition from which we might derive the public nature and impetus of the exercise. Following Steffek's (2008) bid to re-emphasize the "public" within public accountability, we are looking for a critical debate in the public sphere that engages the EU public. Placed in the context of the supranational EU structure, the presence of a duly mandated EU public is lacking in the forums of our three case studies. For the purposes of an accountability mechanism that imposes sanctions on the actor, the measure of the public quality of the CSO would require more than a claim to be "acting in the public interest". The CSO in question can initiate several actions to seek that public mandate by proactively consulting their members and stakeholders and creating publicity on the matter that will generate public debate. The absence of the EU public might also be bridged by pure CSOs acting as conduits of the public opinion derived from debate and information generated by the CSOs. I would add that this last form of putting

the public back into public accountability should be underpinned by internal accountability measures that deal with the quality and format of the debate, as per Tanasescu (2009 p. 21).

For UNESDA and WFA the accountability Forums correspond to the Platform for Action on Diet, Physical Activity and Health (obesity Forum) and the European Alcohol and Health Forum (alcohol Forum) respectively. The Forums present both passive and active characteristics. The passive element lies in the transparency of the procedures as presented on the databases of DG SANCO and the access to commitments and activity reports for the general public. The active, “live”, part lies in the physical participation of all stakeholders including the pure CSOs in the plenary meetings. Although the European Commission is a public institution, there is no public-specific mandate on which the set up rests, be it to ask questions or to pass judgment. It is however noted that the approach of regrouping all likely stakeholders to report in plenary on the evolution of commitments made and to comment on statements heard contains an intention to create deliberation and debate. The Forum structure indeed allows for “reason giving”, regroups “all parties potentially affected by the decision or representing all relevant points of view” and all participants are “free and equal” as identified by Tanasescu (2009). It does not include the key element of leading to a binding decision though nor does it present the political principles as stated by Fischer (2012 p. 447) relating to, for example, the reliance of the deliberation on the empowered involvement of ordinary citizens.

In the absence of the presence of the “EU public” in the two Forums, might the activity of the pure CSOs present constitute necessary deliberation and debate in the public sphere as to create a public opinion on the respective commitments of the units of analysis, or at the least on the issues covered by the Forums?

In the UNESDA case study, the activity of the Forum appears more dynamic and harmonious than that of the alcohol Forum. However, my research on the statements made by the obesity Forum participants, as well as any comment they might place in the public domain via their respective web sites did not reveal a level of reporting or interaction that might equate to a public debate. They do however monitor and participate in the Forum. UNESDA has sought to create dialogue around the reporting of their activities but not in the form of a debate. The proactive initiative of presenting key reports to leading NGOs prior to their airing in the Forum was essentially based on the will to pre-empt negative comments.

Similarly to UNESDA, WFA sought to consult all stakeholders of the alcohol Forum prior to formulating wording required by their commitment on use of social media. Again, although this initiative led to some

interesting email exchanges, it was not intended to stimulate or frame a debate in the public domain but to elicit initial reactions as part of a buy-in process for acceptability of the end wording.

By contrast, the walk-out of the pure CSO, Active Europe, from the alcohol Forum led to a string of statements, press releases and press reports made by key stakeholders in the debate. The activity of Active Europe and its alliance partners went some way towards flagging the main issues of the Forum (again, not the WFA commitment on social media analyzed alone) and to frame the debate around the viability of self regulation in this matter. The pure CSOs present at the meeting I attended in November 2013 focused on a monitoring role of the statements made, although their vigilance seemed centred more on the intentions of the European Commission than that of the industry representatives.

A comparison of the activity in the two respective Forums would lead one to interpret the WFA case as more closely providing the potential for an emulation of a European Public Sphere via the activity of the pure CSOs acting as conduits for the public. Their framing and translating of the issue for wider consumption, in particular for vulnerable teenagers, brought the debate to the attention of the Press. Looking at the internal accountability steps however, the level of consultation with the wider public beyond their stakeholders appears very low.

It would seem clear also that the potential for greater and wider public coverage of a policy debate rests on the nature of the polemic. The more polarized the positions and sensitive the topic, the more likely there is to be an EU wide followed discussion. In this case, alcohol consumption has proven more controversial a topic than that of sweetened non alcoholic beverages.

Finally, on the public elements of the WFA and UNESDA case studies, one must recognize the nature of the products and services provided by the members of both organizations as being known to the public at large and not being limited to a certain section of EU society.

Concerning EPACA, the main public element related to the case can be found in the nature of the activity and profession under scrutiny. The Forum does not comprise a public nature nor is it intended to. The deliberations are not held in public as prescribed by Tanasescu nor is the design of the PPP intended to lead to a practical outcome (although the decision made led to significant amendments to the Code of Conduct). Participation in the hearing is limited by Charter to the two parties, the Panel appointees and two Management Committee observers. Also, the placing on the web site and hence in the public domain of the results of the hearing appear to be the only truly public feature of the accountability process examined. The intention to further widen the remit of potential scrutiny on the part of the

public was entrenched however, in the amendments and widening of rules on locus standi for registering a complaint, adopted by the organization in March 2013.

The obligation to provide an account and the account giving itself:

As stated earlier (chap 2.3.), the “obligation” that Bovens describes as a justification of the conduct undertaken on the part of the actor does not sit well with the soft law context of accountability mechanisms. The compelling nature of the obligation to provide an account would be better derived from the nature of the commitment and the fact that it is undertaken on behalf of another entity, the principal, to whom a report is owed. Mulgan (2000) underlines the external nature of the account giving which reflects practice for UNESDA and WFA. He also points to the ability to provide an account as a factor of consideration, linked to the problem of identifying the actor. Although the identity of the actor is not an issue in the UNESDA and WFA case studies, the ability to provide an account comprises administrative and financial implications that the business associations have to take on board from the outset.

