

Democratic legitimacy? The online consultations of the European Commission

Julian Weller

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Abstract

The central research puzzle of this thesis relates to new opportunities for political organisations due to technological change and non-electoral forms of creating democratic legitimacy. In particular, the thesis asks if new Information and communication technologies can address democratic legitimacy issues of the European Union. Without doubt, the European Union already has mechanisms for creating democratic legitimacy. However, does political participation based on new information and communication technologies offer an avenue for enhancing democratic legitimacy besides elections for the European Parliament and indirect democratic legitimacy provided by national governments in the European Council and the Council of Ministers? If we accept the assumption that technology offers new opportunities for the development of democratic legitimacy providing institutions then what are these new opportunities for the European Union?

The methods used for this thesis are based on a qualitative case study design. The first case study is an online consultations for the directive on 'Harmonisation of legislation on industrial products', the second consultation is for the 'Community Action Plan on the Protection and Welfare of Animals 2006- 2010'. The main phenomenon, around which the research is built, is the input legitimacy potential of the Commission's online consultation regime. The unit of analysis are two online consultations of the Commission. The thesis uses three hypotheses to examine the input legitimacy potential dealing with accessibility of the participation arena, the meaningful transformation of inputs and participation patterns of participants. The gathered original data comes from four primary sources, semi-structured interviews with Commission officials directly related to case studies, semi structured interviews with consultation participants, interviews with so-called case study outsiders and a document analysis concerning the EU's communication strategies in connection with participation in policy-making.

The key finding of this study is that the input legitimacy potential of the Commission's online consultation in its current form is negligible. Input legitimacy is not a prime concern, either for the citizens or for the Commission. There is no culture of inclusive participation aimed at individual citizens from within the Commission .

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List of Abbreviations

AISE - International Association for Soaps, Detergents and Maintenance Product Industry in Europe

CE - Conformité Européenne

CEFIC - European Chemical Industry Council

CEN - European Committee for Standardization

CENELEC - European Committee for Electrotechnical Standardization

COLIPA - European Cosmetic Toiletry and Perfumery Association

CONNEX - Connecting Excellence on European Governance

CSO - Civil Society Organisation

DG - Directorate-General

ECJ - European Court of Justice

ECPA - European Crop Protection Association

EFPIA - European Federation on Pharmaceutical Industries and Associations

EP - European Parliament

ETSI - European Telecommunications Standards Institute

EU - European Union

EuropaBio - European Association for Bioindustries

EVAM - European Centre for the Validation of Alternative Methods

IALS - International Adult Literacy Survey

IPM - Interactive Policy-Making

NANDO - New Approach Notified and Designated Organisations

OECD - Organisation for Economic Co-operation and Development

OIE - Office International des Épizooties

ORGALIME - Organisme de Liaison des Industries Métalliques Européennes

QMV - Qualified Majority Voting

RAPEX - Rapid alert system for dangerous non-food consumer products

RECON -Reconstitution Democracy

SEA -Single European Act

SLOP - Self-selected listener opinion poll

UN - United Nations

UNESCO - United Nations Educational, Scientific and Cultural Organization

WTO - World Trade Organization

Declaration

Whilst registered as a candidate for the above degree, I have not been registered for any other research award. The results and conclusions embodied in this thesis are the work of the named candidate and have not been submitted for any other academic award.

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Introduction

Elections are of paramount importance as a device for creating legitimacy in Western democracies. They are currently the single most important mechanism that meaningfully connects the ruled with the rulers. On a basic level, elections are communication mechanisms that link the preferences of the ruled to those who rule. Yet, not only theoretically but also in historical and contemporary practice, it is not the only mechanism to create democratic legitimacy (also called 'input legitimacy' for the purpose of this thesis) for a polity. Thus, elections were of marginal importance in the Athenian democracy. They were regarded as the least democratic method used for selecting political personnel. Elections were seen as an instrument that advantaged wealthy and well-known citizens as they had more means to influence the masses. In contrast, assemblies open to all citizens were regarded as more democratic, as were rotation of office and random selection of political personnel (also called allotment). This preference for open democratic processes is also reflected in voting on ostracism, a non-judicial and inherently democratic procedure under which any citizen could be exiled from the state for up to ten years (Bonner, 1933, p. 7); clearly, an election an Athenian did not want to win.

While in ancient Greece citizenship was limited mainly to male, property-owning members of the city-state, today's democracies work on much larger scales. Still democratic legitimacy only occurs where mechanisms are in place that both empower the citizens to influence their polity and let them acknowledge that the development of the polity and the fate of the individual are interwoven on many levels (King, 2006, p. 17). Developing, communicating and adapting political needs are therefore linked to the development of communication possibilities in terms of both communication technology and the personal abilities of citizens to use this technology. Therefore, technology influences how institutions are shaped which provide democratic legitimacy.

Aims and objectives

In his seminal work 'Information and American Democracy: Technology in the Evolution of Political Power' Bruce Bimber (2003) suggests five historical phases in

the development of modern mass democracy which are linked to the development of communication technology. His analysis is based on the USA, yet Bimber's framework can be adapted to other polities. Bimber argues that before the proliferation of national postal services and cheap newspapers, i.e. in the first phase (in the USA before the 1820s), both the political personnel and the citizenry had little means to understand the polity as a whole. Without doubt, political communication was considerably boosted by postal services and the new press. Defining the second phase, these technologies allowed the development of a common political identity, led to the increase of voter turnout and above all the rise of political parties (Bimber, 2003, p. 18). The third phase is linked not so much to a single technology. Ever more specialised knowledge was needed to master a wide range of technologies invented and popularised after around 1880, which gave rise to a new intermediary in the polity – organised groups dedicated to lobbying for their particular interests (Bimber, 2003, p. 19). Then, in the first half of the 20th century, a fourth phase, characterised by the development and spread of radio and TV broadcasting, gave rise to mass audiences on a national scale. Bimber argues that this technology led to a new system for political communication, which was adapted to explore changes of mass communication via radio and TV, such as electoral campaigning focussed on TV appearances or institutions devoted to influencing media news businesses via 'spin'.

Bimber characterises the fifth phase beginning with the late 1990s as dominated by 'information abundance' (Bimber, 2003, p. 29). New information and communication technology (ICT) and in particular the internet have enabled people in the western world to easily and cheaply produce information, including highly specialised information. Information provision and distribution has become virtually free and has the chance to reach mass audiences. Both specialised and mass political communication can happen without a formal organisation. While the features of this process that currently takes place are not fully understood, it is clear that new ICTs are creating new opportunities for the adaptation of political institutions. Clearly, elections and the infrastructure around them are scrutinised in the context of new ICTs. New ICTs also appear to have potential for alternative ways of providing democratic legitimacy. Beyond voting on political personnel, the question arises if new ICTs provide mechanisms for widespread participation (or short 'e-participation') in policy-making and thereby can offer an alternative or additional mechanism for creating democratic legitimacy.

The central question of this thesis relates to new opportunities for political organisations due to technological change and non-electoral forms of creating democratic legitimacy. In particular, can new ICTs address democratic legitimacy issues of the European Union (EU)? Without doubt, the EU already has mechanisms for creating democratic legitimacy. However, does political participation based on new ICTs offer an avenue for enhancing democratic legitimacy besides elections for the European Parliament (EP) and indirect democratic legitimacy provided by national governments in the European Council and the Council of Ministers? If we accept the assumption that technology offers new opportunities for the development of democratic legitimacy providing institutions then what are these new opportunities for the EU?

In particular, the thesis aims to shed light on the impact of e-participation on EU policy-making within the Commission. Especially EU policy-making and the involvement of civil society actors have produced a considerable research output, also with regard to legitimacy issues. However, this field of research has hardly taken into consideration the (potential) role of new ICTs. Thus, under which circumstances is it plausible to claim that e-participation contributes to the EU's democratic legitimacy? If due to the particular features of the EU polity, classic institutional arrangements to improve democratic legitimacy have proven less feasible and effective than in the nation state context, has internet based participation the potential to overcome some obstacles for creating democratic legitimacy at the supranational level?

If we follow Bimber's analysis that new communication technology offers possibilities to adapt existing institutions, the question in the case of the EU is which institution should be adapted? Clearly, chances of real world improvements of the EU's legitimacy are considerably higher if they are implemented within existing structures and programmes. After all, this is certainly not the best of all worlds but arguably the most significant. With regard to participation in policy-making, the most promising environment appears to be the EU Commission's consultation regime, which officially made contact with the internet in the early 2000s. Two technologies are at the heart of the Commission's online consultation regime. First, consultations can be reached via the Commission's internet site 'Your Voice in Europe'. Second, the Commission operates the Interactive Policy Making Initiative (IPM), which is not only a Commission initiative but also a piece of technology for managing online

consultations. The Commission regards the 'Your Voice in Europe' portal as the 'one-stop-shop' for citizens' (EU Commission, 2003a, p. 4) participation which is basically a collection of links provided by, and pointing to, different DG websites and consultations hosted there. Thus, this thesis identifies the Commission's online consultation regime as the most promising candidate for adapting an existing institution.

It is also worth noting in this context that the Commission's online consultation regime is not technology rich. It is based on internet communication technology of the 1990s and is not sophisticated on the front-end (the part that participants and the policy officers see and use). It combines functionality of an online poll with a comment function. Moreover, additional comments can be sent via email. And finally, there is a website for publishing calls for participation, accompanying materials and results of consultations.

Literature review

The effects of ICTs on parliaments and in turn political parties and governments have attracted a great deal of academic attention (see amongst others: Gibson & Ward, 2000; Coleman, 2001; Gibson, Nixon, & Ward, 2003; Gibson, 2004; Vicente-Merino, 2007; Dai & Norton, 2007; Leston-Bandeira, 2007; Zittel, 2009). Also, the question whether direct involvement of citizens in the policy process via new ICTs is desirable and feasible has provoked a considerable research output in the last 15 years (Anttiroiko, 2003; Bannister & Walsh, 2002; Barabas, 2004; Barber, 2000; Barney, 2000; Beierle, 2003; Bentivegna, 2006; Bingham, Nabatchi, & O'Leary, 2005; Bohman, 2004; Brothers, 2000; Castells, 2001; Chadwick, 2003; Coglianesi, 2007; DG Research, 2008; Dyson, 1996; Elmer, 2002; Engström, 2002; Froomkin, 2003; Griffiths, 2004; Hacker & Van Dijk, 2001; Hofkirchner, 2007; T. Jordan, 2000; Kampen & Snijkers, 2003; McCullagh, 2003, 2003; Negroponte, 1996; Schlosberg, Zavestoski, & Shulman, 2007; Selnow, 2000; Shulman, Schlosberg, Zavestoski, & Courard-Hauri, 2003). In the context of the EU, research since the 1990s has focussed on participatory governance and European civil society as instruments for enhancing the quality of EU governance and for addressing the EU's alleged democratic deficit. This literature will help to frame this thesis' empirical research. It is discussed predominately in chapter 2 and 3.

However, empirically guided research that combines the development of ICTs, participation in policy-making and EU legitimacy remains at an embryonic stage. At the time of writing, only four works directly and substantially address the issue of EU e-participation in the Commission's consultation regime and input legitimacy. In 2005, a study on EU online consultations was published by the Institute of Technology Assessment of the Austrian Academy of Sciences (Winkler & Kozeluh, 2005). In 2008, Asmina Michailidou (2008a) published her PhD thesis 'The European Union online'. Although addressing EU e-participation in a broader context than the EU's consultation regime, her work provided some useful insights particularly regarding the rhetoric of participation in the EU's public communication.

So far the biggest advancements emerged out of the Connecting Excellence on European Governance (CONNEX) research consortium. From 2007-11, the three researchers Barbara Finke, Christine Quittkat and Thorsten Hüller published a string of articles on online consultation (Finke, 2007; Hüller, 2008; Quittkat & Finke, 2008; Hüller, 2010a; Quittkat, 2011). Their overriding interest was the tension between governance and legitimacy in its various aspects across the EU. Compared to Michailidou and Winkler and Kozeluh, they took a more quantitative approach. Finally, Thorsten Hüller (2010b) has published a book on EU democracy, which includes an empirical analysis of some online consultations conducted by the EU Commission.

Apart from those four works, a few other publications suggest in general terms that e-participation may contribute to the EU's input legitimacy, including Paul Timmers (2005), Forcella (2006), Curtin and Meijer (2006) Nixon and Koutrakou (2007), Baskoy (2009) and Drakopoulou and Xenakis (2010). However, this literature does not significantly address e-participation mechanisms either empirically or theoretically. Abels grey paper (2009) is a special case as she indeed advances the field theoretically by comparing different forms participation in EU policy-making including online consultations. Chapter 3 appreciates her contribution a bit more. It is also worth noting that the phenomenon of online consultations has recently been warranted a comprehensive and very insightful edited book by Coleman and Shane (2012).

The earliest of the four core publications mentioned above, the Austrian report from 2005 arguably bears the most similarities in terms of research interest and design to this thesis. The study stresses the issue of policy impact and deliberative

design to assess the online consultation regime. Regarding policy impact, the authors conclude: 'Online consultations do not provide a space for inclusive public deliberation in a strong sense, since access depends on being already involved in the consultation topic, to belong to interest networks or to be invited to take part. Experts criticise that there is not enough promotion on (on-going or intended) online consultations. The consultations are also more relevant for public bodies, NGOs and other institutional players than for the single citizen' (Winkler & Kozeluh, 2005, p. IV). Lack of accessibility, awareness and inclusiveness appear as the main shortcomings for this deliberative democracy setting. However, based on content analysis, the authors regard the quality of the policy discussions, which they see as an indicator for 'democratic potential', as good. They conclude 'that about two third of postings included well-formulated and rational arguments (...)' (Winkler & Kozeluh, 2005, p. VI). Yet, the major shortcoming of this report is that it does not address the consultation process within the Commission as interview data was largely gathered from personnel who did not implement the consultations. Moreover, its findings are somewhat outdated, too.

Contrasting 'rhetoric and reality', Quittkat and Finke ask if after the Commission's White Paper on Governance of 2001 the EU Commission's consultation regime succeeded in broadening participation. They based their analysis on data on the Commission's online consultations. In contrast to Winkler and Kozeluh, they conclude that 'the Commission's efforts to achieve inclusiveness through online consultations have been quite successful. Online consultations have not only attracted representatives of different types of interest groups; they have also lowered the threshold for individual citizens to access EU level consultation processes' (Quittkat & Finke, 2008, p. 218). However, their yardstick is not deliberative democracy, the conceptual approach used in this thesis and introduced in the next part of this introduction. Rather, they reach their conclusion by comparing historically older forms of consultation, which were indeed less inclusive. Whether they are inclusive enough by the standards of deliberative democracy is not the central concern of their work. Generally, they see online consultations in a positive light, arguing that 'especially consultations with open, albeit structured questions offer real possibilities of participation (...)' (Quittkat & Finke, 2008, p. 218). The importance of their work lies in the fact that Quittkat and Finke explore for the first time the area of EU online

consultations in quantitative terms. Yet again, the implementation of the consultations is largely omitted.

Michailidou (2008a) in her work also addresses the tension between the stated official policy on public participation and the reality. She argues that while 'the Commission has repeatedly expressed its commitment to promoting dialogue with the general public and civil society and recognises that public communication is a key factor for improving openness, transparency and citizens' participation in the EU decision-making process (...), the actions proposed to address the issue of the EU's democratic legitimacy are focused on public perception rather than institutional reform' (Michailidou, 2008b, p. 361). Based on opinions expressed by Commission officials in interviews, she suggests that they do not regard the internet as a 'new propaganda machine' (Michailidou, 2008b, p. 361). Rather their view is that citizens need more information first and foremost, which they see as the main prerequisite for the emergence of a deliberative EU policy-process.

Based on his work within CONNEX, Hüller (2010b), finally, discusses the democratic potential of online consultations in a monograph. In essence, he uses online consultation as a possible means for what he calls 'associative democracy', which is broadly based on the idea that Civil Society Organisations (CSOs) have democratisation potential for the EU. His work criticises the general inaccessibility of online consultations. Empirically – like Winkler and Kozeluh – he works with a content analysis of four consultations (Hüller, 2010b, p. 180) and looks at the quality of the participation input.

Against this background, how does this thesis aim to go beyond the state of the art in research on e-democracy in the EU? From an institutional perspective, the four sets of publications to some extent draw upon theories of deliberative democracy as a backdrop to assess the legitimacy potential of online consultations. However, this thesis uses deliberative democracy more stringently as the yardstick for analysing and assessing the legitimacy potential of e-participation. In contrast, this research does not build hypotheses on the basis of the quality of the actual deliberation. This is the prerogative classic content analysis, which has been done for the Commission's online consultations in particular by Hüller and Winkler and Kozeluh. All works (including this) contrast the rhetoric of participation with the reality of EU policy-making. Not surprisingly, the reality is less participative and democratic than

the rhetoric. Even Finke and Quittkat were sometimes baffled by the erratic reality of the online consultation regime.

Crucially, however this thesis seeks to go one decisive step further and to explain why the reality is not as good as the rhetoric. In this regard, the thesis is inspired by research on so-called 'street-level bureaucracy'. This term was introduced by Michael Lipsky (1980) and originally refers to 'the schools, police and welfare departments, lower courts, legal services offices, and other agencies whose workers interact with and have wide discretion over the dispensation of benefits or the allocation of public sanctions' (1980, p. xi). Instead of looking at 'legislatures or top-floor suites of high-ranking administrators' and their formal laws, policy statutes and communiques, Lipsky argues that public policy is best understood by looking at what 'is actually made in the crowded offices and daily encounters of street-level workers' (1980, p. xii) as 'policy making does not simply end once a policy is set out' (1980, p. x). This means taking into account 'the routines they establish, and the devices they invent to cope with uncertainties and work pressures' (Lipsky, 1980, p. xii). According to Lipsky, this is possible because street level bureaucrats have a high degree of discretion and relative autonomy from organizational authority. What Lipsky brings forward is a 'bottom-up' argument not from the perspective of the civil society but from the administrative side (Durose, 2011, pp. 979–980).

From a participant perspective, moreover, this thesis stresses the importance of individual citizens as opposed to CSOs. This thesis goes beyond the premise that 'if we build they will come' and accepts that citizen participation is both rare and crucial for the legitimacy potential of online consultations. Hence, what are the motivational barriers and incentives for participation in the Commission's online consultations? Between the legitimacy potential of EU online consultations and their impact on the legitimacy belief, the focus is on the former. The reasons for this are discussed in chapter 4, which sets out the research design of the thesis. However, this thesis will not only help to understand what the Commission with their online consultations has provided in terms of input legitimacy; crucially, building on the empirical analysis it will also discuss and make some proposals for how to improve the online consultations regime to enhance its democratic legitimacy potential.

Beyond this specific literature review on the works covering the online consultations of the Commission, more literature is reviewed in the theory chapters 1-3. The aim of this wider literature review is threefold. First describing the nature of the

EU's legitimacy and identifying the core challenges if we want to improve its democratic legitimacy (chapter 1), second, outlining why and how e-participation in policy-making is a potential option to improve the democratic legitimacy (chapter 2) and third to review the literature of participation (mostly 'offline') in EU policy-making in order to provide the cornerstones of the methods discussion in chapter 4.

Concepts and methods

Theories of deliberative democracy provide the theoretical backdrop for analysing the democratic qualities of the consultation processes. Bohman suggest to broadly define deliberative democracy as a 'family of views according to which the public deliberation of free and equal citizens is the core of legitimate political decision making (...)' (Bohman, 1998, p. 401). It differs from of a decision-making process that merely aggregates preferences by voting for a policy or for political personnel. It is also different from technocratic decision-making, in which aims are defined and the difficulty lies in the quest for the most efficient means to accomplish the aims.

Theories of deliberative democracy assume that citizens are able to consider their preferences and values in relationship both to their overall life and to a common good. The theories assume that citizens have the capability to empathise with the perspective of other individuals. Thus, they are able not only to evaluate the personal value but also the common value of actions and outcomes (Rosenberg, 2007, p. 338).

The quality of deliberative processes is assessed against two central categories: first, inclusiveness, which is concerned about information uptake and second, learning strategy, which concerns information processing. This is backed by the literature. Regardless of the context of the participation process, it is characterised by a consensus about these two categories of legitimising deliberation (Delli-Carpini, Cook, & Jacobs, 2004, pp. 59, 330). For the purpose of this study, these two categorises have been refined to the 'prerequisites for meaningful participation' and the 'prerequisites for a meaningful transformation of participation inputs'. It leads to three hypotheses (split into the distinction between actor groups - Commission's personnel and the participating citizens) for the empirical analysis of the consultations run online by the Commission.

The methods used for this thesis are based on a qualitative case study design. Ideally, 'one good case can illuminate the working of social system in a way that

series of morphological statements cannot achieve' (Gluckman, 1961, p. 9). A case study is an empirical inquiry that aims to investigate 'a contemporary phenomenon within its real life context, especially when the boundaries between phenomenon and context are not clearly evident' (Yin, 1994, p. 13). The main phenomenon, around which the research is built, is the input legitimacy potential of online consultations. The input legitimacy potential of online consultations is analysed in the context of participation patterns, policy nature and policy-making in the EU Commission. The unit of analysis are two online consultations of the Commission. These case study consultations are on the one hand the directive on 'Harmonisation of legislation on industrial products' and on the other hand the 'Community Action Plan on the Protection and Welfare of Animals 2006- 2010'. The case study selection was guided by the heterogeneity of the cases. The initial reason why the two consultations were selected lies predominantly in the perceived nature of the policy. The overriding reasoning for selecting the Animal Welfare lies in the fact that it is regarded as a high salience case (from a participant's perspective), which was listed on the Your Voice in Europe Website. It attracted a seemingly large number of participants (for the time) and dealt with the evocative issue of the treatment of animals. In contrast, the consultation by Directorate-General (DG) Enterprise essentially dealt with the more technical issue of product standardisation, which attracted comparatively lower numbers of participants. The assumption is that the distinction between high and low salience consultations is relevant because it is very costly to substantially contribute to EU policy-making, in most (not salient enough) cases probably too costly to participate for the vast majority of potential participants. The following table gives an overview of the case selection criteria.

Feature	Animal Welfare	Product Harmonisation
DG	Health and Consumer (or SANCO)	Enterprise
Type of legislation	Non legally binding action plan	Legally binding directive
Main type of participants	Lay citizens	Professionals
Maturity of the policy area	New (at the time not mentioned as an EU policy in an EU treaty)	Old (at the core of European integration since its beginnings)
Communicative approach	Mainly closed questions	Closed/open questions mix
Policy area	Animal ethics in agriculture, research and consumer protection	Market regulation by reducing trade barriers

Table 1: Case studies selection criteria

The gathered original data comes from four primary sources – semi-structured interviews with Commission officials directly related to case studies, document analysis, semi-structured interviews with consultation participants and interviews with so-called case study outsiders. The core empirical data for this thesis is sourced from semi-structured interviews with Commission officials working on the implementation of the consultation procedure. For the case studies, interviewees were selected based on what they might know with regard to the practical experience of online consultations and their potential contribution addressing the input legitimacy problem of the EU. Case study outsiders are people who did not participate in one of the case study consultations but were familiar with the online consultation regime (or certain aspects of it), namely representatives from Brussels based lobby firms, think tanks and lobby watch groups but also Commission personnel working on technical issues. The rationale for interviewing these people was to increase the validity of interview data gathered from sources directly related to the case studies by incorporating a third observer. It also counterbalanced tendencies of the data and the researcher to see the main actors' views as the main explanation for the events of the cases. In the terminology of empirical research, interviewing case study outsiders is a form of data triangulation. Similarly were the aims of the document analysis. First, it helped to frame the independent variables and provided the basic reference for structuring the interviews. Second, it allowed a cross examination of the core interview data and as such is a form of methodological triangulation.

There are sound reasons for qualitative case study research design. Although the previous section used the language of quantitative research with dependent and independent variables in real life the distinction is not as clear-cut. Therefore, a method that inherently allows addressing these challenges by allowing the ambiguity

of 'context' and 'phenomenon' is particularly suitable for this research. Moreover, at the time of the design of this research project, the area of online consultations within the Commission was largely uncharted waters (which is still the case, although to a lesser degree as new literature emerged). Research based on semi-structured interviews is especially suitable to sail those uncharted waters of a complex and emerging area of research (which also has its significance yet to prove) because it allows us to find out what is there by asking the people in charge what they are doing, without having to establish a tight analytical corset. Nevertheless, the choice of methods undoubtedly was also related to the practicalities and reality of doctoral research not embedded in a wider project. Although arguably a qualitative approach combined with a major quantitative study would have been desirable, this approach was not realistic within the framework of a PhD that was not integrated into a large quantitative study.

Regarding the research practicalities, the first round of gathering data consisted of collecting relevant documents on all Commission's online consultations up until 2006. Moreover, a small database (with the help of SPSS statistical software package) of all closed consultations was built. This data in conjunction with the literature review was then used to make decision on the case study selection. Initial interviews took place in June and July 2007 in Brussels and the main round interviews with participants and Commission staff took place from May 2009 to May 2010. Primary texts for the document analysis were fed into a database based on the Zotero software, which is a tool developed to archive and reference traditional literature and in particular electronic texts and digital artefacts. With regard to the interviews, transcribed sections of the interviews and key excerpts of the document analyses were coded according to their links with the three hypotheses along with some generic descriptive variables. This was done with the help of traditional spreadsheet software. It allowed the easy grouping of data in relation to a hypothesis across cases and data sources. Also, pattern of types of interviews were easier to identify with this method.

Ultimately, two hypotheses were developed to assess the legitimacy potential of the Commission's online consultation and a third to assess a potential direct impact on the legitimacy belief of participants. The first hypothesis is concerned with the degree of accessibility of the arena of participation and assumed that the more inclusive and the higher level of awareness it creates the more legitimacy potential it

can claim. Inclusiveness and awareness are the concepts used for measuring the accessibility. Indicators for public awareness centre on the efforts for actively approaching individual citizens and attempts for reaching out beyond Brussels, i.e. attempts to include participants that neither are based in Brussels nor travel to Brussels. Indicators for inclusiveness ask if consultations are adapted to different participants groups, whether educational material is provided and whether accessibility is the guiding principle of the consultation implementation.

The second hypothesis deals with the meaningful transformation of inputs. Policy impact and feedback are the two concepts to measure the meaningful transformation. Indicators for policy impact are agenda setting, policy contestation and a change of policy proposal, the existence of internet accessible feedback and criteria why an input is included or not are indicators for the feedback concept.

The third hypothesis centres around the direct impact of participation on the legitimacy belief of participants. Indicators for the concept of salience and stake are personal relevance and personal consequences related to policy. The indicator for efficacy is self-attestation. Finally, the indicator for the acknowledging of impacts is whether a participant followed consultation after the submission of inputs. As the data on participants is less comprehensive, secondary sources are used to analyse the boundary condition of these hypotheses, too.

Chapter 4 will discuss the development of the hypotheses and the case study design in greater detail.

Structure of the thesis

The thesis is broadly divided into two parts. The first part consisting of chapter 1 to 3 discusses the research puzzle and lays the theoretical foundations for the hypotheses for the empirical, second part of the thesis consisting of chapter 4 to 6. The second part of the thesis analyses the data gathered from the case studies along the above outlined three hypotheses.

Chapter 1 outlines the debate on the nature of the EU's legitimacy, a debate that is far from settled. Following Føllesdal and Hix and conceptualising the lack of legitimacy as a deficiency of the EU, this chapter discusses the opinions and various options regarding the 'symptoms, diagnoses, cures' (2006a, p. 533). The thesis follows the mainstream of this literature in assuming that the EU does have a legitimacy problem (Føllesdal & Hix, 2006b; Warleigh-Lack, 2003). According to the

standard explanation of its democratic deficit, the EU lacks contestation, which is responsive to the preferences of the EU citizenry. This lack of contestation concerns policies, political leadership and political personnel. More specifically, the main challenge for democratic legitimacy is at least twofold. First, citizens are excluded from dominant network-type arrangements of non-hierarchical policy-making (Kaiser, 2009). Second, the EU demos lacks the strong political identity that is needed for input legitimacy based on representative democracy.

The second chapter looks at participatory policy-making, both in its online and offline versions. The main question for this thesis is how participatory policy-making can and does contribute to democratic legitimacy. The chapter introduces the distinction between 'participatory democracy' and 'participatory governance'. The latter is mainly concerned with governance. In contrast, participatory democracy is mainly concerned with participation. Participatory democracy is centred on the inclusive participation in policy-making. Participation is seen as a socialisation process among citizens, civil society actors and a governing body. Citizens are entitled to participate if they wish to do so. Access to the policy-making process does not depend on the provision of information resources in connection with a policy problem. Rather, participation is even welcome for the sole purpose of political socialisation. Here theories of deliberative democracy come into play as this is the main avenue for justifying the legitimacy claims of participatory policy-making.

Chapter 3 analyses the EU and the current state of participatory policy-making in the Commission. It reviews participatory governance in the context of the EU both in its online and offline forms. It studies the attempts to remedy the input legitimacy problem of the EU via public policy-making and political participation. The EU and especially the Commission is no stranger to attempts at participatory policy-making. The EU has a long tradition in its policy process of interacting with non-state 'civil society' actors. With regard to governance, the concept of civil society assumes that non- or less hierarchical policy-making depends on the knowledge generated and communicated by societal actors. Therefore, civil society is regarded as a main component of output efficient EU governance (EU Commission, 2001a). With regard to the legitimacy debate of the EU, civil society actors in the political processes are seen as an alternative to or as complementing supranational European democratisation based on parliamentary democracy. It is also regarded as a

counterbalance to the legitimacy problems deriving from the executive dominated EU policy-process.

Chapter 4 outlines a framework for answering the question whether e-participation in the Commission's online consultation regime is actually a viable option for increasing the democratic legitimacy of the EU. The key aspects of this chapter were outlined above in the section on methods.

Chapter 5 gives an overview of the theoretical and policy background of the two case study consultations. The first case study – the directive on 'Harmonisation of legislation on industrial products' – deals with a horizontal legislative approach to the harmonisation of legislation on EU market access of industrial products. At its core, the policy of 'harmonisation of legislation on industrial products' is a meta-regulation of technical trade barriers caused by product standards. It is a follow-up policy to the ground breaking Council Resolution on the 'New Approach to technical harmonisation and standardisation' (85/C 136/01, 7 May 1985). The second case study deals with the 'Community Action Plan on the Protection and Welfare of Animals 2006-2010'. An Action Plan is a comprehensive overview of the Commission's planned policy initiatives in a defined period of time. It does not constitute EU law but is a strategic document often including a declaration of intended policies.

Chapter 6 tests the research hypotheses developed in chapter 4 against the empirical data. It concludes that the democratic legitimacy potential of the Commission's online consultation in its current form is negligible. It is a prime concern neither for the citizens nor for the Commission. This finding of course stands in stark contrast to the official position of the Commission, as expressed for instance in its White Paper on Governance: 'Democracy depends on people being able to take part in the public debate. To do this, they must have access to reliable information on European issues and be able to scrutinise the policy process in its various stages' (EU Commission, 2001a, p. 10). While the design of consultations allowed in principle every interested person to participate and while technology per se did not exclude citizens there was hardly any citizen participation. The lack of dissemination and of clear rules for participation made both cases highly inaccessible. Based on the analysis of the two case studies, there is no culture of inclusive participation aimed at individual citizens from within Commission. Although the Commission's officials interviewed for this research are by no means blind to ideas of widening the

participation base, there is no evidence that they facilitate an inclusive consultation process beyond the confinements of Brussels and a meaningful transformation of online inputs. Instead, online consultations are primarily an instrument used to make the working life of policy officers easier.

Hence, this thesis argues that the legitimacy potential of online consultations is limited. Moreover, the thesis questions whether it is worth adapting the current online consultation regime due to the nature of the Commission as an institution and the high literacy skills needed for participating in the Commission's consultations. Nevertheless, the thesis suggests to introduce measures that allow establishing a more transparent long term electronic communication process between participants and a DG (especially for people who do not take part in 'offline' consultations) that moves beyond the linear input/output model envisaged at the moment by the Commission's online consultations.

Chapter 1: The EU, its Legitimacy and the Democratic Deficit

At the beginning of the 1990s, the controversies surrounding the Maastricht Treaty referenda in Denmark and France introduced the term democratic deficit into the public arena of the EU's Member States. For instance in Germany, the Maastricht Treaty and its democratic implications were the object of a crucial ruling of the Federal Constitutional Court in 1993 (Føllesdal, 2006, p. 442; Papadopoulos, 2002, p. 2). In the UK, John Major's Tory government was challenged by its own backbenchers over the Treaty in 1992 and 1993 (Williams, 1998, p. 96). Looking back, the controversies surrounding the Maastricht Treaty became the watershed of the EU legitimacy debate. Before this treaty and its ratification process most pro-European policy-makers and scholars, backed consistently by opinion polls conducted in then European Economic Community, assumed that European integration was supported by the citizens of the Member States based on a 'permissive consensus' (Höreth, 1999, p. 252). The popular and legal response to the Maastricht Treaty considerably questioned this assumption (Føllesdal, 2004, p. 4). As a result, much has been published about the democratic deficit and legitimacy challenges of the EU following the Maastricht Treaty.

In recent years, the issue of the democratic deficit has come onto the public agenda to an unusual extent, particularly during the ratification process of the Constitutional Treaty. After its adoption by Member State representatives in October 2004, the ratification process was in effect terminated after referenda in France and the Netherlands rejected the treaty in May and June 2005. After the failure of the treaty, the heads of state and government and the Commission announced a period of reflection on the consequences of the failed ratification process ('The Period of Reflection and Plan D') (EU Commission, 2006a). Amongst other issues such as the 'lousy' pro-campaign, the question of 'the euro and Turkey' (Thomassen, 2008, pp. 321–322), the insufficient legitimacy of the EU was publicly debated as a reason for the rejection of the Constitutional Treaty by Irish, Dutch and French voters, whilst referenda in Spain and Luxembourg approved the Treaty (Crum, 2007).

This chapter aims to provide an answer to the question of what the key challenges are if online consultations want to address this problem of the EU's democratic

deficit. In order to identify these challenges the chapter reviews the academic debate on the nature of the EU's legitimacy. The first part introduces briefly the basic concepts of legitimacy and democracy as well as developing structure for analysing the debate on the EU's legitimacy. The main part of this chapter discusses the nature of the EU's legitimacy as well as strategies for and difficulties in enhancing it. The chapter finishes with identifying key challenges for increasing the EU's legitimacy on democratic grounds.

Legitimacy and/versus democracy

Max Weber (1922, p. 19) proposed a definition of legitimacy as the belief of the ruled that the political order they live in is lawful. The main components of legitimacy - normative (lawfulness) and positive (approval of the political order) - are already identified in his seminal definition. In reality, political institutions such as the state (but we can also think of its subsystems) are usually not either legitimate or not; rather, they are more or less legitimate. The term 'political institution' or just 'institution' incorporates a wide range of objects of legitimacy from a complete political system or, more often, a subsystem including a single political decision-making process (Føllesdal, 2006, pp. 450–451).

A belief is, as values and attitudes, a latent construct, which can only be measured indirectly, for example by observation or opinion polls. Therefore, legitimacy has the problem that its measurement is inherently vague as the belief itself is only indirectly evident. This led Schmitter to conclude that: 'I may not be able to define (or measure) it, but I know it when it is not there' (Schmitter, 2001, p. 3).

The consequence of high legitimacy of a social institution is that the ruled voluntarily comply with the rules even if compliance is costly for them. On the side of the rulers, legitimacy lowers the costs of ruling because fewer resources have to be invested into coercion and supervision mechanisms (Scharpf, 2003). As Scharpf argues: '[L]egitimacy beliefs imply a socially sanctioned obligation to comply with government policies even if these violate the actor's own interests or normative preferences, and even if official sanctions could be avoided at low cost' (Scharpf, 2003).

Thus, without legitimacy, sustainable rule is not possible. From a systemic perspective, legitimacy is a functional precondition for justifying a governing authority: 'Legitimacy converts power into authority' (Schmitter, 2001, p. 3). Therefore, for the

function of any social order and any state, legitimacy is of paramount importance. Any political system wants a high degree of legitimacy. However, legitimacy cannot work without some sort of normative content, a system that provides a set of tools for judging a social institution. This is where democratic theory comes into play.

Within the last two centuries, political theorists have been increasingly using the concept of democracy to build legitimating arguments. Those arguments were in turn increasingly adopted by the ruled in some societies to judge the social order in which they lived. According to Held (1997), arguments from various theories on democracy are now the fundamental standard for judging political legitimacy in our times. The core demand of any theory of democracy is that the ruled have a significant and formalised influence on the political processes. This can be achieved through the participation of citizens in free and fair elections or in direct democratic referenda but also through participation in political organisations. Clearly, democracy cannot be the only yardstick with which to judge a society or state. Hence, democratic legitimacy may also gain from factors that are not exclusively associated with democracy such as the accountability and transparency of policy processes, the constitution and the rule of law, independent media, a system of checks and balances between different institutions and territorial entities ('separation of powers', 'federalism') and political and economic stability (Dahl, 1971). Yet, an institution that aspires to achieve democratic legitimacy cannot do so without referring to some minimum standards of democratic theory.

As in the case of the EU, legitimacy usually becomes an issue beyond the academic world if it is missing or deficient. Schmitter remarks, 'legitimacy recedes into the background and persons seem to take for granted that the actions of their authorities are "proper", "normal" or "justified" ' (2001, p. 3). Moreover, legitimacy itself is difficult to measure on empirical grounds. Risse points out that institutions (e.g. a law or an election process) but not actors (e.g. a single citizen or the head of state) can be legitimate (2004, p. 7), whilst nevertheless acknowledging Weber's well-known argument that one of the three principle sources of legitimacy (besides tradition and rational authority) can be the charismatic qualities of a leader (M. Weber, 1922, p. 124).

Yet, how is it possible to speak of the legitimacy of an institution? This might refer on the one hand to the alleged or proven approval of the institution by a significant share of the citizenry or, on the other hand, to its legitimacy potential, that is, the

(alleged) potential of a social institution to maintain and/or increase its legitimacy among the ruled. In addition to the normative and positive aspects of legitimacy, we can distinguish between two analytical dimensions of legitimacy when addressing how to measure it: on the one hand, the legitimacy potential of an institution and on the other, the legitimacy belief of citizens.

Based on this distinction of legitimacy potential and legitimacy belief, there are two principle strategies for assessing democratic legitimacy (Holzhacker, 2007, p. 259). The first, normative approach looks at a political institution, an institutional arrangement or a complete political system and evaluates features of this system against a normative theory of democracy. The rationale of this approach is that the more criteria are concordant with the theory, the more legitimate the system should be.

Legitimacy is, however, what the ruled attribute to a political system. In an allusion to the military strategy of 'winning the hearts and minds of the population', the real battleground of legitimacy is the hearts and minds of the ruled. Theory only helps to identify relevant characteristics of legitimacy providing arrangements. To illustrate this point one can imagine a scenario, where according to normative political theory, a system is democratic but the citizens do not believe it is legitimate. Are the people wrong or is there a problem with the theory? Clearly, the theory is either incomprehensible or wrong.

In contrast, the second, positive approach centres not on institutions but on people. It assumes that a system is democratic and then asks the people living in the system about their legitimacy beliefs. The problem here is that we can think of a scenario where people believe the system is democratic (and support it) but it is actually not according to any theory of democracy. The system would still be legitimate but not based on democratic theory. There are of course many diverse sources of legitimacy as there have been, and still exist, a significant number of polities worldwide which do not rest on arguments of democratic theory for their legitimacy (Holzhacker, 2007; Schmitt & Thomassen, 1999).

The first approach establishes the democratic legitimacy potential whilst, in contrast, the second measures legitimacy belief but needs the backing of normative theory in order to know what it measures. Of course, in an ideal world theorists would hope that the more a system conforms to their democratic theory, the stronger the

legitimacy belief among the citizenry. We will come back to the distinction between legitimacy potential and legitimacy belief in chapter 4.