The particular nature of the Platform systems in which UNESDA and WFA participate respectively is based on a detailed account giving of activity against the commitment made. Indeed, the emphasis of the systems themselves is in the account giving with a large proportion of activity focused on providing indicators against measures taken. The requirement for independent assessment and audit of activities carried out under a commitment provides authenticity to the outcome and supports the building of trust amongst the participants. But it is also costly and time consuming. This emphasis on the monitoring process detracts from the other features that DG SANCO might have enhanced such as the stimulation for more deliberation between and at the plenary meetings or a focus on broader representation of stakeholders. More importantly, as taken up by the respective assessment reports of the obesity and alcohol Forums, the reporting does not include measures on proof of the tangible effects of the activities as to the reduction of obesity and alcohol related harm.

Despite the above criticism of the inclusion of an obligation in a voluntary commitment system, the UNESDA case study revealed a clear administrative obligation at the reporting stage of the Platform process. This becomes an obligation once the non fulfilment of it carries a sanction. The UNESDA case points to a removal from the database of commitments if the committing entity has not furthered or begun to enact its commitment six months into the annual process. This is evident from the monitoring database to all stakeholders and is reported in plenary. However, its inclusion might be deemed by the

participants as an administrative incentive related to process and not as a potential sanction of the accountability mechanism. This obligation is not present in the alcohol Forum system followed by WFA and its absence is not considered as important by DG SANCO. This difference in approach might also be seen as a reflection of the lack of importance of the measure, considered as administrative and not fundamental to the Platform philosophy. The rationale behind its inclusion was based on organizational priorities of cleaning up the database to free up room for a greater number of participants and ensuring a focus on activity. It is possible that DG SANCO did not take into consideration the potential impact of the obligation on the qualification of the process as accountability based when they introduced it.

The context and priorities are slightly different for the EPACA case study. There are two levels of obligation to provide an account. The first is part and parcel of annual adherence to the EPACA Code of Conduct and does not involve directly reporting to a Forum. However, non adherence to this code leads to removal of membership and hence a removal from the EPACA web site membership list. The obligation involves reporting on a full understanding of the Code, the process for staff signing and that of internal training on the Code of Conduct.

The second level is related to the account of the defendant company before the PPP. This is provided for in the Guidelines to the Code of Conduct where the defending company is required to respond to the complaint submitted and under consideration. The deliberations of the Panel and the account provided by the parties to the hearing however are not made in public and do not reflect the ideal Tanasescu (2009) elements of reason giving by all participants who are free and equal or the institutional design components of Fischer such as the reliance of the deliberation on the empowered involvement of ordinary citizens.

The findings of the case studies provide another aspect to the direction of the discussion in literature on the account giving component of the accountability process. Ebrahim (2003) refers to “inducement” over obligation (Bovens) which is a less coercive term and fits more easily in the voluntary soft law context. Keohane (2005) refers to reporting on the activity through the nature of the relationship between agent and principal where the latter “makes demands” on the former. All three case studies however reflect a quasi administrative requirement related to membership of an organization or participation in a Platform. The evidence from the studies indicates that this component of the process carries less importance in practice than that allocated to it in the literature. A reporting does indeed need to take place but the actual existence of the report is vital to the process whereas the reason behind the report giving, be it based on a obligation, compulsion or inducement is not.

The questioning and passing of judgment with possible consequences:

Under the Bovens definition, whilst the actor has an obligation to report, the forum has a possibility to ask questions and pass judgment with possible consequences. I commented earlier that the difference between the terms “an obligation” and “a possibility” seems asymmetrical and typifies an imbalance in the Bovens approach. Grant and Keohane (2005 p.42), moreover, writes clearly of “costs”, where a “group or other entity makes demands on the agent... and has the ability to impose costs on an agent”. This sanction stage of the accountability process includes the all important potential for scrutiny which denotes the difference between transparency and accountability (Papadopoulos 2007 p. 473).

Also of importance in this final stage of the process is the absence of a reference to the mandate of the forum to ask questions and to pass judgment as well as to the enforceability of the sanction. Esmark (2008 p. 290) points to a negative outcome between a mandate given and decision made by an accountability holder as the trigger for punishment of the punishee (holdee) by the punisher (holder). A trigger however cannot equate to a mandate when punishment is a possible outcome.

The above remarks reflect the unease of accountability authors in addressing the meting out of possible sanctions. The lightest form of sanction is favoured by Vibert (2007), in the form of disclosure, monitoring or evaluation. He eschews a penalty based system in favor of measures that better reflect the voluntary nature of the NGO context, such as monitored self regulation. However, since the case studies examined rest within a context of influencing policy outcomes, dealing with actors operating under conditions of EU policy participation, the influence oriented activities of the pure CSO sector acting in the public interest and the business association sector representing commercial interests do not differ greatly. Credibility is prized above representativity and also legitimacy to a certain extent; “naming and shaming” is therefore a viable sanction for all stakeholders.

In the Platform process analyzed for UNESDA, the Commission enjoys a form of punishment in that they can remove an organization from the database for failure to submit an interim report. This sanction however, is administrative and does not conform to the parameters of an accountability process. The sanction in the identified public accountability process is that of “naming and shaming” on the part of the pure CSOs participating in the respective Forums. It is worth noting also that the decision to sanction is individual in that the Forums do not each act as a body but allow for reactions from each participating organization separately.

The UNESDA participating obesity Forum does not seem to give rise to the level of scrutiny or antagonism between participants that would generate a sanction of “naming and shaming”. As the EuroHealthNet Communication officer remarked, their intervention in the press is only likely for such claims as a pizza being presented as a vegetable.

The walk out however of the Active Europe alliance covered in the WFA case study and its subsequent press statement provided a naming and shaming of not only the advertising and alcohol producing industries but also of the Commission’s DG SANCO. The industry’s credibility was undermined in that its monitoring rests on a self regulatory system. The Commission’s was also indirectly affected for condoning the self regulatory system. The active reactions on the part of the pure CSOs in the WFA case study, unlike those of the UNESDA case study, might be due to the polarization of stakeholders on the topic of reduction of alcohol related harm. However, the monitoring, flagging, framing and translating (for example in the form of the video on self regulation for youths) constitute a difference between public and stakeholder accountability. The CSO activity could potentially create the level of deliberation and consultation necessary for a European Public Sphere.

The EPACA case study involved the possibility of sanctions but these would be limited to exclusion from the membership of EPACA as a final measure. Even this measure must comply with Belgian law on the not for profit sector and would call for the convening of an extraordinary general assembly of the members to specifically vote on a motivated proposal to exclude. Although the PPP, composed for hearing a given complaint, acts outside the profession and is external to the organization its powers are limited to recommending measures only back to the EPACA Management Committee.

Notwithstanding the lack of existence of the application of this sanction, since EPACA has not as yet excluded a member, the effect would be close to that of a naming and shaming as per the respective obesity and alcohol platforms. The missing element of enforcement of this form of sanction requires a greater level of communication between stakeholders that decide to decry the activities of the business association in question. In the UNESDA case study I highlighted the lack of press statements made by pure CSOs participating in the platform and the potential for press publications for enforcing a “naming and sharing”. The same can be said for the web sites of the relevant organizations including the Commission. The absence of reporting of the fact that Active Europe quit the Forum might indeed have reflected negatively on DG SANCO who only refer to the matter in a meeting report saved as a pdf. on the Forum web site (deeply embedded in that of DG SANCO). This lack of posting of more press worthy results of the meetings on the DG SANCO web site might indicate that the purpose of the Forum is seen

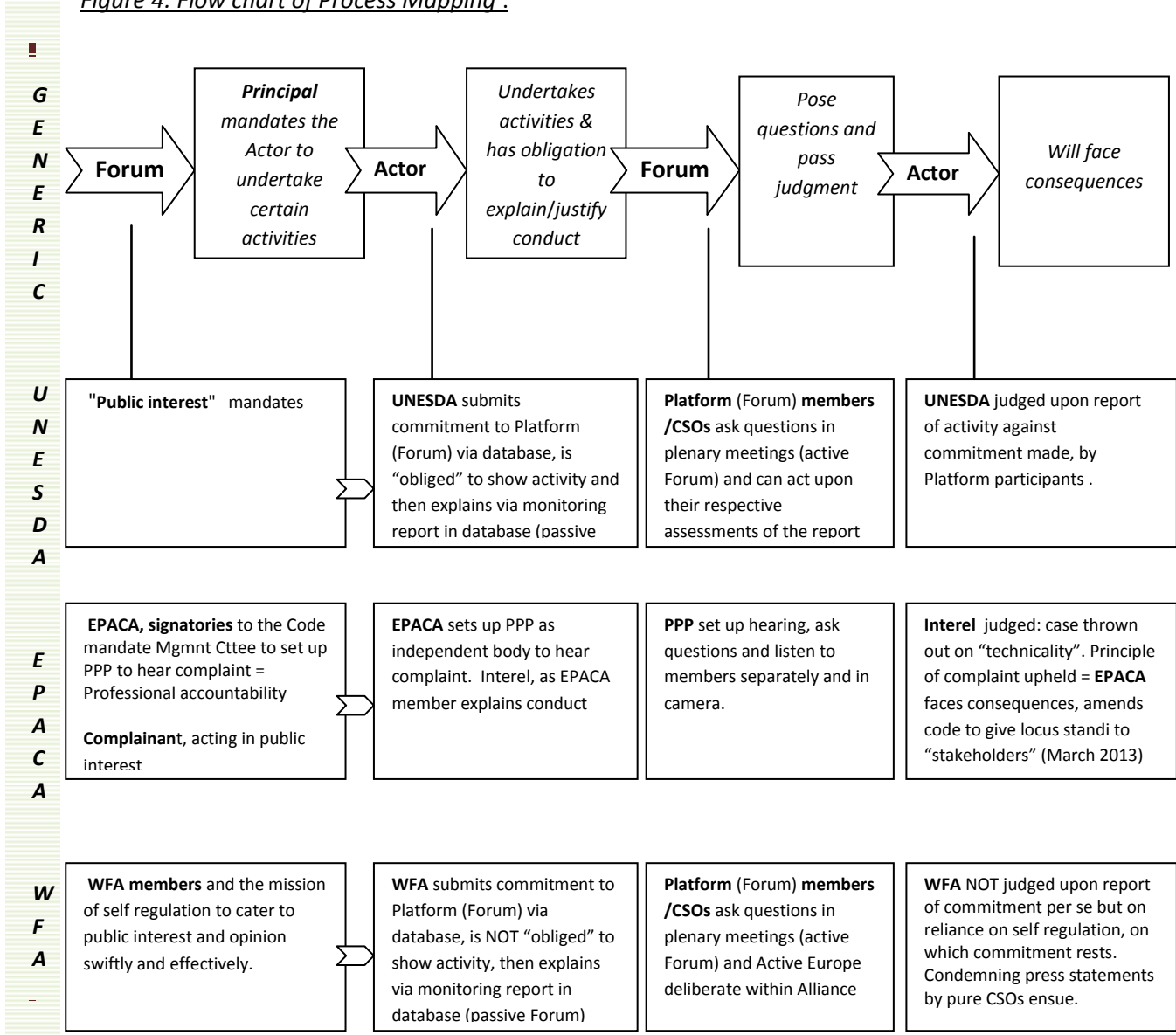
on the part of the Commission to include a process based legitimization of their own output. A walk out would not only be seen to criticize and condemn a tacit condoning of the self regulatory system on the part of the Commission but also an undermining of the rationale behind the existence of the Forum itself. DG SANCO funds the participation of pure CSOs to these gatherings to re balance access of all stakeholders between industry and pure CSO representatives but also to seek legitimacy of output.

“Sanctions” or “facing of possible consequences” needs to be interpreted from the viewpoint of the agent or actor and be relevant to the context in which they operate or the particular process at hand. In the three cases examined the nature and level of the sanction corresponds to the policy and credibility network context of vying organizations seeking favorable policy outcomes. This supports the assertion by Benner et al (2004, p. 200) to the effect that loss of credibility “is one of the more effective negative sanctioning mechanisms to further accountability in and of networks”. The sanction is therefore the same for all stakeholders, pure CSOs and business associations alike, given the particular context at hand.