Scharpf (1999) suggests analysing the principle sources for democratic legitimacy potential with reference to the definition of democracy given by Abraham Lincoln in his Gettysburg Address. Lincoln defended the United States' authority (during the American Civil War, when the US president was not perceived as the legitimate head of state in the southern Confederate States of America) with the triple identity of the governed ('government of the people'), the governing ('government by the people') and the beneficiaries of government ('government for the people'). Scharpf's distinction between 'input' and 'output' legitimacy refers to government by the people (input) and government for the people (output).

Input legitimacy is based on the participatory quality of the decision-making process leading to laws and rules. It relies on involving citizens and stakeholders in policy-formulation and 'the rhetoric of "participation" and of "consensus" ' (Scharpf, 1999, p. 7). In other words, those who have to comply with the rules ought to have an input in the rule-making processes. Output legitimacy on the other hand refers to the problem-solving quality of laws and rules. These should serve the common interest of the citizens. Finally, Lincoln's 'government of the people' does not fit into the scheme of output/input legitimacy; yet, it is an essential prerequisite of democratic legitimacy and it refers to the collective political identity of the ruled. Input legitimacy needs political identity to enable the citizens to believe that the welfare of the minority is also 'an argument in the preference function of the majority' (Scharpf, 1998). In the output dimension, identity is necessary to define the membership in the community whose 'common interests' are thought to justify governmental action even if it entails individual sacrifices.

Traditionally the legitimacy of a democratic government is input-orientated whilst the legitimacy of policies or governance itself is output-orientated. It is obvious that democratic states aim to maintain their legitimacy by enhancing both components (Risse, 2004, p. 6). Scharpf argues that both sources have their own tradition in the theory of democracy and therefore he does not set them in a hierarchical relationship (Scharpf, 2006, pp. 1–6). However, this is to some degree misleading. While input and output legitimacy have their own tradition in political theory, only input legitimacy is a suitable criterion to differentiate democratic systems from undemocratic ones. Output legitimacy can be used by any type of political system as a source of

legitimacy. Historically, it preceded input legitimacy as the thinkers of the age of Enlightenment argued for a government that is based on the well-being of the ruled. Before the Enlightenment, the interest of the ruled was subordinate to the alleged interest of a higher being or a ruling class with a shared social origin. The common good was not the source of legitimacy but only a factor of statecraft. Well-being implied political stability and it was therefore part of wise politics. Yet what distinguishes enlightened absolutism from a parliamentary democracy is, above all, that the latter rests on input legitimacy (Føllesdal, 2006; Føllesdal & Hix, 2006a; Greven, 1998). Hence, in a narrower sense, only input legitimacy provides democratic legitimacy regardless of the fact that democracies base their legitimacy on other sources as well. Thus, in the terminology used in this thesis, 'input legitimacy' and 'democratic legitimacy' are interchangeable and do not describe the system-wide legitimacy of democracy.

After these analytical clarifications, we can build a structure for analysing strategies to improve legitimacy of more or less democratic states. The legitimacy potential can be based on output or input orientated measures. These can be weak or strong in a given initial scenario. The legitimacy belief of the ruled can likewise be either strong or weak. This leads to eight principle reform strategies as outlined in Table 1. This taxonomy is not exhaustive as not all permutations are included. It is, however, an analytically convenient tool for structuring the EU's legitimacy debate.

		legitimacy potential: input			
legitimacy potential: output		strong		weak	
	strong	1) ideal democracy, no need for reform	2) strong democracy with ignorant citizens, state education on participation channels and or performance of state	3) authoritarian democracy, reform depends on preference of citizenry	4) authoritarian democracy, educate citizens about performance of state, further reform depends on preference of citizenry
	weak	5) weak democracy, reform based on performance improvement	6) weak democracy, reform based on performance improvement and state education participation channels	7) unstable democracy, revolution imminent	8) apathetic democracy
		<i>acknowledged by citizens</i>	<i>not acknowledged</i>	<i>acknowledged by citizens</i>	<i>not acknowledged</i>
		legitimacy belief			

Table 2: Strategies for improving legitimacy

The first box denotes the 'no need for reform scenario', an ideal democracy. Input and output oriented legitimacy potential is strong and both aspects are acknowledged by the citizenry. The second box is the scenario of a strong democracy. Whereas input and output orientated legitimacy potential is strong, it is not acknowledged by the citizenry, however. Here the state may try to communicate its performance better or strengthen the infrastructure to promote a common identity or a change of the belief systems of the citizenry.

The third scenario is a strong authoritarian democracy with low input but high output oriented legitimacy acknowledged by the citizenry. In this scenario, it is not clear whether any reform is needed. This depends mainly on the preferences of the citizenry and their perspectives on democracy.

The fourth box describes a weak authoritarian democracy with low input and high output orientated legitimacy. However, this is not acknowledged by the people of this state. As a result, the state may want to consider educating its citizens better about its performance.

Fifth, the weak democracy is characterised by high input and low output oriented legitimacy potential, which is acknowledged by the citizenry. Reform strategies are subsequently based on performance improvement.

Sixth, the unstable, weak democracy is plagued by low output orientated legitimacy potential, whilst nonetheless having a strong input legitimacy. Both aspects are not acknowledged by the citizenry. Reform here aims at performance improvement as well as state education on possible participation channels for the citizenry and how to use them.

The seventh scenario is an unstable democracy where an overthrow of the government is imminent. The citizens acknowledge the low legitimacy potential of both input and output oriented institutions.

The eighth scenario is arguably a hypothetical case of an apathetic democracy where legitimacy is not an issue in the belief system of the citizens whilst, at the same time, the state is characterised by a low input- and low output oriented legitimacy potential.

The table shows that in principle two main strategies exist for addressing a legitimacy deficit. The first strategy is to adapt the institutions so that they are more in accordance with the belief system of the ruled (in an out- or input orientated manner). This means that an institution is altered in order to increase its legitimacy potential.

The second is to modify the belief system of the ruled so that their standards for judging the situation or their information base for those judgements changes. While the former cannot be employed without the latter, the latter is plausible without the former.

If the reform of institutions is not communicated to the citizenry, however, then they cannot re-evaluate the performance of those institutions. Arguably the communication effort is higher if the state wants to convince the citizenry that their standards for judging the situation is either incomplete or not applicable whilst at the same time making suggestions on how to adjust or replace the inappropriate yardstick for judging an institution.

The EU's legitimacy

The previous section provided some insights into why assessing the EU's legitimacy is a cumbersome undertaking. In particular, making a decision as to whether the EU lacks democratic legitimacy or not depends upon the view one takes regarding the state of the EU's legitimacy and the legitimacy potential of its institutions. Also in the process, the validity of the citizens' belief systems must be questioned. Do they 'understand' the EU? Have they 'enough' knowledge about the EU? Do they judge the EU by the 'right' criteria?

Difficulties aside, the term democratic deficit is used by many analysts. This brings us to the question of what precisely constitutes the 'democratic deficit'. What are the symptoms of the EU's democratic deficit? The debate has sprawled into many areas of EU research. As early as 1995 scholars tried to identify key elements of the democratic deficit by simply listing the more commonly mentioned features of the deficit in the public and academic debate, leading to a 'standard version' as opposed to the less mainstream aspects of the debate which then can be included in the 'non-standard' version (Weiler, Haltern, & Mayer, 1995).

The three main aspects of the standard version are, first, a lack of input legitimacy providing institutions, relating to an expansion of executive policy-making without strengthening input legitimacy providing institutions. Second, there is the perception of an opaque policy-making process, which lacks accountability and transparency, and which makes it difficult for, or even prevents, citizens from acknowledging and judging the processes and outcomes of EU policy-making. Third, there is the lack of a common identity among the citizens of the EU, which prevents some citizens from

developing and maintaining a coherent belief system for judging the EU's legitimacy (Abromeit, 2002; McCormick, 2010, pp. 1–2).

The expansion of EU governmental power by transferring competences from the Member States to the EU level has been coupled with a weak control of these powers by input legitimacy providing institutions, mainly parliaments at Member State level and the EP. The expanding and highly executive character of EU politics lacks input by European citizens. In this respect, the role of the 'weak' EP as the counterpart of the 'strong' EU executive branch is highlighted by some scholars (Heard-Laureote, 2007). The parliamentary powers are too weak to ensure proper accountability of the executive. The EP's status within the policy process is also weak compared to national parliaments and its role as facilitator of a public forum is hampered by its remoteness from EU citizens.

Policy-making in the EU is often based on opaque and informal policy networks and the EU decision-making process involves many actors on various levels (Kaiser, 2009). Does the resulting lack of transparency lead to a lack of accountability over who is responsible for the outcome of EU legislation? Who is to give feedback about EU regulations? The result is a policy process that can hardly be evaluated by most EU citizens. At the same time, feedback mechanisms on the outcomes are weak. Still, non-compliance with EU regulations by citizens is rare mainly because regulations are mediated by the Member States and implemented nationally. In everyday life, it is mostly not the EU and its public administration but the Member States that deal with citizens and their responses to EU regulations. Hence, the 'specific multilevel characteristics of the European polity' save the EU from facing 'the empirical tests of political legitimacy because it is shielded against the behavioural responses of the governed' (Scharpf, 2007, p. 9).

The EU is regarded by some of its citizens as remote. Cultural and geographical distance hinders the development of strong legitimacy beliefs. The EU is characterised by strong linguistic, geographical, economic and cleavages (Majone, 1998, p. 11). Only weak mechanisms exist to support an EU identity. Thus, there is no cohesive European public sphere that reports on EU issues (Liebert & Trenz, 2008; Trenz & Eder, 2004). This lack of a common identity becomes a problem when the rule of the EU is perceived as foreign, as not part of political self-determination by the citizens; as not a part of a legitimate process of politics and policies within a polity. Identity is of course socially constructed and in flux. Based on Eurobarometer

data, Marks and Hooghe comment that whilst the EU has changed rapidly in the last 20 years, the self-perception of the identity among the citizenry has not. There is also no clear trend towards a more European identity as opposed to a national identity or vice-versa. They conclude that '[u]ntil generational change kicks in, Europe is faced with a tension between rapid jurisdictional change and relatively stable identities' (Hooghe & Marks, 2009, pp. 13–14).

It is important to bear in mind that legitimacy shortcomings attributed to the EU can also be found within the democracies of Member States. This does not render the legitimacy problems of the EU less relevant but gives us the chance to put them in perspective. The features characterising the standard version the EU's democratic deficit – an opaque policy process dominated by the executive branch of the state combined with the limited influence of parliamentary institutions in addition to tensions based on the lack of a collective identity within the state – are a template for criticising virtually any western democracy. Arguably, some problems are more pronounced within the EU. Nevertheless, the EU is not as unique with its democratic challenges as some media reporting tends to make us believe.

The majority of the academic literature supports the idea that the EU has some sort of legitimacy deficit but this may partly be down to research pragmatism. First, the nature of the problem means that we can probably identify a legitimacy deficit in every democracy. After all, can a political system have too much legitimacy? Second, regardless of the substance of any alleged or actual EU legitimacy deficit, from the perspective of the researcher it is always better to have a puzzle to solve. Third, the possibilities for combining topics from the EU studies canon with the legitimacy deficit is seemingly endless, hence there are structural features that feed the literature on the EU's democratic deficit. Up to a point, this thesis follows such a pattern. Finally, two prominent researchers of the EU have already made the case against the existence of a democratic deficit (Føllesdal & Hix, 2006a, p. 537): Giandomenico Majone and Andrew Moravcsik.

Majone sees the EU as something like a weak authoritarian democracy in the structure outlined above. This scenario is characterised by low input and high output oriented legitimacy. However, the latter is not acknowledged by the people. Majone regards the EU as an authoritarian democracy, which is nevertheless benevolent towards its citizens. According to him, the EU is what he describes as a regulatory state. It was created by its Member States for 'specific functional tasks that can be

tackled more efficiently and/or credibly at the supranational level' (Majone, 1998, p. 24). In Majone's view, the EU is mainly producing efficiency improving policies as opposed to redistributionary policies. The former policies aim to increase the aggregated welfare within a society, the latter to redistribute welfare from one particular group to another. Majone argues convincingly that producing efficiency improving policies can be delegated to a benevolent dictator – or to 'institutions independent of the political process' (Majone, 1998, p. 24). Hence, the legitimacy of the EU can solely be based on output orientated institutions.

The problem with Majone's argument is that the reality of the EU does not support his analysis. Whilst there is a considerable amount of regulatory, non-redistributive and efficiency improving policies, the EU does engage in redistributive policy-making (such as the Common Agricultural Policy, structural funds and EU-wide research funding). There are EU policies where certain societal groups clearly gain at the expense of others. In addition, on the Member State level we can identify 'net contributors' and 'net beneficiaries' (Føllesdal & Hix, 2006a, p. 543).

Compared to Majone, Moravcsik makes his case much more aggressively, describing the democratic deficit as a myth, which 'always was, and remains, nonsense' (Moravcsik, 2008, p. 333) because 'the EU is at least as democratic, and generally more so, than its Member States' (Moravcsik, 2008, p. 332).

Moravcsik argues that the idea of a deficit is a 'myth' because first (in line with Majone) it is desirable that certain non-redistributionary policies are insulated from democratic institutions and their competition for the right policy. Hence, it is not more technocratic than any other western democracy (Moravcsik, 2002, p. 613). Second, policies of the EU already have sufficient democratic legitimacy, which is generated by the Council and the EP. They ensure that preferences of the citizenry are in line with the EU's policy agenda (Moravcsik, 2002, pp. 611–612). Third, increasing the input legitimacy potential is not advisable because the citizens' apathy towards the EU would mean that they have no effect on their belief systems (Moravcsik, 2002, pp. 615–617).

For Moravcsik, there is simply no need to reform the EU on legitimacy grounds. For an institution that aims to provide democracy beyond the nation state, the EU is a role model. Input and output oriented legitimacy potential is strong and both aspects are acknowledged by the citizenry. Whilst Moravcsik sees possibilities to improve output legitimacy, he sees no potential whatsoever for improving input legitimacy

(beyond the already very high standards of the EU) because the EU citizens do not demand it.

Yet, there are also considerable weaknesses with Moravcsik's argument. First, while it is common practice in many democracies to insulate some branches of the executive (e.g. the central bank) from the democratic political process, this is not an argument to insulate all parts of the executive from this process (as is currently the case with the EU Commission) (Føllesdal & Hix, 2006a, pp. 542–544).

Second, the input legitimacy providing institutions of the EU clearly have their merits but fail to offer a forum for contesting policy. If citizens want a different policy agenda neither institution provides a forum for advocating a different policy agenda or forming an alternative leadership (Føllesdal & Hix, 2006a, p. 549). There is no strong mechanism that links the preferences of citizens to the policy processes of the EU. However, even if the policies are in line with the preferences of the citizens, these preferences are not fixed. If the preferences change, there is no strong mechanism that translates this change into different EU policies. Moreover, even if current EU policies reflect current preferences within the EU citizenry this does not take into account that preference formation is part of the process. Opinion on political leadership and policy agendas are shaped by the democratic process itself and therefore they are likely to be different from preferences formed under a benevolent dictatorship (Føllesdal & Hix, 2006a, p. 543). In short, due to the lack of contestation over policy and political personnel, the EU is less democratic than any of its Member States.

Third, citizens demonstrating apathy towards EU issues does not necessarily mean that apathy remains if the boundary conditions change; in particular, if there are channels of participation that offer policy and/or leadership contestation. Or, as Føllesdal and Hix put it, the apathy of citizens 'is not a justification for no democracy, as long as it may equally well be the result of a lack of democratic arenas for contestation' (Føllesdal & Hix, 2006a, p. 551).

Moravcsik, and to a lesser degree Majone, have probably calmed the debate otherwise characterised by many other scholars aiming to identify various democratic deficits on different levels of the political system of the EU. After all, even at times of economic and financial crisis, the EU does not appear to be on the brink of revolution. Anti-EU riots are rare. In many ways, the EU has worked reasonably well

during better (e.g., the beginning of 1990s) and worse times (e.g. since the mid-2000s).

So what are the existing sources of legitimacy on which the EU is currently resting? Although the legitimacy foundations of the EU might be disputed, it has to be clear that there is anything but a complete absence of legitimacy in the EU. If we want to know how the central executive body of the EU, the Commission, sees the legitimacy problem, the 2001 'White Paper on European Governance', although now more than ten years old, remains the most important source (EU Commission, 2001a). It contains several proposals for improving the EU's systems of decision-making and implementation. It aims to realise more effective policy-making by better involvement of the citizens and through more efficient decision-making and enforcement.

With regard to democratic legitimacy (in the sense of input legitimacy), according to the White Paper there is no need for fundamental change. The White Paper sees the EU as legitimate because '[t]he union is built on the rule of law; it can draw on the Charter of Fundamental rights, and it has a double democratic mandate through a Parliament representing EU citizens and a Council representing the elected governments of the Member States' (EU Commission, 2001a, p. 7). Moreover, the 'Union uses the powers given by its citizens' (EU Commission, 2001a, p. 8). As discussed above this view is incomplete. Jachtenfuchs et al. (1998) and Lord and Magnette (2004) offer a more comprehensive view on the bases of EU legitimacy. They identify four sources of EU legitimacy: parliamentary, indirect, technocratic and procedural legitimacy.

Parliamentary legitimacy is widely cited in the Commission's White Paper. The dual legitimation by the Council of Ministers and the directly elected EP is a way of achieving popular sovereignty in a political system that has both individual citizens with their political preferences, and several citizenries divided along lines of different cultural identities (Lord, 2001, p. 644). Such a polity can aggregate and deliberate preferences both nationally and transnationally.

The historically oldest and still most widely acknowledged source of legitimacy is indirect legitimacy. The EU mainly rests on powers delegated by the governments of the Member States (Eriksen, 2001, p. 6). EU legitimacy depends on the legitimacy of the EU Member States, on its respect for their sovereignty and on its ability to serve their interests (Lord & Magnette, 2004, p. 185). This foundation is often stressed by

scholars who operate with an intergovernmental approach to explain European integration. It is supported by findings that suggest that treaty authorisations of EU power have been dominated by state actors and state preferences (Milward, Brennan, & Romero, 2000; Moravcsik, 1991, 1998; Moravcsik & Nicolaïdis, 1999).

Technocratic legitimacy is generated by the ability of EU institutions to offer 'pareto-improving' solutions (Majone, 1993). The EU is technically able to improve the welfare of the overwhelming majority of citizens in terms of their own felt preferences. The prerequisites for this source of legitimacy are 'first, a normative belief that the superior ability of a system to meet citizens' needs is grounds for political obligation to it; second, epistemological confidence in a rationality or science of government (positivism); and, third the identification of specific public needs that can be met only by independent European institutions' (Lord & Magnette, 2004, p. 186). In essence, the concept of 'technocratic legitimacy' refines the argument for output legitimacy in the context of the EU.

Procedural legitimacy is based on the belief that certain procedures generate legitimacy such as transparency, balance of interests, proportionality, legal certainty, and consultation of stakeholders (Lord & Magnette, 2004, p. 186). For instance, Risse and Kleine coined the phrase of 'throughput legitimacy', which is achieved by adhering to certain standards of legality, transparency and the quality of the decision-making process (2007). However, this point is questionable, first, because general and specific procedural rules are necessary for all mentioned sources (e.g. the rule of law, modes of communication). Therefore, one can argue that they do not represent a source in their own right and are already implied by other sources of legitimacy. Second, even if they represent a source of their own (as Lord and Magnette argue), it is highly questionable if the complicated and highly non-transparent mechanism, and formal and informal standards of the EU decision-making process significantly affect the legitimacy belief of the citizenry.

How to tackle the democratic deficit

The early debate about the democratic deficit used classic political systems and their democratic institutions as reference models for the EU. The sources of inspiration both for identifying the lack of democratic legitimacy and in attempting to solve the problem were parliamentary and presidential political systems as discussed in the literature on comparative politics (e.g. Lijphart, 1999). This strategy is also

intuitively highly plausible. Why should one not apply the same democratic principles to the EU that are applicable to its Member States? Why should the EU be allowed to not fulfil criteria that are mandatory if a state is applying for EU membership (Zürn, 2004, pp. 181–182)?

These strategies are seen by some of today's scholars with more critical eyes (Abromeit, 2002; Moravcsik, 2002, p. 605). Nevertheless, these early suggestions are helpful in showing why the EU goes well beyond the boundaries of a classic nation state. Moreover, they highlight the central problem of the legitimacy debate. Democratic legitimacy is closely connected to the traditional nation state and beyond the nation state democratic legitimacy is a widely unknown area with regard to theoretical concepts and practical experiences (Risse, 2004; Scharpf, 1999; Zürn, 2000). At the same time, nation states in Europe face a similar set of problems in the area of legitimacy (prominent examples are Belgium and Spain). Again, in this sense, the case of the EU is not as unique as one might assume.

If we look at a typical state in Western Europe, we could state in a slightly simplified way that a democratic system is legitimate because the government is accountable to the citizens, who in turn can participate in the political decision-making process (Crum, 2005, pp. 453–455). This implies a congruence between the rulers and the ruled through mechanisms of representation (Norris, 1997, p. 275). However, when we look at the EU, we have to admit that these mechanisms are violated in the EU. Those who govern the EU are not elected by the EP, nor is the head of the Commission (as a potential counterpart of a Head of State in a member-state like France) elected by the people of Europe (like in a presidential democracy) (Norris, 1997, p. 275). Because of this, these democratisation strategies assume that the principle of democracy requires the transformation of European institutions into a 'normal' parliamentary system with two chambers. The European Council of Ministers would be transformed into a second chamber of territorial representation like the US Senate or the German Bundesrat, and the EP would become a first chamber with the right to elect the members of the Commission (Zweifel, 2002, p. 814). The Commission in this scenario would be a government fully responsible to the EP. The core difference in the presidential variant would be that the government (the Commission) or the head of the government (the President of the Commission) would be directly elected by the citizens of the EU (Hix, 2002, p. 2).

However, there are major problems with the application of this kind of institutional design to the EU. For instance, any majority rule is a considerable threat to the interests of small Member States (Coultrap, 1999). In any case, the majority rule itself has no legitimacy per se and needs to be legitimised. A society where the majority rule is used for democratic decision-making needs a political identity that enables the defeated minority to acknowledge the majority decision, not as foreign rule but as the product of collective self-determination (Scharpf, 1998). However, the political identity of European citizens is weak at the European level (Katz, 2001, p. 54), and substantial value differences and different political cultures among the societies of the Member States are significant obstacles in developing an EU parliamentary system (Fuchs, 2003). On the other hand, structural preconditions on which parliamentary processes depend are lacking. Some scholars have argued that there is no such thing as a European party system (Steunenberg & Thomassen, 2002). If it does exist, as other authors argue (Hix & Høyland, 2011), it is at the very least highly underdeveloped. This makes it very unlikely that a party government could develop in the medium term.

The mass media tends to focus on the nation state rather than the EU. Consequently, there are less European-wide controversies or debates on political issues and policy choices in the European public sphere (compared to national public spheres) (Chrysochoou, 2002; Trenz & Eder, 2004). In conclusion, even if the legal and constitutional preconditions were to allow the EP a greater influence on European legislation, this would not automatically lead to an increase of legitimacy (Anderson, 2002). The democratic infrastructure in Europe as a whole is, at least at this moment, insufficient. That does not mean that this situation cannot change. Meanwhile the social reality does not favour a fully fledged representative democracy in the EU.

Explaining the EU – what it does, why it does it, and its effects – is still a difficult challenge for political studies scholars. It is obvious that there are significant differences between a classic nation-state and the EU. As seen above, the EU has neither a government nor any parliamentary opposition. It also has no effective means of domestic control over compliance with its laws. It largely has to rely on the internal sovereignty of the Member States to implement and enforce its laws. Moreover, the EU as a political system has several characteristics that make internal sovereignty – i.e. the ability of the political system to exercise factual control within a

given territory (Krasner, 1999, p. 4) – very difficult, if not impossible. These characteristics are:

- The EU does not have sufficient legal institutions. The responsibility for the application and control of compliance with EU law rests to a high degree with the legal systems of the Member States. There is no separate system of EU courts equivalent to the federal courts co-existing with state courts in federal states (Piris, 2000, p. 322). The only EU court is the European Court of Justice in Luxembourg, which is a mixture of a constitutional and an administrative court (Shapiro, 1992, p. 124).
- The EU does not have sufficient human resources. In 1999, the EU permanently employed approximately 28,000 people in total. This is quite a lot for an international organisation (in comparison, the UN employs some 9000 people) but it is not that much if compared to the Member States. EU Member States have on average 322 civil servants per 10,000 inhabitants; the EU has 0.8 per 10,000 for all of the EU institutions. They are only enough to maintain a central administration (20,000 of the 28,000 total are employed by the Commission), with few agencies outside Brussels (Nugent, 2006, p. 108).
- The EU lacks sufficient financial resources. The EU budget is only 1.11% of the GNP of the Member States and approximately 2.5% of their total public expenditure, which is incomparable to budgets of EU Member States (Nugent, 2006, p. 390).
- The EU does not have sufficient means of law enforcement typical of a nation-state, such as police forces, customs authorities, or trade supervisory boards (Nugent, 2006, pp. 128–129; Tokár, 2001, p. 6).

Based on these observations, Scharpf suggests understanding the EU 'as a government of governments, rather than a government of citizens (...), [which] is extremely dependent on voluntary compliance' (2007, p. 9). Hence, it is not surprising that many of the traditional institutions of legitimacy are less efficient or even not applicable in the EU context. However, if we were to assume that the EU is only a large international organisation and we were to see the EU solely in its international context, then we would have to accept that there is either 'governance without

government' - to quote the title of an influential volume of Czempiel and Rosenau (1992) - or there is no governance at all (Rhodes, 1996). Consequently, compliance with EU legislation would be based on rational acting motivated by incentives and sanctions or on normative acting by the perceived normative potency of a decision or a rule.

The analytical problem is, however, that the EU fits into at least two categories. It is both an international organisation *and* a political system. Academic literature therefore has often used the term 'sui generis' to stress the deviant case of the EU as an international intergovernmental organisation and a political system at the same time (Laffan, 1998, pp. 236–238) although the term has become much less fashionable as the EU is now more often compared to the USA and other federal states using the analytical tools of comparative politics. From a more general viewpoint the EU is both a polity, 'in which the content of policy is highly contested, as well as an experimental exercise in international cooperation in which the type and degree of cooperation is contest' (Peterson, 2001, p. 293).

As a reaction to this 'state in between', scholars dealing with politics and policy-making in the EU adopted the concept of 'governance' from Public Administration. Following Pierre, governance as a way of governing refers to 'sustaining co-ordination and coherence among a wide variety of actors with different purposes and objectives such as political actors and institutions, corporate interests, civil society, and transnational governments' (2000, p. 3). Jachtenfuchs and Kohler-Koch (1996) first used the term 'multi-level governance' to characterise the European Union system. This term implies cooperative rather than hierarchical relations between different governmental units attached to different territorial levels (subnational, national and European).

The concept of governance has decentralised governing, yet the legitimacy of this mode of governing still rests on traditional institutions for legitimacy. It is no wonder that governance has been criticized for its delegitimising effects (Benz, 2001; Carter & Scott, 1998). Within the existing EU institutions, there is no democratic legitimacy counterpart for governance. So far, however, it has become clear that the search for legitimacy should not be 'trapped in a state-oriented mode of thinking' (Jachtenfuchs et al., 1998, p. 417).

Concluding remarks

The EU as a polity in the making fits well with Lipset's observation that 'the crisis of legitimacy is a crisis of change' (Lipset, 1984, p. 89). It is essential to recognise that the quest for democratic legitimacy is closely connected to the finality of the European integration process. If one sees the establishment of a federal system ('United States of Europe') as the aim of integration, then one has to judge the EU by the nation state's criteria of democratic legitimacy and one therefore also has to deal with the debate about the democratic deficit. On the contrary, if one sees the finality of the EU in the completion of the common market, then one does not have to be too concerned about the democratic deficit. From this perspective, the EU is a quite democratic institution when compared to other international organisations like the World Trade Organization (WTO) or the United Nations (UN). Moreover, the main problem would not be that the EU has a democratic deficit but rather a 'competence surplus' because the competences of the EU have stretched into policy fields beyond the common market. From this perspective, if the EU did not engage in redistributive policies, the democratic legitimacy of the EU would not even be a topic for academic research, let alone a practical issue for the EU.

The more the EU stretches its competences into fields beyond the common market and the more EU policies arouse public controversies, the more it is in need of democratic legitimacy. The input of the EU's citizens has to be allowed to make a difference to the outcome of the process; otherwise, the legitimacy of the EU is eroded. Here lies the crux of legitimacy deficit or competence surplus. Traditional institutions of democratic legitimacy are less capable when we take into account the character of the EU as an international organisation and as a political system with a weak common identity.

What then are the central challenges for creating an institution that enhances democratic legitimacy for the EU? First, democratic legitimacy cannot solely rely on output legitimation. Government by the people has to be part of such an organisational set-up. Second, the EU demos lacks the strong political identity that is needed for input legitimacy based on representative democracy. Therefore, this institution has to be able to deliver input legitimacy without a 'thick' political identity. Third, governance in the EU is based on network co-ordination and coherence

among a wide variety of actors with different purposes and objectives. Legitimacy has to be achieved in such a non-hierarchical environment.

The EU has become a laboratory for governance and international cooperation. By stretching its competences more and more into the field of domestic and international politics, the EU needs to become a laboratory for legitimacy beyond the nation state as well. To a considerable degree, this has already happened. The next experiment in this laboratory has to deal with the question of how *democratic* legitimation could look beyond the nation state in a governance environment. Can democratic legitimacy be achieved in an environment that lacks a 'thick' political identity?

Chapter 2: Participatory Governance

In the last decades, governments in western democracies have increasingly deployed participatory procedures during policy formulation (sometimes subsumed under heading of 'collaborative public management'). Examples are the interactive governance projects in the Netherlands (Edelenbos, 2005; Edelenbos, Klok, & Tatenhove, 2008), the Planungszelle ('planning cell') experiments in Germany beginning in the mid-1970s (Dienel, 2002), the US-American citizen participation programmes in rule-making (Coglianese, 2006) and their citizens' juries, likewise beginning in the 1970s (Crosby, Kelly, & Schaefer, 1986; Ward, Norval, Landman, & Pretty, 2003) or the Danish consensus conferences (Joss, 1998). Although still not a standard instrument, this form of involvement by citizens and other civil society actors has grown in importance. Koppenjan and Klijn describe these participatory procedures as 'a way of decision making in which citizens, users, interest groups as well as public and private organizations that have a stake in a decision are involved in its preparation. It is aimed at creating support for policy proposals, improving the quality of decisions by mobilizing external knowledge and expertise, and enhancing the democratic legitimacy of decision making' (2000, p. 368).

This broader and institutionalised involvement of citizens and civil society actors in policy-making can be seen as a response to at least two wider social developments. First, within the last few decades the idea has gained ground that a cleavage has developed between citizens and their governments (Klijn & Koppenjan, 2000, p. 370). This trend has manifested itself through an increase in voter apathy and their growing affiliation to non-governmental voluntary organizations and a decrease in their affiliation to political parties throughout western democracies (amongst others Barber, 1984; Castells, 1996; Tsagarousianou, 1998). Generally and as mentioned in chapter 1, the democratic systems based on the nation state suffer from similar legitimacy problems as the EU.

Second, modern society is dominated by various social networks in which complex interdependencies prevail among actors who before functioned more independently. Castells (1996) first used the term 'network society' to characterise this state of relations between the state and society. Government has become one actor among others, dependent on the resources of other economic and social actors. These

developments have resulted in new ideas about policy-making in which hierarchical structures are replaced by more horizontal modes of cooperation between governmental and social actors (Kooiman, 1993). In a complex society, knowledge about social problems is widely scattered and therefore it seems ingenuous, if not unrealistic, to claim that one single actor could adequately deal with all kinds of social problems (Edelenbos & Klijn, 2006, p. 119). Fischer goes so far as to regard this shift in the academic discourse from government to governance as 'one of the important theoretical developments in political science and sociology during the past decade' (2006, p. 19).

Unlike in the case of voting, there is no canonical approach in Political Studies to this form of political participation. Unquestionably, while traditions of direct involvement of citizens in policy-making (such as the US-American New England town meeting) exist in various countries, so far there is no widespread tradition and political narrative for the direct involvement of citizens in policy-making across western societies. Generally, the various forms of direct citizen participation are not per se an alternative to liberal, representative democracy. More often than not, they are not conceived as mutually exclusive with democratic forms based on representation.

Against this background, this second chapter looks at some of the effects on democratic legitimacy of public participation - particularly mediated via the internet (i.e. e-participation). It scrutinises under which circumstances it is plausible to claim that internet-mediated forms of public participation in policy formulation contribute to input legitimacy. Although participatory governance in the form of online consultations cannot be the only and ultimate answer to the EU's legitimacy problems, it is nonetheless viable to ask what its contribution could be in enhancing input legitimacy.

The first section of this chapter reviews the concept of participatory governance and legitimacy. Section two introduces deliberative democracy as the normative backdrop for participatory governance. Part three discusses deliberative democracy in relation to the case of e-participation. The last part makes some concluding remarks on e-participation in the context of the EU Commission's online consultation regime.

Enhancing legitimacy via participatory policy-making

As discussed in chapter 1, Scharpf introduced the very fruitful analytical distinction between two sources of democratic legitimacy: input and output orientated legitimacy. Input legitimacy is based on the participatory quality of a decision-making process leading to laws and rules. Output legitimacy on the other hand refers to the capability to increase the welfare of the citizenry.

When contrasting the rationale of participatory governance with the dichotomy of input versus output legitimacy, participatory forms of policy-making aim to counterbalance the decline of traditional forms of input legitimacy by offering new channels of participation in the policy-process. Moreover, tapping societal knowledge and expertise also aims at increasing output legitimacy by improving the problem-solving quality of the outcomes (Boedeltje & Cornips, 2004). The concept of widening the information foundation for decision-making and thus assuming to increase the output legitimacy is somewhat less disputed than the legitimacy increase by widening the participation base. Hence, it is necessary to understand on which type of normative arguments this assumption rests.

While in an ideal world both input and output legitimacy would mutually reinforce their respective positive effects, in reality most institutional arrangements tend to favour, intentionally or not, one type of legitimacy over the other. In the context of participatory policy-making this dichotomy is reflected in the concepts of 'participatory governance' and 'participatory democracy'.

In the context of this thesis, 'participatory democracy' and 'participatory governance' are distinguished as concepts that nevertheless share a couple of features. Participatory governance and participatory democracy have at least three central features in common. First, both concepts share the same crisis perception regarding the lack of democratic involvement in western societies. Second, they both take a sceptical view regarding the performance of hierarchical decision-making in complex environments. Third, they accept that it is necessary to provide information to a wider public before the implementation stage.

Nevertheless, the two concepts also differ in central points. First, they disagree with regards to who should participate in the process. While some participation arenas are unrestricted and open to all who wish to participate (and have the resources to participate), others only address certain groups or particular

stakeholders. Second, they differ on the mode of communication. While in some participatory policy-making arenas participants mainly receive information from government representatives who may then explain their policies in a question and answer session, others are actively deliberative where participants exchange arguments in a structured process.

Participatory governance is concerned with why and how civic participation in policy-making contributes to more capacities of governing bodies for effective problem solving. It amounts to an attempt to improve the problem solving capacities of an established institution 'by means of officially sponsored and managed participation' (Bevir, 2006, p. 452). From a legitimacy perspective, participation aims mainly to contribute to output legitimacy. Participation is conceptualised foremost as a function of governing. Hence, the right to participate stems from certain qualities that a participant has in relation to the policy problem, normally information and the ability to communicate it (Schmitter, 2002, p. 62). Well-communicated information, which is perceived as relevant to the policy in question is the central resource participants should deliver from a participatory governance perspective. A second aspect comes into play at the implementation stage. By securing a consensus over a policy early in the policy cycle, governing bodies hope that policies are more acceptable to the target audience.

The connection between participation and policy influence is controlled by the governing body. Thus, it is not genuinely democratic as such an instrument could occur in any type of government. Participatory governance is not governing 'by the people' as the participation process is an exclusive venture. On the one hand, only a very small group of people potentially has something to contribute and therefore a right to participate. Hence, the process is purposefully elite driven. On the other hand, this governance form provides safeguards against the 'possibility that citizens and associations act as catalysts for change, overturning existing norms, practices, and institutions instead of enhancing their legitimacy and effectiveness' (Bevir, 2006, p. 457).

In contrast, participatory democracy does not derive from a policy problem but from *participation* in policy-making. This can also be perceived as intrinsic participation as opposed to functional participation (Barnard, 2001, pp. 145–149). In this thesis 'participatory democracy' is defined as having a) an authentic interest in creating input legitimacy (as opposed to this being a welcome by-product), b) the

right to participate derived from the status of being a citizen and c) draws on arguments of deliberative democracy theory, particularly the link between political decision-making and inclusive deliberations by referring to a common good.

Summing up participatory governance versus participatory democracy, the following table contrasts the two concepts.

	Participatory governance	Participatory democracy
Function of	governing	democracy
Main resource	information	willingness to participate
Mode of communication	consultation dialogue	deliberative consultation
Right of participation is granted by	governing body	civil rights
Participation can be initiated by	governing body only	both by a governing body or a civil society actor
In case of a trade-off the more important source of legitimacy is	output oriented	input oriented
Agenda setting by the	governing body	the participants

Table 3: Participatory governance versus participatory democracy

Participatory governance and deliberative democracy

Participatory governance does not need normative backing on democratic grounds. If it delivers policies more efficiently then there is no need for further normative grounding. This leaves the question of whether participatory governance measures improve the quality of policies. Giving a straight answer is difficult because a) the empirical evidence does not point in the same direction and b) answering this question poses some serious method problems – mainly that one policy can only be implemented once, so there can be no clear-cut comparison between the policy impact caused by a process with and a process without participatory governance measures. It seems that only two studies have comprehensively addressed the claim that public participation in policy-making is improving output effectiveness. Newig and Fritsch have done a comparative meta-analysis of 47 North American and European case studies on public participation in environmental decision-making (2009). They come to the ambiguous conclusion that 'on the one hand, the “quality” of decisions with respect to more environmentally sound outputs was rather lessened than improved through participation. On the other hand, participation did indeed foster the effective implementation of these decisions' (Fritsch & Newig, 2007, p. 12). Beierle

using a similar research design comes to the conclusion that regarding quality of stakeholder-based decisions 'we should be rather optimistic about the quality of stakeholder-based decisions. Across a diversity of cases, most of the evidence points toward quality decision making from stakeholder processes' (Beierle, 2002, p. 747). Generally Fischer's observation that '[d]espite much of the rhetoric surrounding the discussion of participation, experiences with new forms of participatory governance show participation to be neither straightforward nor easy' (2006, p. 21) is still valid.

Thus, the effectiveness of public participation remains unclear. This holds true even more for the case of participatory democracy that has to deal with more ambitious normative criteria as it needs grounding in some sort of democratic theory to achieve its legitimacy claims. The democratic theory context of participation by citizens and civil society actors in policy-making leans towards deliberative democracy (Barabas, 2004; Bohman, 2004; Dahlberg, 2001; Dahlgren, 2005; Froomkin, 2003; Witschge, 2002). In general, legitimacy in a deliberative democracy is based on popular and inclusive participation with an emphasis on public discussion, reasoning, and judgement (Froomkin, 2003, p. 799). Fearon suggests seeing deliberation as either 'a particular sort of discussion (...) that involves the careful and serious weighing of reasons for and against some proposition or [as] an interior process by which an individual weighs reasons for and against courses of action' (Fearon, 1998, p. 63). Chambers describes it as a '[t]alk-centric democratic theory [that] replaces voting-centric democratic theory' (2003, p. 308). Rather than simple compromise, bargaining or voting, deliberation aims at creating a discourse among all those affected by a decision with a view to creating a common good (Bohman, 1998, p. 400). It is therefore a different form of decision-making from one that merely aggregates preferences by voting for a policy or for political personnel. It is also different from technocratic decision-making, in which aims are defined and the difficulty lies in the quest for the most efficient means to accomplish the aims. 'Deliberative democracy, broadly defined, is thus any one of a family of views according to which the public deliberation of free and equal citizens is the core of legitimate political decision making (...)' (Bohman, 1998, p. 401). Rosenberg sees two traditions of the theory of deliberative democracy. An Anglo-American tradition which leads to an 'ahistorical vision that focuses on a universal set of individual rights and an associated set of political institutional arrangements' and theories closer to

the work of Habermas which 'stress[es] the capacities and goals of individuals (...) and how political institutions can and should function' (Rosenberg, 2007, p. 337).