The sanction component of the accountability system renders it “thick” to Harlow and Rawlings (2008, p. 313) and I would add that an accountability process without a sanction mechanism and a reasonable expectation of enforceability of that self same sanction cannot carry the “accountability” denomination. The co relation of the forum’s possibility to ask questions should also systematically lead to judgment – with positive or negative consequences - in order to justify the effort undertaken to deal with accountability in an organization and to balance out the duties and obligations of the parties in the process. Moreover, it is the context in which the actor operates that would indicate the most effective type of “consequence”, whether the organization claims to act in the public interest or not. A greater polarization of the diverse positions on each side of the issue’s divide will garner higher press visibility.

Below is *Figure 4. Flow Chart of Processing Mapping*, mapping each respective process of the case studies against the definition. The model of accountability derived from the comparison differs markedly in emphasis from the Bovens interpretation in that the identification of the principal is less evident in particular relating to a public mandate. The obligation to provide an account is related to the monitoring or reporting of the activities and the composition of the Forum directly impacts the public quality of the outcome. There is however evidence of a clear pattern of steps undertaken in accountability procedures, bearing in mind the modifications discussed, that lead to a generically composed process and a model framework from which to assess accountability.

Figure 4. Flow chart of Process Mapping :



4.1.3. The perspectives from which to assess "accountability":

In addition to the components of the process, Bovens (2007) provided three perspectives from which to assess the effects of accountability. As commented earlier in chapter 2.3.2., this approach seems somewhat overworked but does provide insight into the rationale for applying accountability processes and desired outcomes. The purpose of this exercise is to reflexively apply the theory, developed initially without empirical evidence, in order to measure its use and the quality of the yield of its application to the actual case studies. I apply these perspectives to the case studies in turn.

Democratic perspective and popular control:

Bovens refers to public accountability here to state that it provides the citizen with information and the means to judge governmental conduct. Translated into a context of actors under conditions of EU policy participation, the popular control element would be derived from the respective obesity and alcohol Forum members holding the actor, UNESDA and WFA to account. Their access to information via the databases provides the necessary basis from which to judge activities. However, as per the analysis of the Forum for both case studies, the “public” character of such a process would require underpinning by a wider representation of the EU public engaged via the activity of the “pure” CSOs.

The structure is even further removed when applied to the EPACA case study which lacked the public nature of the account giving even where the members of the association were concerned. This perspective therefore is more aptly applied to the classical democratic accountability scenarios of governments, democratic elections and voters than to the context of EU policy participation.

The constitutional perspective; prevention of corruption and abuse of power:

Here describes potential curbs on excessive power of central government through an independent body with judicial powers are described. This relationship would refer to the division of powers whereby courts enjoy powers of judicial review applied to governmental administration. Whilst the case studies provide the Forums and the EPACA’s PPP with sufficient basis to “judge” an actor, corruption and abuse of power would not be the subject of any indictment. This perspective might be translated into a prevention of exaggerated claims on the part of the actor in relation to results achieved in the case of WFA and UNESDA. Regarding EPACA however, there is little scope for abuse of power on behalf of the actor unless an aware, wider public should be convinced that EPACA “abused” the Smoke Free Partnership in the PPP process and decision taken.

The learning perspective; enhancing government effectiveness:

This perspective deals with a scenario closer to the accountability relationships analyzed in the case studies in that it refers to an open process in which governmental delegates have to justify their acts and citizens can ask questions in order to increase the acceptability of the government. Although the role of the actors is different, in that WFA and UNESDA are independent entities unrelated to a centralized type of government, the CSOs of the respective Forums claiming to enjoy a public mandate can ask questions to increase the acceptability of the commitment achievements towards a wider public. Questions put in

the plenary meetings and their answers are reported on as part of the meeting summary and placed on the relevant website. Although I would be skeptical as to how many EU citizens would read the meeting reports with the aim of increasing their support for the commitment of the business associations, the reporting has the merit of placing the information in the public domain, thereby providing a basis for learning.

This perspective is certainly relevant as an outcome for the EPACA case study with regard to the professional accountability relationship, internal to the organization. The association literally amended its Code of Conduct to adapt to the outcome of the PPP recommendations. The result of the application of the Code led to a decision to first accept the complaint made since there were sufficient grounds for suspicion of misconduct on the part of the member, then to decide however that the Smoke Free Partnership did not qualify as a complainant. The learning perspective led to the PPP acknowledging that this result was not in the spirit of the Code and duly suggesting amendments which would effectively deal with this state of affairs as well as addressing the weakness of the procedures in relation to trainees.

The above analysis using the Bovens perspectives provides some insight but might be better applied in the discussion on the expected outcomes of the accountability process application, a subject left somewhat aside by the author who focuses on the steps of a process as opposed to the context and purpose of the application.

4.1.4. Propositions from the literature and other findings:

The elements drawn from the analysis of the literature of leading accountability authors taken up in Chapter 2.2.2., as well as the further questions I identified to which they give rise, need to be held up against the case study findings. The purpose of this application is to verify or set aside the propositions made by the authors after the case study analysis and contribute thereby to defining the criteria for the context which gives rise to accountability situations. A common strain to the authors was the continuous breakdown of types of accountability leading to various denominations of accountability given the nature of the actor, that of the obligation or the forum amongst other drivers. My assertion is that the breakdown of accountability types has little practical application when the process or mechanism applied can be generic, applied to business and pure CSO organizations alike. Nonetheless, the context and reason for the use of an accountability process is directly related to the desired outcome of its application and practice.

Turning to the potential for accountability of transnational actors in this business association context there are several points and findings from the case studies, as well as verifications from individual authors' contentions that I will address with observations in turn.