Habermas and other deliberative democracy theorists argue that the legitimacy potential of deliberation depends on the 'institutionalisation of the forms of political communication necessary for rational political will-formation' (Habermas, 1992, p. 445). This 'includes a careful examination of a problem or issue, the identification of possible solutions, the establishment or reaffirmation of evaluative criteria, and the use of these criteria in identifying an optimal solution. Within a specific policy debate or in the context of an election, deliberation sometimes starts with a given set of solutions, but it always involves problem analysis, criteria specification, and evaluation' (Gastil, 2000, p. 22). Ideally, participants are informed about an issue with all its complexities, uncertainties and trade-offs. Deliberators reason and argue together and question underlying concepts, frames, and values. They also reflect on their own preferences and the arguments of others as well as being encouraged to provide reasons for others (Benhabib, 1996, pp. 71–72). As they act together in a social environment, participants in a deliberative process should become aware of their common membership in a broader group and discovering similarities and differences (Dryzek, 2000, p. 79).

On a practical level, this concept of democracy raises the question of the implementation of its normative standards. Arguably, it is easier to claim, in broad terms, that the political process might benefit from deliberation and participation than to facilitate meaningful interactions between the 'man in the street' and professional policy-makers. Moreover, what can deliberation really achieve? Deliberative approaches tend to provide something more akin to 'soft' advice, feedback or suggestions, which may stimulate public discussion, rather than 'hard' definitive political outcomes (Hendriks, 2008, p. 7). This raises the issue of the nature of the link between participation and discussions on the one hand and policy or public action on the other hand.

Above all, in practice, deliberative decision-making is less deliberative in the sense that certain criteria of the normative literature are not met or only partially met (for a comprehensive discussion see Ryfe, 2005). In this sense, real life deliberation is incomplete (Fishkin, 1995, p. 41). As in many other cases, the normative theory provides a set of regulating ideas for real world implementation, rather than a recipe for best practice. Any democratic decision-making procedure (such as voting or

deliberation) does not automatically lose its legitimising effects if they differ from idealised criteria. For example, a UK general election arguably does not lose its legitimising effects on the selection of political personnel if, say, 10 votes in a constituency are wrongly counted. This might change if a considerable share of the vote goes missing. Also, the circumstances of the decision are relevant. A hundred votes might be crucial in a marginal constituency but irrelevant in a 'safe' constituency. It is reasonable to argue that the more the democratic practice differs from the normative standards of the decision-making procedure, the more the legitimacy potential can be expected to decrease. What remains unclear though is how far an individual or the citizenry as a whole will be willing to accept flaws and incompleteness before decision-making can no longer be regarded as legitimate. Again, when it comes to voting, there is a consensus about what free and fair elections are. Nevertheless, the specific characteristics of what a free and fair election is differ widely among established democratic systems.

While the general definition of deliberative democracy sets the tone, a more applicable and robust set of criteria is needed to assess participation in policy-making on democratic grounds. The existing literature offers a wide range of criteria that ought to be fulfilled in order to maximise the potential of deliberative decision-making. This thesis stresses two dimensions, inclusiveness and learning potential. First, deliberative decision-making requires an openness or inclusiveness regarding the access of participants to the deliberation process and, after entering the process, it needs openness towards the exchange of information and the competition of ideas during the deliberation. Hence, deliberative decision-making has to facilitate a form of respect and sincerity among all participants (Cifuentes, 2002, p. 18).

Second, participants need a development or learning strategy in a deliberation process. A development strategy as an evaluating and learning mechanism is needed to analyse conflicting interests with the objective of negotiating opposing perspectives. This form of socialisation aims to generate cooperation. This ideally leads to a consensual decision by balancing both conflicting interests and the aggregation of participants' interests (Cifuentes, 2002, p. 19). These are robust minimum requirements. Although they may not be sufficient on their own, they can be seen as necessary preconditions for achieving democratic legitimacy.

E-participation and input legitimacy

The ever growing significance of the internet since the mid-1990s has bolstered the idea of facilitating political participation by enabling citizens to connect with one another and, in particular, their elected representatives and policy-makers. Facilitating political participation between government participants, politicians and citizens is a common definition of political e-participation.

Internet based technology is often regarded as a driving factor for a reform of institutional conditions in the political-administrative system (Bimber, 2003; Mälkiä, Anttiroiko, & Savolainen, 2003). Traditional e-government has the aim of decreasing administrative costs and improving efficiency using information and communication technologies. Therefore, it can be seen as a part of administrative reform linked to the New Public Management paradigm (Mälkiä et al., 2003, p. 57). E-governance, as a broader term, goes beyond putting existing administrative processes and services online (Margolis, 2007, p. 12). As discussed so far, the concept of governance, broadly defined, offers a less state centric view on governing while putting emphasis on the involvement of societal actors in the process of governing. Again, e-participation as part of e-governance is not centred on the mere computerisation of existing procedures. The focus lies on developing new mechanisms of participation with the use of ICTs, embedded in a less executive- centred culture of administration. The principal idea is to open-up the policy process and use technologies based on the internet as a mode of communication between citizens and parts of the administration. It is worth mentioning that neither e-participation nor governance (with or without 'e-') is inherently democratic. Nevertheless, ICTs bears potential to facilitate democratic legitimacy.

If look at the reality of e-participation in Europe, the following table adapted from the 'DEMO-net booklet no 1: Introducing eParticipation' (Tambouris et al., 2007, pp. 11–12) gives an overview of forms of political e-participation. They are not all directly concerned with policy-making, though.

Participation channel	Role of ICTs
Community building / Collaborative environments	to support individuals coming together to form communities, to advance shared agendas
Consultation	in official initiatives by public or private agencies to allow stakeholders to contribute their opinion
Deliberation	to support virtual, small and large-group discussions, allowing reflection and consideration of issues
Information Provision	to structure, represent and manage information in participation contexts
Electioneering	to support politicians, political parties and lobbyists in the context of election campaigns
Campaigning	in protest, lobbying, petitioning and other forms of collective action
Mediation	to resolve disputes or conflicts in an online context
Spatial planning	in urban planning and environmental assessment
Polling	to measure public opinion and sentiment
Voting	in the context of voting in election and referenda
Discourse	to support analysis and representation of discourse

Table 4: Forms of political e-participation

A study by Panopoulou, Tambouris and Tarabanis (2009) identified 255 e-participation initiatives in Europe from 18 different countries. Europe consists of 50 sovereign states at the time of writing, so roughly one third of European states engage in e-participation ventures. Out of these 18 countries, only Iceland and Switzerland are not EU members. Of those 255 e-participation initiatives, around 50% originate from the UK and Germany (60 and 61 initiatives respectively) (Panopoulou et al., 2009, p. 8). Around 50% of the initiatives operate at local and national level (31% and 28% respectively), compared to initiatives at the European (19%) and regional level (17%). The rest are classified by the authors as 'international' and 'transnational' (Panopoulou et al., 2009, p. 5).

While the idea of strengthening democracy via e-participation has been widely discussed both on theoretical and, to a lesser degree, on empirical grounds, the overall picture of the current state of research is mixed (Shulman, 2005, p. 112). Mahrer and Krimmer remark that e-participation in the policy process is not commensurate with the rate at which the diffusion of the internet has increased

(2005, p. 30). In addition, the long-term engagement of participants via the internet (as opposed to sporadic participation) is questioned (Komito, 2005). Other publications are generally rather sceptical about citizens' participation in government processes (Coglianese, 2007; Lips, 2007, p. 33). On the other hand, various empirical studies report successful or partly successful applications and regard them as a desirable improvement of 'democracy' (e.g. Chadwick, 2003; Chadwick & May, 2003; Häyhtiö & Keskinen, 2005; Muhlberger & Weber, 2006; Reddick, 2005; Tonn, 2004; Winkler & Kozeluh, 2005; Zwahr & Finger, 2004). While the empirical findings are at least mixed, a majority of authors claim or expect positive effects for 'democracy' by strengthening civic participation.

The mechanisms for how participation translates into 'democracy' are often opaque, however. Hence, the following section aims to clarify the relationship between e-participation in policy formulation and the alleged legitimacy effects. The translation of participation into democratic legitimacy takes place in the participation process. Central factors with regard to the input legitimacy potential of e-participation rest on normative arguments discussed in the literature on deliberative democracy. As suggested above, inclusiveness of the process and a development strategy are procedural requirements in order to legitimise the decision-making process with arguments based on deliberative democracy. This is the normative dimension of the e-participation process.

Moreover, the legitimacy potential can be analysed on the level of citizens, emphasising the individual characteristics of the participants and their legitimacy belief. A third layer of analysis looks at how institutional factors can improve the legitimacy potential of the participation arrangement. Concerning e-participation in the policy process the public administration is the central institution. Moreover, the legitimacy potential of e-participation depends on the characteristics of the media technology employed, which facilitates the participation by offering possibilities for interaction between citizens and professional policy-makers. In this sense, media technology is regarded as an institutional choice.

Although media technology as represented in the iconic 'e-' appears to be the cornerstone in this approach of creating input legitimacy, its significance is debatable (Coglianese, 2007; Kampen & Snijkers, 2003; Noam, 2005; Pratchett, 1999). Like governance or participation, there is nothing inherently democratic about technology. Technology does not make deliberation cheaper or even easier (quite the opposite).

It is still costly to produce a coherent sentence and argument with regard to policy challenges. What technology - in principle - is able to deliver is to lower the transaction costs of participation. Therefore, neither of the components generates legitimacy – it is the quality of the overall process that matters.

E-participation and the EU Commission – an opportunity to gain legitimacy?

As discussed in chapter one, the EU as a whole is a polity, which lacks input legitimacy in particular. According to the standard narrative of the EU's democratic deficit, its core problems are a lack of policy contestation, which is responsive to the preferences of the EU citizenry, and insufficient contestation over political leadership and political personnel.

Thus, could e-participation in EU policy-making be a promising approach to address the input legitimacy deficit? What makes it attractive – especially for the Commission – to seek input legitimacy via an e-participation arrangement? There are three main answers to these questions. First, there is no need for treaty reform as e-participation could be integrated in the existing consultation mechanisms. This is certainly true for any trial phase. Moreover, this means that it can be embedded in an established and potentially accountable process that links participation and policy action. Second, e-participation directly addresses a core problem of democratic legitimacy by potentially offering a forum for policy contestation. Third, as a necessary precondition participation needs individual features, namely the access to internet technology and the motivation to participate in discussing a specific policy proposal. In contrast, societal features, namely an EU demos with a strong political identity that is needed for input legitimacy based on representative democracy, is not a necessary precondition. Therefore, e-participation has the potential to deliver input legitimacy without a 'thick' political identity.

In the light of the EU, insights can be drawn from the previously established use of e-consultations in conjunction with the Interactive Policy-Making (IPM) initiative. The IPM originated from the Commission's White Paper on Governance of 2001. This White Paper outlined under Action XX a new procedure for obtaining feedback – the IPM initiative. It states: 'Information and communication technologies have an important role' (EU Commission, 2001a, p. 11). As a result, the White Paper

stipulated that the EU website was set to evolve into an 'inter-active platform for information, feedback and debate, linking parallel networks across the Union' (EU Commission, 2001a, p. 11). At its core, any consultation starts with one or more consultation document. Issues are ranging far and wide from a specific policy item (e.g. the remuneration of EU regulated financial fund managers, see DG Internal Market, 2010) to the direction of whole policy areas (such as the consultation on the Action Plan on Animal Welfare which is core to the empirical analysis of this thesis) to issue dealing with the institutional design of the EU (e.g. the consultation on the European Citizens' Initiative based on the Lisbon Treaty, see EU Commission, 2009a). We will have a closer look at the Commissions online consultation regime in the next chapter. For now, it is worth pointing out that any EU deliberative decision-making would probably – although potentially affecting about 480 million people – be a highly selective project. For various reasons only very few societal actors are motivated to engage in EU politics. Therefore, it is likely that mainly people with a professional interest will engage in such a process (Ågren, 2001). We can expect this to be even more the case with more technocratic policy questions. In short, it is plausible that in practice, deliberative EU participation would be a selective rather than an inclusive enterprise.

To this end, it is highly questionable if technology can provide *the* solution. It is truly challenging to envisage how user-friendly internet technology could overcome the substantial motivational difficulties, language barriers and knowledge gaps, which impede citizens' e-participation in EU policy-making. To put it differently, it is very costly to substantially contribute to EU policy-making, in most cases probably too costly for 'ordinary' citizens to participate. However, from time to time there may be highly controversial policy-proposals, where people may assume that it is worth the effort to participate. This assumption is backed by findings on the US-American e-rulemaking. Coglianesse cites a non-public US-government report, arguing that '83 percent of the total comments came from just a single proceeding' (2006, p. 956). However, 'highly salient rules tend to be rare. Rules that garner a high level of citizen input presumably also remain rare' (Coglianesse, 2006, p. 958). Therefore, a usually elite driven deliberative e-participation that is, in principle, open to anyone bears legitimacy potential. In such a setting, as we have seen above, knowing that there is a possibility to influence EU policies by participating could have an impact on the citizens' legitimacy beliefs. This is regardless of the fact that the vast majority of

people will probably choose not to participate in most cases, which are not salient enough. Based on above outlined argument, two types of citizens can be distinguished: participants and non-participants. It seems plausible that participation may have an impact on the legitimacy belief of the participant. Moreover, e-participation may also have an impact on the legitimacy belief of non-participants. The possibility of participation, especially if backed-up as a legal right, may influence the legitimacy belief of the non-participants (as in the case of the right to vote and actual voting). Even if a citizen refrains from participation but knows that he or she could participate and have an input into decision making, then this knowledge alone could have effect on the legitimacy belief of the non-participant. We will come back to this argument in the light of legally binding structures and the nature of the Commission's online consultation procedures.

Concluding remarks

Chapter 2 has discussed e-participation as a form of policy contestation for the EU. It aimed to answer the question if and why the Commission's online consultations are, in principle, a viable strategy to enhance the input legitimacy of the EU. There is clearly a reality gap between the expectations invested into participation in the policy-process via the internet and the fact that for now, predominately male and young individuals in the Western world mainly populate the cyberspace created by the internet (Michailidou, 2008b, p. 348). At the same time, the social reality of the internet is changing rapidly. The speed with which this communication medium has become an integral part of the cultural economic and social infrastructure is unprecedented. The theoretical promise of the internet as an accessible medium of communication remains unchallenged due to its 'ability to bypass communication obstacles, as well as geographical and time-related barriers' (Michailidou, 2008b, p. 348).

Neither ICTs in general, nor the internet in particular, will change the nature of democracy – or at least only as much as previous media technology did (Bimber, 1994, 2003). It is just a piece of technology, not the saviour of democracy or the harbinger of doom. In a historical perspective, democracy has been quite resilient to technological change by changing itself. ICTs will alter politics and policy-making just as any other media technology has done before. The degree of change is still unclear

and mainly rests on the eye of the beholder. The internet offers new opportunities, challenges and risks for any kind of polity.

E-participation provides a possibility for gaining access to political processes beyond voting and the narrative of election campaigns. Yet in practical terms, there are major problems with this approach. First, there is no public narrative for online participation. For most people e-participation is a rather esoteric process. However to realise its legitimacy potential it should be as accessible as elections are in a liberal democracy today. Generally, it is fair to assume that 'citizens can participate but that participation has to be carefully organized and facilitated, even cultivated and nurtured' (F. Fischer, 2006, p. 21).

The chapter has also identified the problem of inclusiveness versus costs. From a government perspective, one can expect that the more inclusive a consultation is (by bringing the mass public into the process), the less valuable the average single input of a participant will be. Hence it becomes costly to produce policies. On the other hand, from the participant's side, it is costly to participate so that inclusiveness is difficult to achieve. Moreover, whether there are long-term output performance effects through participation, which may compensate for alleged short-term performance deficits because of less effective policy formulation, is unclear.

One major cost factor is that online consultations are text based. Inclusiveness is therefore difficult to realise vis-a-vis participants with less education and literacy skills, or citizens who generally find it rather difficult to deal with written materials (Fishkin, 2005, p. 8). This problem is likely to be exacerbated by the foreign language barrier for some EU citizens. In a not too distant future, and with changing internet technology computer, mediated face-to-face deliberation may become feasible and more manageable. This could make it easier for less literate people to participate. Whether such technology will become relevant for e-participation in policy-making, remains to be seen. For now, we are stuck with a text-based internet for policy consultations.

Arguably, the Commission's online consultations do not represent a radical departure from elite forms of policy-making given that they are not driven by inclusiveness and the idea of deliberation. However, could they form a nucleus for something 'bigger'?

Chapter 3: The Commission and Societal Actors in Policy-Making

The last chapter introduced participation in the policy-making process as a strategy to enhance the input legitimacy of democratic systems. Particularly since the publication of the Commission's White Paper on EU governance in 2001, participation in policy-making has been widely debated as a means to tackle the EU's democratic legitimacy problems. The main area where the EU invites outside participation is the Commission's consultation procedures. Hence, this chapter looks in more detail at the participation arrangements in these procedures. It clarifies the alleged legitimacy effect of civil society participation as well as its particular shortcomings, rooted both in the structure of the Commission's consultation process and the nature of CSOs. In the light of its various shortcomings, the chapter then addresses EU e-participation via online consultations.

In matters of participatory governance, the Commission prides itself of 'a long tradition of consulting interested outside parties when formulating its policies' (EU Commission, 2002a, p. 3). In fact, the EU subsidizes interest representation by what it calls civil society organizations (van Deth, 2008, p. 244). According to Greenwood, '[t]he most striking features of the institutionalisation of organised civil society interests in the EU are: the role of EU political institutions in interest-group formation and maintenance, including substantial funding of non-business groups; the incorporation of selected groups in formal and informal political structures of EU political institutions; and the use of procedures to empower and enhance the role of groups. Around 1,500 (some guesstimates go to 2,500) groups constituted in law organized at EU level embrace virtually every imaginable spectrum of civil society' (Greenwood, 2007, p. 342). Financially, the Commission 'spends around 1 per cent of the EU budget, around €1 billion annually, in funding interest-group activities. Virtually every one of an estimated constituency of 300 citizen interest groups organised at EU level receives EU funding (Greenwood, 2007, p. 343).

Kohler-Koch and Finke (2007) suggest distinguishing three generations of relations between the EU (in particular the Commission) and the civil society. The first 'consultation generation' lasted from the 1960s through the 1970s, the second

'partnership' generation through the 1980s and early 1990s. The third 'participation' generation has begun in the late 1990s.

According to this conceptualisation, the first generation was characterised by a 'rather intense, yet informal, irregular and ad hoc dialogue addressing a comparatively selective circle of societal actors' (Quittkat & Finke, 2008, p. 187), mainly trade unions, employers' and farmers' associations. In this generation, '[t]here was hardly any dispute concerning the benefits of cooperation, and procedures were mostly informal, allowing the Commission the largest possible degree of discretion in its exchange with societal actors' (Quittkat & Finke, 2008, p. 187). The second generation was characterised by both the broadening and deepening of civil society involvement. The participation base was widened by including actors concerned with issues such as human and women's rights as well as environmental and consumer protection. Their participation became more formalised via, for example, the establishment of stakeholder forums such as the Platform of European Social NGOs ('the Social Platform') or the Commission's 'Civil Dialogue' programme (Quittkat & Finke, 2008, p. 188). The current generation is characterised by the drive for more openness and transparency and, in particular, an explicit 'participatory' momentum aiming to enhance the democratic legitimacy of the EU via civil society involvement in EU policy-making (Quittkat & Finke, 2008, p. 189).

At the time of the White Paper in 2001, the Commission saw the legal basis for Commission consultations in Protocol 7 relating to the application of the principles of subsidiarity and proportionality which is annexed to the Amsterdam Treaty and states that 'the Commission should [...] consult widely before proposing legislation and, wherever appropriate, publish consultation documents' (EU Commission, 2002a, p. 4). More recently, the Treaty establishing a Constitution for Europe (2004), which was never ratified, made a direct reference to participatory democracy. Article I-47 ('The principle of participatory democracy') was to become one of the core principles of the EU. The article stated that 'institutions shall, by appropriate means, give citizens and representative associations the opportunity to make known and publicly exchange their views in all areas of Union action' and that they 'shall maintain an open, transparent and regular dialogue with representative associations and civil society' (Article I-47, 1,2). It was also to give EU citizens the power to ask the Commission for a policy initiative (Article I-47, 3). This was an article that survived and was later included in the 2009 Lisbon Treaty (2007) (the so-called 'Citizen

Initiative'). Yet, the elaborate reference to participatory democracy was not included in the Lisbon Treaty. As the constitutional basis for EU input legitimacy, only 'representative democracy' remained in Article 10,1 ('The functioning of the Union shall be founded on representative democracy'). The Lisbon Treaty nevertheless makes implicit references to participatory democracy in Article 10,2 ('Every citizen shall have the right to participate in the democratic life of the Union. Decisions shall be taken as openly and as closely as possible to the citizen') and in Article 11, 1 ('The institutions shall, by appropriate means, give citizens and representative associations the opportunity to make known and publicly exchange their views on all areas of Union action'). Trez has commented on this decline in the importance of participatory democracy in the transition from the Constitutional Treaty to the Lisbon Treaty 'that the road to Lisbon was also marked by a trade-off between representative and participatory democracy. Whereas the Convention in 2003 agreed on an equal footing between participation and representation as the founding principles of European democracy, the Lisbon Treaty abandoned the explicit reference to participatory democracy (...). With this it was made clear that participatory elements of democracy should be considered mainly as an auxiliary to EU-governance but not as an autonomous principle on which the democratic legitimacy of the EU could be founded' (Trenz, 2008, p. 54).

One major step stone in the difficult journey from the Constitutional Treaty to the Lisbon Treaty was the Commission's 'Plan D for Democracy, Dialogue and Debate'. With regard to participatory democracy, the document claims to 'set out a long-term plan to reinvigorate European democracy and help the emergence of a European public sphere, where citizens are given the information and the tools to actively participate in the decision making process and gain ownership of the European project' (EU Commission, 2006a, pp. 2–3). The document also explicitly refers to citizens' participation via online consultation (EU Commission, 2006a, p. 8).

Apart from within its consultation regime, the Commission has supported three other forms of participation that can be summarised under the heading 'participatory democracy'. First, so-called 'citizen conferences', which are closely modelled on the Danish consensus conferences (Joss, 1998) and the German planning cell approach (Dienel, 2002). Between 10 to 30 non-expert citizens discuss a policy problem with experts, aided by moderators. The non-expert participants are given access to

relevant information before and during the conference, which is organized over a period of six to eight months.

Five such conferences have taken place in the EU so far. They have dealt with new regional and urban sustainability approaches in Europe (in 2005, as part of the 'Raising Citizens and Stakeholders' Awareness and Use of New Regional and Urban Sustainability Approaches in Europe' project), brain science (also in 2005, organised by the Belgium King Baudouin Foundation), the rural areas in future Europe (from 2006 to 2007, sponsored by a consortium of mainly public bodies including the Commission via DG Education and Culture) and with the future of the EU more generally (in 2006, also organised by the King Baudouin Foundation) (Abels, 2009, p. 8; Boussaguet & Dehousse, 2008).

The second form of participation is the 'deliberative poll' (also 'deliberative opinion poll'), a concept developed in the late 1980s and early 1990s by James Fishkin. It is a combination of small group discussions with a relatively large number of participants (in the two EU cases, 327 and 348 respectively) and a random sampling of public opinion. It aims to combine the best of both worlds: the representativeness of opinion polls (participant selection aims to be representative) and the in-depth and informed deliberation of small group discussions (Fishkin, 2009).

So far, two deliberative polls have taken place. The first, in 2007, 'Tomorrow's Europe' dealt with a variety of social, economic, and foreign policy issues (Luskin, Fishkin, Boucher, & Monceau, 2008). It involved citizens from all Member States and facilitated deliberation in 22 different languages. The second deliberative poll ('Europolis') took place in the context of 2009 EP elections. It aimed to shed light on how the election results might have been different if 'informed voters' had voted for the EP (Boucher, 2009; Olsen & Trenz, 2010).

As a third forum of participation, the Commission maintained the Futurum 'Future of Europe - Debate' website as a portal for information and discussion on the constitutional process. The website allowed an internet forum-style discussion on aspects of Convention on the Future of Europe in a moderated forum. The idea was that the discussions taking place there would inform the process of drafting a European constitution (which in the end was nonetheless called 'treaty') (Wodak & Wright, 2006; Wright, 2007).

Yet, these approaches pose one main problem which is exactly how deliberation and discussion are actually linked with policy impact and public action. How can it be

ensured that participation matters? With regard to the policy impact, one might claim there is not much difference between a well-documented public discussion and a deliberative poll. Although the Futurum forum was aimed at informing the convention process, this did not happen simply because 'the online debate was not listened to, summarized or otherwise fed into the Convention process' and because 'the Commission and Parliament could not agree the structure and details of this process, as well as issues about whose responsibility it was' (Wright, 2007, p. 1172). In contrast, the main comparative advantage of the participation in the Commission's consultation process is that it is an established, mutually accepted and effective way for non-state actors to participate in the policy-making process (Kohler-Koch, 2009). At least rhetorically, the explicit link between consultation and policy impact is clearly announced in EU and Commission publications (EU Commission, 2002a).

The Commission's consultation regime: 'participatory democracy' or 'participatory governance'?

To analyse the Commission's approach to its consultations we can use the distinction between 'participatory democracy' and 'participatory governance'. The last chapter introduced these concepts as ideal types for analysing participatory policy-making. The Commission hopes that participation enhances the quality of the decisions while at the same time improving the legitimacy of the EU governance process. Hence, consultation processes as part of democratic governance incorporate both democratic issues (input legitimacy) and governance performance issues (output legitimacy). In this sense, the Commission aims at achieving participatory governance benefits. In addition, the Commission - at least rhetorically - seeks to go one step further by introducing participatory democracy elements via its consultation procedures.

Alongside the legal texts of the treaties, the Commission's White Paper on Governance remains the key document on participation at the EU level as it focuses in particular on civil society participation. Its starting point is the Commission's perception of the EU institutions as having enjoyed a good performance record. This however is in stark contrast to the disenchantment of EU citizens with the EU. According to the Commission, many EU citizens do not adequately value the achievements of the EU (2001a, p. 7). Here the White Paper employs the

'information argument' according to which citizens lack information and/or are affected by misinformation and, thus, do not judge the EU adequately. The White Paper then goes on to suggest more participatory governance in the EU political process as a remedy. A central feature of this governance process is 'a less top-down approach' (2001a, p. 4) through participation of civil society in order to 'connect Europe with its citizen' (2001a, p. 3), which is also 'more inclusive and accountable' (2001a, p. 8).

While the Commission clearly embraces the idea that civil society positively contributes to democratic legitimacy in the EU, it is less clear what concept of civil society the Commission uses. Although not stating this explicitly, the White Paper follows a modern, liberal pluralist tradition of civil society. According to this view, 'civil society has been conceived as a public realm of action in the triangle between the state, the economy and the private sphere, constituted by autonomously created associations and organisations through which civic interests are formed, self-government is learned and exercised' (Liebert & Trenz, 2008, p. 12). Crucially, civil society should have the power to limit the 'uncivil power' exercised by some forms of economic and political powers (Habermas, 1992).

Instead of explicitly qualifying the alleged functions of civil society, the White Paper tries to describe how a 'good' CSO should look like. Such an organisation should be 'representative, accountable and capable of following open procedures in formulating and applying agreed rules' (2001a, p. 21) as well as being able to 'follow the principles of good governance which include accountability and openness' (2001a, p. 15). Besides, the White Paper names organisations, which the Commission regards as part of civil society: trade unions, professional associations, churches, charities, grass-roots organisations and NGOs (2001a, p. 15), the latter a catch all phrase for all aforementioned organisations. This hints at a rather eclectic approach to civil society as a collective of non-governmental bodies. The Commission dubs this an inclusive approach to civil society. Hence, conceptually, the White Paper does not add anything new (Armstrong, 2002, p. 128). What it does make clear, however, is that organisations are at the centre of civil society and not individual citizens.

Yet, what the White Paper does not acknowledge is that CSOs are multifaceted entities. They are not by their very nature committed to 'good causes' (as perceived by the mainstream of society) in the sense of promoting various aspects of common welfare in a civic, peaceful and maybe even cosmopolitan way. In contrast - as

Liebert and Trenz comment - CSOs can of course support, and be part of, 'violent, xenophobic or anti-Semitic networks' or engage in 'varieties of outright particular or even anti-public interest' activities (Liebert & Trenz, 2008, p. 4). '[T]he dark side of civil society (...) [which] confound[s] the conventional wisdom about the relationship between civil society and democracy' (Armony, 2004, p. 15) is well documented. Writing about US-American civil society, Armony notes that 'Members of the Aryan Brotherhood, the Aryan Circle, the Texas Syndicate, the Crips, the Bloods, and the Confederate Knights of America — all prison gangs in Texas — attend meetings, elect officers, have a system of rules and sanctions, exercise internal accountability, make the bulk of their decisions democratically, distribute benefits according to merit, and write their own constitutions. Members learn to trust each other and thus discover the benefits of cooperation and reciprocity. They develop organizational skills by handling paperwork and taking responsibility for specific tasks. They also learn to exercise their rights (...)' (2004, p. 20).

Based on the White Paper, it seems that the Commission wants as much freedom as possible to experiment with different forms of civil society participation in their consultation regime. This is achieved by a severe lack of normative and critical conceptual grounding in the functions of civil society actors, which – in all their diversity - they can, may or should have (Liebert & Trenz, 2008, p. 8). In contrast, the White Paper regards the participation of CSOs as a harbinger of democratic governance and concludes, therefore, that their involvement in whatever form can only result in enhancing input legitimacy.

The White Paper suggests five abstract principles (openness, participation, accountability, effectiveness and coherence) which it regards as essential for democratic governance (2001a, p. 10). These principles appear, however, to be mainly rhetorical devices. The actual principles of civil society participation areas are - as it becomes clear in White Paper and the Commission guidelines on how to conduct consultations - that first, consultations are initiated by the Commission; second, that they do not produce binding decisions; third, that participating organisations need to be representative; fourth, that access to the consultation is granted by the Commission; and finally, that consultation outcomes are not legally binding. When contrasting these practical principles of 'participatory democracy' with the 'participatory governance' concept, it becomes clear that what the White Paper

effectively proposes is participatory governance, characterised in essence by four main criteria.

First, the consultation is managed and controlled by the Commission. Crucially, the Commission both decides whether (or not) to initiate a consultation and who has access to it. This is very much in line with the logic of the post Maastricht Treaty framework, which continued to grant the sole right to initiate EU legislation under the first pillar to the Commission (while other institutions may file a request to initiate a policy). According to the 'General principles and minimum standards for consultation of interested parties by the Commission' and concerning access to participation, the Commission needs to take all interested parties into account (EU Commission, 2002a). Again, although the White Paper often refers to citizens, when it comes to consultations, the dominant terms are 'interested parties' and 'stakeholders' while leaving it to the Commission to decide which groups to include under such headings.

Second, although the Commission considered whether the civil dialogue needed a treaty article as a legal foundation (Armstrong, 2002, p. 120), the Commission made it clear that it had no intention of making any consultation procedure legally binding. The consultation itself is not legally binding in two ways, first with regard to the need to initiate a consultation and second, concerning the procedural norms of the consultation itself. The Commission names four main reasons for that. First, the Commission fears over-bureaucratisation. Legally binding structures could hamper 'creativity and free expression' (EU Commission, 1997, p. 8) as the Commission's report on 'Promoting the Role of Voluntary Organisations and Foundations in Europe' put it. Second, the Commission fears being over-burdened with procedural requirements which 'would be incompatible with the need for timely delivery of policy, and with the expectations of the citizens that the European Institutions should deliver on substance rather than concentrating on procedures' (2002a, p. 10). Third, the Commission fears that a 'proposal could be challenged in Court on the grounds of alleged lack of consultation of interested parties' (2002a, p. 10). Fourth, the Commission fears that institutional responsibility could become blurred between the Commission's 'own initiative prior to the adoption of a proposal, and the subsequent formalised and compulsory decision-making process according to the Treaties' (2002a, p. 10). In contrast, the Commission prefers 'a flexible but systematic approach' (EU Commission, 1997, p. 8) dubbed as non-legally binding 'extended

partnership arrangements' (2001a, p. 17) with CSOs in order to formalise relationships (Greenwood, 2007, p. 346).

Third, although the White Paper argues several times that participation should be encouraged 'throughout the policy chain' (EU Commission, 2001a, p. 10), concrete proposals actually focus on the consultative, pre-decision stage. While the White Paper can be seen as an acknowledgement of the partiality of legitimacy based on the representative institutions in the EU, the White Paper aims to reconcile and even support representative institutions with civil society participation at EU level. Indeed, the Community method under the old first pillar is at the centre of the White Paper (i.e. the Commission's monopoly of legislative initiative with the general use of qualified majority voting in the Council combined with the decisive role of the EP in co-legislating with the Council). It makes a crucial distinction between the actual decision - which is reserved for the elected bodies (the Council and the EP) - and the rest of the policy process (Magnette, 2003, p. 150).

Moreover, if we take the notion of 'participation throughout the policy chain' seriously and therefore include the implementation and post-implementation stages, the mechanism through which the participation of citizens and civil society takes place in the latter stages of the policy chain is even more elusive in the White Paper.

This leads us to the fourth criterion. The Commission states in various documents that the representativeness of the organisation is a central quality for any organisation to participate. What does the Commission understand by representativeness? Based on the Economic and Social Committee eligibility criteria for its 'civil dialogue', which are cited in the White Paper (Economic and Social Committee, 1999; 2001a, p. 14), representativeness at European level means that 'a European organisation must: exist permanently at Community level; provide direct access to its members' expertise (...); represent general concerns that tally with the interest of European society; comprise bodies that are recognised at Member State level as representatives of particular interests; have member organisations in most of the EU Member States; provide for accountability to its members; have authority to represent and act at European level; be independent and mandatory, not bound by instructions from outside bodies; be transparent, especially financially and in its decision-making structures' (Economic and Social Committee, 2001, p. 4).

It seems to be intuitively right to distinguish between groups that are directly involved with the implementation, groups that are directly affected by a policy and

groups that just have a more or less general interest in a policy. However, if participation is perceived as an inclusive participation arena, the quality of a contribution is measured within the participation and not by ex-ante criteria. Of course, a participant can acquire a good reputation, for instance by feeding accurate information into the process. But again, this reputation is built up during the participation process. Participatory forms of democracy emphasise the quality of the process as opposed to the quantity of participation. Another advantage - from the Commission's perspective - in privileging representative organisations is that they can provide opinion or input aggregation for the Commission. Again, this is something that the participation process itself should deliver and not something that is delivered in advance.

Looking beyond the description of the White Paper, representativeness can be seen as the possibility of creating legitimacy based on representation arguments: representation in its basic form may increase the legitimacy potential of an institution if those who represent are 'acting in the best interest of the public' (Pollak & Slominski, 2002, p. 9). Thus, the criterion of representativeness of course has another function: excluding the 'unwanted', 'uncivil' CSOs from the participation process.

Trenz also brings-up the question of who supervises the Commission in their decisions on representativeness. He comments that the 'self-description of the role of the Commission as the guardian of representation by European civil society has remained surprisingly unchallenged within the academic community and even within civil society at large' (2009, p. 37). The question of who decides on representativeness becomes even more difficult if we acknowledge the complexity of legitimacy claims based on representation. Lord and Pollak point out that those who represent can claim to do so by referring to selection procedures such as election, appointment or nomination, thus 'based on different grounds (territorial, institutional, ethnic identity; expertise; common interests) with widely different mandates and tasks leading to different representative styles (e.g. trustee, delegate, politico and modes of responsiveness (policy, service, allocation, symbolic responsiveness) as well different forms of accountability (e.g. legal, political, economic)' (2010, p. 126).

Moreover, representation is of course the central concept of representative democracy and as such, it is the main source of legitimacy for the EP and the Council. This leads to an inconsistent argument. On the one hand, the Commission

does not want to interfere with the legitimacy potential of the EP and the Council. On the other hand, it tries to use concepts, which, structurally, do not fit.

Summing up, the Commission expects CSOs to 'tighten up their internal structures, furnish guarantees of openness and representativity, and prove their capacity to relay information or lead debates in the Member States' (EU Commission, 2001a, p. 17) if they want to participate. The following table summarises this section in terms of participatory governance versus participatory democracy.

	Participatory Governance	Participatory Democracy	Comment
Participation in the Commission's consultation regime is a function of	governing	democracy	Rhetorically both, practically so far mainly a function of governing.
Main resource participants have to offer	information	willingness to participate	Information- most documents see participants as service providers for policy-making.
The mode of communication is	consultation dialogue	deliberative consultation	Consultation with some dialogue
The right of participation is granted by	governing body	civil rights	Consultations are not legally binding, there is no right for consultation or participation in consultations
Participation channel can be initiated by	governing body only	both by a governing body and a civil society actor	De-facto only by the Commission
In case of a trade-off the more important source of legitimacy is	output orientated	input orientated	Output orientated
Policy agenda setting is done by the	governing body	citizens	The Commission's DGs have so far initiated all consultations

Table 5: Participatory governance or participatory democracy in the Commission's consultation

The White Paper leaves the impression that it pays lip service to participation and democracy but does not offer new ways of connecting the EU with its citizens. In addition, civil society seems like a pool of service providers for EU governance rather than a starting point to 'get citizens more actively involved in achieving the Union's objectives and to offer them a structured channel for feedback, criticism and protest' (2001a, p. 15), as the White Paper itself suggests.

In the same vein Magnette, comes to the conclusion that 'in spite of these ambitious objectives, the concrete reforms suggested by the White Paper focus on a limited conception of participation: It will probably remain the monopoly of already organised groups, while ordinary citizens will not be encouraged to become more active' (2003, p. 146). Nevertheless, he sees it as a step towards a more democratic EU because 'actions undertaken by mobilised minorities can benefit the whole citizenry, and strengthen both administrative and political accountability' (Magnette, 2003, p. 146). Armstrong regards the White Paper's 'discourses of democracy, governance, and civil society (...) [as a] rather oversized constitutional cloaking for the thin frame of improving transnational consultation processes' (Armstrong, 2002, p. 12). Höreth concludes that the consultation practice, as suggested by the White Paper, is 'limited to those citizens and groups who benefit from enough intellectual and financial resources to influence EU politics and policies' (2001, p. 15).

Rhetorically, the issue of participation in the Commission's policy-making has become engrained in debates since the publication of the White Paper. Yet, the answer to the question of how citizens are able to participate in a constant and direct open dialogue with EU officials and policy-makers remains unclear. Citizen's participation is not mentioned for instance in the 2006 Communication 'A citizens' agenda - Delivering results for Europe' (EU Commission, 2006b). The White Paper on a European Communication Policy of the same year, while stating that '[c]itizens should have a right to express their views, be heard and have the opportunity for dialogue with the decision-makers' (EU Commission, 2006c, p. 6) does not explain how citizens can exert this right. The picture is similar in the Commission's 'Communicating Europe in Partnership' (2007a) communication or in the 'Information note from Vice President Wallström to the Commission Plan D - Wider and deeper Debate on Europe' (EU Commission, 2006d).

There is a rhetorical shift from a mainly information-orientated policy ('if citizens do understand the EU better they would judge it more fairly') to a partly

participation-orientated policy. So far, however there is no clear and coherent strategy for ensuring that citizen's participation has a coherent impact on the on the everyday working life of the Commission's policy-making (Michailidou, 2008b, p. 252). Does participation rhetoric only change the way the Commission communicates itself or has it also changed the Commission's policy-making process?