The first deals with the co-existence of internal and external accountability processes. Whilst their mention is pervasive across the authors addressed, they do not refer to the inter-reliance from an administrative tracking view point that is a practical necessity. Indeed, an external accountability process relies on internal tracking, monitoring and record keeping. A further observation is that adherence to a code of conduct, acting as an internal accountability process, when undertaken by all actors fulfilling a given mandate, can provide the potential for amounting to external accountability. Interestingly, the inter reliance does not necessarily operate both ways. Indeed, the existence of an external accountability process is underpinned by internal means, but internal accountability systems such as that of EPACA's internal self regulatory system, stops short of external accountability qualification. The interplay between an internal process and accountability is addressed further below in the analysis of the initial propositions against the findings.

The second point relates to the situating of the practice of accountability as lying beyond legal compliance. Indeed, the research of Piewitt et al (2010 p.252) demonstrated a lack of cohesion amongst the CSOs examined as to where the boundaries of legal compliance end and governance preferences start; one organization referring to legal compliance as a form of self regulation. Yet, all three case studies deal with business associations that opt to conform to burdensome monitoring practices (for UNESDA and WFA) or compliance measures (EPACA members adhering to the Code and updating of training) that are not required by the law of the land. Accountability processes appear redundant in the presence of laws and "legal accountability" carries an unnecessary double emphasis. However, the added value of accountability appears to be greater in the presence of legal compliance rather than in its absence. The accountability means observed are applied in a sophisticated policy context, concerning businesses that are already fully legally compliant with the laws of the countries in which they operate. The application of the accountability measures arises where the business association wishes to increase the positive reputation of its sector in a very specific policy context. It is this elitist EU level policy development context which also limits the application of the process to the remit of the stakeholders. This remit in turn reduces the importance, from the Actor's viewpoint, of the truly public credentials of the process.

The third point is made by Ebrahim when writing of self regulation and long term change involving codes of conduct and where she claims that the “inducement” is the risk of “erosion of public confidence due to scandals and exaggeration of accomplishments (external loss of funds and internal loss of reputation)” (Ebrahim 2003 p.825). For WFA and UNESDA, a poor performance in the alcohol and obesity Forums respectively would likely lead to a certain loss of reputation in relation to the authenticity of their commitments. However, as business associations, it would be unlikely that they risk a loss of funding, as might an international NGO, since this is derived from the membership fees. The purpose of the setting up of the complaints system by EPACA was indeed reputation management for the purposes of the profession. Ebrahim also makes a fourth point which is supported by the findings, in that she claims that the inducement for public accountability is closely related to the core purpose and activity of the organization in question. WFA wishes to promote the self regulatory system adopted by the advertising industry and promote agreement on wording to an international context. A means of achieving this without dealing with individual negotiations on a company or association level is to seek to gain approval from the alcohol Forum which regroups a wide array of stakeholders providing therefore increased buy in to their system. This would go a long way towards ensuring smooth implementation but also compliance even prior to the rules and wording being adopted internationally. UNESDA’s motivation for participation in the obesity Forum is directly linked to reputation management fears arising from bad press coverage relating to the sugar content of the products of their members. Their inducement arises from the risk of reduced sales, a matter directly linked to their existence itself. The EPACA case study deals with the bid for recognition of a profession and consequently its reputation management. The motivation to better regulate and render transparent complaints procedures is founded in a bid for professional recognition. This is further compounded by the extra step taken by the adoption by the EPACA Management Committee of the recommendations of the PPP - recommendations that were not required as part of the procedure but were optional.

Goodin’s market accountability is also borne out by the literature and constitutes the fifth point. He also refers to internal and external aspects of accountability; the internal process referring to a firm’s officers facing its shareholders and the external side referring to the way in which that market sector justifies itself to society at large and consumers in particular (2003). The visibility of the market sector in question to society at large clearly impacts heavily on the accountability choices. The advertising industry examined in the WFA case study is directly linked to most individuals as citizens in society who, in turn, have a choice to complain or not about advertising, encountered daily in many varying modes through their own single click button on a web site. This greater visibility implies increased risks to

reputation management and a heightened need for each member company to comply with the self regulation in the best interests of the overall profession. The recognizable brand names regrouped in UNESDA enjoy the same notoriety, visible to most EU citizens on a daily basis. These organizations aspire to Goodin's market accountability where the bottom line is measured in income and profit. He makes a useful distinction borne out by the findings between non profits that hold each other accountable through network based mechanisms, a form of peer accountability or "reputational sanctioning among a group of like minded others". This form indeed, does not reflect the findings in the case studies where vying factions – the industry and public interest representations - are prevalent in the respective obesity and alcohol Forums.

The EPACA complaints system would allow for peer accountability in that any entity that fits the now enlarged complainant criteria can submit a complaint against a member. This however, is unlikely due to the heightened competition in the market place and the awareness of scrutiny of pure CSOs towards the lobbying profession. In practice, such matters are usually settled internally by one on one meetings of the consultancy leaders involved. Peer accountability carries the risks inherent to the homogenous nature of the actors, described by Goodin as "conspiracies against the public or cosy cabals covering one another's incompetence..." (2003 p.387). The presence of peer or network accountability amongst similar actors in the not for profit sector does not however preclude the equal use of market accountability for the same actors. The competition for funding from donor organizations as well as individuals, brings accountability scenarios amongst pure CSOs very close to those of the for profit sector. "Naming and shaming" would be equally damaging as a sanction to the sectors and under that interpretation, market accountability can be also applied to the pure not for profit sector.

In the context of professional accountability, Deleon neatly addresses the internal – external divide by asserting that individuals can be held accountable for their professional accountability but that a profession has to deal with public accountability (1998). This would seem to reflect the case of EPACA where the conduct of a profession is the reason for the drawing up a code of conduct and subsequent hearing of the case. The underpinning of the credibility of the EPACA application of their code of conduct might have occurred through a more "public" addition to their PPP, a representative enjoying a public mandate through a pure CSO and more independence from the Management Committee.