Since the publication of the White Paper more than ten years ago, various research projects have studied the issues raised by it. In particular, research which has emerged out of the European CONNEX network ('connecting excellence on European governance', dedicated to the analysis of 'efficient and democratic multilevel governance in Europe') from 2004-2008 and the RECON network ('reconstitution democracy' in Europe) from 2009-2011 evaluated the Commission's governance outline of the White Paper. The recent literature could add some very useful insights to the functioning of the Commission's participatory governance regime. It mainly confirmed earlier work and assumptions about the 'participatory turn' in EU governance. We will concentrate here on three aspects: First, regarding CSOs and their provision of useful expertise for the Commission; second, related to CSOs as democratic transmission belts; third, regarding citizens' perception of their duties as a good citizen.

First, the Commission welcomes participation predominately via CSOs. This follows from the institutional outline of the participatory regime and therefore, is hardly surprising. It is interesting to note though that CSOs are often happy to participate and provide useful expertise for the Commission. According to Kohler-Koch, the plurality of voices heard has increased (2008, p. 284). Quittkat and Finke (2008) conclude that CSOs profit most from the introduction of new participatory instruments. Without doubt, the Commission and its consultation regime do not only provide them with money but also with a sense of purpose.

Second, CSOs are not able to act as a transmission belt between citizens and the EU mainly due to the professionalisation of these organisations and a lack of interest in EU affairs on the part of their members. This confirms Warleigh's assessment made in 2001: 'I argue that NGOs are, currently at least, unable to act as catalysts for the Europeanization of civil society, since their internal governance procedures are insufficiently democratic. I found no evidence of significant political socialization by NGOs (...). [They] usually make little or no effort to educate their supporters about the need for engagement with EU decision-makers (...). Moreover – and perhaps

more worryingly – I found no evidence that supporters are unhappy with this passive role, displaying at best little interest in the EU (...)’ (2001, p. 623). These findings are also confirmed by Sudbery (2003) and Jordan and Maloney (2007, pp. 160–161). The problem with CSOs as channels of participation is also emphasised by Greenwood and Halpin’s (2007) research on their membership policy. They point out that almost all European associations are organised as associations of national associations, which generally do not admit individual citizens as members. Moreover, this structural remoteness from the membership base of key EU civil society actors is actually encouraged by the Commission itself (Greenwood & Halpin, 2007, p. 189). As mentioned above, the status of being an EU association encompassing various national associations ensures compliance with a representativeness criterion, which the Commission regards as an essential feature for democratic governance.

Third, citizens do not regard it as part of their duty of being a good citizen to participate in EU CSOs, which in turn participate in the Commission’s consultation regime. This aspect is highlighted by van Deth (2008). He looks at the perceptions that different actors have on what is a good citizen? Instead of concentrating on institutional arrangements and their normative implications, he analysed the normative qualities of a good citizen from the actor’s perspective.

Van Deth concludes that citizens are unlikely to participate via CSOs because ‘[a]part from casting a vote, ordinary citizens do not support the idea that a “good citizen” is necessarily characterised by political and social engagement’ (2008, p. 253). His findings are in line with the very influential book ‘Stealth Democracy’ by Hibbing and Theiss-Morse (2002). Analysing US-American participation, they argue that the ‘last thing people want is to be more involved in political decision making: They do not want to make political decisions themselves; they do not want to provide much input to those who are assigned to make these decisions; and they would rather not know all the details of the decision-making process (...) and would much prefer to spend their time in non-political pursuits’ (Hibbing & Theiss-Morse, 2002, pp. 1–2).

The following table compares European policy-makers and European citizens in respect of their image of a ‘good citizen’ highlighting the discrepancy between the Commission’s expectations and the reality according to van Deth’s analysis of survey data (2008, pp. 244, 255).

	European policy-makers	European citizens
Degree of political participation	uses the opportunities of representative democracy, supports CSOs	mainly casts a vote in elections but is not involved in other political activities
Perceived role of the civil society	supports the role of CSOs in decision-making processes; direct involvement of citizens is superfluous	supports the role of civil society organisations in decision-making processes; direct involvement of citizens is not needed
Impact on the attitude towards the EU	develops (more) positive orientations towards the EU	is unlikely to develop (more) positive orientations towards the EU

Table 6: What is a good European citizen?

The first (degree of political participation) and second aspect (perceived role of civil society) are not contested and reflect the current state of empirical research in the field. Yet, the third point can be disputed. This stems from the fact that van Deth does not go into detail on the reasons why citizens do not see it as their duty to participate in the political process beyond voting.

Why participation at all?

The Commission aspires to attract participation either via CSOs and/or directly by citizens. The research of van Deth's and others suggests that citizens do not want to participate; that is, if the Commission wants participation it needs to offer incentives to encourage it. In order to understand these possible incentives we need to understand the motivations for participation, which will be addressed in the following section.

Arguably, the most influential argument on the motivation for political participation originated from rational choice theory - namely rational ignorance (Aranson, 1989, pp. 104–106; Downs, 1957). It aims to explain why citizens do not vote and have a low level of information about political issues. The rational ignorance argument suggests that people do not make informed political choices or participate in the political process because the benefits of participation do not outweigh the costs of participation. For example, if a citizen has one vote out of thousands then the chances are marginal that her or his single vote is relevant. Hence, why should she or he invest resources to make an informed choice or even bother to vote at all?

However, participation, and even more so participation in the policy-process, depends heavily on citizens being informed and active.

The book 'Stealth Democracy' (Hibbing & Theiss-Morse, 2002) employs a refined rational ignorance argument for explaining (non-)participation. It draws its arguments from social psychology. It suggests first, that people try to avoid conflict situations and, that second, more participation increases the risk of conflict, which third, raises the costs of participation prohibitively without any increase in benefits. Hence, even if there were meaningful participation channels citizens would have little or no interest in using them and instead, would delegate political decision-making solely to competent elites (see also Theiss-Morse & Hibbing, 2005).

Perceived from the rational choice informed perspective, political participation thus constitutes a theoretical puzzle. The bulk of literature deals with this in the context of elections. Nevertheless, as Schlozman, Verba, and Brady comment, the 'logic applies to almost any kind of political activity - protesting, campaigning, making electoral contributions, whatever' (1995, p. 3). The phenomenon of rational ignorance with regard to electoral turnout is also known as the 'paradox of voting' (not to be confused with Arrow's 'voting paradox'), a phrase originally coined by Downs (1957). Consequently, Aldrich has claimed that the 'paradox of voting' is 'the major example of the failure of rational choice theory' (Aldrich, 1993, p. 247).

From a theoretical perspective, three main strategies can be applied to solve the puzzle. First, by adding altruism to the conception of citizens' behaviour so that social welfare becomes part of the individual cost-benefit calculation (Jankowski, 2002, 2007) or, as Edlin, Gelman and Kaplan have phrased it: 'If one cares about others, it can be rational to vote' (Edlin, Gelman, & Kaplan, 2007, p. 295). The second strategy is to conceptualise participation not solely as costs but partly as benefits, too. This means taking into account benefits available only to those who take part. This is the core argument of Schlozman et al. (1995). These benefits could be derived from performing their civic duty as a citizen or expressing their political preference. Schlozman et al. explain that '[j]oint activity can bring social rewards - the chance to interact with other people or to gain respect from others involved - or can be fun or exciting. Moreover, performing the act may be intrinsically gratifying: participants may derive a sense of satisfaction from promoting a cause in which they believe (...)' (1995, p. 5).

What also happens by rephrasing the argument in this way is that benefits become connected to the cost and disconnected from the outcome. These benefits are sometimes termed expressive rather than instrumental, the benefit deriving from the performance of the act, not from the consequences of the act. In these cases, costs and benefits are hard to disentangle, for paying the cost itself becomes a benefit. In the same vein, Blais - as part of his critique of rational choice approach - identified benefits connected with participation itself and not simply from the outcome of participation-dominated decisions (2000).

If we look at the core argument of 'Stealth Democracy', the causal relationship between apathy and participation channels is not clear – why should the practise of meaningful participation not change the perception of conflict? Why should it not lead to a re-evaluation of conflict and participation – as a problem in its own right and regarding its importance? Why should the competence of dealing with conflict not increase - in terms of avoiding conflict or minimising unwanted consequences of conflict? Stealth Democracy's empirical argument likewise has to deal with conflicting results. While alienation is certainly a phenomenon often analysed in research in Political Studies, the opposite has been on the record, too. Fishkin, writing on deliberative polls, sums-up this alternative view as follows: 'Our experience is that voters welcome the opportunity and view it as something that transforms their connection to the political process and their sense of efficacy and likelihood of continuing political involvement. Given the right institutional design this problem [rational ignorance] can be overcome' (2005, p. 20). Therefore, in contrast to the claims of van Deth (2008) and Hibbing and Theiss-Morse (2002), the jury on the nature of political efficacy and the participation of citizens is still out.

So how do we get out of this in practical terms? First and foremost, we have to realise that rational ignorance is not a moral failing with regard to norms of civic duty. It is not the lack of moral integrity or complex human nature that makes citizens employ the strategy of rational ignorance but a rather simple cost/benefit calculation – at least if we accept the utilitarian foundation of the argument and do not simply abandon the economic arguments to turn solely to normativist-culturalist explanations that stress individuals' feelings of normative obligation as sole causal factors. Second, rational ignorance is not specific to a particular kind of participation mode. In contrast, rational ignorance behaviour can be observed in many everyday situations too. Thus, with regard to political participation it occurs independently of the

participation arena in question. Third, any political institution that aspires to increase participation from a wider public must offer incentives that counter rational ignorance. Fourth and finally, in real life most elections have a greater voter turnout than the rational ignorance threshold. Thus, although rational ignorance is a coherent argument highlighting an essential causal mechanism it has not stopped political mass-participation – it is simply at odds with the empirically measurable and substantial turnout rates. In this sense, we gain useful insights if we ask why rational ignorance has not stopped democratic participation completely. Therefore, not only in theoretical terms but also in practical terms there must be a way out.

If we look at empirical voting studies and their theories that explain participation then two concepts enjoy a long tradition - one based on political psychology (treating voting as the consequence of an attachment or attitude towards a party and/or candidate) (Berglund, 2005) and the other based on political sociology (where socio-economic factors determine the vote) (Oskarson, 2005). In addition, recent election studies looked at the participation environment itself as a causal factor in voting. Thomassen (2005b) in his book on the European voter argued that it wasn't so much social change (such as the shift towards post-materialistic values) that led to different voting patterns but more the choices put before voters by the different parties in an election. Thomassen and his colleagues found that the degree of polarisation (i.e. the degree of policy divergence between parties) across political parties in a given election will significantly influence whether citizens vote or not and the degree to which social cleavages become relevant in voting behaviour (Thomassen, 2005a, pp. 6–9). This will in turn have an influence on the degree of attachment of citizens toward political parties and/or candidates. The lesson here is that it is participation design and context, which matters.

This in itself is not a new finding. The early literature working with the concept of rational ignorance explained US-American voter apathy in the 1950s. Yet, apathy declined sharply in the 1960s as the political polarisation increased (on issues such as the Vietnam War or the US-American Civil Rights movement). This again suggests that participation depends on the importance citizens assign to political choices (Westheimer & Kahne, 2004).

The EU is not very good at providing incentives to counter rational ignorance by offering an arena for political contestation. Hence, apathy of citizens towards the EU in particular is not a convincing argument against participation per se as long as we

do not know that apathy itself is not caused by the lack of meaningful participation channels . The question of what determines and what changes participation is at the heart of any input legitimacy reform. Clearly, there is not much room for change if we accept the conclusions of Hibbing and Theiss-Morse's 'Stealth Democracy' (2002), van Deth (2008). At the same time, there are coherent arguments that meaningful political participation beyond voting is possible.

Although the participation regime is an on-going process, the preliminary conclusion is as follows. The participatory regime has been geared towards output legitimacy and the participatory turn in EU governance has been successful in increasing output legitimacy. The problem of the lack of input legitimacy has been largely untouched by the participatory turn, although this had been one of the central problems of the 2001 Commission's White Paper. This is mainly due to a focus on CSOs as actors in participatory governance and their inability to act as democratic transmission belts. They are not stepping-stones to political participation. If CSOs do not offer a meaningful participation channel for citizens in the Commission's consultation regime, they simply do not address the core challenge of democratic legitimacy in the EU.

This said, the Commission has made initial moves towards a participatory regime that could provide genuine input legitimacy. Thus, the road forward from here is to concentrate on participatory instruments used by the Commission that focus on the individual citizens – if we accept that it is unlikely (and perhaps undesirable) that the Commission can force CSOs to democratise their internal structures. Two aspects are worthy of special attention. First, whilst for the vast majority of citizens the vast majority of EU policy issues are not salient enough to make them participate, participatory instruments may be able to deliver input legitimacy for those cases where the issue *is* salient enough. Second, the question of how the Commission's consultation regime as a participation channel may offer incentives that counter rational ignorance is and will remain crucial.

E-participation within the Commission

Although the White Paper set out to achieve a closer union between the EU and its citizens, it offered hardly any new mechanisms to connect directly with citizens apart from the IPM. If we look at the overall digital agenda of the EU since early the 1990s, online consultations can be seen as part of the shift from merely advancing

an economic agenda towards the use of technology as a means of facilitating EU governance online.(EU Commission, 2001a, p. 11)

The EU's digital agenda up until around 2000 was shaped by an economic perspective. Digital technologies were seen *inter alia* as a means to increase employment, to improve the EU's global competitiveness and to restructure the economy in particular by fostering the creation of new businesses ('start-ups'). The debate on the EU's digital agenda was led against the backdrop of higher economic growth in parts of Asia and higher rates of employment in the USA throughout the 1990s (Vonortas, 2000, p. 103). A key term in EU documents in the 1990s encompassing the EU's digital agenda is 'Information Society'. It came to prominence in the Commission's White Paper on 'Growth, competitiveness and employment: The challenges and courses for entering into the XXIst century' (1993a). The Bangemann report (1994), the Commission's subsequent Action Plan (1994) and the Green Paper on Innovation (1995) have the same thrust. Core elements are first, the liberalisation of the telecom markets and second, to promote a Europe-wide ICT infrastructure. These supply side ideas and policies were complemented by more user oriented policy ideas from 1997 onwards (Vonortas, 2000), for instance in the influential working paper 'Building an Information Society for us all' by DG Employment (1997) and then prominently in the first eEurope communiqué 'An Information Society for all' (1999). These reports put issues such as cheap internet access and bolstering e-commerce on the agenda. Reflecting on the EU's digital agenda in 1990s Anttiroiko notes that 'EU information technology policies in the 1980s and early 1990s were written by industrial leaders' (2001, p. 33). Moreover he comments that 'the EU refers to "access" as critical mass, "participation" to consumption processes, "dialogue" to opportunity to make inquiries via Internet, and "transparency" to official documents available in e-format on the Internet. This suggests how eEurope and the entire Union deal with democracy. The techno-economic message is usually surprisingly explicit, though sometimes it is bundled with expressions suggestive of genuine democracy and participation' (Anttiroiko, 2001, p. 34).

E-participation in policy-making as form online governance in the EU can be traced back to the concept of e-government. E-government has been on the Commission's agenda prominently since the Bangeman report (1994). This report entitled 'Recommendations to the European Council on Europe and the Global Information Society' was the first major EU level publication that fully acknowledged

the social and economic changes caused by new ICTs. It focused on the economic gains of the internet and called for more investment in infrastructure. Political participation was not mentioned in the document, however. In fact, although the term citizen was used, it often appeared synonymous with 'consumers' or 'users'. Regarding governing, the report saw technology mainly as a means to create '[m]ore efficient, transparent and responsive public services' (Bangemann, 1994, p. 5). It took another six years until the term e-democracy was mentioned in the document eEurope 2000 (EU Commission, 1999) in the context of the Lisbon strategy (Juhász, 2007). The document acknowledged the role that ICTs could play in citizens' participation.

If look at the online governance aspect of the EU's digital agenda, we can divide the years from 2000 to 2010, in which the internet gained much more momentum, into two periods concerning the Commission's vision of the role of the internet. The first of these periods was from 2000 to 2004 ('information provision') and the second from 2005 to 2010 ('two-way communication'). This distinction is based on work done by Michailidou (2008a), although she actually suggests dividing the decade into three periods.

The first period is characterised by the 'information argument' (citizens lack information and/or are affected by misinformation, so that they do not judge the EU in adequate terms). Hence, the Commission emphasised the need for more transparency and openness with regard to the EU decision-making process in conjunction with an increased amount of information on the actual policies in the making. Hence, the internet was used as a tool for information provision (Michailidou, 2008b, p. 349).

The second period is characterised by emphasis on 'two-way communication between citizens and the EU, as opposed to the previously proposed top-down information flow' (Michailidou, 2008b, p. 350). The key document that emerged in this period is the Plan-D for democracy (EU Commission, 2006a). It especially embraced the idea of internet based participation, arguing that '[t]he internet is of prime importance for stimulating the debate' (EU Commission, 2006a, p. 5) and that '[i]n recent years, the Commission has improved the way it consults on major policy initiatives. The number of (...) internet consultations have risen sharply. As part of the listening process, the Commission intends to use and improve existing tools for

collecting feedback directly from citizens, consumers and business (...)’ (EU Commission, 2006a, pp. 8–9).

Plan-D boldly states that 'the Internet has become an important forum of the political debate. If the Commission intends to play an active role in moderating the debate on the Future of Europe it should explore the use of every interactive communication medium that can facilitate this debate. The Commission will therefore use state-of-art Internet technology to actively debate and advocate its policies in cyberspace (...)’ (EU Commission, 2006a, p. 10). Yet, it is fair to say that after the publication of Plan-D, the IPM did not become a 'state-of-art Internet technology', which facilitates e-participation.

In this context, the IPM can be framed as an initiative by the Commission to advance its digital agenda in terms of proliferating online governance at EU level. The IPM has its origins in DG Market and the first document that made IPM more widely known within the Commission was a draft progress report (DG Market, 2000) in connection with the development of the White Paper on Governance. This document was sent for internal consultation in December 2000. It explains that the IPM aims to 'exploit fully the opportunities offered by the Internet, to obtain better access to the opinions and experiences of economic operators and EU citizens, and thereby enhance the Commission's ability to assess the impact of its policies (or the absence of them) on the ground (...)’ (DG Market, 2000, p. 2). The IPM was first publicly announced in April 2001 in a press release ('Interactive Policy Making: Commission seeks to use Internet in EU's policy-making process') (EU Commission, 2001b). Since November 2001 the IPM is operational and has been continuously developed further. As of summer 2012, the latest version of the IPM software is V3.1 published in March 2012 (DG Digit, 2012a). The IPM is financed by the Commission's 'Interoperability Solutions for European Public Administrations', which since 2009 is the successor of the 'Interoperable Delivery of European eGovernment Services to public Administrations, Business and Citizens' programme (EP and Council, 2009). As such, the IPM is part of the EU's long term aim to make e-government ICT systems interoperable within the EU and is an investment in IT infrastructure.

At its core the IPM is a tool developed to manage and facilitate online surveys and questionnaires (DG Digit, 2012b). Originally devolved by DG Market, the IPM is now run by DG Digit. Participants of online consultations who use the IPM do not need to

install specific software. A computer with any modern internet browser in conjunction with an internet connection is all the technology that is needed to participate. Coming from the perspective of someone who wants to create an online consultation, it is important to point out that in principle anyone can use the IPM software to generate online questionnaires as it is open source software under the European Union Public Licence (DG Digit, 2012b). The open source aspect is relevant in so far as it makes the IPM a genuine infrastructure project for the whole of the EU.

From the administrative side, the main advantage of the IPM is that it 'will produce information that is much easier to process than an unstructured and general consultation (e.g. asking stakeholders to comment on a White Paper). A growing number of services are finding it helpful to use the Interactive Policy Making (IPM) tool developed by DG MARKT to run their structured questionnaires' (EU Commission, 2005a, p. 10). DG Digit produces detailed manuals aimed at policy officers intending to create an online consultation with the IPM software (for the latest version see DG Digit, 2012c). The main weakness of the IPM according to the Commission is the difficulty 'to reach all possible target audience [sic]' and that 'dissemination activities [need] to be reinforced' (Fassian, 2012).

The IPM is mentioned in a few key policy document in the years following its launch predominantly in follow-up documents on the White Paper on Governance such as in the communiqué 'Towards a reinforced culture of consultation and dialogue. Proposal for general principles and minimum standards for consultation of interested parties by the Commission' (EU Commission, 2002a, p. 7) or the inaptly named 'Progress Review of Reform' report (EU Commission, 2003b, pp. 21, 44). In the last five years it has not mentioned in any key document. Overall, the IPM itself (as opposed to online consultations) is rarely mentioned in official documents.

Two technologies are at the heart of the online consultation regime. Consultations can be reached via the Commission's internet site 'Your Voice in Europe'. It originates from the Commission's Interactive Policy Making initiative. The IPM is not only a Commission initiative but also a piece of technology for managing online consultations. The main access point is the website 'Your Voice in Europe' and it consists of hyperlinks to the consultation websites of individual DGs. Three kinds of links can be found: first to the generic DG consultation website, second to specific open public consultations and, third, links to specific closed consultations. However, not all public online consultations are listed on 'Your Voice in Europe'. The website

presents only a selection of consultations. The majority of online consultations can be found on the individual DG's website. Only 13% of online consultations are published on the 'Your Voice in Europe' website (Quitkat & Finke, 2008, p. 206). Interestingly, a small minority of consultations can be found on the 'Your Voice in Europe' website only. The rationale for why some consultations are promoted via the 'Your Voice in Europe' website is unclear. The Commission does not offer any criteria for selection. The same applies to consultations that cannot be found via a DG site. Here the online access point clearly does not stand up to the claim that '[t]he European citizen is entitled to expect efficient, open and service-minded public institutions' (EU Commission, 2005b, p. 9).

The outline of the web page was unchanged from 2001 until September 2009 when the web-master team of DG Market altered the website. This development was at least partly triggered by an exchange of information between the author of this thesis and DG Market about the phenomenon of the 'disappearing consultations'. The context of these developments and the website are discussed in more detail in chapter 6.

Most DGs use the instrument of online consultations. Heavy users are DG Enterprise and Industry (15% of all online consultations), DG Internal Market (13%), DG Health and Consumer Protection (10%) and DG Environment (9%). In contrast, DGs concerned with the internal workings of the Commission (DG Budget, DG Economic and Financial Affairs) and diplomacy related DGs - External Relations and Enlargement - tend not to employ online consultations. Also, not surprisingly, the use of online consultations has increased over the years (although not in linear form) in all DGs. These figures are based on the authors own calculations and Quitkat and Finke (2008, pp. 206–7) for the period 2000-6.

The vast majority (between two thirds and three quarters) of online consultations are in principle open also to individual citizens. Although stakeholders are often mentioned, they are not defined, so that in principle anybody who wishes to participate can do so. In contrast, some consultations are restricted to organisations or specific groups. Nevertheless online consultations are clearly the most important mechanism for opening policy formulation to a wider public. Although there are some cases with several thousand contributions such as the consultation on the Authorisation of Chemicals (Persson, 2007) the usual participation rate is around several hundred contributions for a single online consultation.

Nevertheless, the most striking feature of online consultations is that they offer the possibility for both the Commission and citizens to directly interact without physically being in Brussels. Hence, it could be an instrument truly geared towards governing the EU by the people and not simply an exercise designed to raise the output legitimacy of the EU. One of the main advantages from the Commission's perspective is its flexibility towards different participation patterns. What we know from citizen behaviour based on rational ignorance research is that most citizens have much too busy lives and can only seldom afford participation under specific circumstances. This is similar to a representative democracy setting where casting a vote is a rather exceptional event in a citizen's life. Therefore, participation from ordinary citizens will probably be an exception rather than the norm. Hence, any participatory instrument must be as much concerned with participation as with non-participation.

From the technology side, online consultations can adapt comparatively easily to varying numbers of participants. Online consultations have a twofold advantage. In the case of direct citizen participation, the legitimacy effect does not depend on the internal structures of CSOs. Democracy is not mediated through CSOs. Nevertheless, they can contribute to the political socialisation of citizens by providing information or normative orientation. If citizens do not participate, the Commission still has a pool of CSOs that can offer policy input. In other words, in the standard case of the non-participation of citizens, the Commission's policy producing machinery does not grind to a halt. Moreover, online consultations offer the possibility of various intermediate actors participating. If we conceptualise a civil society actor continuum with, on one side, an individual citizen and, on the other, a professional well-funded, long running organisation, various in-between forms can be imagined. These could be families, users of a website, participants of a forum, newspaper threads or other ad hoc groupings found on the internet and elsewhere. Thus, online consultations do not need pre-defined actors.

Nevertheless, the IPM has major drawbacks. Apart from problems associated with the Commission and with participatory approaches such as the lack of a right to participate, a lack of legally binding structures and a lack of deliberation due to a lack of appropriate feedback channels, the IPM has two specific problems. One of the two problems is the specificity of policies discussed in the IPM. While the Commission could embrace various issues, it predominantly develops rather technical

consultations. The problem is not that there are so many technical consultations but the sheer lack of politicised consultations. This suggests that the Commission fears the debate it started with the White Paper. DG Research's 'Participatory science and scientific participation' reports comments that '[a]sking for participation at the regulatory stage, when the large majority of issues and topics have been already framed and settled, does not encourage participation(...)' (2008, p. 9). Yet, the Commission's consultation process is streamlined towards a policy consensus by all involved actors. This consensus-seeking mode within the EU, and especially in the European Commission, is sarcastically summarised by an interviewee from a major lobbying firm: 'Here in Brussels [as opposed to Washington] we are all part of the solution and nobody is part of the problem' (O, 2). The process aims at creating consensus without allowing (too much) conflict. Therefore, how trustworthy is a consensus, which has come about by avoiding conflict and contestation?

Avoiding conflict and politicisation is not an issue only depending on institutional design as Magnette notes: 'Politicising the Union, and creating a clear deliberation of European issues, which could generate public interest, is not so much a question of institutions as a problem of political attitudes. As long as the Commission, which initiates policies, considers itself to be a body designed to bypass political conflicts and forge compromise before public deliberation takes place, the politicisation of the EU will remain very difficult' (Magnette, 2003, p. 157).

Concluding remarks

It would not be fair to claim that the Commission is doing nothing to increase participation at EU level. Spending one percent of the EU's budget on CSOs is clearly more than paying lip service to the cause of participatory governance. In this regard, the Commission's talk is not cheap. However, as this chapter has argued, it is not necessarily money well spent for the cause of democratic legitimacy as there 'is a wealth of evidence about the limited capacity of EU citizen interest groups to bridge the gap between themselves and citizens in the Member States' (Greenwood, 2007, p. 347) Without doubt, integrating civil society organizations in EU decision-making processes has been, and will probably continue to be, much more effective (from the perspective of the Commission) than any efforts aimed at including citizens in the policy-making process regardless of the looming problems of 'patronage, "closed

shops”, and corruption’ (van Deth, 2008, p. 253). Clearly, they will not lose their role in the policy-making process in the years to come.

Regarding the patterns of participation, it must be clear that it is not participation that is the key to input legitimacy but ‘good’ participation. In other words, participation does not improve input legitimacy per se. If we take participation as the causal variable, we will probably not make (analytical) progress if we claim ‘the more participation, the more input legitimacy’. We should rather argue that ‘more meaningful participation can create more input legitimacy’ while, conversely, the ‘more meaningless participation, the more decrease in input legitimacy’. It could be the case that the fixation with ‘the more participation the better’ has its origins in election studies where a high degree of voter turnout is per se regarded as a desirable quality of an election. The problem with voting is that the quality of participation is almost irrelevant in the act of participation. Whether a voter casts an informed or uninformed vote does not change the importance of the vote once he or she has cast it. In contrast, participatory forms of democracy emphasise the quality of the process as opposed to the quantity of participation. Hence, the main challenge is not the rate of participation but rather on what grounds participation is established (DG Research, 2008, p. 9).

There is also empirical evidence that participation can decrease political legitimacy. For instance, Theiss-Morse and Hibbing (2005) have looked at the US-American empirical civic participation literature and its claim that this form of participation, which is not motivated by the desire to affect public policy (as opposed to political participation), has a considerable democratisation potential. They come to the conclusion that ‘civic participation in some circumstances actually turns people off of politics, leaving them less, not more, politically engaged’ (2005, 228). Van der Meer and van Ingen (2009) come to similar conclusions with regard to Europe. The crucial aspect in Theiss-Morse and Hibbing’s conclusion is the words ‘in some circumstances’. Meaningful participation depends on the participation arena. It is not simply a case of ‘if we build, they will come’ and participate meaningful.

One aspect of ‘good’ participation is the question of the availability of relevant information. Yet the question of what citizens should do with more information is not as straight forward as the Commission thinks it is. While the Commission hopes that more information on the EU leads to a better understanding of the EU, which in turn leads to an increased legitimacy belief, this may not be the motivation for most

citizens to seek information. Such information may improve their ability to contemplate issues linked to the EU or their chances of winning a pub quiz. If the Commission aims to 'create a citizens' ownership of EU policies, to make them understandable and relevant' (EU Commission, 2006a, p. 3), then information has to become instrumental from the citizens' perspective, too. One way of achieving this is to make it relevant for participation in the policy process. Information then is the first step to meaningful participation.

This link is not established in the Commission's documents, however. In the Commission's publications, 'participation', 'information' and 'coming closer to citizens' are strangely unconnected, even more so in their practical application. What Michailidou only alludes to casually, namely that 'the exact ways in which the feedback from civil society organizations and citizens will impact on the modus operandi of the Union' (2008b, p. 252) remain unspecified, is at the heart of the methodological and empirical part of this thesis.

Chapter 4: Framework of Analysis and Case Study Design

Chapter 1 analysed the main characteristics of the input legitimacy problem of the EU. The second chapter proposed public e-participation in policy-making as a potential way of addressing this legitimacy issue. The third chapter then discussed e-participation in the specific context of the EU and, in particular, the Commission. While chapter 1 set out the problem of the lack of EU input legitimacy, chapters 2 and 3 discussed a potential remedy for the EU's input legitimacy deficit. This fourth chapter now outlines a framework for answering the question of whether e-participation in EU policy-making is actually a viable option for reducing the input legitimacy deficit.

The chapter is structured as follows. The first part outlines the key aspects that the framework of analysis has to address. The second part then outlines the research hypotheses of the comparative case study. The third part describes the research methods and their use in the comparative analysis of the two cases. It discusses the research design based on case studies, how the cases were chosen, the methods of data gathering and how the data is linked to the research hypotheses.

The translation of participation into democratic legitimacy

Before discussing the actual research design of the comparative case study, this first part of the chapter looks at the main theoretical aspects of the translation of participation into input legitimacy. As briefly elaborated in chapter 2, the normative grounding for input legitimacy based on participation in policy-making is provided by theories of deliberative democracy. Based on the review of the literature two layers of basic standards for deliberative democracy can be found: first, standards that must be met before a deliberation begins (or 'prerequisites for a meaningful process') and, second, standards of conduct during the deliberation process (or 'prerequisites for a meaningful transformation of inputs'). Chapter 2 linked these two core requirements to the concepts of accessibility and the development strategy. The following paragraphs discuss a comprehensive list of standards in the context of the Commission online consultation regime and explain why the focus of the empirical analysis is on the standards of accessibility and development strategy.

The first prerequisite for a meaningful deliberative process is the suspension of action so that arena of participation can be created. Policy action (including the possible decision to do nothing) must come after the policy deliberation (Rosenberg, 2007, p. 340). This first prerequisite is obviously not difficult to meet for the Commission's consultation regime, at least on formal grounds. The very idea of a Commission's consultation is that the process takes place before the action. The Amsterdam Treaty states that 'the Commission should [...] consult before proposing legislation, and, wherever appropriate, publish consultation documents' (1997, para. Protocol no 7, Article 2). As a consequence, the Commission has committed itself not to submit policies before it has consulted widely (EU Commission, 2002a).

The second prerequisite is that the deliberation is public 'so that all those affected but not directly involved, can be appraised of, and potentially respond to the substance of the deliberations' (Rosenberg, 2007, p. 337). In the case of the Commission's consultation regime, this is once more not controversial. It also ties in with discussions of accountability and transparency at the EU level. While there is room for improvement, the overall aims of accountability and transparency are not controversial. Practising the principles of open government is part of the self-description of the Commission (EU Commission, 2006e).

The third prerequisite, however, is the Achilles heel of the whole online consultation process in terms of its legitimacy potential: the arena of political participation must be accessible. This means the arena of participation both has to create public awareness and needs to be inclusive. The simplest way of achieving inclusiveness is to define it as the inclusion of all the relevant aspects, ideas and viewpoints into the participation arena. This is very much in the interest of the Commission and forms a guiding principle for achieving output legitimacy. However, if participation itself is a yardstick, inclusiveness is more challenging because it then means the inclusion of all those actors who are potentially affected by a policy. Lack of resources and communication skills at the very least impede the participation of citizens so that they freely 'express their views and have them heard with respect and consideration and have an equal opportunity to speak and to persuade his or her audience' (Rosenberg, 2007, p. 337).

If we look at the process of deliberation within the arena of participation the first standard is that the aim of the deliberative process should be increasing the common good. While the general task of identifying the common good is laborious, especially

when the common good and individual gain might not go hand in hand, it is once again uncontested as a guiding principle. Ultimately, any consultation process can be regarded as a step towards developing the common good. Furthermore, additional 'common good vetting' is also provided by the Council and the Parliament.

Finally, a second Achilles heel is that meaningful deliberation needs a learning strategy, i.e. deliberation 'must consist primarily of the exchange of reasons for two purposes: that of communicating one's own views in a way that can be understood and accepted by the other, and that of coming to understand the meaning and value of the other's views in her terms' (Rosenberg, 2007, p. 337). This is a particular challenge for the Commission, which is also expected to design the arena of participation to allow for a learning strategy internally, within the Commission itself.

In essence, the approach used here to analyse legitimacy based on deliberative democracy is closer to the Anglo-American than the Habermasian tradition. Moreover, the approach is based on the assumption that the Commission's online consultation regime in its current form does not fulfil all criteria to be truly deliberative. Rather the thesis assumes that it could be the nucleus for a deliberative form of democracy. As such, the analysis concentrates on two core or necessary dimensions instead of a comprehensive set of criteria detailing the sufficient conditions for deliberations.

If we turn from the legitimacy potential to the legitimacy belief itself, further clarifications are needed on the structure individual belief systems. As a research field, belief systems are predominately covered by the field social psychology (and, to lesser degree, political sociology). To further conceptually grasp the motivation for participation of participants beyond the mere economic cue of a cost-benefit calculation, it is advisable to refine the components of the cost-benefit calculation. In social psychology, the theory of vested interest is the prevalent approach for explaining how attitudes are linked to participation. The central tenets of the theory of vested interest were developed by William Crano in the early 1980s. Crano also coined the phrase, which refers to the legal process of vesting. In his own words, vested interests are defined as 'the extent to which an attitude object is hedonically relevant for the attitude holder' (Crano, 1995, p. 132). The theory, in its essence, suggests 'that people with strong vested interest in a behavior are more likely to act on their attitudes than people with little vested interests (...)' (Ajzen, 2005, p. 50). According to this theory, vested interests do not directly predict the behaviour of

individuals but are an intervening factor (or moderator) between attitudes and behaviour (Anker, Feeley, & Kim, 2010, p. 1296). The advantage of this arrangement is that it provides an explanation for inconsistency between attitudes and behaviour, e.g. why did a person knowing of the existence of the animal welfare consultation not participate, although she or he believes it is important to give the Commission input on this subject?

In its most developed form, Crano's vested interests are made up of five components: stake, salience, self-efficacy, certainty and immediacy. Certainty and immediacy deal with the chance of a recommended behaviour occurring with great likelihood and in a short time period. Salience is defined based on the amount of thought that one gives to an attitude object, while self-efficacy explains one's belief in one's ability to affect an outcome. Empirically the most important components in the sense of being able to explain and predict behavioural responses are stake, salience and self-efficacy (Crano & Prislin, 1995, pp. 15–16).

Stake deals with individual relevance that is attributed to the anticipated consequences of a decision. The higher the stake is, the more consistent attitude and behaviour should be. In this sense, it is the little brother of vested interest, although the latter is the overarching concept. Also, according to Crano, empirically it is the most important component in determining behavioural consequences. Salience 'is defined based on the amount of thought that one gives to an attitude object' (Anker et al., 2010, p. 1297). It can be seen as the importance that an individual attributes to the attitude object in his or her inner world. Finally, self-efficacy, in vested interest, is the degree to which an attitude holder believes that he or she is capable of performing an act, which is associated with a behavioural attitude (Crano & Prislin, 1995, p. 9).

If we look structurally at the whole research puzzle of the thesis, the main components are the (governance) administration (at the macro level), media technology (at the auxiliary level) and the individual belief systems of the participants (at the micro level). Both the macro and micro levels have actor qualities while the auxiliary level works as an intermediary between the actors. Moreover, technology can be used to peruse democratic aims. Hence, we can argue that the legitimacy potential of e-participation depends on the characteristics of the media technology, which processes information between the normative and macro level to the micro level, i.e. the belief system of citizens. It facilitates participation by offering

possibilities for interaction between the structural and normative levels thereby affecting the transformation of participation so that it has an impact on the legitimacy belief of an individual citizen. Hence, we can assign media technology to an auxiliary role. Yet, overemphasising the auxiliary level can easily lead to a crude form of technological determinism, an idea that aims to explain a social phenomenon in terms of one principal factor, i.e. technology. The problem with technological determinism is, as McLuhan and Watson have satirically pointed out, that 'such inventions as the horse collar quickly led to the development of the modern world' (McLuhan & Watson, 1970, p. 121).

A full discussion on technological determinism is beyond the scope of this work which adopts a broadly constructivist view on technology (Winner, 1993, pp. 364–8). Thus, technology per se has no 'natural effects' on a social system directly derived from certain qualities of a technology. While technology can offer, and indeed change, predispositions for changes in a social system, its social manifestation is socially conditioned and depends on the intended and unintended forms of its use by human beings within a given system. Bimber describes this view as a 'norm-based account' of technological determinism (1994, p. 82) which is something of a misnomer in that it attributes 'causal agency in the history of technology to human social practice and beliefs rather than to technology itself' (Bimber, 1990, p. 341). It is also worth noting in this context that the Commission online consultation regime is not technology rich. It is based on internet communication technology from the 1990s and is not sophisticated on the front-end (the part that participants and the policy officers see and use). It combines the functionality of an online poll with a comment function. Moreover, additional comments can be sent via email. Finally, there is a website for publishing calls for participation, accompanying materials and the results of consultation.

Coming back to the translation of participation into democratic legitimacy, this takes place within the participation process. Central factors regarding the input legitimacy potential of e-participation rest on normative arguments discussed in the literature on deliberative democracy. As suggested, accessibility to the process and a development strategy are procedural requirements in order to legitimise the decision-making process. Together they are the key normative dimension of a democratic e-participation process.

Moreover, we can look at legitimacy belief on the level of individual citizens. On the macro level, we can study the legitimacy potential of political institutions, which, thanks to their design, may have a positive effect on the legitimacy belief of the ruled. With regard to e-participation in the policy process, public administration is the central institution.

What is the causal interplay between the structural levels? From a theoretical perspective, we can expect that the more the macro and auxiliary dimensions are able to support the normative dimension, the more legitimacy potential an e-participation process can claim. In turn – as suggested in chapter 1 – the higher the legitimacy potential of the institutional arrangement, the more we can expect positive effects on the legitimacy belief of the citizen.

The following section describes the structural components and their significance in supporting the normative procedural dimension of the participation process. The section delivers the background for the development of the hypotheses presented in the next part of this chapter. The following table gives an overview of the six vectors.

		Structural dimension		
		Governance administration (macro level)	Media technology (auxiliary)	Participants (micro level)
Procedural-normative dimension	Inclusiveness	Vector I Acknowledging the potential of the e-participation process; Offering the possibility of participation to as many civic actors as possible	Vector III Barrier-free applications for all participants on both levels; Offering the possibility of participation to as many civic actors	Vector V Inclusiveness towards the cost and benefit factors of participation; ties in with the vested interests theory
	Development strategy	Vector II Appropriate inward structure to process the inputs of the e-participation process	Vector IV Complementing the inward structure of the governance administration body as well as a tool to support understanding the deliberation process	Vector VI Learning strategy based on evaluating all relevant information of the e-participation process; ties in with the literacy issues of participants
		<i>Legitimacy potential</i>		<i>Legitimacy belief</i>

Table 7: How do we assess the input legitimacy potential of e-participation?