Deleon is the only author quoted that refers to codes of conduct as an organizational philosophy taken up by a profession. The case of WFA also includes, via the self regulatory system, a form of all pervasive code of conduct which reflects not only the conduct of the profession and its limits of tolerance as well

as which professional steps to take in certain given circumstances. Deleon's emphasis on the need for enforceability of the codes of conduct reflects the weaknesses of the WFA case where self regulation and its enforcement are not accepted by an engaged and participating CSO as a viable approach. The accountability of the profession based on the application of the code was not established, thus verifying the problem identified by Deleon and constituting the sixth point.

Moreover, the question of accountability tends to arise around "expert" type tasks mainly due to the administrative effort and cost required to implement such a process which would seem neither cost nor time effective for more everyday type tasks. This pattern is also the consequence of the relative freedom accorded experts on the course to adopt in achieving the desired results. This greater freedom of process however, carries a greater obligation to account for the method, reflecting the greater obligation carried by the expert in the Pitkin Independence theorists' scenarios.

Finally, Koenig Archibugi (2010) points to the possibility for accountability mechanisms to be built into the governance of the organizations, as reflected by EPACA and the internal self regulatory system of WFA. Although the main activity of UNESDA revolves around the obesity Forum, the accomplishing of the commitments made the presenting of the tracking process, the documents related to its Constitution do not refer to this fact. Turning to the matter of legitimacy, Koenig Archibugi, finds reasons to believe that accountability can "enhance the legitimacy of power in the eyes of those who have delegated it and of those who are affected by it – as well as being normatively desirable from a more impartial point of view". Just as the requirement for externally imposed constraints such as advisory boards is concerned, the addition of an external, but informed element, to assessment exercises makes for a more balanced and impartial result. This would potentially have enhanced the acceptability of the decisions of the PPP for the EPACA case study and ensured that the application of the outcome had wider consequences. Equally, an independent and impartial assessment of the internal self regulatory system of WFA would have at least provided argumentation that might justify such an approach so that this choice of approach alone – the focus of the Active Europe walk out - need not detract from the main activity of the Forum. The potential for legitimacy enhancement and the desirability of accountability mechanisms from a more impartial point of view are verified in the case studies and make for the seventh point.

Below, *Figure 5. Matrix for Cross case Analysis*, sets out the conclusions drawn from the case studies in relation to the components, and typology of accountability. The matrix allows for matching of content of process and set of circumstances giving rise to the process. The matrix also reveals causal links between

the process and the outcome and thereby allows for clear identification of the weaknesses in relation to the “public” nature of the processes (see Findings column of Figure 5.).

Figure 5. Matrix for cross analysis of Accountability case studies: causal link between process and outcome?

	UNESDA	EPACA	WFA	FINDINGS
Principal	<ul style="list-style-type: none"> No mandate from public or consumer groups Statement of acting in “public interest” Pre-consultation with CSOs on presentation of commitment results Regular consultation with parents and head teachers, deriving a tacit mandate DG SANCO acts as surrogate public ? 	<ul style="list-style-type: none"> No mandate from public or consumer groups to EPACA to self regulate or hear complaint Will to profile public affairs profession EPACA management committee mandates PPP to hear complaint 	<ul style="list-style-type: none"> Self fulfilling mandate via mission and membership High visibility of product (advertising) to public, i.e. no need for awareness raising on issues DG SANCO acts as surrogate public? 	<p><i>Little evidence of public based motivation in participation</i></p> <p><i>Rationale of context lies in reputation management</i></p> <p><i>Element of interaction with CSOs and public on ad hoc consultation within formal process or audit</i></p>
Actor	<ul style="list-style-type: none"> UNESDA and its 9 company members, participating in the Forum and representing 80% of market. 	<ul style="list-style-type: none"> EPACA (for profession) Interel (within EPACA hearing) The trainee (within Interel) 	<ul style="list-style-type: none"> WFA and its members 	<p><i>Public interest concerned with good professional practice and moderation in consumption of certain products</i></p> <p><i>Professional activities of lobbyists inherently indirectly impact wider public</i></p>
Forum	<ul style="list-style-type: none"> Obesity Forum system allows for scrutiny in passive form (via database) as well as active (Forum) meetings to ask questions About ½ members of Forum are “not for profit” Lack of deliberation amongst and within CSOs and wider debate in media 	<ul style="list-style-type: none"> Not representative of the public, the PPP is a professional panel Meets in private, hears complaint and response in camera Is concerned for public opinion 	<ul style="list-style-type: none"> Alcohol Forum allows for scrutiny in passive form (via database) as well as active (Forum) meetings to ask questions CSO walk out was directed at self regulatory approach and not focused on social media case study CSO deliberated internally, discussed with alliance partners and engaged media, eliciting more press coverage 	<p><i>EPACA forum was professional and internal although decisions will impact “stakeholders” (since March 2013</i></p> <p><i>Obesity Forum CSOs not contributing to creation of EPS through consultation, deliberation and publicity</i></p> <p><i>Alcohol Forum CSOs created deliberation in press, sought mandate from internal public, initiated discussion amongst CSOs to lead alliance</i></p>
Account giving	<ul style="list-style-type: none"> “obliges” progress on account within fixed time frame via Forum database Prescribes format of report and independent auditing (cost) 	<ul style="list-style-type: none"> Obligation to provide an account in circumstances of a hearing is linked to membership, just as undertaking regular training for all staff and signing of Code Code process was closely implemented 	<ul style="list-style-type: none"> No “obligation” to progress Prescribes format of report and independent auditing (cost) 	<p><i>Hence, the efficiency of the monitoring process and the co-related providing of an account, impact directly on the accountability of the outcomes.</i></p>
Consequences	<ul style="list-style-type: none"> Forum has mandate to hear report but not to pass judgment Participants can do so individually, acting in “public interest” (CSOs) 	<ul style="list-style-type: none"> PPP enjoys mandate from management committee and membership to hear case Imposes sanctions, such as membership withdrawal (did not occur) Ability to recommend amendments to Code (occurred) 	<ul style="list-style-type: none"> Individual CSO led small alliance walk out Self regulatory approach of advertising and alcohol producers branded, “shamed” in “insider” press as self serving WFA continues to support self regulation CSO walks out of Forum because it has failed to deliver promised discussion on reducing alcohol relate harm. 	<p><i>No unit was sanctioned in these cases, although alcohol Forum advertising and alcohol producing members were named</i></p> <p><i>Little evidence of enforceability of sanctions</i></p> <p><i>More clarity on role and purpose of sanction would lend teeth to process</i></p>
TYPOLGY	<ul style="list-style-type: none"> Stakeholder accountability Market accountability 	<ul style="list-style-type: none"> Professional accountability Market accountability Stakeholder accountability 	<ul style="list-style-type: none"> Stakeholder accountability Market accountability Public accountability (weak) 	<ul style="list-style-type: none"> Need for CSO active deliberation, greater publicity and means of grass roots consultation Improved role allocation in process Enforced sanctions