Vectors one to four describe how the legitimacy potential depends on the institutional arrangements and the capability to support the normative aspects of a just rule. The main institutional features here are the attitudes of the governance administration and the use of media technology.

Vector I: Accessibility and political and governance administration

On a very basic level, the administrative body has to take participation seriously by expecting to gain from the deliberation process. This aspect should not be taken for granted - Aikins and Krane (2005) found that public officials tend to ignore the innovation e-participation offers or are very sceptical about its usefulness in general. Moreover, the political administrative system has to make information, which is

relevant for the decision-making process accessible to the participants. Meaningful participation is virtually impossible if the administrative body informally blocks the process, e.g. by internally adhering to its information monopoly (Macintosh, 2006, p. 6; Märker & Wehner, 2007). Accessibility here also means that the arena of participation is designed by the public body to be as open as possible to all interested parties. This implies that the deliberation process offers the possibility of participation to all parts of the citizenry. This particularly means taking different needs and preferences into account. Citizens and other stakeholders vary considerably in their technological and political efficacy but they also vary in aspects such as their degree of literacy and communication skills (L. Weber, Loumakis, & Bergman, 2003).

Vector II: Development strategy and governance administration

Engaging citizens to interact with the administrative body only makes sense if there is a development strategy within an administrative body, which analyses inputs, interacts with responses and feeds them into the policy process. This requires an active inward structure to enable a learning process. The link between participation in policy discussions and the impact on the policy has to be transparent. Administrative bodies need to integrate the results of the e-participation into their policy development (Macintosh, 2006, p. 4; Märker & Wehner, 2007, p. 363). Participation in itself does not automatically increase citizens' and civil society actors' influence in an actual decision-making processes if there is no procedure for handling their inputs.

Vector III: Accessibility and media technology

Media technology offers the platform on which citizens and the administrative body interact. With regard to accessibility, technology should aim to provide a barrier-free platform for both citizens and the administrative body in order to facilitate deliberative decision-making. It remains highly unlikely that a single piece of technology meets all requirements for such an open process regardless of the policy environment. Hence, the choice of technology is highly context dependent. Accessibility of technology needs to appreciate individual and social differences such as language and technical skills. As such, the choice of technology always bears the risk of systematically excluding particular groups (Macintosh, 2004, p. 122). Moreover, media technology plays a vital role in supporting the aims of vector two, i.e. helping public bodies to make their participation arena as inclusive and accessible as possible.

Vector IV: Development strategy and media technology

In order to support the development strategy of both structural levels, the technology needs, on the one hand, to be compatible with the information processing of the administrative system so that the deliberatively generated knowledge can be fed into the decision-making process and, on the other hand, technology should facilitate the transparency of the deliberation by highlighting the interaction and reasoning between the participants (Macintosh, 2004, p. 121). Technologies should help to analyse inputs in order to understand their significance for policy-making but it should also facilitate understanding the deliberation process by highlighting the line(s) of reasoning.

Vectors five and six describe key individual features of participants, which make it more likely that the participation process has a positive impact on their belief system.

Vector V: Accessibility and the cost and benefit factors of participation

This vector deals with motivational issues and vested interests. In essence, the lower the perceived costs of participation (in terms of invested resources or feelings of moral defection), and the higher the benefits of participation (by either intrinsic participation benefits or benefits based on participation outcomes), the more likely participation is. Moreover, the higher the relevance of the participation arena, the more likely it will have an effect on the citizens' legitimacy belief.

Vector VI: Development strategy and individual characteristics of the civic participants

The personal learning strategy of the participants should avoid short cuts and information cues. Positively speaking, participants should aim to evaluate all relevant information offered during the deliberation process. Deliberative theorists argue that a comprehensive understanding of an issue and, more importantly, the understanding of the deliberation process is the key for successful deliberative decision making (Delli-Carpini et al., 2004, pp. 59, 330). Nevertheless, deliberation also implies a challenge of personal reasoning strategies. An individual learning and development strategy includes acknowledging the difficulties of being challenged during the deliberation. As such, it is closely linked to the literacy level of a person.

If we look at vector one and two from the perspective of the governance administration, it then depends mainly on the motivation of an authority to initiate such a process. Likewise, if we look at vector five, it addresses the motivation for

citizens to participate. Citizen participation causes costs for both sides. Yet, legitimacy often fails to be a prime concern for citizens or authorities. For both sides, their cost-benefit consideration simply comes down to the question: Is it worth the effort? (Irvin & Stansbury, 2004). The motivation for participation is nevertheless crucial because if there is no participation there cannot be any legitimacy effects – at least positive ones. It is of course possible that a single e-participation venture fails because there are no participants although this may still have a positive impact on the legitimacy belief because – as discussed in chapter 2 – the mere possibility of participation may influence the legitimacy belief.

Research hypotheses

The broader research puzzle of this thesis is under what circumstances it is plausible that e-participation in the Commission's consultation regime could have a positive impact on the legitimacy beliefs of EU citizens. Based on the previous section, the short answer is, if more prerequisites for meaningful participation and more prerequisites for a meaningful transformation of participation inputs are met, it is more plausible that the Commission's e-consultation regime will have a positive impact on the legitimacy belief of EU citizens.

This thesis does not work with large survey-based data on EU citizenry and their belief systems. Hence, the more precise question of this thesis is: Under which circumstances is it plausible that e-participation in the Commission's consultation regime could have positive impact on the legitimacy beliefs of EU citizens?

The basic underlying assumption about the Commission's e-consultation regime is that the Commission established an arena intended for creating input legitimacy by welcoming participation in its policy-making. Nevertheless, the core concept of the Commission's consultation regime was established before the 'participatory turn' (Saurugger, 2010) and has its roots in output-oriented ideas of policy-making. This is of course a simplification, at least on the grounds that it assumes that the Commission is a unitary actor. Moreover, the Commission also pursues other interests with its consultation regime and it should be recognised that the motivation behind consultations might differ between DGs and within the Commission in general.

The following section looks at the key prerequisites for meaningful participation. It differentiates between two chronologically different phases of the participation

process: before and during the gathering of inputs and after the gathering of inputs. The following table sums up the prerequisites for meaningful participation.

	The commission (macro level)	The citizens (micro level)
Prerequisites for meaningful participation	Inclusiveness, Awareness	Saliency, stake and efficacy
Prerequisites for a meaningful transformation of participation inputs	Policy impact, Feedback	Acknowledgement of impacts

Table 8: Meaningful participation

From the Commission's side the main factors for meaningful participation are the accessibility of the arena of participation in terms of inclusiveness and public awareness.

Therefore, if a Commission online consultation

- a) is inclusive and
- b) has a higher level of awareness,

and thus achieving high accessibility, then any participation is able to generate input legitimacy.

What are the prerequisites for the meaningful transformation of inputs? These aspects boil down to the impact of inputs on the Commission's policy formulation. From the point when the Commission takes over the stewardship of the inputs, the main prerequisites for a meaningful transformation are policy impact and the provision of feedback on the gathered and processed input.

Therefore, if the Commission

- c) allows an online consultation to have an impact on the final policy,
- d) provides feedback on the consultation process,

and thus securing the meaningful transformation of inputs, then any participation fulfils the necessary preconditions to be able to generate input legitimacy.

From the citizens' side the main prerequisites for meaningful participation are, first, the perception of relevance of a policy (i.e. saliency and stake), which is a component in the cost-benefit calculation underlying the degree of motivation to participate (or not). The second set of prerequisites deals with the communication

skills of citizens (in terms of literacy skills, efficacy). On the citizen level, the key prerequisite for the meaningful transformation of inputs is the degree of acknowledgement or recognition of their impact on the policy proposal.

Therefore, if citizens

e) regard their personal skills as sufficient to communicate their inputs (efficacy),

f) regard the process of gathering inputs as personally relevant (salience and stake),

g) understand and acknowledge the impacts of their inputs in the policy proposal, then any participation fulfils the necessary preconditions for having a positive impact on the legitimacy belief.

In the context of the hypothesis outlined above, a case study approach was adopted to analyse the legitimacy potential of online consultations. The empirical research is based on the Commission's consultation for the 'Action Plan on animal welfare 2006-2010' (animal welfare case), which originated from DG Health and Consumer (also known by its French acronym 'DG SANCO') and the consultation for the regulation on 'requirements for accreditation and market surveillance relating to the marketing of products' (harmonisation case) initiated by DG Enterprise.

Arguably, the biggest challenge for case study research is linking the gathered data with the theoretical propositions. Yin for instance comments that this is the least well developed component in case study research (compared for instance to quantitative large survey research) and of course empirical research based on experiments (1994, p. 25). The challenge is to make the phenomenon and causal mechanism around the phenomenon of input legitimacy visible, taking into account that the phenomenon always tries to escape in practical research (Silverman, 1993, pp. 201–203). The simplest form of assessment is to identify a boundary condition, establishing its existence in the real world and then to assess the quality of the boundary condition. Assuming that we found measures for securing accessibility (the boundary condition), then a hypothesis will say that the consultation has input legitimacy potential (or the consequence of the hypothesis). Strictly speaking these are working hypotheses as they are provisionally accepted when faced with a lack of viable alternatives. They are also not complete in a logical sense, which would

require that only the hypotheses devised here are able to explain and predict the phenomenon of input legitimacy of online consultations.

Hence, the first step is to identify whether the boundary condition exists (if x leads to y and we find x then it is a valid deduction to predict that y exists too). The problem with this research though is that there is not only one boundary condition but also an unknown number of them. In this case, accessibility as a research construct has boundary conditions itself which are not well defined. One of the challenges of this research is precisely to identify unknown boundary conditions. Second, it is a challenge to assess the quality of the existence of a boundary condition in an interpretive way, which means comparing the evidence found with the theoretical propositions and the evidence found in the other case. The hypothesis on accessibility is not operationalised in such a way that it can be measured with quantitative means. This is due to the perception that phenomenon and context in this research are not easily and meaningful discernible and that therefore the operationalisation of the hypotheses to achieve a codifiable multiple-choice questionnaire would be a bad choice of method. In terms of quantitative research, the variables presented are dummy variables (i.e. they have only two possible values). As data rarely speaks for itself, the question of how to judge the data is crucial. In the case of the accessibility hypothesis, the first approach is to compare the data with the purpose of accessibility within deliberative democracy theory. Beyond the description of the measures to secure accessibility based on documents and interview responses, the key question is if there is awareness for this problem as part of an exercise to generate input legitimacy based on deliberation. Is the design and employment of these measures informed by this concern? This obviously includes the aspect of what measures were not implemented and what other purposes measures of accessibility may have for the staff working on the consultation.

The second layer to establish the quality of boundary conditions is to compare the two cases – what are the main differences and similarities with regard to the aspect of accessibility? What are the reasons for similarities and dissimilarities? Are they down to the same causal factors? What are the advantages and disadvantages of different approaches?

Nevertheless, the first step is the operationalisation of the three hypotheses. The first hypothesis is concerned with the degree of accessibility of the arena of participation and it is assumed that the more inclusive it is and the higher the level of

awareness it creates the more legitimacy potential it can claim. Inclusiveness and awareness are the concepts used for measuring accessibility. Indicators for public awareness centre on the efforts for actively approaching individual citizens and attempts at reaching out beyond Brussels, i.e. attempts to include participants that neither are based in Brussels nor travel to Brussels. Indicators for inclusiveness ask if consultations are adapted to different groups of participants, whether educational material is provided and whether accessibility is a guiding principle of the consultation implementation.

The second hypothesis deals with the meaningful transformation of inputs. Policy impact and feedback are the two concepts used to measure the meaningful transformation of inputs. Indicators for policy impact are agenda setting, policy contestation, and a change of policy proposal, whilst indicators for feedback are the existence of internet accessible feedback and criteria for why an input is included or not.

The third hypothesis centres on the direct impact of participation on the legitimacy belief of participants. Indicators for the concept salience are personal relevance and personal consequences related to policy. The indicator for efficacy is self-attestation. Finally, the indicator for the acknowledgement or recognition of impact is whether a participant has followed a consultation after the submission of inputs. As the data on participants is less comprehensive, secondary sources are used to analyse the boundary condition of these hypotheses in chapter 6, too.

The following tables show how the hypotheses of the study are linked to relevant concepts and indicators. Directly linked to the indicators are the interview items (see also Appendix I and II) developed for qualifying the concepts as well as elements from primary documents and secondary sources (if applicable) that are connected to these indicators.

Concept	Indicator	Main interview items	Primary documents	Secondary sources
<i>Public awareness</i>	Actively approaching individual citizens	List of measures for rising awareness; Initial addressees of the consultation	Direct reference to awareness in the internal documentation;	none
	Reaching out beyond Brussels	Forms of promotion beyond the Commission (e.g. campaigning); Internal responsibility for communicating with the web master team of DG Market/wider communication strategy	State of the documentation of DG specific implementation Commission-wide guidelines based on the 'General principles and minimum standards for consultation of interested parties by the Commission' (EU Commission, 2002a)	
<i>Inclusiveness</i>	Adapting consultation to different participants	Measures included to reach out to potentially marginalised groups; Examples of best practice. DG specific best practice cases	Direct reference to openness/inclusiveness in the internal documentation State of the documentation of DG specific implementation	none
	Educational material provided	Forms of background material provided	Commission wide guidelines (EU Commission, 2002a, p. 13)	
	Accessibility as guiding principle of the consultation	Assessment of “usability” of online consultation site; Decision-making process on promoting a consultation on the 'Your Voice in Europe' website		

Table 9: Evidence chain for the accessibility hypothesis

Concept	Indicator	Main interview items	Primary documents	Secondary sources
Policy-impact	Agenda Setting	Relative importance of inputs of the online consultation in comparison to inputs provided by other forms of consultations	Referencing of the online consultation in documents accompanying the final policy outcome	none
	Policy-Contestation	Contestation of internally held viewpoints by input provided through online consultations		
	Changes to the policy proposal	Relevance for input for adapting policy proposal; Inclusion and participation or policies consensus		
Feedback	Criteria for why something is included	DG specific policies to communicate feedback; Procedures regarding the handling of contributions which were discarded for a policy draft	Publicly accessible document that explains the decision making process endorsed by the Commission	none
	Internet accessible feedback given	Public actively informed about results after the consultation period		

Table 10: Evidence chain for the meaningful transformation of inputs hypothesis

Concept	Indicator	Main interview items	Primary documents	Secondary sources
Salience and stake	Statement of personal relevance	Relevance of participation in relation to other aspects of life/work; Monitoring of the 'Your Voice in Europe' web-portal	Individual written replies to the consultation	Works on the relevance of EU policy issues
	Personal consequences related to policy	Personal interest apart from/in addition to the professional interest		
Efficacy	Self-attestation	Perception of impact on a policy; Impression of the communication skills of participants by Commission personnel; Assessment of the relevance of own contribution for the DG/other participants		Works on adult literacy
Acknowledgement of Impacts	Following the policy proposal through the course of policy cycle	Recollection of the handling of the online consultation by the DG; Acknowledging contributions of other participants; History of participation in online or other forms of consultation; Monitoring of the consultation and its results after the submission of input		

Table 11: Evidence chain for the participants hypothesis

The question of how to assess the legitimacy potential of technology is not within the scope of this thesis. On the contrary, as argued above, the thesis assumes that there is nothing inherently democratic or undemocratic about internet technology. Certainly, technology may be used in better or worse ways to pursue political and social purposes. This comparative aspect of the employment of technology is discussed with the help of the two case studies in the remaining chapters. However, this thesis does not employ a genuine research hypothesis based on technology. A genuine technology research hypothesis could be that 'the more interactive web elements a consultation exercise has, the more legitimacy potential a consultation has'. The rationale behind this hypothesis could be that interactive elements offer channels for participation and that the more channels exist, the more meaningful participation can take place. As mentioned in the first part of the chapter the thesis aims to avoid the fallacy of technological determinism as found for instance in the sentiment that 'the internet is the saviour of democracy' (O'Loughlin, 2001). Certainly a more technology focused research design can be fruitful (especially when it takes into account what humans make out of technology) such as, for example, when questions are raised about how internet-based technology changes political participation. Yet, this is not within the scope of this research. In the context of this specific research puzzle, media technology plays a subordinate role with regard to creating input legitimacy. The implications of the choice and deployment of media technology is nevertheless discussed throughout the empirical part of this thesis. In a nut shell, technology is discussed simply as a feature of the cases. Hence, there are no hypotheses built around the nature of the technology used by the Commission.

Methods and selection of case studies

Ideally, the chosen cases will achieve Gluckman's aspiration that one good case should 'illuminate the working of a social system in a way that series of morphological statements cannot achieve' (1961, p. 9). Following Yin, this case study is an empirical inquiry which aims to investigate 'a contemporary phenomenon within its real life context, especially when the boundaries between phenomenon and context are not clearly evident' (1994, p. 13). In this case study, the main phenomenon, around which the research is built, is the input legitimacy potential of online consultations. The input legitimacy potential of online consultations is analysed in the context of participation patterns, policy nature and policy-making in the Commission.

Although the previous section distinguished between dependable variables (i.e. 'legitimacy potential') and independent variables (amongst others the 'quality of feedback given by the Commission'), in real life the distinction is not as clear-cut, as the next chapters show. Therefore, a method that inherently addresses these challenges by allowing for the ambiguity of 'context' and 'phenomenon' is particularly suitable for such a research project.

While this research is firmly located within the 'qualitative research camp', this is not an either/or decision. The problem is that '[i]n the field, material is much more messy than the different camps would suggest' (Silverman, 2001, p. 294) and different approaches become fruitful if we look beyond the polarities (and implied contradictory nature) of different approaches. The language of dependent and independent variables (or, to put it in other words, the language of quantitative analysis) has its place as it provides a starting point of clarity from which we can venture into the less clear-cut aspects of this research subject. Moreover, the language of quantitative analysis makes it potentially easier to follow-up on this research by quantitative means.

Although a widely used method, case study research is not self-explanatory. While being intuitively plausible, it has its own challenges: starting from the question of what actually constitutes *the* case (i.e. defining the unit of analysis) (Yin, 1994, pp. 21–25) to the number of cases studied. After the constitution of the cases, the content of the cases and the interplay between them needs to be clarified. What is the comparative aspect of this method and what is the relevant context of the cases? (Gomm & Hammersley, 2000, pp. 4–5). Finally, the interplay of theory and case study needs elaboration in terms of mere descriptions of events but more importantly in terms of explanation, evaluation and, potentially, prescription.

The units of analysis in this research are the aforementioned consultation procedures initiated by two different DGs of the EU Commission. In terms of the research design, they are naturally occurring cases. 'Naturally occurring' refers to the fact that the cases were not fabricated by the researcher for the analysis but found in the real world (Gomm & Hammersley, 2000, p. 4). The consultations were not started by the Commission to serve as a research object but rather their research worthiness was assigned by the researcher (in a process that included other people's works and comments).

The consultations were primarily chosen for being representative of EU policy-making. The representativeness of the cases is rooted in the aspect of policy-making and not in the aspect of being commonplace as examples of online consultations. As discussed in chapter 2, the unique aspect with regard to input legitimacy of online consultations is that they offer the possibility of broadening participation in the policy formulating stage of the policy-making process. It is therefore plausible to base the case selection on the nature of the policy and not on a typical online consultation.

Moreover, not one but two cases were chosen. This was done to add a comparative layer to the analysis. Potentially any argument based on case study data in conjunction with prepositions derived from a theoretical framework can become stronger if they can be related not only to the theory but also to another case. The comparative element allows a conclusion to be drawn from at least one other angle, which potentially increases the validity of the research results.

The relationship of the two case studies is marked by the dissimilarity between the two cases. Dissimilarity potentially highlights the challenge of creating input legitimacy better (in comparison to similar cases) by allowing the complexity of policy-making to emerge as opposed to a design that stresses similarity. This thesis does not engage in theory building. Nonetheless, dissimilar cases potentially broaden the theoretical perspective on the phenomenon in question, which in turn may highlight shortcomings of the theoretical framework. Again, this assumption disrupts the pure nature of deductive research, where research data logically does not change the theoretical assumptions. This also relates to the issue that the boundaries between phenomenon and context are not clearly evident. In addition, the ambiguity of purposes of online consultations is an essential part of the beast's nature. From the start, the Commission itself did not subscribe to a hierarchical order of purposes for its consultations. The case study method accepts the ambiguity of the unit analysis rather than silencing the ambiguity by over-simplification.

However, case study research with small Ns raises the question of how far reaching the results are. The ideal deduction (assuming that the hypotheses of this thesis are both true and valid) leads to what Lincoln and Guba describe as a generalisation that would be the 'be-all and end -all of inquiry' (Lincoln & Guba, 2000, p. 39). Yet, in the research reality of social science, this is rarely achieved, if ever at all. Even natural science often finds new boundary conditions, which apply to a rule

previously regarded as completely generalisable. While this may shatter belief in a 'be-all and end -all of inquiry' it does not challenge the regulative idea of finding a simple Popperian rule (i.e. one and only one boundary condition and an almost 100% chance of falsification) that explains (and predicts) as much as possible (ideally everything) (Caldwell, 1991, pp. 2–4). What it does challenge, though, is the opinion that this is the only way to undertake meaningful research.

Case study design in this sense embraces the open-ended nature of any type of research. Although the small N of case study research (in comparison to for instance survey type research) makes generalisation less authoritative (Lieberson, 2000, pp. 209–212) and conclusions less far reaching, it also makes it paradoxically easier for other researchers to pick up open questions and loose ends and incorporate case study research into their work, both by highlighting unanswered puzzles but also by raising the question of the transferability of conclusions. This also holds true for this work (as discussed in the introductory chapter). Whilst all researchers stand on the shoulders of giants, case study design often makes it easier to assess whether an existing scapula is a viable platform for their own feet.

The aspect of generalisability is treated here in a twofold way. First, the generalisability is not the main purpose of this research. Second, there may be potential for generalisation even in the murky water of small Ns. Clearly, one has to be cautious about the limited capacity of small-scale case study conclusions. Nevertheless authors like Stake make claims to generalisability based on what he calls 'naturalistic generalization' (Stake, 1995, p. 85) or what Lincoln and Guba describe as 'transferability' (2000, p. 40), a term used in this thesis. The basic idea is that the reader, researcher, practitioner or consumer of case study research have analysed the case studies and decided on possible applications elsewhere for themselves. Generalisability of case study research is then not mainly based on the degree of credibility assigned by the author of the research by adhering to certain standards but by the recipient(s) of the research. Hence, with the concept of transferability the problem of generalisation is handed over to the researcher or practitioner who knows about research context in terms of both its origin and where potentially useful applications may exist elsewhere. In this sense generalisation becomes an extrapolation not based on statistical or probabilistic concepts but rather on the abilities of the recipient to assess 'logical, thoughtful, case derived, and problem oriented' potential other applications (Falk & Guenther, 2006, p. 9).

The design of this research does not stress the aspect of the intrinsic value of the cases (Gomm, Hammersley, & Foster, 2000, p. 99). The case studies as part of the whole research design gain their value from the potential to answer puzzles presented by theories of democratic legitimacy in a non-nation state context. Yet, there may be a claim of intrinsic relevance based on the novelty of the research area of internet based participation in EU policy-making, also known as gap filling research (Dunleavy, 2003, p. 21). However, this should not be overly stressed, not only because the case study is explicitly not employed for its intrinsic value but also because the novelty aspect rapidly fades with the research, which is emerging in this area.

As mentioned above, the heterogeneity of the cases were paramount in their selection. The reason why these two consultations were selected lay predominantly in the perceived nature of the policy. The overriding reasoning for selecting the animal welfare case lay in the fact that it is regarded as a high salience case (from a participant perspective), which was listed on the Your Voice in Europe Website. It attracted a comparatively large number of participants (for the time) and dealt with the evocative issue of the treatment of animals. In contrast, the consultation by DG Enterprise essentially dealt with the more technical issue of product standardisation. Both cases also differ with regard to centrality for the EU. While product harmonisation has been at the heart of EU policies ever since its early days, animal welfare is a comparatively new policy area for the EU.

Feature	Animal Welfare	Product Harmonisation
DG	Health and Consumer	Enterprise
Type of legislation	Non legally binding action plan	Legally binding directive
Main type of participants	Lay citizens	Professionals
Maturity of the policy area	New (at the time not mentioned as an EU policy in an EU treaty)	Old (at the core of European integration since its beginnings)
Communicative approach	Mainly closed questions	Closed/open questions mix
Policy area	Animal ethics in agriculture, research and consumer protection	Market regulation by reducing trade barriers

Table 12: Case studies – overview

The gathered original data comes from three primary sources – semi-structured interviews with Commission officials, document analysis and semi-structured interviews with consultation participants. The core empirical data for this thesis is

sourced from semi-structured interviews with Commission officials working on the implementation of the consultation procedure. For the case studies, interviewees were selected based on what they might know with regard to the practical experience of online consultations and their potential contribution in addressing the input legitimacy problem of the EU. These are generally speaking lower to middle ranking EU Commission officials (up to 'Head of Unit' within a DG) who held privileged positions in conducting the consultation. Apart from staff directly related to the two case study DGs, personnel in charge of the Your Voice in Europe website and the IPM were interviewed.

We can expect that such individuals are likely to have a crucial influence on the outcomes of a consultation, more so than higher ranking officials who are often not involved into the day-to-day work of drafting policies. These middle-ranking officials have a degree of expert knowledge but their formal power within the organisation does not (yet) match their expertise. In particular, due to their functional responsibility for drafting policies, they have a high degree of discretion in interpreting guidelines issued by higher-ranking members of the Commission. This makes their position particularly relevant for the outcome of the consultation. In this sense, they are the Commission's equivalent of Lipsky's (1980) street level bureaucrats, which were discussed in the introduction.

Apart from gathering more knowledge on the consultation process, the main function of these interviews is to cross-examine the theoretical positions of this thesis on the input legitimacy potential of online consultations with perceptions and beliefs held by the Commission officials on this matter (Richards, 1996, pp. 199–200). Hence, the interviews were interested in attitudes, values, and beliefs with regard to implementing online consultations and in an account of the historic evolution of the consultations.

At the time of the design of this research project, the area of online consultations within the Commission was in even more uncharted waters than at the time of submission of the thesis. Research based on semi-structured interviews is especially suitable to sail those uncharted waters in what is a complex and emerging area of research because it allows us to find out what is there by asking the people in charge what they are doing, without having to establish a tight analytical corset. Moreover, the semi-structured interview technique can also create an environment in which highly educated professionals articulate their views on the matter, elaborating what

they think and why (Aberbach & Rockman, 2003, p. 674) This method may also produce new insights on a theoretical level. Additionally, open-ended questions allow engagement in broader discussions, something, which enables the interviewer to probe beneath the surface of a reply and shed some light on the reasoning and premises that underpin a response.

However, there are major drawbacks to this research design. Semi-structured interviews necessarily produce a subjective account of the consultation event. This does mean, though, that they can provide data with a high degree of reliability as open-ended questions offer the opportunity for the interviewee to organise their responses within their own frameworks. Also, the question of the reliability of a narrative can be addressed during the interview process. This kind of data is especially valuable for the exploratory and in-depth research interests of this thesis. On the other hand, the (high) price for this is a significant lack of validity. Validity is hampered by both the case study design and the nature of the interview design. Although it seems plausible that conclusions based upon those case studies are valid for other cases, there is not much apart from anecdotal evidence that supports validity across the EU online consultation regime within this thesis.

Whilst reliability is generally considered as one of the advantages of semi-structured interviews, there are nevertheless also problems with reliability as Richards (1996) points out. They are caused by 'failures in his/her memory. The older the witness, and the further from events they are, the less reliable the information (...). This is partly a result of the stretch of time, but interviewees also have the problem of confusing what they can actually remember of events, with what they have later read on the same subject' (Richards, 1996, pp. 200–201).

Coming to the types of interviewees, there are three categories of interview partners; interviewees from the Commission, participants of online consultation and outside observers. The latter two categories do not need further clarification. Outside observers are people who do not work for the Commission in areas directly related to the case studies or have participated in one of the case study consultations but are familiar with the issues of the online consultation regime, most of them are representatives from Brussels-based lobby firms, think tanks and lobby watch groups. The rationale for interviewing people from this third category was to increase the reliability of interview data gathered from sources of category one and two by having a third observer of the online consultation process (Beamer, 2002, p. 93). It

also counterbalanced tendencies (in both the data and the researchers) to see the main actors' views as the main explanation for events and processes in the cases (Silverman, 1993, p. 199).

With regard to the research praxis, one of the more severe problems was related to the organisational dynamics of the Commission. Ideally, we would like to know all key players of the policy-drafting phase who can then either be interviewed in total or, alternatively, a sample of the totality can be chosen. Although both cases were not affected by a reorganisation of units and/or responsibilities, not all people involved in the case study consultation still worked in the unit when the interviewing began. Luckily, the key players still worked in the respective units and were able to name other relevant people involved. Yet, their accounts regarding relevant players (although cross-referenced with other interviewees) could not be verified independently. Ultimately, the totality of key players is therefore unknown, so it is possible that not all of those who were relevant for the case studies were interviewed.

To further address the reliability issue of semi-structured interviews with EU officials and to add another layer of data (Davies, 2001), a document analysis of the European Commission's policy communication was conducted regarding both the case studies and online participation. As far as the latter is concerned, some of this research has been presented already in chapter 3. To allow for a potential contrast with the views of the Commission, semi-structured interviews with participants of the case study consultations were also undertaken. This is however close to anecdotal evidence as no sampling technique of participants was employed. While the totality of participants is known, contact details are accessible for only a fraction of participants. These were provided by the Commission's staff. As it was never an aim to draw conclusions about the whole EU citizenry, the lack of a systematic sample is acceptable. The aim of data provided both by the participant interviews and document analysis allowed for cross-referencing with Commission interview data, which in turn helped with the interpretation of EU documents, especially as the people who wrote key documents were interviewed.

Another reason why the research is less conclusive when it comes to participants lies in the time lag between the act of participation and the conducting of the interviews. A common answer to the posed questions was 'I can't remember', which is understandable, given that some interviews took place more than three years after

the participation event. This was especially a problem with participants of the animal welfare case, who generally had no professional interest in consultations and therefore their life did not evolve around the activities of the EU. In addition, the 'professional participants' of the harmonisation case were often kind enough to admit that they could not answer the question because they could not remember the context and detailed content of the consultation. This became especially apparent when questions were asked about the content of the policies (such as 'from your perspective which were the most relevant points raised by the Commission's documents?'). Most interview partners only had a vague idea about the policy issue at stake.

The material on participants is likely to be further biased as the interview partners selected themselves by replying. Hence, it is likely, and especially in the animal welfare case, that individuals who responded held strong opinions on the Action Plan. Some comments made in the interview seemed to confirm this assumption. This, however, was not an issue with participants in the harmonisation case. One can speculate here that the willingness to participate in a research interview was inversely proportional to their workload at the time of contacting.

The last section of this chapter before the concluding remarks is used to describe the key elements of the field research and research practicalities. The first round of gathering data consisted of collecting relevant documents on all of the Commission's online consultations up until 2006. Moreover, a small database (with the help of SPSS statistical software package) of all closed consultations was built. This data in conjunction with the literature review was then used to decide the case study selection.

Initial interviews took place in June and July 2007 in Brussels, mostly with interview partners outside of the Commission. The main round of interviews with participants and Commission staff took place from May 2009 to May 2010.

The initial contact with the Commission was established in two ways. First by contacting the DGs' communication offices in writing and second, by directly contacting personnel working in the relevant units of the DG via the directory of the Commission (accessible via the internet, see EU Commission, 2012a). The rationale for the former approach was that the Commission is obliged to reply to 'written on paper' requests for information or help (usually within month). This was done in case the latter approach would not yield any replies.

After the initial contact was established, staff also provided me with names of colleagues who were potentially relevant for this research (also referred to as 'snowballing'), usually people who left the DG between drafting the policy and the field research.

The medium of communication for the initial contact was a written letter sent via traditional post. Much of the subsequent communication was done via email and, to much lesser degree, telephone.

The participants were contacted after the unit of the DG allowed me access to their participants' record. The permission was obtained to contact participants who decided that their input was not confidential (in the case of DG Enterprise) or, in the case of DG Health, to contact organisations to which the call for participation was sent. The response rate of participants was very low. Fewer than 7% of the contacted individuals responded to my request. Appendix III lists all interview partners.

Interviews were conducted via telephone and via email. The face-to-face interviews, bar two, took place in Brussels. Appendix I contains an interview matrix used as guideline for interviewing EU officials. Appendix II is an example of an email questionnaire sent to participants.

No specialized software package was used in the analysis of the data, although versions of Atlas.ti, NVivo, MAXQDA, Qualrus, QDA Miner and HyperRESEARCH were tested. Instead, generic spreadsheet software was used. The decision to use spreadsheet software was based on the fact that the powerful statistical tools these other packages offer were not required. On the one hand traditional spreadsheet software (both Open Office Calculator and MS Excel were used as processing took place on computers using both MS Windows and Linux operating systems) was deemed sufficient for the data and on the other hand no extensive training to use unfamiliar software was required. In addition, primary text documents were fed into a database based on the Zotero software, which is a tool developed to archive and reference traditional literature and, in particular, electronic texts and digital artefacts. This programme was also used for the traditional referencing of secondary literature for the thesis.

With regard to the data analysis with spreadsheet software, transcribed sections (where voice recorded) of the interviews and key excerpts of the document analyses were (binary) coded according to their links to the three hypotheses along with some generic descriptive variables (such status of interview and case relation). This

allowed the easy grouping of data in relation to a hypothesis across the cases and data sources. Also, patterns of interview types were easier to identify by this method. This setup was very helpful in not becoming entangled by the narrative of individual interviews and cases and concentrating more on the propositions of the hypotheses without completely sacrificing the context of an interview narrative.

Concluding remarks

The fourth chapter discussed the research methods of this thesis. Three hypotheses were developed in order to analyse the data originating from two Commission online consultations. The success and failure of this qualitative case study research depends to a great extent on effectively utilising interpretive methods as a form of establishing credible links between the data and the hypotheses. Such credible links are established by both having data from a range of sources and conducting systematic comparisons between the data, cases and theory. This is the task of the remaining two chapters.

Chapter 5: Case Studies – Policy Issues and Choices

This chapter gives an overview of the two case studies on policy issues. We will study the development of the proposals before and after the consultation took place and place them within the wider debates in the policy fields.

This chapter is divided into two major parts, each part looking at one of the two case studies, 'Harmonisation of Legislation on Industrial Products' and 'Community Action Plan on the Protection and Welfare of Animals 2006-2010'. The first part describes the product harmonisation case while the second is concerned with the animal welfare case.

Part I: Harmonisation of legislation on industrial products

The first case study deals with a horizontal legislative approach to the harmonisation of legislation on EU market access for industrial products. This approach could also be described as the 'harmonisation of EU harmonisation policy'. It is a follow-up policy, in particular to the ground-breaking resolution on the 'New Approach to Technical Harmonisation and Standardisation' (Council, 1985). The case study consultation led to a package of three measures with the aim of improving the coherence of the Single Market. First, 'Regulation (EC) No. 764/2008 of the European Parliament and of the Council of 9 July 2008 Laying down Procedures relating to the Application of certain national technical Rules to products lawfully marketed in another Member State and repealing Decision No. 3052/95/EC' (EP and Council, 2008a); second, 'Regulation (EC) No. 765/2008 of the European Parliament and of the Council of 9 July 2008 Setting Out the Requirements for Accreditation and Market Surveillance Relating to the Marketing of Products and Repealing Regulation (EEC) No. 339/93' (EP and Council, 2008b); and finally, 'Decision No. 768/2008/EC of the European Parliament and of the Council of 9 July 2008 on a Common Framework for the Marketing of Products, and Repealing Council Decision 93/465/EEC' (EP and Council, 2008c). These three measures collectively are sometimes referred to as the '2008 Goods Package' or the 'New Legislative Framework' (a phrase preferred by the Commission).

The following first part of this case study overview will shed some light on the mechanisms of European integration and market access. The second part looks at the online consultation process and the content of the consultation. The third part then analyses the policy problems and policy choices made by the Commission in the light of the consultation process.

Policy background of product harmonisation

The policy of the 'harmonisation of legislation on industrial products' is essentially a meta-regulation of technical trade barriers caused by product standards; in other words, this is a harmonisation of harmonisation rules and a part of the wider 'regulatory mode of EU policy making'. The regulatory mode refers to a 'framework for numerous micro-level decisions and rules, for the shape of relationships with member governments and economic actors (...)' (Wallace, 2005, p. 81) within the Single Market.

At the centre of the regulatory mode, the Commission acts as the main policy designer and defender of regulatory goals. The Commission also offers various access points for societal actors. The Commission's consultations in their various forms (and, among them, online consultations) in principle offer the opportunity to shape the content of European market legislation.

The Council of Ministers shapes the broader political aims of harmonisation. The role of the European Court of Justice (ECJ) is to ensure a coherent application of the law across the EU and also creates an arena for addressing cases of discrimination of or by individual economic actors (Wallace, 2005, p. 81). Moreover, the ECJ holds the classic judicial role of settling disputes. The Parliament is less important in this policy-mode (Lord, 2003, p. 265). It can nevertheless prompt 'the consideration of non-economic factors (environmental, regional, social and so forth) with increasing impact as its legislative powers have grown but it still has little leverage on the implementation of regulation' (Wallace, 2005, p. 81).

This regulatory mode is the bread and butter work of large parts of the EU's institutions and, in particular, the Commission. Although many EU actors – including the Commission – prefer to focus on a specific policy area, the legal basis for legislation is ultimately treaty articles dealing with the Single Market and the regulatory regime (Pelkmans, 2011, p. 2) – as we will also see in the animal welfare case.

From a historical perspective, early European (market) integration was focused on customs, tariffs and quotas and less concerned with technical barriers to trade. This changed during the 1960s and 1970s, with the perception that new technologies resulted in new products, which led to concerns over consumer protection and the environment. Subsequently, as Pelkmans comments, 'modern developed countries have turned into machines for risk regulation' (2007, p. 707). Technical barriers to trade increased, which challenged the then new idea of the internal market and the free movement of goods. As a policy problem, non-tariff barriers largely replaced tariffs, which had been abolished among the Member States by 1968 (Young, 2005, p. 95).

The Commission's initial approach to tackle the problem of technical barriers to trade aimed at complete harmonisation (also called 'Old Approach'), that is the adoption of detailed identical rules for a product or a product category for all Member States. Apart from the sheer volume of technical details (Voss, 1998, pp. 54–56), this process was slow mainly due to the need for unanimity in the Council, an institution made up of government representatives who were faced with pressure from interest groups wishing to preserve the status quo (Pelkmans, 1987, pp. 252–53).

The nature of policy-making for the Single Market changed significantly with the Single European Act (SEA), effective since the 1st of July, 1987. The SEA revived so-called 'negative integration', 'that is, the removal of national rules that impede economic exchange' (Young, 2005, p. 102). It led to the mutual recognition principle, the abolition of frontier controls and the elimination of exchange controls. The SEA also changed the institutional framework for 'positive integration' i.e. the process of 'agreeing common rules to replace national ones by reinstating QMV [qualified majority voting] and enhancing the powers of the EP' (Young, 2005, p. 102). The SEA made it easier to achieve negative integration, which happens '[i]f one member government prohibits the sale of a product produced legally in another Member State, the producing firm can challenge that prohibition under European law. If successful the importing member government must accept the product, and negative integration has occurred' (Young, 2005, p. 103). Nevertheless, Member States may seek to exclude products from their markets, usually on the grounds of safety, health, environmental concerns and/or consumer protection. In the spirit of free movement, this is an exception to the rule. If the standards in both the producing/exporting and importing country are essentially the same then there will be no exception for the

product in question. If there is conflict regarding the assessment of standards then the ECJ will be asked for a ruling. Mutual recognition thus becomes the default case. It is only not applied in cases where a harmonisation measure exists or if a Member State believes that there are substantial dangers associated with the product although it is accepted in other Member States' markets.

If negative integration is not possible because national standards are substantially different then positive integration is needed. National legislation is then replaced by European legislation (Young, 2005, p. 103). At this stage, the New Approach to product harmonisation becomes relevant. Where standards are not at a comparable level, an exception has to be made. The free movement of goods then depends on product harmonisation. The New Approach to technical harmonisation amounts, in essence, to mutual recognition with regard to technical standards (also called 'regulatory mutual recognition'), i.e. the goal is defined but the means are open. The core concept of the New Approach to harmonisation is that the Commission together with the Council and the Parliament defines standards in broad terms for groups of products. The more technical and often case-specific decisions are then handed down to assessment bodies: certification organisations or so-called 'notified bodies' if they are accredited at EU level (Gehring & Kerler, 2008, p. 1002). Their task is it to test, inspect or certify a product with regard to EU safety standards as an independent third party. If a product meets the standards according to the assessment organisation it is awarded the CE (Conformité Européenne) label (or 'CE marking' in official terms) and can be freely placed on the Single Market.

The EU's harmonisation policy aims to minimise unwanted trade barriers based on technical regulations and product standards. In 1995, the WTO produced the agreement on 'Technical Barriers to Trade' (negotiated as part of the Uruguay Round of the General Agreement on Tariffs and Trade) in which it described product standards regulations as 'a document approved by a recognized body, that provides, for common and repeated use, rules, guidelines or characteristics for products or related processes and production methods, with which compliance is not mandatory' in contrast to 'technical regulations', which are mandatory measures (World Trade Organization, 2003, p. 497). In other words, minimisation of technical trade barriers is a show case for the differences between free trade and the EU's 'guarantee' of the free movement of goods, capital, services, and people (also known as the EU's four freedoms) within the Single Market. Free trade simply means that a country abstains

from imposing tariffs and quotas for goods but remains autonomous in granting market access, based, for instance, on technical regulations. The concept of free movement of goods, however, changes this fundamentally because the right of market access is already a given. Without the free movement of goods and services, the EU would merely form a customs union but the EU's four freedoms make it a union of states with a fully fledged internal market (Pelkmans, 2007, p. 700).

The Achilles heel of this approach to regulation is the matter of what is 'recognised' within the internal market. A single directive may refer to several hundred different products. This is a problem both for Member States and market operators. The development of European technical standard based objectives in the relevant directives is done by (semi-) private standardisation organisations such as the European Committee for Standardization (CEN), the European Committee for Electrotechnical Standardization (CENELEC) and the European Telecommunications Standards Institute (ETSI). Pelkmans comments that the legally voluntary character of those standards is beneficial: 'In case a company is innovative and creates novel aspects or techniques or uses new materials not foreseen in a European standard, the new good can be tested directly on compliance with (...) the relevant directive(s)' (2007, p. 703). Wallace however also points out the limitations of the New Approach in commenting that 'it appears to have been particularly successful in dealing with product regulation, and less robust in dealing with process standards (...). The mode has also had rather less purchase on the regulation of services, financial markets, and utilities, where instead we see moves towards more decentralized, less hierarchical versions of regulation' (2005, p. 82).

The key concept of the New Approach is to distinguish between general health and safety requirements and detailed technical specifications. While these standards are not legally binding, they still have an important market function. An EU Member State 'must assume that products conforming to their requirements are also in conformity with the legally binding general health and safety standards of the relevant directives' (Gehring, 2007, p. 12). Hence, a Member State must accept the marketing of such products within its jurisdiction (Gehring & Kerler, 2008, p. 1010). The CE marking represents a claim by the manufacturer or importer that a product has meets EU health, safety, and environmental requirements. This is the de facto entry ticket into the European Single Market. As a consequence consumers from across the globe frequently come across the CE label on products.

The harmonisation of technical standards for products is seen as a central prerequisite for the free movement of goods within the European Single Market. Egan notes that 'a market is not organized by itself, but always operates within a political and legal framework that provides the rules of the game' (2001, p. 2). Mario Monti, the former Commissioner for the Internal Market and for Competition, has argued that 'a robust Single Market is key to the overall health of the European Union, because it represents the very foundation of the integration project' (Monti, 2010, p. 12). Naturally, the Commission is enthusiastic about the drive towards comprehensive EU market integration and regards the Single Market as 'one of the great achievements of our time (...). This economic space, where goods, services, capital and labour can circulate freely, provides a foundation for prosperity in the European Union (...)' (EU Commission, 2000a, p. 3).

According to Gehring, 'today 23 directives are in force, which cover wide product areas (...) including sectors, in which decision making had been blocked under the Old Approach' (2007, p. 12). The directives cover everything from machinery of all types and sizes, toys, elevators, radio and telecommunication equipment and building materials to railway transport and medical products. At the time of the online consultation process in 2006, the Commission reckoned that some 600 legislative texts for harmonisation covering industrial products had been adopted since 1969 and that the EU's harmonisation legislation covered around 80% of industrial production as well as approximately 74% of intra-EU manufacturing trade (DG Enterprise, 2007, p. 7) with an estimated value of more than €1500 billion per year (DG Enterprise, 2007, p. 11).

However, regulating the conformity assessment had become a difficult challenge. The new battleground for product harmonisation shifted from the Commission and the Council to organisations dealing with product certification. The question of mutual recognition of standards among testing and certification organisations was first comprehensively addressed 1990 in the Commission's so-called 'Global Approach' (Nicolaidis & Egan, 2001, p. 462).

According to the Commission, during the implementation of the New Approach legislation various shortcomings were uncovered. Foremost amongst these was a lack of coherence in its implementation and enforcement. The Commission identified the 'distortion to competition because of differing practices in the designation of conformity assessment bodies by national authorities and unequal treatment in the

case of non complying or dangerous products on the market, through very different national market surveillance infrastructures, rules and means' (EU Commission, 2007b, p. 2).

The fact that notified assessment organisations are a source of market distortion is not surprising as legislation only sets minimum criteria, which a conformity assessment body must interpret and meet. It is the responsibility of the Member States to ensure that a conformity assessment organisation does meet the criteria. If a Member State believes that such an organisation fulfils the relevant requirements it notifies the Commission and the other Member States that this organisation has been appointed to implement conformity assessments in accordance with one or more EU directive(s). Hence, in EU legal terms the conformity assessment body becomes a 'notified body'. Moreover, the '[n]otification of notified bodies and their withdrawal are the responsibility of the notifying Member State' (DG Enterprise, 2012). Apart from very small Member States such as Malta and Cyprus, all Member States have national accreditation schemes for assessing whether an assessment organisation complies with EU criteria so that it can become a notified body. The main difference between Member States is that in some states the accreditation bodies are private organisations, whilst other countries delegate accreditation duties to their public bodies. Hence, the mode of accreditation differs both between Member States and between product sectors (DG Enterprise, 2007, p. 62). Different accreditation schemes contributed to different implementation outcomes, which according to the Commission led to the aforementioned 'distortion to competition'.

The upshot of all this is that the Commission's proposed legislation had the 'objective to provide a common framework for the existing infrastructures for accreditation for the control of conformity assessment bodies, and market surveillance for the control of products and economic operators, by reinforcing and extending what exists (...) and the organisation of the revision of existing product related Community harmonisation legislation' (EU Commission, 2007b, p. 2).

Consultation process and content

Given its complexity and importance, it is no wonder that the process of market harmonisation and its tools are under constant review. With regard to the directive on 'Harmonisation of Legislation on Industrial Products', the Commission held a public consultation on the New Approach directives as early as 2002. This consultation also

provided the background to the 2003 Commission's communication on 'enhancing the implementation of the New Approach directives' (EU Commission, 2003c). Both the 2002 consultation and the 2003 communication already outlined core elements for the 2006 internet consultation. This case study consultation was open between the 13th of June and the 26th of July 2006 (EU Commission, 2006f).

At the initial policy formulation stage, the Commission circulated its main working documents to all major stakeholders. Based on the feedback to these (some 250 replies), a draft proposal went on the Your Voice in Europe website as an internet consultation in 2006. The internet consultation received 280 replies (EU Commission, 2007b, p. 3). From the Commission's perspective, the internet consultation confirmed the results of the initial consultations on the working documents: 'The contributions received confirm that the proposals should build on what exists as opposed to creating a new system (...). They reaffirm it [notified body] as a public authority activity and (...) should be free of commercial competition. The conformity assessment body system [sic] requires stricter selection criteria and harmonised national selection processes. Support was given to the harmonised definitions and the obligations set out for the economic operators (...). Practically all contributions supported a Community market surveillance system with an information and co-operation system between national authorities (...) and without creating new tools. The option of abandoning the CE marking was contested and clarifying its meaning and protecting it legally were supported' (EU Commission, 2007b, p. 3).

Subsequently, the Commission developed four 'fact finding questionnaires' aimed at specific industry sectors. The questionnaire for companies was used by the Euro Info Centre network to carry out face to face interviews with some 800 small and medium-sized businesses. Additionally, the Commission consulted experts in the fields of conformity assessment, accreditation, market surveillance, standardisation and technical harmonisation at all stages of the policy formulating process. Experts also directly participated in meetings (EU Commission, 2007b, p. 3). Finally, an Impact Assessment was compiled (DG Enterprise, 2007). The Impact Assessment is a procedure that aims to raise the quality of a potential policy before implementation by assessing the consequences of different policy options (including the option to do nothing). The option of changing nothing was discarded as was the option to work on the basis of non-regulatory measures. The latter was ruled out because non-regulatory measures had already been used exhaustively before. Moreover, the

Impact Assessment came to the conclusion that '(p)roblems originating in the existing legal provisions can only be eliminated through a change in the legislation' (EU Commission, 2007b, p. 5).

If we look at the specific design of the case study online consultation from a technology perspective it is vital to remember that the IPM itself is an empty shell, which needs to be filled by the policy officer in charge. The initial content, i.e. the design of the survey and questions is in effect prepared outside of the IPM. The unglamorous role of the IPM in providing help with the design of the consultation is perhaps best illustrated by the following advice found in the IPM manual: 'Please note that prior to the process of creation of the online questionnaire it is advised to create the questions and answers in a simple Word document. You can then proceed by copy/paste to introduce the different elements in the system' (DG Digit, 2012c, p. 1). Publishing an online consultation with the IPM can be divided into three phases. The first is to create an initial survey, which is then tested in a second phase with a select group of people. Their feedback may then inform the design of the final consultation. The third phase is the actual publication of the online consultation. It is crucial to remember that the policy officer can in any phase alter parts of the consultation (including deleting items), temporarily halt a consultation or permanently delete it. The latter is particularly severe as the operation cannot be undone (DG Digit, 2012c, p. 107). From the participants' view, the IPM does not help to trace such changes. The core problem here is that the technology of the IPM does not improve institutional accountability. The IPM is a weak tool to hold the policy officers accountable to the ideals of a transparent and democratic policy process as they can fundamentally change the consultation process virtually undocumented.

If we look at the main participants characteristics of the 2006 case study consultation we can see that

- the majority of the 280 participants (77.5%) took part on behalf of an organisation, institution or enterprise (DG Enterprise, 2006, p. 1),
- the majority of participants came from Germany with 73 participants, followed by France (60), the UK (25), Italy (22) and Belgium with 20 participants (DG Enterprise, 2006, p. 2),
- important sectors of economic activity for the participants were electronics related enterprises, machinery and construction and less important were

sectors such as toys, transport, recreational craft and chemicals (DG Enterprise, 2006, p. 3).

If we turn to the content of the consultation then part one and two of the consultation address issues around standardisation, part three and four assessment procedures and notified bodies, part five deals with CE marking while part six and seven deal with traceability and market surveillance.

The first part of the consultation results revealed that European standardisation is generally regarded as an effective tool within the framework of the New Approach. Roughly 86% of participants held this view (DG Enterprise, 2006, p. 5). According to the participants, the most pressing problems were the lack of a coherent market surveillance regime and conformity assessment. In contrast, the accreditation infrastructure for notified assessment organisations was deemed to be less important (DG Enterprise, 2006, p. 18).

In the second part of the consultation dealing with standardisation, the participants complained that the standardisation process was too slow. Two thirds of respondents regard this as an 'important' or the 'most important problem' (DG Enterprise, 2006, p. 5). A less pressing problem was the complexity of the process. The participants did not consider the 'lack of stakeholder visibility' or that the 'standardisation process has a wrong image' (DG Enterprise, 2006, pp. 5–6) as important issues.

The third part on conformity assessment procedures highlighted a high degree of consensus among participants and no real concerns in this area. Most participants believed that a 'wide choice of conformity assessment procedures is important' (80% replied 'I agree' or 'I tend to agree' with the statement), whilst at the same time agreeing that 'the current directives leave a sufficiently wide choice' (DG Enterprise, 2006, p. 7).

The most surprising result of the fourth part on notified bodies was that participants were split over the assessment of the uniformity of assessments by notified bodies across the EU - an issue that the Commission identified as a core problem. 55% of participants answered either 'I disagree' or 'I tend to disagree' with the statement that '[n]otified bodies across the EU perform their tasks to a satisfactorily even level of quality'. In contrast, 40% agreed with the statement in broad terms (DG Enterprise, 2006, p. 8). Nevertheless, a majority (61%) considered notified bodies to be insufficiently monitored. 98% of participants supported the idea

of withdrawing accreditation for dubious notified bodies, believing that an accreditation scheme for assessment bodies would improve the credibility of notified bodies (DG Enterprise, 2006, pp. 8–9). Other issues were more consensual, such as an agreement on a minimum amount of activity of notified bodies in their accredited areas, a time limit on the validity of the notification of a body by a Member State and the verification of competencies of assessment bodies by Member States (DG Enterprise, 2006, p. 8).

The fifth part on CE marking again was an area of consensus. The vast majority of respondents (87%) did not wish to abolish the CE marking and believed that the best way forward was to initiate an information campaign to make it better known (89%). Anything leading to more obligations for manufacturers or importers was rejected (such as 'compulsory third party certification' as opposed to in-house self-certification for certain products) as were 'imposing traceability' and 'systematic border controls' (DG Enterprise, 2006, pp. 10–12).

In the sixth part on traceability, there were no real surprises. Participants decided that the idea of clarifying the obligations of economic operators would be an acceptable measure (88% answered either 'I agree' or 'I tend to agree' with the statement). They also supported appointing a representative authorised by the manufacturers to deal with standardisation issues (the top priority out of three with 41% of the respondents). Less acceptable was the idea of a 'registration system' and 'keeping record(s) of suppliers and purchasers' (DG Enterprise, 2006, pp. 13–15).

The seventh and last part dealt with market surveillance. There was general agreement that a 'coherent enforcement of product safety rules throughout Member States would ensure a level playing field for companies and a safe market place for consumers' (96% answered either 'I agree' or 'I tend to agree' with the statement) and that 'market surveillance is insufficiently rigorous'. Participants broadly supported the demand that 'Member States should invest more in market surveillance' (89% answered 'yes', 'No' 5% and 'I don't know' 5%) (DG Enterprise, 2006, p. 16). More controversial was the question of whether 'it is justified to treat consumer products differently than products for professional use'. 54% of respondents agreed, 37% disagreed (and 9% did not have an answer) (DG Enterprise, 2006, p. 17).

Arguably, more interesting than the results of the consultation is the degree to which these results actually fed into the draft proposal. How much, if at all, did the online consultation influence the policy paper subsequently produced by the

Commission? From outside the institution, the impact of the online consultation is difficult to assess because the Commission bundled together the inputs from different types of consultation over longer periods of time. Hence, to single out one consultation and attribute to it specific importance is impossible without analysing the internal view of the Commission's officials. We will address this issue of how the Commission saw the online consultation in chapter 6. In the meantime, we will treat the Commission as a black box. Input from the consultation goes in and out comes a policy proposal. In this sense, the last section on results provided the input for the black box.

A document produced by DG Enterprise explaining the decision-making process of the New Approach package provides initial insights into the Commission's assessment of the role of the online consultation. This 'Commission Staff Working Document, accompanying document to the Proposal for a Regulation of the EP and of the Council setting out the requirements for accreditation and market surveillance relating to the marketing of products – Impact Assessment' (DG Enterprise, 2007) (or short 'Impact Assessment') aims to explain and justify the internal decision-making process for other actors in the EU, in particular the Council and the Parliament. The document highlights three problematic areas: first, the role of assessment bodies; second, issues surrounding market surveillance and enforcement of directives; and third, the role of the CE marking. Hence, how exactly does this Impact Assessment document explain the internal decision-making process also in the light of the online consultation?

Policy problems and policy choices

The first issue centres on notified bodies. Here the main problem – as mentioned above – was the varying rigour in the implementation and enforcement assessment standards across different Member States by different notified bodies. Problems arose on at least three levels: first, for manufacturers needing a CE marking to place a product on the market; second, for assessment bodies that award the CE marking; and third, for consumers buying products on the market.

Conceptualised in terms of game theory, the problem of varying standards for notified bodies constitutes a classic race to the bottom scenario (Deakin, 2006), although official Commission documents did not use this term. Instead, they merely describe the mechanisms, which is a form of the well-known prisoner's dilemma

(Deakin, 1999). From the demand side of conformity assessments, manufacturers realise that both the interpretation of safety requirements and the procedural requirements vary considerably between different assessment organisations. There is no incentive for manufacturers to obtain their assessment from more rigorous assessment organisations (where the whole process is potentially more costly, too) because a directive defines only minimum standards that need to be met for a CE marking. Hence, manufacturers have a clear incentive to go for the cheapest assessment body. At the same time, from the supply side, assessment organisations compete with one another. While in theory this may lead to better services and lower prices for manufacturers, it can have also negative consequences if assessment organisations lower their requirements for product assessments in order to provide their services cheaper than competitors do. Ultimately, consumers in the Single Market lose out in this scenario because they have to buy products that are less safe compared to a world where the same level of rigour in implementing and enforcing assessment standards applies for all notified bodies across the Member States.

The Commission gathered some evidence that such a race to the bottom was actually taking place. In a non-representative survey amongst notified bodies, 42% of the respondents named 'less rigorous implementation of procedures by some notified bodies', 37% 'unrealistically low pricing for services' and 30% 'less rigorous implementation of essential requirements' (DG Enterprise, 2007, p. 13) as sources of 'unfair competition'. Bearing in mind that lower prices do not automatically equate to lower quality, this data needs to be treated with caution. In this survey, notified bodies determined what constitutes 'unfair competition' and overstating the degree of 'unfair competition' may well be a strategy to eliminate 'fair competition'.

Another indicator for a possible race to the bottom is the variance of price for the same service. The Commission reckons that a variance in the range of 15% is a common market scenario. However, a Commission's survey amongst notified bodies revealed a variance range of between 30% and 75% for the same service in different testing areas. From the demand side, a Commission's survey amongst small and medium sized enterprises revealed an average variation of 48%. (DG Enterprise, 2007, p. 14).

At the time of the consultation, the Commission was not sure if the obscured downward spiral had already had significant effects at the level of the consumer.

Ambiguously, the Commission states in its Impact Assessment: 'The negative impact of such procedures has been limited to economic effects for notified bodies and manufacturers alike and has not yet reached a level where the health and safety of consumers, workers or end-users is routinely endangered, *although there have been cases*' (DG Enterprise, 2007, p. 14, emphasis added) The report goes on to claim that '[t]here is no specific data which would allow to make a link between the [sic] an inappropriate testing by a notified body and accidents occurred with the certified products' (DG Enterprise, 2007, p. 41). From these statements, it is not clear if the Commission wanted to downplay the effects for the consumer, if there was no backlash, or, if it had no clear idea about the situation in the market. It should be noted, however, that it is highly plausible that if both notified bodies and manufacturers were already affected by such an obscured downward spiral that then this would also have had a negative effect on the products sold by manufacturers, which in turn would have had an effect at the consumer level.

The root cause of this presumed race to the bottom was different standards for notified bodies across EU Member States. The Commission identified a couple of factors for this. First, in the survey amongst EU notified bodies, roughly half of them believed that the competence of notified assessment organisations was not the same in all Member States (56%), while only roughly a quarter considered the level to be consistent (24%) (DG Enterprise, 2007, p. 16). Second, some notified assessment organisations notified to the Commission did not perform any conformity assessment activities with regard to directives for which they had been appointed by Member States (DG Enterprise, 2007, p. 15). Third, the assessment process of notified bodies by Member States is seriously lacking in transparency. Essentially, a Member State does little more than to announce that an assessment organisation fulfils the criteria laid down in the EU legislation for notified bodies without providing further details for the Commission or other Member States (DG Enterprise, 2007, p. 16). Fourth, different Member States have different approaches to monitoring their notified bodies. This is to say that some Member States evaluate their notified bodies annually whilst other Member States do this every four years (DG Enterprise, 2007, p. 17). Finally, the notification procedure (i.e. informing the Commission and other Member States about the existence of a notified body) lacks transparency (DG Enterprise, 2007, p. 17). This problem had already been tackled by an internet

application managing the notification process with the New Approach Notified and Designated Organisations (NANDO) input tool (DG Enterprise, 2012).

According to the Commission's report, the second set of problems centred on directives that were not properly enforced. Member States and many market actors regarded the enforcement of EU legislation on products as insufficient. In essence, this means that products, which do not comply with the EU legal requirements enter the Single Market. There is a range of causes for this situation. At the Member State level, this includes -but is not limited to- issues like insufficient frequency and efficiency of checks, lack of resources allocated to enforcement, lack of traceability of products, lack of coordinated actions, lack of effective sanctions, insufficiently controlled external borders, lack of cross-border co-operation in the EU and a lack of traceability of economic operators (which means that authorities have problems identifying the entity which made a product and/or distributes it within the Single Market) (DG Enterprise, 2007, pp. 21–23).

At the EU level especially, the safeguard clause mechanism does not work effectively. In EU terminology, the safeguard clause refers to a measure whereby one Member State notifies the Commission that another Member State fails to comply with obligations regarding to the internal market. Reasons for the ineffectiveness are the lack of resources within the Commission to assess cases, insufficient information provision by the Member State which triggers the safeguard clause mechanism and a tendency to over-notify, which means that a Member State notifies a breach without thoroughly checking whether the case is actually a valid breach (DG Enterprise, 2007, p. 23).

Another problem at the EU level is common to complex systems: inconsistencies. In this case, we refer to inconsistencies in the regulatory framework. The main causes of inconsistencies were unclear key terminology, which remains undefined in some directives or has different meanings in different directives. This problem is amplified by the fact that the same product can be subject to a whole range of EU directives and other legal instruments, which led in some cases to incompatible conformity assessment procedures (DG Enterprise, 2007, p. 27).

This in turn leads to an unnecessarily time consuming, judicially laden and costly process for the manufacturer. It also makes it more difficult for national authorities to implement and enforce EU law. On the level of market actors, distributors and especially importers from outside the EU do not always check the EU conformity of

their products. In principle, this is the obligation of the manufacturer. However, this obligation is transferred to the EU distributor for products manufactured outside of the EU as products made outside do not *a priori* have to comply with EU standards as they may have been produced for other markets (DG Enterprise, 2007, pp. 23–24).

The effects of insufficient enforcement of EU directives are similar to the effects of varying standards for notified bodies. Insufficient enforcement creates an unfair competitive advantage for market actors who do not comply with EU legislation. This can ultimately lead to a downward spiral because compliance in this case constitutes a competitive disadvantage. Again, consumers in the Single Market loose out in this situation because they buy products that are less safe compared to a world where directives are rigorously enforced across the EU (DG Enterprise, 2007, p. 24).

All of this is happening in a highly interdependent world with complex economic relations within the EU and beyond. At the moment intra-EU production (or EU-domestic) is growing slower than imports from non-EU countries. Hence, if compared to issues around notified bodies the scale of the problem is a very different one. The number of relevant actors is seemingly endless compared to roughly 1500 notified bodies (DG Enterprise, 2007, p. 67) within the EU. Equally, the relationship is infinitely more complex than between notified bodies and manufacturers.

While the two issues of notified bodies and inconsistencies in the regulatory framework concerned mainly professional market operatives, the third issue of misunderstanding the CE marking affected the average consumer – at least in the way the Commission initially phrased the problem. In the consultation, the Commission addressed the problem that many consumers seemed not to understand what the CE marking tells them about a product. The main reason lies in the fact that the addressee of the CE marking is not the consumer, which is already a very wide category – from the man in the supermarket buying a soft toy to the architect ordering a lift installation for his new building complex – but national authorities. Seeing the CE marking, official bodies have to assume that this product can circulate freely within the Single Market (as long as there is no evidence of non-compliance).

Interestingly, the Commission's Impact Assessment also states that this problem is not solely restricted to average consumers but '[e]ven amongst professionals and legislators, the meaning [of the CE marking] is not always clear' (DG Enterprise, 2007, p. 26). There are a number of common misconceptions about the CE marking. To start with, most people do not know which products need to have a CE marking.

This has led to a situation where manufacturers place CE markings rather too generously on their products even when they are not in fact required. This is done either in the hope that it will enhance the value of the product and/or to 'guarantee' that their product could definitely be marketed in the entire EU. Moreover, the CE marking is often perceived as an indication of origin (similar to locally produced food) or as proof that a product is in any case tested and approved by some authoritative third party (similar to awards by consumer organisations or magazines) (DG Enterprise, 2007, p. 25). In addition, products often bear labels that indicate exactly these qualities, such as local origin, adherence to non-obligatory environmental standards or quality testing of some kind. All this blurs the meaning of the CE marking for the consumer. Hence, it is criticised for its lack of credibility, especially if we take into account that the CE marking is sometimes affixed to products that do not comply with the relevant EU legislation.

In light of these policy problems, what policy options were discussed? As mentioned above, the Commission took from the start the view that there was a need for regulatory action. The option to do nothing was dismissed on the grounds that the problems were too important to ignore and that a 'self-healing' of the market was unlikely to occur. Furthermore, the option to resort to non-legal actions was also dismissed by the Commission. On the one hand, the Commission believed that it had already unsuccessfully tried to tackle the problems on a non-legal basis. On the other hand, the Commission argued that issues arising from the existing legal framework could only be tackled by changing the problematic part of the EU legislation (EU Commission, 2007b, p. 5).

In the context of notified bodies, the main options discussed were a) to directly regulate notified bodies at the EU level; b) create a specific agency at the EU level, which would centrally take care of assessing notified bodies with the help of an accreditation scheme; c) to establish an EU legal framework that would regulate competence assessment of notified bodies and d) to create a horizontal network of notified bodies at the EU level. In addition, the Commission discussed the already adopted web-based notification procedure via the NANDO-Input service.

The first option – directly regulating the activities of notified bodies – was dismissed almost outright. Clearly, a regulatory framework would probably produce a more consistent conformity assessment. However, it would bring back the problems of the Old Approach to harmonisation through the back-door. The Commission

argued that the policy-making process would be rather lengthy and cumbersome and that also after the adoption of the regulatory framework, it would lack the flexibility to react quickly to new technical developments (DG Enterprise, 2007, p. 53).

Option b) – an EU agency to assess notified bodies via an accreditation scheme – was accepted within the consultation process as an effective way of tackling the problems around notified bodies. Nevertheless, the Commission also dismissed this policy option because of the costs involved in setting up such an agency and because of subsidiarity issues (any matter that can be regulated better on a national level must be left to the Member States). Building an agency would mean establishing a whole new structure, when most Member States already have accreditation schemes. What is more, Member States would lose their powers to regulate an assessment organisation. The Commission clearly anticipated a conflict with the Council and concluded: 'The disadvantage of the agency option is that it would create a totally new structure instead of building upon an existing system. Important knowledge and synergy would be lost and adaptation to a new set of rules and procedures would lead to an unnecessary and additional administrative burden, both for the notified bodies and the national authorities, especially in the initial period' (DG Enterprise, 2007, p. 53).

Hence, the Commission went for option c) – establishing a legal framework for competence assessment of notified bodies – which means that the assessment and monitoring of notified bodies is still to be done by the Member States but with a common legal framework at EU level. This framework addressed the broad terms for accreditation on minimum standard grounds, e.g. the principle of non-competition between assessment bodies, reviewing intervals, rules on cross-frontier accreditation, obligations for co-operation among the Member States and their accreditation bodies. In the Commission's view, it promised to reduce the differences between notified bodies from different Member States. If we look at the final legal text, the details of the framework are laid down in Chapter II, Articles 4-12 in the Regulation (EC) No. 765/2008 (EP and Council, 2008b).

Option d) – the creation of an EU level network of notified bodies - was seen as an auxiliary measure to promote the coherence of conformity assessments via a common EU framework. Here the Commission decided to foster the 'European Co-operation for Accreditation'; an organisation at EU level which promotes coherence among assessment organisations in the EU based on a peer review

system of evaluating accreditation schemes. The Commission wanted to make the participation in co-ordination activities of the European Co-operation for Accreditation mandatory for all notified bodies. In the legal text, the European Co-operation for Accreditation is named in Chapter II, Articles 14,6 of the Regulation (EC) No 765/2008 ('The first body recognised under this Regulation shall be the European co-operation for accreditation, provided that it has concluded an agreement as specified in paragraph 2.') (EP and Council, 2008b). From the Commission's viewpoint both measures, c) and d), built on existing structures and were therefore deemed to be efficient.

Two more aspects are worth mentioning. First, the importance of the issue of standards of certification across the EU was not as clear in the consultation (DG Enterprise, 2006, pp. 8, 18) as in the Impact Assessment. The industry did not uniformly identify it as a major problem. Consumer representatives generally backed the Commission's stance, noting critically, however, that 'the ongoing cost (...) is to be paid from the Community budget. Why should the EU pay Member States to do what they should do anyway? Is this the only way to get Member States to do their duty? However, even with more money for accreditation and conformity assessment there is no guarantee that Member States will assign the necessary national resources to direct market surveillance to ensure that the system is producing the desired results' (BEUC, 2007, p. 1).

Regarding the other main point on the policy agenda – market surveillance and enforcement of New Approach directives – the Commission discussed four measures. Option a) suggested improving the existing co-operation mechanisms for market surveillance authorities. Option b) proposed an information campaign aimed at businesses regarding their obligations in the context of New Approach directives. Option c) looked at more effective control mechanisms after a product has been placed on the Single Market. After-market control was seen as more essential than the so-called pre-market control (e.g. testing a product before it enters the market) because pre-market control would increase the burden for complying manufacturers whilst non-complying entities would still be out of the reach of pre-market control. Option d) is rather similar to option c) on the notified bodies (establishing a legal framework setting minimum standards for the operation of national market surveillance authorities), on issues such as procedures on how to process complaints, on the removal of non-compliant products from the market, on how to

perform checks on products or on monitoring accidents (DG Enterprise, 2007, p. 36) enhancing coordination mechanisms amongst these bodies by improving the pooling of information on best practices or common projects as well as sharing resources (DG Enterprise, 2007, p. 36). This would include an extension of the, then already existing, RAPEX information exchange system. RAPEX stands for 'rapid alert system for dangerous non-food consumer products'. It enables Member States and the Commission to exchange information about dangerous products, which are withdrawn from the EU market and/or recalled from consumers. It aims to prevent further sales of these products on the Single Market.

The Commission also suggested reforming the safeguard clause by transforming it into an information exchange system amongst Member States, which would only needs intervention from the Commission if there were disagreement between Member States. This aimed to tackle the problem of over-notification of infringements. Option d) made the suggestion of improving the traceability of products by forcing companies to increase the transparency of the production process for market surveillance authorities. More concretely, the Commission suggested that a manufacturer must appoint a member of staff responsible for products from outside the EU, providing documentation on the products used in the production chain in conjunction with the introduction of a registration system for manufacturers and importers (DG Enterprise, 2007, p. 37). Finally, option e) referred to inconsistencies in existing legal texts, something which could be tackled by modifying them in a consistent way and/or by creating a reference document on standard terminology, which would also outline how to reformulate the existing framework more consistently.

In the end, the Commission perused all options after the consultation apart from the information campaign for market operators. The strengthening of market surveillance authorities was realised with the aforementioned Regulation No. 764/2008 (EP and Council, 2008a). The establishment of the legal framework for minimum standards for the operation of national market surveillance authorities is laid out in the Commission's Decision No 768/2008/EC (EP and Council, 2008c). More effective control mechanisms after a product has been placed on the Single Market are addressed in Regulation No 765/2008, Articles 15-29 (EP and Council, 2008c). The information campaign for market operators was deemed to be too difficult to manage from the EU level because it would require a different campaign

for each Member State. It would have also not addressed the problem of intentional non-compliance. On the issue of legal inconsistencies, the comprehensive and simultaneous overhaul of all Community product legislation was deemed not to be feasible. Hence, the Commission resorted to the establishment of a reference document, which would address both the most urgent problems for market operators (by clarifying the terminology) and outline how to streamline the whole EU regulatory framework for products in the medium term. Agreement on these measures was highly consensual amongst participants from within the online consultation and from other actors, including non-industrial representatives. Thus, ANEC (European Association for the Co-ordination of Consumer Representation in Standardisation) supported 'the Commission's call for reinforced market surveillance in Member States' (ANEC, 2005, p. 1) although it was critical about other aspects of the policy package, as we will see.

Finally, on the issue of the CE marking, the Commission brought forward three options. Option a) suggested abolishing the CE marking because its meaning is too confusing. Option b) proposed a change to the meaning of the CE marking. The basic idea was to distinguish between CE markings on products that need testing by a notified body and CE marking on products where the manufacturer simply declares conformity to EU legislation. Option c) suggested an information campaign to improve the understanding of the CE marking, aimed at non-professional consumers. Finally, option d) went for the protection of the CE marking as a registered collective trade mark.

As both business and authorities have been using the CE marking since the mid-1980s, the Commission discarded the option of phasing out the CE marking almost from the beginning 'due to its detrimental effects for both industry and the functioning of the internal market' (DG Enterprise, 2007, p. 54). Also, the option for adjusting the meaning of the marking was dismissed on the grounds that 'any change will not correct the current situation of misunderstanding, but only lead to further confusion' (DG Enterprise, 2007, p. 54). This would be in addition to negative consequences for EU businesses in the international market where the CE marking is more highly regarded than within the Single Market.

Options c) and d) - an information campaign on the meaning of CE marking and the protection of the CE marking as a trademark - were seen as more promising, mainly because of the perceived lack of negative consequences for EU businesses.

In the final policy, Regulation No 765/2008, Article 30 (EP and Council, 2008b) and Decision No 768/2008 ANNEX I Articles R11-12 (EP and Council, 2008c) address the CE marking.

At the start of the consultation, the issue of the CE marking and, in particular, the original suggestion by the Commission of the option of abolishing the CE marking was arguably the most daring aspect. Although, as will be seen in the next chapter, the Commission was certain that the idea of abolishing the CE marking would be rejected, neither the online consultation nor the Impact Assessment report highlights this controversial aspect of the 2008 Goods Package. The Commission's unwillingness to abolish the CE marking, however, could clearly be seen through all relevant documents. The Commission was happy to suggest abolishing the CE marking; yet, its motivation for doing so is unclear. It may have merely been a tactical device as the Commission never included a convincing concept for its potential replacement. After all, the CE marking is not a gimmick and serves a purpose in the Single Market. This lack of imagination over a possible replacement for the CE marking arguably contributed to the almost universal rejection of the idea by industry representatives. The Commission was also unprepared to include the suggestion from consumer organisations such as ANEC that if 'the best solution in order to avoid further erosion of the credibility of the New Approach', (i.e. abolishing the CE marking) 'was not feasible, then the second best option would be 'removing the CE marking from the product itself and to [sic] affix it on the technical file' (ANEC, 2005, p. 1). As the intention of the CE marking is not to give information to the end-user, putting the CE marking in the technical documentation is very much within the spirit of the New Approach (BEUC, 2007, pp. 1–2). Yet, from the industry's point of view, the CE marking had morphed into something else as the 'CE marking has also de facto become a global marketing trademark facilitating sales in the EU and sometimes even in third country markets' (ORGALIME, 2006, p. 2) an advantage the industry did not want to jeopardise. This position on the CE marking was presented, amongst others, by the European Engineering Industries Association, ORGALIME (Organisme de Liaison des Industries Métalliques Européennes), a major player within the Commission's consultation regime (representing mechanical, electrical, electronics and metalworking trade federations). In the end, it became the position of both the industry and the Commission. Essentially the industry profited from the confusion of the meaning of the CE marking and Commission implicitly agreed to

persevere with this questionable status. Moreover, the industry's position included, for instance, the information campaign on the CE marking (ORGALIME, 2006, p. 3) which was rejected by consumer organisations on the grounds that after 20 years of confusion and complexity an information campaign directed at end-users would simply not be effective (ANEC, 2005, pp. 1–2).

The conflict over the CE marking is also interesting as it saw the only major clash between consumer organisations and industry organisations. The outcome is not surprising as the consultation was, without doubt, dominated by industry representatives (Micklitz, 2007, p. 19). In fact, the Commission detailed that only two organisations with a consumer background took part (ANEC and BEUC).

Part II: Action Plan on the Protection and Welfare of Animals 2006-2010

The second case study deals with the 'Community Action Plan on the Protection and Welfare of Animals 2006-2010'. An Action Plan is a comprehensive overview of the Commission's planned policy initiatives in a defined period of time. It does not constitute EU law but is a strategic document, often including a declaration of intended policies. The Commission adopted the 'Community Action Plan on the Protection and Welfare of Animals 2006-2010' in January 2006 as an official communication from the Commission to the EP and the Council. The Commission expected that the Action Plan on animal welfare would be applied to a range of EU sectors (including Common Agricultural Policy, Research and Development) but also in relations with non-EU countries. In summary, the Action Plan suggested upgrading minimum standards for animal welfare, promoting research and alternative approaches to animal testing, introducing standardised animal welfare indicators, better informing animal handlers and the general public on animal welfare issues and, finally, supporting international initiatives for the protection of animals.

The aim of this second major part of chapter 5 is to place the Action Plan into the wider policy field of animal protection and the EU's somewhat notorious Common Agricultural Policy. In particular, this second case study description elaborates the normative dimension of animal welfare. At EU level, animal welfare has both the challenge and the advantage of an emerging policy area. The advantage lies in the possibility of starting from scratch, which allows for a broader policy debate and hence it offers the luxury of allowing a more fundamental debate on how to approach the matter in principle. This aspect is further promoted by the nature of the Action Plan as an outline of intended policies, which can, amongst other things, omit legal details. The challenge, of course, is to establish the policy field as a legitimate area for EU policy-making. The question for this research is, though, how the advantages and challenges of the emerging policy area are addressed in the online consultation. Undoubtedly, the policy area had a considerable deliberative potential. Was this opportunity seized?

The second case study description is divided into three parts. The first part discusses animal welfare as a policy problem for the EU and the second part

introduces animal welfare as a normative problem as it may be perceived from a policy actor's point of view. Finally, the third part looks at the consultation in conjunction with the Action Plan.

Animal welfare as an EU policy problem

Although animal welfare as an EU policy area is less established and developed when compared to the area of minimising technical trade barriers, it has not emerged out of a void. Clearly, from a single market perspective, the removal of borders and trade barriers have obviously had considerable impact on the use of animals and, therefore, potentially on their well-being. Moreover, and as in other areas of trade, the increasing competition between market actors since the Second World War across nation states' borders makes standards, which increase the costs of producing animal related products and research, more likely to be acceptable if more - ideally all - market actors have to adhere to these standards. The problem of agreeing, implementing and enforcing higher standards of animal welfare is exacerbated by the transnational character of trade relations. In principle, this makes it a valid candidate for EU-wide regulation (Knierim & Jackson, 1997).

Policy-wise there are two major avenues to choose. One is to err in favour of animal welfare. This benefits animals and people who prefer a high standard of animal welfare. The other is to err in favour of a competitive market, which tends to favour producers of animal related products and people with a preference for lower standards of animal welfare. They refer to different policy ideologies; on the one hand, an ideology that promotes market liberalisation, on the other hand more stringent regulation based on post-materialism. Market liberalisation stresses the benefits of removing restrictions on competition, whilst post-material values, in conjunction with a 'precautionary principle', favour a more stringent regulatory approach (Young, 2005, p. 95).