4.1.5. The study's initial propositions – verified or not? :

My initial four propositions were presented at Chapter 1.2. and were set up to better guide questions for salient data collection and provide depth to the criteria for analyses. They are an intrinsic part of the evaluation framework and contribute in particular to defining the circumstances in which an accountability mechanism might be applied to yield an expected outcome. They are presented and discussed in turn below.

- Public accountability mechanisms are desirable in particular given contexts of policy development dealing with issues of a sensitive nature combined with concerns of reputation management in a highly competitive interest representation environment.

The initial search for case study units of analysis demonstrated the narrow remit of the scope of research in particular combining the condition of EU policy participation with an external process. The second difficulty lay in the mapping of the process and its satisfying of the criteria related to the inclusion of a public vocation. The number of potential associations was therefore limited by the criteria and quickly revealed specific circumstances. These are related to the sensitive nature of the industries examined and their potential to harm. A heightened sensitivity comes in play when children or young adults are involved such as for UNESDA and WFA. EPACA deals with the reputation management of the lobbying industry, which suffers from a poor reputation. The context of these analyses is the influencing of policy outcomes where the respective industries are confronted with a non-governmental sector that specializes in limiting the spread of the business. An observer would deplore the geographical limitation of the debate to the Brussels bubble since the topics addressed engage on a much wider scale and would benefit from a greater balance as regards science over political positioning. The European Commission set up the respective Forums on issues that deserved wider consultation and which polarized the populations. These are also sectors in which regulation is undesirable for several practical reasons such as the lack of a chain of responsible actors that are easily identifiable by law, or an activity where there is too great a number of potential rule contraveners. Regulation might also be undesirable due to a prohibitive tracking cost or delays caused in bringing the case through a classical justice system, such as with advertising. The measures, however, undertaken by the respective business associations lie beyond legal compliance, and thus demonstrate a will on the part of the private sector to meet expectations of policy makers and stakeholders within well defined limits.

- All business organizations that comply with public accountability arrangements boast internal governance structures which allow for accountability mechanisms to be applied.

This proposition is taken up in the literature and apparent in the case studies, as commented. My initial assertion rested on a practical consideration in that external accountability with the requirements in the account giving to describe steps and demonstrate progress, would require administrative tracking and annotation at each stage. This tracking itself would rest on an internal accountability procedure dealing with record keeping and providing evidence of tasks accomplished. The governance structure of each organisation would, at the least, need to allow for such an internal system. This is more evident for WFA and EPACA than for UNESDA.

The WFA internal accountability system is at the core of the association's existence; its members all operate under the self regulatory code of practice. The rules and implementation of the internal system are transparent, it provides for tracking and is set in a procedure that operates EU wide. Its applicability is however questioned by NGOs in the framework of the public accountability system. This last questioning potentially undermines the principles on which the system rests.

The EPACA case study remains focused on the internal system embodied in the Code of Conduct of the association. The professional accountability type lacks somewhat the causal link with the public although the amendments to the Code can be construed as demonstrating a will to widen liability, a result of accountability.

The sanction mechanism discussed when analyzing the UNESDA case study was described as the potential for naming and shaming in the Forum remit. I analyzed the founding documents of the association and queried as to the internal tracking system on which the commitment lay. The secretary general referred to internal discussions having occurred when a member appeared to fail to reach the targets set out by commitment and this led to a resolution of the problem, it seems, with no formal procedure followed. This approach might be the co-relation of the fact that the main activity of the organization is the inputting to the obesity Forum itself.

- Business organizations have had little call for developing processes of public accountability and have been reluctant to assert a public role that might impact market stability.

And,

- Existing accountability mechanisms in business associations engaged in EU policy participation were historically not widely promoted towards the EU public.

What is the motivation for the private commercial sector to engage in exercises that render a business association publicly accountable? Business organizations are notoriously wary of torts cases (where a plaintiff might demand damages) and therefore limit their liability through contractual clauses which come into effect upon purchase. Any closer link with the public might be seen as increasing the likelihood of liability and therefore adversely affecting market stability. The situation changes however when reputation management is required. Furthermore, the respective DG SANCO Forums and the EPACA web site are relatively safe environments from which to engage in accountability processes. The absence of main stream media from the Member States and leadership by the services of the Commission who choose not to communicate the work of the Forums on their front page ensure that the potential wider coverage is limited.

The result of the above situation, coupled with the Brussels centric remit of this assessment lead to the fact that business associations have not been widely promoted to the EU public. The increased use of internet however and new social media as a vehicle to discuss societal concerns and emit citizen opinions could greatly impact this state of affairs. There is likely to be greater involvement of grass roots activity in the future where missing links and knowledge gaps will be filled, including better research about how organizations function and profile themselves. Add to this the new procedural rules of the Lisbon Treaty which reduce the duration of the decision making procedures and increase the need for lobby alliances and coalitions earlier in the process. These coalitions might give rise to the new and unto now rather incongruous matching of business and NGOs claiming a public interest. The public accountability of that coalition and the professional accountability of duly mandated actors will become of heightened importance.