Historically, the EU (and its predecessors) tended to prefer the former strategy. Since its founding in 1957, animal welfare had not been substantially embodied in the treaties. The only basis for community legislation on animal welfare was in Article 43 on Agriculture, quoted when the protection of farm animals is concerned, and/or, Articles 100 and 100a on the Approximation of Laws, used in connection with the protection of experimental animals. Obviously, measures for animal welfare can be seen and used as a simple measure of decreasing the freedom of trade and as a

distortion of competition. The removal of trade barriers for goods, services and people and the general rules of competition ensuring the equal treatment of market operators are among the core and exclusive competences of the EU and, in particular, the Commission. Therefore, one Member State cannot simply ban the import of an animal product, which has not been produced in accordance with national animal welfare legislation. Member States can, however, prohibit certain production methods. A real world example is the production of foie gras (the liver of a duck or goose fattened by force-feeding corn), which is prohibited in most EU Member States, apart from France and Belgium. Yet, importing foie gras from France cannot be prohibited or limited on animal welfare grounds by other Member States (Bartels, 2005, pp. 694–696). Unsurprisingly, the Commission has been in favour of a competence widening, whilst Member States have been reluctant, arguing against EU competence expansion on the grounds of subsidiarity.

The issue of animal welfare has, however, made incremental steps towards becoming a genuine EU competence, especially since the 1990s and initially via the changing Common Agricultural Policy. The policy aim of the EU system of agricultural production originally focused on problems such as ensuring adequate supply, reasonable prices and stable production. The first European Community legislation on animal welfare from 1974 was concerned with the stunning of animals before slaughter in order to prevent unnecessary suffering. Yet, on two occasions, non-legally binding annexes were made acknowledging the importance of animal welfare during the 1990s. First, at the Maastricht Conference in December 1991, declaration No. 24 on the Protection of Animals was annexed to the Treaty on the EU (Treaty of Maastricht, 1992). Then in 1999, the 'Protocol on Protection and Welfare of Animals' was annexed to the EU Treaty as part of the Treaty of Amsterdam (1997). The protocol itself is not hard law and not part of the Treaty of the EU but it is regularly cited in the Commission's pre-Lisbon Treaty documents on animal welfare. It basically acknowledges diverging views on animal welfare in the EU and, in particular, highlights the ethical dimension – as opposed to the mere economic – of this policy by saying that 'Member States shall pay full regard to the welfare requirements of animals, while respecting the legislative or administrative provisions and customs of the Member States relating in particular to religious rites, cultural traditions and regional heritage'.

Turning to the ratified Treaty of Lisbon (2007), it recognises animals as 'sentient beings' by stating in Article 13 that '[i]n formulating and implementing the Union's agriculture, fisheries, transport, internal market, research and technological development and space policies, the Union and the Member States shall, since animals are *sentient beings*, pay full regard to the welfare requirements of animals, while respecting the legislative or administrative provisions and customs of the Member States relating in particular to religious rites, cultural traditions and regional heritage' (emphasis added). Hence, this Article 13 has potentially created a new legal situation in which animal welfare is a central cornerstone in the named EU policy areas. The significance of attributing sentience to animals will be discussed shortly. However, 'Article 13 does not imply any stronger legal obligation for the concerned policy areas to consider animal welfare (...). [It] puts animal welfare on equal footing with topics such as (...) environmental protection, and sustainable development (Tjärnström, 2010, pp. 21–22).

From the Commission's side, animal welfare was put high on the agenda with the White Paper on Food Safety (EU Commission, 2000b) by integrating animal welfare into the food chain policy of the EU. This also took place in the Action Plan 'Animal Health Strategy 2007–2013' (EU Commission, 2007c) and finally, in the 'Evaluation of the EU Policy on animal welfare (EUPAW) and Possible Options for the Future' for the Action Plan for 2011-2015. This document is arguably the most comprehensive document by the EU on animal welfare so far. It was published in late 2010 (DG Health, 2010). It is the direct follow-up policy of the Action Plan analysed for this thesis.

In the area of the EU's Common Agricultural Policy, animal welfare considerations were reinforced by introducing the so-called 'cross-compliance principle'. The idea here is that the allocation of certain agricultural subsidies now depends on compliance with animal welfare requirements. Whilst issues of food safety and quality are closely connected to farming, issues of environmental protection, sustainability, enhancing the quality of life in rural areas, the preservation of the countryside and the 'proper treatment' of animals have also been discussed in the context of animal welfare. From the Commission's perspective, 'European consumers increasingly focus on "clean and green" production methods and are attracted by the possible food quality, safety and animal health and welfare benefits of innovative production systems such as organic farming. The mindset of consumers and producers has

undergone a seismic shift from merely preventing cruelty and avoidable suffering to animals, to instead becoming focussed on promoting their well-being and meeting their most important needs' (EU Commission, 2006g, pp. 11–12). Moreover, Commission's staff, central for the animal welfare unit at the time of the consultation, published research which indicates that animals which 'are well-treated and able to behave naturally are healthier than animals treated badly and whose welfare is compromised. Retailers are also recognising animal welfare as a constituent aspect of product image and quality, which creates a need for reliable systems for on-farm monitoring of animal welfare status and providing guarantees on production conditions' (Horgan & Gavinelli, 2006, p. 304). This is argument can also be found almost verbatim in an earlier official EU publication (EU Commission, 2002b).

In reality, this means that the main factor in improving the standards of animal welfare lies outside of DG Health. The advantage of placing the Commission's animal welfare unit in DG Health (transferred from DG Agriculture in 1999) is that they can also easily address the welfare of non-farm animals. Moreover, it stresses the independence and credibility of the EU's animal welfare output. Yet without doubt, DG Agriculture's Common Agricultural Policy is the main financial and political framework with direct impacts on the welfare of farm animals (Buller & Morris, 2003, p. 221). Based on the major reform of the Common Agricultural Policy in 1999 there are two distinct pillars of support. Measures, which make up the first of these pillars are the traditional form of commodity payments and market intervention. Measures in the second pillar can be summarised under the title 'Rural Development' (Buller & Morris, 2003, p. 221). In essence, the policies of the pillars imply two different ways of dealing with animal welfare. On the one hand there are 'those human actions towards animals that are arguably morally contestable but nonetheless operate within defined social norms' and on the other hand there are 'those that go above such norms to provide genuine welfare improvements and, crucially, other benefits' (Buller & Morris, 2003, p. 220).

In the first pillar, it is assumed that farmers comply with existing national or European legislation on animal welfare, yet the payments rarely explicitly depend on compliance (Buller & Morris, 2003, p. 221). In contrast, the second pillar consists of measures that go beyond mere compliance with existing legislation to achieve certain desirable objectives. The Commission often refers to a list of aims associated with improving animal health (which also play prominent part in the case study

consultation), inter alia better public health, better-tasting food, improvements for rural development, environmental gains and better landscape quality (Buller & Morris, 2003, pp. 221–222).

Moreover, the Commission aims to improve animal welfare through direct income payments. Direct income payments are also given under the condition that recipients must keep their land in both good agricultural and environmental condition by complying with EU standards for the environment, food safety and animal welfare. Non-complying farmers are penalised by a reduction of direct payments. The downside of this strategy is that for such payments one needs a transfer system that is geared towards achieving non-economic objectives. This requires considerable monitoring of what is happening on the farm in order to promote policy aims such as animal welfare. Rieger comments that such direct payments 'are regarded as virtuous simply because they are not production aids' and that '[f]unction-oriented direct payments are much better suited to legitimate the stream of public money flowing to farms' (2005, pp. 171–72).

In a broader sense, the Commission's approach shifted from a 'value-for-money' approach, which has dominated the second half of the 20th century to a 'values-for-money' approach, as Lang (2010, p. 1814) puts it. These shifts are also communicated on the grand stage of EU politics. Mariann Fischer-Boel, then European Commissioner for Agriculture argued that '[w]hen we play our cards right, we can get a premium for these "qualities"', and deliver 'high standards of environmentally friendly land management, animal welfare and public health' (Fischer-Boel, 2008, pp. 310–311). Of course, the shift to a more ethical mode of production may not be a bold departure from the old post Second World War goal of producing enough food cheaply; it may simply reflect the recognition of market realities in which the EU production of agricultural products is increasingly less competitive when compared to international rivals (Lang, 2010, p. 1816). The EU and its regime of subsidising the agricultural sector is simply forced to look for a place for their products in the current market and 'high standard' products appear to be a viable option.

Animal welfare as a normative problem

In broad terms, the policy area of animal welfare has strong similarities with human welfare - or social policy -, which too, needs an ethical rooting with regards to

the concepts such as equality, liberty and (relative and absolute) poverty. Likewise, in practical terms, it is concerned about welfare indicators. Clearly, the number of human welfare policies compared to animal welfare policies is much greater but apart from this gradual difference, the core distinctive feature, which sets the two apart is the state of mind attributed to human beings and animals. The status of human beings as sentient beings is virtually unchallenged in ethics, while the status of animals as sentient beings is challenged. The (extreme) ethical position that an animal is a mere bio-mechanical automaton makes the concept of animal welfare meaningless – there is no such thing as poor or good welfare for non-sentient beings. Yet, the mainstream position within western society is that some animals are somewhat sentient. The attribution of a consciousness and of feelings to animals by humans typically depends on the degree of domestication (pets and farm animals are seen as more sentient than wild animals) (Bovenkerk, Stafleu, Tramper, Vorstemborscch, & Brom, 2003), their usefulness for human beings (the more useful, the more sentient), the type of species (endothermic animals, especially mammals and birds are seen as more sentient than haematocryal animals such as fish and insects). Size is also an issue; the larger animal, the more sentient it is said to be (Duncan, 2006). Thus, the perceived sentience of animals varies, whereas the ethical importance does not typically vary between different human beings.

The concept of animals as sentient beings also implies that animals have an intrinsic ethical value. There are also extrinsic ethical concerns or instrumental concerns whereby means of improving the welfare of animals are actually means for other goals such as improving the environment (Fraser, Weary, Pajor, & Milligan, 1997, pp. 189–190), an aspect that is often emphasised by the Commission. Animal welfare policy primarily aims to improve the standard of life of certain animals and, not primarily, the standard of life for human beings. This is also the reason why the acknowledgement of the sentience of animals by the EU's Lisbon Treaty is crucial for the development of this policy area. It offers a legal nucleus in its own right, apart from the Common Agricultural Policy and the EU's environmental policy capacities.

The attribution of sentience turns animals into legitimate objects of ethical concern. Broadly, two major schools of thought can be identified. First, there is the animal rights school of thinking. This school stresses the equality of all sentient beings and aims to abolish the distinction between 'human' and 'animals', thus making the latter 'non-human persons' or 'non-human animals'. Therefore, human rights and animal

rights are in principle the same. Hence, the label animal rights is somewhat misleading and should rather be 'rights of sentient beings'. Just as with human rights, the animal rights school operates at the level of the individual (as opposed to society, population, ecosystem or species). According to the animal rights school, the use of animals by humans is, in general, ethically unacceptable.

While the animal rights school is logically stringent, the competing school of thought is less coherent, yet it remains the most common ethical approach to animals. This school is often inaptly labelled as 'animal welfarism' (sometimes also simply 'animal welfare'). It is based on the premise that animals are not in the same ethical category as humans and therefore it is morally acceptable for humans to use animals. Yet, adverse effects on the well-being of the animal should be as minimal as possible. Thus, animal welfare becomes an optimisation problem between the perceived utility of animals for humans and their perceived well-being. The - at the time, in 1974 - libertarian philosopher Robert Nozick summarised this position as follows: 'Consider the following (too minimal) position about the treatment of animals. So that we can easily refer to it, let us label this position "utilitarianism for animals, Kantianism for people." It says: (1) maximise the total happiness of all living beings; (2) place stringent side constraints on what one may do to human beings. Human beings may not be used or sacrificed for the benefit of others; animals may be used or sacrificed for the benefit of other people or animals only if those benefits are greater than the loss inflicted' (Nozick, 1974, p. 39). Garner suggests seeing animal welfarism as 'a compromise between regarding animals as having no direct moral standing and treating animals as morally equivalent to humans' (2006, p. 162). Moreover, '[a]ttaching intrinsic value to animals is not equivalent to according them moral equality with humans. Indeed, the conventional, or orthodox, position regarding the moral status of animals is that, because animals have some moral worth, it is wrong for humans to inflict unnecessary suffering on them, but, because humans remain superior morally, it is equally legitimate for humans to inflict suffering on animals if there is a substantial benefit to humans likely to accrue' (Garner, 2010, pp. 125–126).

The anthropocentric position of animal welfarism allows then to model the problem of determining the sufficient standard of animal welfare in basic economic terms. For instance, animal suffering is typically an externality on markets dealing with animal related products, i.e. they do not explicitly feature in the markets and so pose as

hidden costs. The preference of people for animal welfare is not considered in this market. Hence, the common approach is one of providing consumers comprehensive information about the animal welfare implications of their purchasing decisions. The economic implication is that the market will ensure that consumers purchase animal products, which will maximise their individual net benefits from consumption. In theory, this mechanism should maximise the human welfare in a given society. What it does not consider, however, are externalities caused by people's consumption of animal products with a lower demand for animal standards and the connected higher animal suffering. This lowers the welfare of people with a higher demand for animal welfare. This argument is insofar relevant as it explains the Commission's drive towards a more comprehensive food labelling system.

Before implementing any legislation, the main problem for animal welfarism is to develop indicators in order to measure the welfare of animals. Only if we can judge the state of welfare of an animal, we will have the necessary information required to make a decision, which optimises the welfare of the animal and human benefit. In contrast, the main problem for the animal rights position is to develop a coherent set of norms, which then can be used to assess whether an animal is treated rightly or wrongly (and of course the legal infrastructure to do so). Arguably, though, the bigger challenge for the animal rights position is to lobby the public, concerned parties, policy makers and so on, convincing them that their approach to animal welfare is the more appropriate one, since animal welfarism is by far the dominant position in the western world (Garner, 2005, pp. 15–16). Lobbying efforts are likely to be a particular challenge for this school of thought as the political movement for animal rights has gained some notoriety through its use of controversial and sometimes violent means of pursuing its causes.

Ultimately the animal rights position sees sentience as the defining feature for the ethical nature of living beings (it is both the necessary and the sufficient condition to morally consider an animal in its own right), while the animal welfarism position sees sentience as a starting point, which allows us to consider ethical questions with regards to the well-being of animals (it is only the necessary but not a sufficient condition to morally consider animal in their own right).

In opposition to the animal rights position, proponents of animal welfarism see a morally relevant distinction between different species of animals and humans in features such as 'rationality, autonomy, moral agency, a language capability, free will,

self-consciousness' (Garner, 2010, p. 126). The aim is to establish a distinction between a sentient being and a person, from which the morally inferior position of animals can be deducted. The crucial argument here is that animals are assumed to not being able to make moral decisions and cannot, therefore, possess rights (or duties for that matter). However, the implication of this distinction is that non-person humans – or marginal humans (for instance infants) - have the same moral status as animals, which is for most people hardly acceptable.

Going deeper into the philosophical debate on animal welfare is beyond the scope of this thesis and we should settle for the observation that the animal rights position is arguably more coherent, while only a minority of people regard this as the appropriate philosophical stance. In contrast, animal welfarism is less coherent as an ideology; however, it is by far the dominant ideology regarding animal ethics in the western world. Garner summarizes the policy implications of animal welfarism as follows: 'Where it is held that exploiting animals is significantly beneficial for humans, the law permits it. No country in the world, for instance, has prohibited the use of animals for medical research or as a source of food' (Garner, 2006, p. 163).

The main challenge for animal welfarism is that although animals may be sentient beings they cannot comprehensively communicate their well-being to humans. This is in contrast to human beings who have developed elaborate ways of communicating their well-being and lack of well-being. Animals cannot simply be interviewed so as to ascertain their feelings. There is, therefore, a need to develop welfare indicators. Yet, how should we define the welfare of animals (Webster, 1995, p. 6)? Again, this is a wide field, which first needs to develop an idea of what well-being could mean and second how to measure it. The following section gives a brief overview of the main concepts.

Animal welfare can be framed around the subjective experience of an animal. Yet subjective feelings can often fail to be comprehensively communicated by an animal. It is often difficult to answer questions regarding these subjective experiences. Fraser et al. give the following example: '[W]e might ask (a) whether keeping a bird in a cage reduces its welfare by depriving it of the pleasure of flying, or (b) whether prolonging the life of a sick dog reduces its welfare because its suffering outweighs its enjoyment of living or (c) whether keeping a cow in a barn improves its welfare because the protection from cold, hunger and possible injury outweighs the frustration and other negative experiences caused by confinement' (1997, p. 196).

These questions show why an animal's subjective experiences are relevant. At the same time they highlight the largely unsolved difficulties of natural science to develop an 'accepted method to quantify the pleasure experienced by an animal (example a)' as well as 'purely empirical means to balance suffering against enjoyment (example b)', including the challenge to combine 'different negative states into overall indices (example c)' (Fraser et al., 1997, p. 196). Hence, other concepts are used to frame animal welfare, namely natural-living assumptions and biological well-functioning.

The well-being of an animal can be framed in terms of 'natural-living'. This position says that an animal's welfare depends on an environment in which an animal is able to show 'natural' behaviour and where it can live a 'natural' life (Fraser et al., 1997, p. 191). However, 'natural-living' can also mean suffering and fear, e.g. from predators or the lack of food if 'natural-living' is based on a less romanticised version of nature. Moreover, what does natural living mean for an animal that has been domesticated over several hundreds of years? Moreover as Fraser et al. notes, how is the concept of 'natural living' able to tell us something about phenomena like analgesia, euthanasia and medication (1997, p. 193)?

The other mainstream concept for assessing animal welfare concentrates on the biological functioning of animals. If the animal is in a state within normal physical and biological parameters, then there is a high level of animal well-being. Diseases, injuries and malnutrition hamper the biological functioning of an animal (Fraser et al., 1997, p. 196) and are therefore decreasing the welfare of the animal. The key challenge here is to actually define functioning within normal parameters. This is because biological functions change and adapt all the time, 'ranging from minor, routine adjustments, through to significant disturbance and abnormality' (Fraser et al., 1997, p. 196).

The inconsistency of the animal welfarism approach is easily highlighted by showing conflicting animal welfare indicators. Fraser et al give the following example: Observer A, favouring a functioning-based conception, may conclude that the welfare of a group of sows tethered in stalls is high because the animals are well fed, reproducing efficiently and free from disease and injury. Observer B, using a feelings-based conception, concludes that the welfare of the same animals is poor because they give vocalizations that are thought to indicate frustration, and they escape from the stalls whenever the chance arises. Observer C, relying on a natural-living

conception, agrees that the sows' welfare is poor because stalls are unnatural environments which prevent the animals' natural behaviour (1997, p. 201).

The conflicting view on the ethically appropriate treatment of animals shows that there is need for on-going public reflection on this issue, or as Garnet puts it: '[a]s species we don't seem to be clear at all how we should treat non-human animals' (2005, p. 4). Moreover, there should be no doubt that in the context of animal welfare acceptable or unacceptable treatment of animals is a matter of choice, which is regulated by the state. It is therefore open to democratic process rather than a purely scientific assessment. Yet, there is surprisingly little academic work dealing with the political side of animal welfare both at nation state and EU level. This is even more surprising if we consider the substantial legislative and administrative resources that are used to protect the welfare of animals and the increasing involvement of CSOs in the policy networks (Garner, 2002, p. 395). It is clearly part of the social and economic reality that animals are used for various purposes. Garner argues 'that there is a genuine politics of animal welfare [i.e. welfarism] in the sense that what constitutes 'unnecessary' suffering is sufficiently vague to be open to debate. Indeed, the definition of 'unnecessary' has widened over the past thirty years or so to take into account changing public attitudes to animals that have, in part, been shaped by greater knowledge of the way animals can suffer. For example, (...) the most extreme forms of factory farming, such as battery cages, are being dismantled at the EU level as a recognition that they are regarded by many as unnecessary' (Garner, 2010, p. 125).

Online consultation process and content

As mentioned in the previous chapter, a main reason for choosing this case study was the popular response to the consultation. The closed questionnaire had 44.491 participants (DG Health, 2006, p. 1), a huge number compared to all other consultations promoted by the Your Voice in Europe Website. As we will see in the next chapter, the DG was largely oblivious to this comparatively large number and how it was achieved. There could be a rather simple explanation for the large number of participants and the general unwillingness of the DG to praise this high turn-out as a success, this being that the same people may have been completing the consultation several times. The consultation itself included no mechanism to prevent or restrict multiple participation by one and the same individual (for example by

creating an account for each participant). As the research had no access to the consultation's original data, this could not be investigated further. However, there are some weak indications supporting this assumption. The report on the follow-up online consultation on the Action Plan explicitly acknowledges co-ordinated responses due to the fact that 'identical comments [were] given by multiple respondents. As an example, this happened with a group of about 500 answers that referred to Directive 86/609/EEC and viewed this as 'a business friendly law, scientifically obsolete, cruel to the defenceless' (DG Health, 2010, p. 117). The nature of co-ordinated responses suggests that individuals dissatisfied with the current state of animal welfare in the EU responded several times to the consultation. Similar behaviour is suspected in the thesis' case study consultation, too. Moreover, Quittkat in her quantitative study of online consultations also treated the high number of participants in this case cautiously. She explicitly excluded the animal welfare case in her calculation of the average participation rate of a closed questionnaire type consultation (2011, p. 662). Again, as we had no direct access to the raw IPM data we cannot substantiate this suspicion. Nevertheless, it is advisable to at least raise some doubts about the unusually high rate of participation.

As discussed in the harmonisation case, the IPM effectively provides a template which a policy officer can use to create online questionnaires. The quality of the questionnaires is entirely down to the policy officer and the support she or he has. The previously pointed out copy and paste nature of the IPM makes it relatively easy to produce a consultation based on previous consultations. In the animal welfare case this turned out to be particularly easy as the unit commissioned a Eurobarometer survey on the same topic (DG Communication, 2005), which was published about six months before the online consultation. In scope and design the Eurobarometer was more complex but covered the same core areas of consultation, i.e. 'the welfare of farmed animals, purchasing behaviour and the welfare of farmed animals and animal welfare at the European level' (DG Communication, 2005, p. 2). For the Eurobarometer some 25.000 people were interviewed in 25 Member States between February and March 2005 (DG Communication, 2005, p. 2). Again, apart from the fact that the IPM does not promote accountability through its technology, the main problem with its copy and paste approach is that the IPM discourages intellectual investment into designing a consultation with a deliberative claim.

Turning to the content of the online consultation, the following section discusses the main results of the online consultation. As it was mainly based on closed questions in combination with a large number of participants, this summary is based on the DG Health's analysis of their data. The consultation was open between November the 11th and December the 20th 2005. Two thirds of the participants were female (66.4%) (DG Health, 2006, p. 1), the age group of 18-29 year old was the biggest (33.5%), followed by the 40-55 years (27.3%) and 30-39 years (25.6%) (DG Health, 2006, p. 1). Half of the participants either came from Germany (25.3%), the Netherlands (12.7%) or France (12%) (DG Health, 2006, p. 2) and unlike in the harmonisation case, 87.8% of the participants did not represent an organisation (DG Health, 2006, p. 2).

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By far the most important area of the consultation was the rearing of animals for food and food related ingredients. Other uses included animal testing for scientific or (product) safety purposes and the use of body parts to produce chemicals, leather and fur. Less important in economic terms was the use of animals for leisure, sport and entertainment. Accordingly, the majority of the online consultation dealt with farm related animals and how to communicate animal welfare issues to the general public.

The first part of the questionnaire asked about the perceived standard of animal welfare in the EU. Around two thirds of the participants rated the level of welfare of farmed animals as 'very poor' (35.4%) or 'poor' (29%). Only 1.9% of the responds did not answer the question (DG Health, 2006, p. 2). The questionnaire then went on to ask about the perceived welfare standards for a whole array of animals (including dairy cows, beef cattle, calves, sheep, goats, pigs, laying hens, chickens kept for

meat production, turkeys, ducks, geese, horses, rabbits, farmed fish and fur animals). The general perception of the state of animal welfare in the EU was mirrored in the response of individual groups of animals. In most cases, their welfare was rated 'poor' or worse. Sheep, goats and dairy cattle formed the exception to this perception. In this case, around one quarter of the respondents chose 'moderate' as the appropriate category. The 'don't know' category was never chosen by more than 6% of the respondents (DG Health, 2006, pp. 3–5).

The second part then asked whether the participants believed more ought to be done to improve the level of animal welfare within the EU, to which the vast majority replied 'yes, certainly' (78.4%) and 'yes, probably' (9.7%) (DG Health, 2006, p. 6). The survey then went on to ask about specific groups of animals as before ('[m]ore specifically, for each of the following animals farmed within the EU do you believe that more needs to be done to improve their current level of welfare/ protection?'). The vast majority of participants believed that all groups of animals needed more protection (DG Health, 2006, pp. 6–8).

The third part asked about 'important sources of information on the way animals are farmed' in the respondent's country. Three groups of sources can be distinguished based on the results. In the first group, sources are deemed by a vast majority to be either 'important' or 'very important'. These include information from 'films, video, television, radio', information from 'books, magazines, newspapers, leaflets', information from 'the internet', information from 'personal experience of visiting farms' and information from 'animal protection organisations'. In the second group, sources are deemed by a majority to be either 'not very important' or 'not at all important'. These include information from 'farmers' organisations', from 'government', information from 'shops, supermarkets etc.', from 'the food industry' and information from 'food labels'. The third group consists of one item, namely information from 'school/university' where there is no prevalent perception on the importance and replies are almost evenly distributed between the four categories from 'very important' to 'not at all important' (DG Health, 2006, pp. 9–10). Again, the question about the then current state of information provision was mirrored by questions on sources (same selection of sources as above) available for improving knowledge of the way animals are farmed. Here, nothing was discarded and a majority of respondents deemed all sources potentially 'useful' or 'very useful' (DG Health, 2006, pp. 11–13).

The fourth part then asked about food labels and retailers, asking on the one hand whether the latter provides sufficient information on animal welfare, which was deemed to be insufficient by almost 90% of the participants (DG Health, 2006, p. 13). Most respondents, of course, wanted 'food products to be labelled more clearly to indicate the animal welfare conditions under which these products are sourced' (89.2%). In this context, the DG asked a couple of questions about the information provision of 'conditions of welfare (...) under which animals are farmed within the EU', which again was deemed by almost 90% of the respondents as insufficient (DG Health, 2006, p. 11). Moreover, a vast majority claimed 'that a better knowledge of farming practices could influence decisions when purchasing food' (DG Health, 2006, p. 14).

The fifth part deals with animal welfare outside the EU. Almost 90% of the respondents believed that 'the EU should do more to promote a greater awareness of animal welfare (...) internationally' as well as that 'imported foods should be produced under conditions (...) at least as high as those applied in the home country of the respondent (DG Health, 2006, p. 13).

The sixth part of the consultation was concerned with the benefits for humans of higher animal welfare standards. The majority of respondents agreed that food produced to higher animal welfare standards results in better 'food taste', 'food safety', 'food quality', 'animal health', 'animal productivity' and 'more ethically acceptable food products' (DG Health, 2006, pp. 14–15). The consultation here only addressed aspects that are directly relevant to consumers and producers and it did not ask about links with landscape and environmental gains or rural development improvements.

In the seventh and last part of the consultation, the Commission asked about concepts of animal welfare. Which concepts were regarded as particularly important? Not surprisingly, all items were regarded as 'very important'. These items were 'access to the outside', 'exposure to natural light', 'sufficient space to move around', that 'movement should not be restricted by chains or tethers', that animals should be transported and slaughtered in a humane way, the ability 'to display natural behaviour', having 'contact with other animals', absence of intentional mutilations and that 'animals should be managed and handled by a trained and considerate person' (DG Health, 2006, pp. 15–16).

The online consultation and the Action Plan

Ideally, we would expect that the consultation results would be reflected in the central document, namely the Action Plan and that the consultation would be referenced in accompanying documents to the Action Plan (as we saw in the Impact Assessment in the harmonisation case). In reality, however, particular results are hardly mentioned in any document and the existence of the online consultation is only referenced in generic terms. Moreover, the Action Plan touches on issues not even mentioned in consultation and vice-versa. This is not an unusual occurrence per se as policy-making rarely follows the idealised ways of the policy-cycle. Hence, there is seldom a strict sequential movement from a consultation that takes into account a wider spectrum of issues to a more focused policy paper. However, in this case it appears to be very plausible that the Commission omitted the hot button issue of animal testing, only to have it included in the in Action Plan. At the same time, the issue of animal welfare based on concepts of natural living featured prominently in the consultation but not in the Action Plan. Why it was not included in the Action Plan was not referred to officially by the DG.

Strategically, the Commission aimed to expand its policy competence in the area of animal welfare while at the same time trying to advance on the basis of existing laws. On the one hand, the Action Plan sought to progress by increasing existing standards and efficient enforcement (upgrading minimum standards for animal welfare, see, for instance, the principle of cross-compliance). On the other hand, the remaining four areas (promoting research and alternative approaches to animal testing, introducing standardised animal welfare indicators, better informing of animal handlers and the general public on animal welfare issues and supporting international initiatives for the protection of animals) suggest that the Commission wanted to mainly prompt a public information campaign.

Such an information campaign hardly conceals the limited capability of the Commission in relation to animal welfare due to the lack of a legal basis for a more comprehensive policy. As a reaction, the Commission took a particularly consumer orientated point of view. The highlighting of the role of animals in the food chain and the enabling of consumers to make informed choices seems to be a potentially promising way forward beyond traditional regulatory activity. The EU consumer is seen as a potential ally for the Commission. Not surprisingly, the Commission

advertises its policies with the slogan from 'farm to fork'. Ludwig and O'Gorman see this as a promising approach for 'detaching the issue of improving animal welfare from its pure "ideological" background and highlighting the interconnection with the daily use of natural resources' (2008, p. 388). This comment also gives us a clue as to why the consultation did not play a prominent role in the further policy process. There are several features that make the consultation results unattractive if the Commission wanted to align itself with the average, 'not-ideological' EU consumer. First, its participants were predominantly women, second the large majority of participant came from Western and Northern Europe (as opposed to East and Southern Europe), countries which are known to have, in general, a pro-animal welfare population. Third, the large majority of respondents believed that they could judge the state of welfare for almost all presented groups of animals. Without spending time gathering knowledge on rearing circumstances of those animals, we would expect that the default option to all questions in the first category on the standards of animal welfare would be 'don't know', as it is unlikely that the Commission had, by chance, tapped into knowledge of around 40000 animal welfare experts. It seems likely that the animal welfare consultation was a 'self-selected listener opinion poll' (known as a SLOP) Fishkin explains that 'respondents to SLOPs are not selected by scientific random sampling. Instead, they simply select themselves. They are predominantly those who feel more intensely or feel especially motivated. Sometimes, they are organized' (2009, p. 21). Of course, the core problem with SLOPs is that their results are 'neither representative nor deliberative. It offers a picture of raw opinion that is distorted and partial in whom it includes' (Fishkin, 2009, p. 23). Fourth, the large majority of participants showed considerable mistrust towards the established institutions and commercial enterprises (as opposed to media outlets and animal welfare organisations) in the section on relevant sources of information on animal welfare. In conclusion, then, the pro-animal welfare stance of the consultation was very much an ideological one.

From the Commission's side, the main underlying task was to establish animal welfare as a fully fledged area of EU policy making. As part of this wider strategy, the role of the Action Plan can be summarised as follows. Animal welfare is too complex for Member States alone. Therefore, it should be dealt with at an EU level. At the same time, animal welfare is, even for the Commission, a complex issue and

therefore the Commission needs a strategy for itself, too. Hence the Commission wanted to produce an Action Plan.

To be more detailed, the Commission laid out the problems in the following terms. First of all, animal welfare is already part of the Commission's daily bread because '[a]nimal welfare is now accepted as an integral part of the Community's "farm to fork" policies and is one of the strategic priorities related to the development of more sustainable food production policies' (EU Commission, 2006g, p. 4). Second, ethical concerns regarding the treatment of animals, is a "cultural attitude" for European society'. But not only 'the European society' but also EU treaties regard animals as sentient beings and are therefore worth protecting. Nevertheless, this is not easy because – and here the Commission quotes the OIE (Office International des Épizooties, today known as the World Organisation for Animal Health): 'Animal welfare is a complex, multi-faceted public policy issue that includes important scientific, ethical, economic and political dimensions'. The Commission attested itself to have often tried to incorporate and balance these four dimensions but it not only believed that there is a need for even better coordination at EU level but that it is difficult for a single Member State to address the challenges of animal welfare, especially in the longer term (EU Commission, 2006g, p. 4).

The Commission thought that the 'demand from Member States and stakeholders for relevant legislative and non-legislative future Commission initiatives is increasing' (EU Commission, 2006g, p. 7). Therefore the Commission wanted an initiative on animal welfare that outlines the actions in this field for the coming years, which needs to be performed 'in the most coherent fashion possible, taking into account the cross-cutting nature of some issues, their European and international dimensions and values and the range of associated and inter-connecting competencies as distributed today among the Commission's various Directorates General' (EU Commission, 2006g, p. 5).

The report hinted at a couple of unanswered questions but the Commission chose to answer only this one: Where do we stand on the problem of animal testing? First of all, ethical aspects should be addressed but only as a last resort, according to the Commission. Before the Commission talked about ethics, it preferred to talk about the 'latest available scientific information' (EU Commission, 2006g, p. 6). On the issue of animal testing this meant mentioning the possibilities of reducing, replacing and refining animal testing procedures (the so-called 3Rs principle), of imposing

stricter reviews for testing if an animal has closer genetic proximity to humans (chimpanzees, for instance) or even alternatives for animal testing. Finally, however, the Commission brought itself to saying: '[T]he ability to use animals in research under appropriate controls needs to be preserved in the absence of alternatives to animal experiments (...)' (EU Commission, 2006g, p. 6). This statement, of course, also gives another explanation (apart from simply wanting to avoid a 'hot button' issue) for why the issue of animal testing did not appear in the online consultation. Quite simply, the DG had already made up its mind before the Action Plan. There was simply no need for consultation.

Coming back to the initiative, it should have ideally achieved the following: first, producing an outline of the Commission's planning in the area of animal welfare as well as showcasing the historical origins of the Commission's policies and summarising the then current state of EU animal welfare policies; second, ensuring 'the proper exercising of responsibilities under the Treaty' as well as paying 'full regard to the welfare requirements of animals in formulating and implementing Community policies(...)' (EU Commission, 2006g, p. 7), without, of course, disregarding the subsidiarity principle; third, telling the rest of the Commission what activities in the field of animal welfare there are; fourth, to facilitate dialogue on the issue with everybody who was willing to participate, be it inside or outside the Commission, indeed, be it inside or outside the EU.

Although it seemed at this point that there was only one policy option, the Commission's paper presented three: first, to do nothing in particular at all; second, to produce a so-called non-paper for informal discussions with Member States and stakeholders or third, to issue an official communiqué in the form of an Action Plan (EU Commission, 2006g, pp. 7–8).

The option of keeping the status quo was dismissed outright because it would have meant, according to the Commission, first, neglecting the demands of stakeholders and Member States, second, that the Commission would be insufficiently responsive to the treaty protocol (drafted in 1999), third, that synergies originating from a more coordinated approach would not be realised as well as efficiency gains within the Commission and fourth, that the Commission would have missed an opportunity to expand its competencies.

After establishing that something had to be done, the remaining options were either an Action Plan or an informal discussion paper. The latter was fought off by

stating that an informal discussion paper would not be appropriate for such an important issue. Additionally, it probably could not achieve its stated aims. Therefore, the Commission opted for the Action Plan. The Commission believed that by writing an Action Plan it would facilitate a 'deeper reflection, debate and dialogue'. This would also (ideally) lead to a 'consensus for the future long-term initiatives' (EU Commission, 2006g, p. 8) by promoting the analysis of horizontal animal welfare issues and by stressing the importance of a more coherent approach across the EU Member States and within the Commission. Moreover the Commission believed that a greater impact (compared to an initiative by a single Member State) in the international arena (beyond the EU) would be achievable if the EU had a coherent animal welfare strategy.

Leaving the bigger picture aside, what did the Commission actually propose in the Action Plan with its five actions? The first action - upgrading the 'existing minimum standards for animal protection and welfare (...) for species or issues that are not currently addressed in EU legislation', with a particular priority on 'designing EU rules in order to secure efficient enforcement (...)' (EU Commission, 2006h, p. 3) - appears vague. However, the staff working papers contain more details about the Commission's ideas. In them, the Commission suggested the following points. First, while detailed minimum standards exist for some farm animals (the named calves, pigs and laying hens) there are no specific standards for important farm species like cattle, sheep and ducks. At the same time it is hardly justifiable on either scientific or moral grounds to claim that cows need less protection than pigs. Moreover, the Commission also feared losing its internationally leading role in the area because international organisations like the OIE or the Council of Europe have started to address animal welfare more thoroughly. Second, the strategic paper on the Action Plan suggested incorporating animal welfare into other EU policy areas. The main area here is the reformed Common Agricultural Policy, especially measures foreseen under rural development policies. As discussed above, this shift from 'value to money' to values for money' had already happened at this point. The streamlining of policy areas was also well accepted in online consultation. In addition, there is a clear link between the online consultation and Action One (see part 1 and part 7 of the online consultation).

The second point of the Action Plan dealt with supporting research on animal welfare, 'to pay full regard to the welfare of animals in formulating and implementing

these policies in parallel with enhancing the development, validation, implementation and monitoring of alternative approaches to animal testing' (EU Commission, 2006h, p. 3). Again, the Action Plan did not suggest anything new here as the Commission had supported and initiated a number of research projects on animal welfare such as studies on consumer behaviour, other legal and ethical aspects of animal welfare or the welfare of a particular farm animal. Also, the EU's 7th Framework Programme for Research and Technological Development was already highlighting the issue of animal welfare in various research contexts.

Apart from the existing research initiatives supported by the Commission, the strategic paper accompanying the Action Plan called for the 'preparatory work for the establishment' of a 'European Centre-Laboratory for the protection and welfare of animals and the Validation of Alternative Testing Methods' (EU Commission, 2006h, p. 8). Apart from being a communication hub for animal welfare research (aimed at researchers and other professionals in the area), this centre should be entrusted with the development and the standardisation of animal welfare indicators (EU Commission, 2006i, p. 8), which could be used on the ground and as part of a possible implementation of the proposed third Action of the Action Plan (on standardised animal welfare indicators) (EU Commission, 2006h, p. 3). The Commission also wanted to support research on monitoring systems (such as tracking systems in combination with electronic identification and other communication tools) for the implementation of animal welfare standards which would help to prevent the use of improper facilities beforehand (as opposed to sanctions after a revealed breach of EU legislation). Here the Commission thought in particular of animal transportation issues (EU Commission, 2006i, p. 12). However, the specific implications of this announcement were unclear in particular if we consider that the Commission founded the European Centre for the Validation of Alternative Methods (EVAM) in 1991. While it may have hinted at a competence expansion of the EVAM to areas of animal welfare outside animal experimentation (the centre's founding purpose), this expansion did not happen in legislation that changed the competence of the EVAM - Directive 2010/63/EU on the protection of animals used for scientific purposes (EP and Council, 2010).

Again, on the often mentioned 3Rs principle, the Commission was already supporting research, which had highly consensual qualities, on the one hand, to find alternatives for animal testing (the first R – replacement) and, on the other hand,

where it is still necessary, to reduce and to refine animal testing (the other two Rs). Maybe more interesting - while admittedly typical for the EU's consensus seeking policy style - is the fact that the Commission tried to get the industry on board early on. Pan-European business associations including such illustrious organisations as the European Chemical Industry Council (CEFIC), the European Crop Protection Association (ECPA), the European Association for Bioindustries (EuropaBio), the European Cosmetic Toiletry and Perfumery Association (COLIPA), the International Association for Soaps, Detergents and Maintenance Product Industry in Europe (A.I.S.E.) and the European Federation on Pharmaceutical Industries and Associations (EFPIA) agreed to the so-called 3Rs Declaration of Brussels (The European partnership for alternative approaches to animal testing, 2006), which basically calls for the implementation of the 3Rs. As already discussed, animal testing was not included in the online consultation. However, it featured prominently in the Action Plan. It is worth mentioning that the 3Rs Declaration was completely an industry driven initiative, no CSO representing pro animal welfare concerns participated in it. Commission staff even co-authored an academic paper based on the declaration with an industry representative (Laroche, Lalis, & Brekelmans, 2007).