4.2. Final conclusions:

This final section of the thesis summarises the conclusions of the case studies and reflects upon the adequacy of the theory as presented in Chapter 2. These reflections lead to the proposal of means of improvement to the structure and the method of application of the accountability framework.

The discussion above reflects the findings of the case studies against the questions raised from the literature and my criticism in relation to it. The research has established a tenuous causal link between public accountability and business associations acting under conditions of EU policy participation. There is evidence of constitutive elements of public accountability for business associations, albeit based on an interpretation of the European Public Sphere where CSOs acting in the public interest foster debate with the wider EU public. This deliberation has however proven limited in part due to the context of industry association profiling in which the issues of accountability arise and the specific policy setting framework of the EU which lacks media coverage and grassroots citizen engagement.

In the absence of an identified public to act as the principal in the main relationship of the accountability process, there is a need to better embed the mandate of the principal with a link that proves stronger than “acting in the public interest”, as claimed by UNESDA. This public mandate can be sourced in DG SANCO of the European Commission, whereby the officials seek a mandate through public consultation on the work of the Forum. The second potential source lies in the involvement of the European Parliament in a consultative capacity for the results of the respective Forums. The third and last source for such a potential mandate lies with the pure CSOs and their link with the public and their own mandate to act in the public interest.

The quality of deliberation of the CSOs acting via their public mandate or as interested parties in the DG SANCO Forums can be improved. The deliberation formats are unstructured, be they internal to the CSOs and therefore too limited in remit or in and around the Forum meetings and activities. There is little evidence of discussion across CSOs prior to or at the Forum meetings and little reflection, other than for Active Europe, of their activity in their publications and reports.

The last means of improvement at this stage of the process lies in the generation of deliberation as wide and diverse as possible on the part of the CSOs to act as conduits to the public, attaining a level equivalent to a European Public Sphere. The pure CSOs might then derive a public mandate on the issues through flagging, framing, monitoring and translating, for the benefit of the wider public and transmitting knowledge and findings in exchange for debate and an eventual public mandate.

The research has also demonstrated the generic nature of the accountability model process with however, some amendments in emphases. Indeed, the “obligation” to provide an account might better be described as an integral part of the relationship between the principal and agent, as opposed to a separate step in the process. Equally, the definition could more easily refer to the “providing of an

account” instead of referring to explanations and justifications of conduct. I would argue for the inclusion of the “asking of questions” on the part of the Forum but render this more formal; a type of obligation that will underpin the deliberative nature of the account provision. Finally, “passing judgment” appears weighty and synonymous with the formal order of courts, whilst this process rests clearly in the realm of choice, voluntarism and soft law. In contrast, the “facing of consequences” allows for reward as well as sanction, thereby avoiding anticipating the outcome. The improved enforcement of decisions, as well as the mandate to sanction and reward, would make for a more credible process and result. Whilst the account giving and deliberations might be carried out in public, the decision should equally be made public and recorded for means of precedent setting.

The analysis of the UNESDA and WFA case studies in particular pointed to the need for greater scrutiny of the activities of the other participants in the process. Indeed, the main relationship lies between “an actor and a forum”. The comments above have centred on the nature in particular of the Forum and its “public” credentials derived from pure CSOs and their purported interaction with EU citizens. However, as the possible surrogate for the public, DG SANCO might play a greater role in stimulating greater deliberation internal to or amongst CSOs, or even proscribing the structure for that deliberation. DG SANCO might also have made efforts to publicize the work of the Forums through its media links, thereby generating a greater CSO and citizen following. The European Commission’s role cannot be solely limited to bringing diverse parties to the table. Regarding the EPACA case study, the inclusion of a pure CSO representative, duly mandated, such as Transparency International, in the Panel would prove a significant step towards demonstrating the public vocation of the accountability process.

Finally, the greater “public” quality of the accountability process is attributed to WFA mainly thanks to the activity of Active Europe in increasing the public credentials of the Forum and having brought the debate to the attention of the wider public. The UNESDA case study pointed to the increased potential for deliberation thanks to the diversity of the Forum participants and the need for greater media coverage and action on the part of pure CSOs. Lastly, the EPACA case study would not qualify as a case of public accountability because of the closed nature of the account giving and deliberations. The result of the case focus however, led to amendments in the EPACA Code of Conduct that opens locus standi to all stakeholders, and potentially, the EU public.

All three case studies present features of market accountability (Goodin, 2003), catering to concerns of reputation management and stakeholder accountability (Lord and Pollack, 2010) where the Forum assumes a different role to that of its simple sum of parts and the actor is a representative, not acting in

a personal capacity. The EPACA case study clearly presents elements of professional accountability, dealing with the need for integrity in the accomplishment of public affairs tasks.

The business associations have demonstrated a will to position themselves beyond legal compliance, to do more than was legally required to operate. They have voluntarily rendered themselves accountable not only to their constituents but also reaching a wider audience of stakeholders. This deliberate approach of reputation management is specific to the policy context and can be contrasted with a wider public relations campaign where consumer engagement is the goal. The legitimacy sought would lie in the application of the process, its rigor and independence. The audit requirements and their cost (UNESDA and WFA), as well as the scrutiny to which a profession is willing to be subject by placing a report of the complaints process and its outcome on their own website (EPACA) attest to the vocation of public accountability.

The research has provided evidence of the existence of public accountability in a limited form as practised by business associations under conditions of EU policy participation. In doing so, the rationale behind the application of such a process was defined and the formula applied refined. The observance of the practice of accountability by complex organizations should shift away from a goal of qualifying the type of accountability according to a nomenclature limited to the framework of the study but focus, as per the generic model, on the origin of the mandate for the actor and forum as the key trigger of the process.

As the multiplicity of actors increases in the field of business associations acting under conditions of EU policy participation, the relationships within public affairs networks will become more complex, the dividing lines between private commercial interests, citizens and the state more blurred. The public accountability credentials of those actors operating through prescribed governance models in this specific context allow for a clarification on purpose and transparency of desired outcomes thereby providing a model for accountable democratic engagement.

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