Regarding action number three, the introduction of standardised animal welfare indicators, the basic idea is compelling. In order to make the often quoted 'informed choice', the responsible consumer needs at least a clear labelling system indicating the welfare standard of a particular product (EU Commission, 2006i, p. 10). In order to have a coherent labelling system, one needs animal welfare indicators. At the time of the Action Plan, no Commission publication went beyond this common sense reasoning. The core problem, though, is how to establish these indicators? Without a doubt, negotiations on welfare indicators between the Commission, producers, consumer groups, the research community, animal welfare campaigners and so on, are a lengthy and cumbersome procedure and would probably start with the question of which products need welfare labelling at all. This is not to say that there was no welfare standard labelling going on (e.g. for eggs) but it was, and still is, far from anything the Commission suggested. Interestingly, the aforementioned point of referring the standardisation problem to the 'European Centre-Laboratory for the protection and welfare of animals and the Validation of Alternative Testing Methods' was not repeated under this heading.

While the issue of food labelling was touched upon in the consultation (part 4), the treatment of welfare indicators was more thoroughly explored and fundamentally questioned in the consultation than in the Action Plan. The idea of building welfare indicators based on natural living was included in the consultation but not in the Action Plan (part 7). Again, this omission was not explained officially by the Commission.

Action number four of the Action Plan - 'ensuring that animal keepers and handlers as well as the general public are more involved and informed on current standards of animal protection' (EU Commission, 2006i, p. 11) - also remains comfortably vague. Apart from the platitude that an informed animal handler/keeper and an informed general public are the best advocates for animal welfare, nothing spectacular happened under this heading. The Commission urges itself 'with the support of Member States and relevant stakeholders (...) [to] define a proper strategy to communicate to citizens on the issue of animal protection and welfare' (EU Commission, 2006i, p. 13). The Commission even goes so far as to 'give consideration to the establishment of a specific information platform on animal welfare in order to nurture further dialogue and exchange of experiences between important stakeholders in the field of animal welfare' (EU Commission, 2006i, p. 13). The information campaign featured heavily (in part 3) in the consultation and also appeared in this form in the Action Plan.

In the final and fifth point of the Action Plan - continuing to support and initiate further 'international initiatives to (...) create a greater consensus on animal welfare, including engaging with developing countries to explore trade opportunities based on welfare friendly production systems' (EU Commission, 2006h, p. 4) - more interesting points are addressed. On the one hand, the EU rallies for animal welfare standards beyond the EU, whilst on the other hand higher welfare standards can mean a competitive disadvantage for the EU economy. Therefore, the Commission should lobby internationally for the allegedly high EU standards on animal welfare because if every country were to have the same high standards, these could no longer be a source of competitive disadvantage. Platforms for such international initiatives are the EU's bilateral relationships in the area of agricultural trade. In addition, the Commission, on behalf of the EU, should press for higher standards in international organisations. The strategic report names the OIE and the WTO in particular. Regarding the WTO, the report points out that WTO agreements do not mention

animal welfare and that there have been no disputes on this issue yet. In addition, an interesting proposition of the strategic report is the suggestion of promoting animal welfare in developing countries in order to create trade opportunities for them. This is based on the observation 'that extensive and sustainable agricultural systems, with good standards of animal welfare, are still the predominant form of livestock production in many developing countries' (EU Commission, 2006i, p. 16). This issue was also included in the online consultation in part 5.

Concluding remarks

Scholars from political studies and economics have given the issue of product harmonisation a great deal of academic attention. In comparison, the area of animal welfare appears almost neglected and it is often only a footnote in discussions about the EU's policies on agriculture and the environment. Yet, the public appears to be gripped at certain times by the issue of animal welfare.

Generally, the harmonisation of harmonisation measures is viewed as change for the better. Thus, Renda et al. argue: 'The 2008 'goods package' consists of a cluster of three EC regulations and one EC decision (...). The smooth acceptance, indeed strongly positive co-operation of the EP and Council, is a most encouraging signal for the better working of the internal goods market. Business associations are enthusiastic about the package. The most important change in the package is the decisive cost and uncertainty reduction for businesses when relying on mutual recognition for intra-EU market access' (2009, p. 67). In a similar vein, Pelkmans concludes that '[t]he 2008 Goods package (...) on the improvement of the New and Global Approach stands out as an excellent example of how useful "creeping integration" can actually be (...)' (2011, p. 6). However, he is wrong in claiming that '[t]he [2008 Goods] package has rightly been applauded by all stakeholders, a rare event in Brussels' (2010, p. 2), as consumer organisations substantially disagreed with core elements of the package.

The echo to the animal welfare case is mixed. An evaluation of the Action Plan by the Committee on Agriculture and Rural Development of the EP in March 2010 summarised that '[t]he vast majority of the measures contained in the current – albeit still none too ambitious – Action Plan have been implemented satisfactorily' (EP, 2010, p. 12). Pro-animal welfare groups were disappointed that the upgrading of 'existing minimum standards for animal protection and welfare in line with new scientific evidence and socio-economic assessments and (...) simplification and clarification of the existing legislation where reports and experience highlight the need for revisions or updating' (Animals' Angels, 2009, p. 16) did not happen. Others criticised the lack of compliance with existing animal welfare laws throughout the EU as a basic problem that needs addressing even before any upgrading issues (Compassion in World Farming, 2007). The NGO Compassion in World Farming argues that the Action Plan is insufficient because it does not address the lack of

enforcement. On the other hand, industry representatives such as the European Fur Breeder's Association (EFBA) found no reason to object to the Action Plan. On the contrary, it stated that it 'welcomes and supports the review of the European Action Plan on animal welfare 2006-2010' and that the EFBA 'pro-actively contributed to the public consultation launched by the Commission (...)' (EFBA, 2009).

Unlike legislation in the harmonisation case, the animal welfare case had an explicit communication and participation agenda aimed at the wider public. The Action Plan wanted to 'engage EU citizens and the EP as well as the EU civil society, stakeholders and policy-makers in a wider debate on the place of animal welfare in our society and the importance given to this issue' (EU Commission, 2006g, p. 10). Was the online consultation able to deliver and engaged EU citizens in a wider debate on animal welfare?

Chapter 6: Case Study Analysis

Drawing upon the hypotheses developed in chapter 4, this chapter discusses and compares the results of the two case studies on the basis of the interview data. What are the main differences and similarities between them? What are the reasons for these similarities and dissimilarities? Are they based on similar causal factors? What can we conclude are the advantages and disadvantages of the different approaches? Moreover, as the case studies were selected for their dissimilarity, do the differences between them affect and help to explain the legitimacy potential of online consultations?

It turns out that the reality of the Commission's policy-making is messier than we assumed in chapter 3. In particular, this chapter challenges the assumption of chapter 3 that the Commission is a promising candidate for participation in policy-making due to its long tradition of policy consulting with outside actors. It has become clear that the implementation of the online consultations is not informed by the problems and challenges of creating input legitimacy. Ultimately, both consultations failed to create a participation arena that is able to deliver input legitimacy. In comparing the two case studies, this chapter analyses the consultation process in relation to the operation of the Commission's policy-making machinery.

The literature is full of examples of messy policy making - the classic text here is Wildavsky and Pressman's (1984) ironically and opulently entitled 'Implementation: How Great Expectations in Washington Are Dashed in Oakland: Or, Why It's Amazing That Federal Programs Work at All, This Being a Saga of the Economic Development Administration as Told by Two Sympathetic Observers Who Seek to Build Morals on a Foundation of Ruined Hopes', first published in 1973. Unlike in this US-American case, however, we focus on the tension that arises within an organisation – the Commission – which has historically been geared towards output-legitimacy and thus struggles much more to implement the procedural requirements to achieve greater input-legitimacy.

Chapter 6 is structured as follows. The first part tests the hypothesis about prerequisites for meaningful participation within the Commission against the empirical data; the second part looks at the issue of accessibility in technological terms; the third part analyses the second set of hypotheses on meaningful transformation of

inputs within the Commission; the fourth part tests the hypotheses concerning participants and is followed by a concise conclusion.

Hypothesis 1: Accessibility of the participation arena

The first hypothesis is concerned with the degree of accessibility to the arena of participation and assumes that the more inclusive and the higher the level of public awareness, the more legitimacy potential a consultation can claim. Clearly, the challenge of accessibility can be approached from different angles. First, there is the awareness of the problem. Indicators for this can be found at the level of individual staff in the Commission but also at the organisational level. How do procedural arrangements deal with the issue of accessibility? Is it part of the criteria when organising consultations? Does the design and use of these measures address the issue? This obviously includes measures that were not implemented. The subject of what could have been done and what aspects need improvement are key parts of the conclusion of the thesis. Second, and arguably more importantly, how does awareness of the accessibility problem affect the design of the participation arena?

With regards to the question how the Commission deals with the challenge of accessibility to their consultations, the data was able to shed some light on the following five indicators: first, actively approaching individual citizens; second, reaching out beyond Brussels; third, adapting a consultation to different participants; fourth, on the issue of whether educational material was provided; and fifth on accessibility as a guiding principle of the consultation. The overall picture of the data is clear: Consultations are inaccessible for participants who have no background in the Commission's consultation regime.

One striking difference between the two consultations was that the animal welfare case had a much higher rate of participation compared to the harmonisation case. Regarding the accessibility issue, this raises two questions: First, did the two DGs adopt different strategies in creating public awareness or was the different rate of participation mainly down to the nature of the policy? Second, does each DG offer an explanation for the high/low turnout rate?

This research could not identify any striking procedural differences between the two consultations. The higher rate of participation in the animal welfare case was not caused by making the arena of participation relatively more accessible. The interview data here is relatively clear. Both DGs did not adopt different strategies for creating

awareness. Their most important and successful approach was to mobilise their 'usual suspects'. In the harmonisation case interviewee (E, 3) recalled the process: 'We put the consultation on Your Voice in Europe, there was a press release, we sent messages to the national experts, to associations which are normally interested in following our work, alerting them that the consultation was going on, and then we sent it to the sectoral groups which then further distributed it'. The situation in DG Health was very similar: 'The *only* way of making this popular was in informing stakeholders in different Member States and in Brussels. Normally, this is quite a vast number, around 50 organisations or so – some of them local, some of them international and so we had to cope with different kinds of publics' (emphasis added) (S, 3). Again, the interview partner assumed that the above mentioned organisations were multiplying the call for participation, as summarised by this response: 'The first round of dissemination would be through our stakeholder groups. These are often large networks with their own membership base and they would then send information down to their membership base' (S, 3).

The approach is incomplete when it comes to achieving accessibility on at least two grounds. First, it completely relies on organisations participating and creating further public awareness via their respective membership bases. This idea of CSO actors as democratic transmission belts has been dismissed in chapter 3 as not viable. Both consultations made no attempt to address citizens directly as potential participants. Moreover, regarding 50 organisations as a vast number is problematic. If the aspiration is that the consultation should actually reach as many participants as possible from outside the Brussels cosmos, disseminating the call for participation via 50 organisations is a small number. In another interview (in DG Health), probing the number of contacted organisations, the interviewee suggested that 30 to 50 of the initially contacted organisations is an acceptable number because '[o]therwise it would be unmanageable. These are groups that physically meet in Brussels. They have their own dynamics and working procedures' (S, 3). This practice indicates that the online aspect of the consultation regime is not the driving factor. This also challenges the assumption that online consultations are easily adaptable to different numbers of participants and types of participants, which was elaborated in more detail in chapter 3. Physical presence in Brussels still seems to be of paramount importance even for online consultations. The advantages of having consultations

that do not require physical presence were therefore diminished by the way in which the two DGs disseminated the call for participation.

Regarding the relatively high rate of participation (both compared to the Commission's online consultations in general and compared, in particular, to the harmonisation case), DG Health was surprised. The idea that animal welfare was a hot media topic at the time was openly dismissed, as this reply suggests: 'It was always a struggle to get the media to accept the issue because of a lack of understanding. Also, the political line of the Commission was not clear so resources were dispersed and the lack of clarity did not help to rally support from outside [the Commission]. So the big popular response was not down to a particular issue at the time - on the contrary' (S, 2). Interview partner (S, 5) stated simply: 'The high turnout was quite surprising, even for us'. Interview partner (S, 4) offered a different explanation, possibly affected by his own enthusiasm for the topic: 'It is clear that we have a huge and wide number of people interested. This is symptomatic. We saw the number of letters, the contributions from the web, emails. The second important issue is that the EU and the Commission are having a leading role and I think this is important in the world wide scenario. So – conclusion – the number of people is justified in my view because of the leading role we have. And for the people to take part in an important moment, historically for this area and that is probably the reason for spreading the news of this' [sic].

Unquestionably, a high number of communications from people outside Brussels may indicate a pressing problem, or at least a problem that receives attention from a wider public. A participant could reason that the policy impact of such a 'historic paper' is worth the participation costs. Yet, it is questionable that the participants' motivation was rooted in an analysis of the Commission's role and the conclusion that, via the Commission, they would be taking part in a historical moment for EU animal welfare policy-making. Interviews with participants showed that the work of the Commission is only marginally monitored and they gave no indication that their reasons for participating were to be seen in a historical context.

Issue salience (or the lack of it) is given as another reason for the high turnout. Regarding the harmonisation case an interviewee argued: 'And then of course the subject is quite technical as such, and more for the experts than for the individual' (E, 1). Interview partner (E, 2) suggests that regarding the harmonisation case '[i]t is the

best [tool] that we have, the best we can do and 280 replies on a technical subject is not bad, it is the normal output. I think that this is just the limit of the tool'.

In fact, in both cases no attempts were made to reduce the expert nature of the subject by disseminating accessible information. 'You quickly enter a very technical issue and if you are not an expert then it is difficult to find an answer' (P, 5). This observation did not lead to any consequences. Education was not a concern for any policy officer. Apparently, if one lacks the expertise, then the Commission does not regard it as its duty to provide accessible information.

All that we have just said suggests that the higher rate of participation was indeed down to the nature of the policy. Assuming that participants use a cost-benefit calculation to decide whether to participate or not in an online consultation, the nature of the policy has an impact on both sides of the calculus. First, if the policy impact were perceived as a benefit arising from participation (the higher the impact of policy on the political systems, the more the benefits of participating) then it would be more rational to participate in a consultation, which would potentially have greater policy impact. Second, the more self-efficacy a participant has, the more likely she or he will participate. Hence, a consultation that deals with a policy where less specialised knowledge is needed (or where more knowledge is in the public domain) and therefore more individuals have a working knowledge of the issue and higher self-efficacy, the less costly it is to participate. Therefore, we would expect to see higher rates of participation in those consultations where less prior knowledge is required. This leads to a simple two by two table for classifying consultation cases from the perspective of the participant.

Policy Impact	Ability to contribute meaningfully	
	High	Low
Low	Animal welfare case	Least desirable case for participation
High	Most desirable case for participation	Harmonisation case

Table 13: Cost-benefit calculation

The policy impact in the harmonisation case was likely to be, from the outset, much bigger. The rational participant may choose a consultation where providing input is less resource-intensive, due to the nature of the consultation policy. This

would favour the animal welfare case. Therefore, for an individual who chooses between participating in those two consultations only on the grounds of policy impact, both cases are cross-cutting within this classification and are similarly attractive for participants. We can assume that information on the animal welfare case is more widely disseminated due to the fact that the issue is more media friendly (i.e. it is more evocative, it creates easier television-friendly pictures and refers to tangible objects in the real world - as opposed to abstract safety standards). This assertion is based on the 'accessibility bias' argument which suggests 'that information that can be more easily retrieved from memory tends to dominate judgements, opinions and decisions, and that in the area of public affairs, more accessible information is information that is more frequently or more recently conveyed by the media' (Iyengar, 1990, p. 2).

This leads to the question: Which effect is more important for cost-benefit calculation within a population – the costs of participation or the benefits of policy impact? The design of this study does not allow us to comprehensively address the issue of how to assign a weighting factor to the cost-benefit calculus for participation with regard to the Commission's online consultation. If we only compare the two cases in this research, then the costs of participation appear to be more important than the policy impact.

Nevertheless, with regard to accessibility, this calculus is crucial for the design of participatory measures in policy formulation. In the case of the Commission's online consultations we can assume that the policy impact of a consultation is a given. It is a feature from the outset. The policy impact of an Action Plan is, in itself, difficult to predict as it is unclear which policy intentions will manifest into substantial policies. The degree of policy impact becomes more difficult to judge if we take into account that the aim of the Action Plan was also to establish animal welfare as a competence for the Commission. In contrast, the policy impact of a proposed directive or regulation is comparably more predictable. The assumption here is that, from a participant's perspective, a document stating intended policies is less important than a directive, which will become hard law.

It is of course difficult to criticise DG Health for opening consultations on an Action Plan on the grounds that it has potentially less policy impact than a directive. Yet, compared to the policy impact, the amount of previous knowledge is indeed less of a given as the participation arena itself can be a platform for learning (which is - as

discussed in chapter 2 and 4 - also one of the main requirements of deliberative democracy). Clearly, the Commission should not engage in 'dumbing down' their consultations. However, improving access to relevant knowledge, especially for individuals with no expert background, is central here and therefore, accessibility means lowering the costs of participation by making sure that technical issues are understandable for people who do not have a background in the area. Fishkin for instance, in his deliberative polling events, suggests making sure that an expert prepares briefing materials for participants and that they are also instructed on how to use this expert information within the participation arena (2009, p. 107). With this in mind, then, the question is whether the DGs have made attempts to lower the participation costs for people with less background knowledge. We have already seen that this was not the case regarding educational material, or, with adapting the consultation to different participant groups. The idea of adapting a consultation to people with different backgrounds is not new or alien to the officials responsible: 'What we sometimes do is to make questionnaires for different addressees. But here [in the harmonisation case] we didn't have different versions' (E, 4). Later the same interviewee revealed, however, that in her DG this mainly means addressing particularly small and medium-sized enterprises as opposed to larger corporations – again hardly a shift towards a citizen-centred view of participants. In addition, there are no guidelines on how to adapt consultations for a wider audience. It appears that decisions are in the hands of the policy officer in charge.

Concerning the indicator as to whether accessibility itself is a guiding principle in designing consultations, the following picture emerged. When discussing the reason why an online consultation is set-up in the first place, the interviews revealed a sort of shot gun tactic. Regarding the animal welfare case, one interviewee informed me that '[m]ainly we used all [consultation] means available. First, the Eurobarometer was considered a consultation; then we considered the different meetings with working groups, with representatives from the stakeholders as consultations, representatives of the Member States. It was not the first web consultation by the Commission and we followed certain guidelines. But at that time, it was really the beginning of web consultations' (S, 2). Actually, IPM had started a long time before, in 2001. In contrast, the interview partner (P, 5) in the harmonisation case had a clear understanding of the accessibility potential and problem: 'We put all of our discussion papers on the internet but of course you have to be aware of our website. In this way,

we are quite transparent but we do not reach the wider public. These [online] consultations are meant to fulfil the objective of reaching the wider public'.

It appears that, in particular in the animal welfare case, the online consultation was one part of a wider one-way communication strategy: 'I would never leave out an opportunity to have a wider web based consultation. And I am sorry that we cannot do it even more because the Commission was not built to provide communication' (S, 5). The same interviewee responded regarding the difference between online consultations and other types of consultation that '[t]he online [consultation] is more spontaneous (...)' (S, 5). Another interviewee went so far to say that 'I have no recollection of time where consultations were done in any other way [than online]' (S, 3). It turned out that the interviewee meant that organising meetings has been done electronically since the beginning of the 2000s and hence is done 'online'.

In essence, what the policy officer here suggests is that accessibility is achieved by offering different consultation channels, yet, actively reaching out to the wider public is not achieved due to talking to the 'usual suspects'. It seems that there is a genuine lack of understanding of the potential importance of online consultations for reaching out to the wider public. This was also reflected in a statement from the interview partner in the harmonisation case: 'We already did closed consultations with the industries (...). They come and see us regularly and they get a lot of feedback' (P, 5). In addition, although the interviewee mentioned certain guidelines (without being able to specify them on the spot), he was quite happy that the consultation process has become less rigidly organised: 'The Action Plan was part of a procedural consultation that was not as much formalised as today. It was done with stakeholders selected on the basis of their relationship to the DG. It was not formalised in specific stakeholder committees as it is nowadays. We also created, for the first time within the Commission, an inter-service group in the area of Animal Protection from different DGs' (S, 2).

In case of the animal welfare policy plan, the guidelines were often perplexing for the interviewee. In 2002 the Commission committed itself publicly to building an intranet website that would provide 'Commission staff with practical guidance, including examples of best practice including 'a help-desk facility using a mail-box, to which staff can send questions on the application of the general principles and minimum standards' (EU Commission, 2002a, p. 13). Referring to the specific measures outlined I was assured that '[w]e have been assisted quite strongly in

producing this consultation by the IPM people. I can tell you that the process is extremely sophisticated. We have several quality checks' (S, 2), implying that assistance was provided but in the form outlined in the 'General principles and minimum standards for consultation of interested parties by the Commission' (EU Commission, 2002a). The same interviewee was not aware, however, that the responsibility for IPM had shifted from DG Market to DG Digit in the period between the consultation and interview. The situation was similar in DG Enterprise: 'I am not aware of the existence of (...) guidelines, yes we had them but best practices and examples ... [pause] ... if they are there we do not use them' (P, 5).

The issue of technical accessibility is also riddled with problems. The design of the Commission's website intends that citizens visit the Your Voice in Europe website and are directed from there to the individual consultations hosted by individual DGs. It is the gateway to participate within the Commission. The research showed that there is a communication deficit between people hosting the Your Voice website and the leading unit for online consultations. We will see this in the next part of this chapter.

Accessibility and technology

The issue at stake is straightforward. If nobody finds a consultation then it is impossible for anyone to participate in it. And therefore the accessibility problems of the Commission's online consultations start with the obscurity of the main access point of the 'Your Voice in Europe' website, even for the Commission itself. Interview partner (E, 3) confessed 'I am not sure if every European [Commission] official knows about the YVIE website'. It may be worth noting that this is a statement that is easily transferable to any other group of relevant actors and, in particular, to the citizenry. Moreover, in the same interview the interviewee mused, 'I wonder who really knows about the website your Voice in Europe' (E, 3).

The relative obscurity of the Your Voice website and its low priority within the internal workings of the Commission also has consequences for the main gateway to the Commission's online consultations. An interesting example of the caveats of technology was the mystery disappearance of consultations. At its heart was the phenomenon that some consultations disappeared from the Your Voice in Europe Website at the end of the consultation period. An example for this was the 2008 consultation on animal trapping, hosted by DG Environment (EU Commission, 2008).

In itself, the publishing procedure for a consultation page in the 'Your Voice in Europe' website seems straight forward. The DG Market web-team manages the updating of the 'Your Voice in Europe' website. It gives a title for every new consultation launched by the different DGs. These titles are simple links to their websites. Initially, part of the 'Your Voice in Europe' portal was developed and managed by people within DG Market as was the responsibility for the IPM. In spring 2009, this was transferred to DG Digit. DG Digit is an Internal Services DG (as opposed to DG Market, which is a classic policy DG) based in Luxembourg (as opposed to policy DGs, which are based in Brussels). Individual DGs decide on the consultation period 'but there are minimum standards to be followed: The minimum consultation period required is 8 weeks. If the 8-week period is not respected, DGs should explain their reason and publish this justification alongside the announcement of the consultation' (M, 1).

The design of the Your Voice in Europe page suggests that one can follow the progress of a consultation from open to closed on the website by looking under which heading it is grouped. The perception that consultations are archived on the Your Voice in Europe page so that participants can refer back to them is not correct, as one interviewee explained (M, 1). The 'Your Voice in Europe' website in fact does not archive individual consultations (the consultation itself is on the DG's website). However, more troubling than the lack of archiving was the phenomenon that consultations that had once been open disappeared altogether from the website – or, to be precise, links to the consultations disappeared. The fact that something odd was going on with the website became apparent during the early stages of research for this thesis as it was not transparent which past consultations were promoted via the 'Your Voice' website. Therefore, the question arose as to why old consultations were disappearing from the Your Voice in Europe consultation page.

An initial assumption was that the individual DG decides on how long (if at all) a closed consultation and possible outcomes are listed on the consultation pages of the 'Your Voice in Europe' website. This was not the case, however. After the web-master team understood the issue (there was some confusion arising from the difference between 'closed consultations' and 'closing consultations'), the web-master appeared to be genuinely puzzled: 'What you say sounds quite strange to me. In general all consultations promoted through Your Voice in Europe are archived under "closed consultation" when their closing date comes. If you are sure that old

consultations promoted through Your Voice in Europe have been removed from the site, could you tell me which ones actually disappeared so that I can check with my web-masters and try to understand the reason?' (M, 3).

Even before giving an example for a disappeared consultation, the mystery of the disappearing consultation was solved: 'I just spoke with the web-master and got more information about this issue. Actually you are right: there are a number of consultations which are removed from the site when they are closed. This is because the local DG doesn't ask us to put the consultation in the "closed consultations" section. If we don't receive any instructions from them, we assume that the link pointing to the final page won't work any more after a certain period, and we remove the link from Your Voice in Europe (...)' (M, 1). Hence, the procedure is to move a link from an open consultation to the closed consultation section of the website once the consultation ends. This does not happen if the home DG asks not to leave their consultation link on the Your Voice in Europe page. Moreover, some links to closed consultations are removed after some time from the website if the DG does not provide a link to the follow-up results or the link to the follow-up results does not point to a valid page of the home DG.

Since this interview the situation has changed. The design and management of the Your Voice in Europe website has been altered which is partly a result of the research process for this thesis. Shortly after the problem had been understood by the DG Market unit a further email announced the change of the website: 'When the consultation is over, they have to send another email asking us to remove the consultation from the "open consultations" section and put it under the "closed consultations" section. If they don't send us instructions, we remove the consultation from Your Voice in Europe. However, yesterday we discussed this within our web-team and we came to the conclusion that there may be other users, like you, who are interested in having a record of all the consultations promoted through Your Voice in Europe. Therefore, we have decided to change our procedure. Starting from now, we will move all the consultations from the "open" to the "closed consultations" section, unless DGs explicitly ask us not to do so. We risk maintaining links that don't work any more but at least users will have a full list of all the consultations promoted thorough Your Voice in Europe. We would also like to reintegrate ancient consultations in the "Closed consultations" section (...)' (M, 2). Indeed, since

September 2009 the website has changed accordingly. Appendix IV and V contain screenshots of the old and new designs of the website.

Apart from internal organisational mishaps, the above raises the question of why some DGs do not want to have their results linked to the Your Voice in Europe page. When this question was raised, the policy officer, who was communicating with DG Market, was again surprised. On the mystery of disappearing consultations, an interviewee suggested this explanation: 'The problem with the Commission is the high fluctuation of staff. So, in those cases it could be that the person responsible left before the results were published and the new person didn't know that he or she had to communicate with [DG] Market' (S, 1). Another suggestion made by a policy officer was: 'I think this is quite bizarre because if you decide to carry out a consultation then it is quite logical to publish the results. What could happen is that – we had some criticisms on another consultation – some people think that a consultation is that badly done and then they make it disappear so it does not have an influence on the decision-making process. So maybe someone thinks that the questions were biased – a result of outside pressure resulting from bad consultation. In our case we thought that some comments were not justified but kept them' (P, 5). Neither of the two case studies of this thesis, however, had any issues with disappearing links and both were promoted via the Your Voice in Europe website.

Related to the issue of the disappearing consultations was the phenomenon that some but not all, consultations were promoted via the 'Your Voice in Europe' website, whilst other consultations - although targeting a wider public – were not. Consultations not promoted via the 'Your Voice in Europe' website only appeared on the web-pages of the individual DG. Quittkat hints at the problem by mentioning 'inconsistencies' (2011, p. 258), while Hüller (2010b) seems not to acknowledge the phenomenon at all. However that may be, neither could shed any light on why this was happening. Interview partner (M, 1) from DG Market offered the following explanation: '[A]ccording to internal rules, all DGs should promote their consultations on Your Voice in Europe without exception. If some DGs don't publish their consultations on Your Voice in Europe this is due to mistakes or it is simply due to the fact that we are still in a transitional phase as the new template for publishing consultations has only recently been introduced across the services of the Commission' (M, 1). After a couple of emails in conjunction with disappearing

consultations, the web-master also suggested that this was down to communication problems between DGs.

Further unusual activities were noted on the website during 2008 - a sort of 'reverse case' of the disappearing consultations issue. Here a consultation that was grouped under the heading 'closed' was actually open. A possible explanation could be that a) the consultation was just re-opened or the consultation time was prolonged (the Your Voice in Europe page claimed that the consultation had very recently closed) or b) another consultation was launched from the website so that basically two different consultations had the same web address. Other explanations are possible, too. Of course, a simple communication mishap or technical hiccup could also provide a valid explanation. As this issue was outside of the scope of this thesis, no further investigations were made. What remains clear though is that the maintenance and organisation surrounding the supposed main gateway to participation within the Commission is flaky and sometimes incoherent.

These issues must have been relevant since the beginning of the project in 2001. It appeared that before the exchange of emails in the course of this project, the relevant unit within the DG was not aware of the problem. This can be seen as an indicator of how little scrutiny and attention the website gets both from outside and inside.

In summary, the evidence gathered here speaks a clear language. In both cases, the arenas were inaccessible for the large majority of potential participants who were not based in Brussels, as illustrated by this table:

Concept	Indicator	Harmonisation Case	Animal Welfare Case
<i>Public Awareness</i>	Actively approaching individual citizens	no	no
	Reaching out beyond Brussels	no	no
<i>Inclusiveness</i>	Adapting consultation to different participants	no, but idea has been discussed	no
	Educational material provided	no	no
	Accessibility as guiding principle of the consultation	partly	no

Table 14: Indicator overview accessibility

The chance to use internet technology to lower the transaction costs for participating was, generally speaking, not seized.

Hypothesis 2: Transformation of inputs

The second hypothesis deals with the transformation of inputs. Ultimately, we wanted to know if inputs for the consultation matter for policy-making. Indicators of meaningful transformation are how inputs are reviewed and how the transformation process is communicated back to the participation arena. With regard to the meaningful transformation of inputs, any impact of inputs on the Commission's policy formulation is the central concern. What does the Commission do when it takes stewardship of the inputs? Are the inputs transparently gathered and published? Second, how are they processed and then fed into a draft policy and is feedback given including criteria as to why some inputs are included and others not?

The first hypothesis discussed the impact of a policy as a contributing factor to the cost-benefit calculation of participants. With regard to the transformation of inputs, this part shifts the focus, instead, to the impact *on* policy. Concerning the Commission's duties concerning the transformation of inputs, the interview data was able to shed some light on the following indicators for the concept of policy-impact: First, on agenda setting; second, on policy-contestation; third, on changes to policy proposals based on consultation inputs. For the concept of feedback the following two indicators were sought: First, criteria on why an input has been accepted or not; second, whether feedback was given via the internet. The overall picture of the data is clear – the consultations had, at best, a very marginal influence (if at all) on the policies in both cases. Hence, at the end of this section we will discuss some of the data referring to the question of why this form of consultation was used at all.

The first indicator for the policy-impact concept is the issue of policy agenda setting. While the overall agenda of the consultation is set from the start, the question of what issues to include and what to omit is a central part of the policy process. Both policy areas in themselves need to be further refined into units that are more manageable before entering the participation arena. Although the agenda setting is somewhat outside of the participation arena, it is nevertheless crucial for the outcome. Thus, the genesis of the agenda setting and the influence of online participation is an indicator for the meaningful transformation of inputs, although chronologically preceding the main participation action.

How then did the two DGs handle the question 'how was the agenda set for the consultation'? In the case of the Product Harmonisation legislation, the process was

ongoing: '[T]he first [2002 consultation, see Chapter 5] was more to see whether we identified the right problems. It was done to select the elements that we wanted to review' (E, 3). This assertion seems plausible and the outcomes indeed suggest that the agenda for the 2006 consultation was influenced by this 2002 consultation. It should be noted, however, that none of the interviewees from the Commission were in charge of this earlier consultation, yet one interviewee (E, 1) also suggested – with regard to the agenda setting process - that '[i]t is an ongoing communication and consultation process with stakeholders (...) so it doesn't really make sense to single out one form of consultation'. When further probing where the relevant input for the agenda setting came from meetings with ministry experts of Member States were singled out: 'We have these meetings even if we are not in the process of drafting a policy, so we have a good idea on the daily problems. Plus, we have the industry bringing up certain problems ... and consumer organisations. It is an ongoing process on which we build the first draft and then these online consultations confirm this' (E, 1). Moreover, interviewee (E, 1) suggested - with regard to the online consultation agenda - that the '[a]genda setting was already done, it is more we found there [is] a problem, now give us some input'. This indicates that factors other than the 2001 consultation are the main driving factors behind the consultation agenda setting. It also suggests that traditional channels are more relevant. In practice, the procedures outlined above suggest that it is not the citizens or CSOs but the Member State experts who set agendas for the online consultations.

In the animal welfare Case, the process of agenda setting for online consultations was even more insulated from outside influence as the agenda was set by the Eurobarometer. Interviewee (S, 2) explained: 'We used the Eurobarometer as a template for the IPM'. Interviewer: 'So you employed "copy and paste"?'. Interviewee (S, 2): 'Well, I'd prefer 'was informed by the Eurobarometer questions'. Moreover, '[t]he topics of the consultation were set by us in the beginning. It comes from cooking together all the various pieces of information from that period, which were all very new for Europe at that time. Before that, we only had one consultation on the transportation of animals - actually another one with a large number of participants. The other consultations before the Action Plan were very limited' (S, 2). Interviewer: 'Who decided on the topics?' Interviewee: 'It was [DG] SANCO on all the issues raised by the Eurobarometer in particular about a report prepared by the Commission on animal welfare in third countries' (S, 2). However, interviewee (S, 5) also

suggested that the agenda set by the Eurobarometer was reinforced through the online consultation results: 'The web consultation was quite sophisticated in terms of results, showing that Eurobarometer results were quite reliable - particularly that consumers were not able to understand some problems and felt a certain kind of frustration ... something needed really to be done for the welfare of animals. But also in the area of enforcement and enforcement in third countries - this is then prioritised into an Action Plan. We had to translate the frustration into a concrete line of actions. So we came up with the five initiatives.' While this was certainly not agenda setting, it can best be described as a form of agenda structuring.

Overall, in both cases the agenda setting was almost completely carried out internally and was largely insulated from outside influence. In the case of the product harmonisation, a previous consultation offered an opportunity to participate in the agenda setting via the internet. The importance of this is, however, unclear as the interview data suggests that various forms of formal and informal face-to-face consultations were more important for the process. In the case of animal welfare, no traceable external input on the agenda was uncovered by the research.

The second indicator for the concept of policy impact is the issue of policy contestation. Did the consultation incorporate aspects of choices between different options and did this lead to disagreement between participants and/or the Commission? Did certain aspects of the consultation become political in the sense of responding to conflicting views on policy issues with dialogue? Was this intended or promoted by the DG?

On the question of policy contestation, interview partner (P, 5) pointed towards the issue of the CE marking: 'We had a bit of political discussion on the CE marking (...). Especially consumer organisations claimed that there was confusion about its meaning, saying it was misleading. Here the consultation helped because there was a clear option given to abolish it or not.' The CE marking was highlighted as a controversial issue in the early policy drafting stages before the online consultation: 'In the preparatory stages, this was probably the most debated issue: the CE marking issue. Consumer organisations seem to care but not the consumers, based on studies within the Commission. The consumer does not look for it. He does not base a decision on it. Only the very well informed consumer and consumer organisation looked into it but not the average consumer.' This argument also led to the rejection of the consumer organisations' second best option (incorporating the CE marking

only in the product documentation and not on the product itself). Confusion over the CE marking is an advantage beyond the EU for EU manufacturers while consumers outside of the EU are not a prime concern for the Commission. Hence, the outcome of the consultation was anticipated, although, as interviewee (P, 5) pointed out, 'with the CE marking we were a bit wondering what would happen, expected it to get a bit political and it got a bit political afterwards in the negotiations'. In the end, the views of the Commission were confirmed by the consultation. 'If the response on that hadn't been that clear I think we would have had to rethink our policy there. Honestly, for me I didn't see any better option [than keeping the CE marking]. I think we selected the most reasonable solution. Inside the Commission, that was never an issue. It was just a thing that consumer organisations raised' (P, 5). The policy officer appeared content with this outcome and that it did not become too 'political': '[I]t was quite helpful because if the consultation justifies you and your thinking that is quite good' (P, 5). We will go into more detail about the merits and pitfalls of de-politisation in the conclusion of the thesis.

In the animal welfare case, no contestation was identifiable. On the contrary, all key interview partners pointed out the harmonious situation while working on the document. Speaking about the process of consultation, interviewee (S, 2) emphasised that '[w]e needed political clearance on the issue. Anything that could affect the political line of the Commission requires the cabinet of the Commissioner is expressing its views, first'. The main worry here was not to disenchant anybody and to stay clear of controversy. The lack of contestation was seen as an advantage. 'An online consultation has of course the advantage that you ask the question that you what to ask. If you do it differently, say with a stakeholder meeting, everybody can say what they want to say' (S, 4). As the consultation was based on the Eurobarometer (DG Communication, 2005), which was arguably the greater achievement for the unit, the uncontroversial state of the consultation was assured. 'Each member of the steering group had a priority of what should be in there. Were different DGs diverging on relevance? I have to say we had such a good managing group, representatives from different DGs so that the process was not difficult' (S, 2). Two interviewees, (S, 5) and (S, 2), also suggested that there was also no internal contestation: 'The process was more sophisticated compared to others but thanks to the good work together, the final inter-service consultation and the adoption, we were having only a very small delay, just for some procedural issues. I don't remember any

major problems. No contestation – the options were sufficiently wide to be endorsed by all DGs from DG Research to DG Environment and Agriculture' (S, 2). This is even more surprising given the possibilities for normative disagreement on animal welfare, which were discussed in chapter 5. Arguably, the avoidance of contestation was also aided by not including animal testing in the online consultation, as discussed in the previous chapter.

The third indicator for the concept of policy impact is whether the resulting policy paper has changed due to the consultation. While it is easy to argue that the consultation *somehow* influenced the final policy, the question of whether it made any decisive difference is more revealing. The research on the two case studies again showed little difference between the cases: The consultations had no traceable impact on the policy proposals. All interview partners agreed that the consultation itself did not influence their policy paper: 'Would the policy look different in central parts without the consultation? Honestly, no. I mean our policies are made by consultations but it is not necessarily the IPM consultations. It is not by the IPM tool that we get sufficient information' (P, 5). This again suggests that other forms of consultations are more important than the online consultations. In the case of the animal welfare, one interviewee (S, 2) avoided answering the question of whether he shared the view of the majority of participants, saying that the state of animal welfare in the EU is poor by replying, '[w]e agree with the statement that it is important to improve the standards of animal welfare.' Directly related to the change of policy was the question of whether new ideas were brought-up through the consultation. Interviewee (P, 5) answered: 'Honestly, I must admit there was nothing surprising or new in it. The reason for this is probably that the people who were responding to this were the same we have been in consultation [with] already'.

The second concept for meaningful transformation is the provision of feedback on the inputs. Indicator for this concept is, first, the existence of transparent criteria: Why were some inputs included and others not? Second, are these criteria accessible via the internet? Both consultations did not communicate why some inputs were taken on board and others not. Moreover, on the question of criteria for accepting and rejecting inputs, interview partners of both case studies pointed out that there was no need for that. 'Was there a need to find criteria what to include or not to include? I think nothing came up, what we thought we might have not included [sic]. Criteria, I mean of course if we get something back that is really justified then I think we would

reconsider our approach; there we would have taken it into account because we want to make a good proposal with which the main stakeholders are happy and work with' (E, 1). Moreover, '(...) there are no established criteria in advance. I would also say that we were quite confident that we would be confirmed as we already did consult widely before' (E, 1). The animal welfare case had its own approach on picking the 'right' inputs. One interviewee (S, 2) argued: 'Some contributions were discarded because they were simply not seen [as] functional to any of the Commissions policies.' Interviewer: 'Such as?' Interviewee (S, 2): 'Well, there were requests to raise the issue of animal welfare in WTO. But we decided to go for international co-operation in bilateral agreements. So raising the issue with WTO was discarded. Another example, many contributions pushed for clearer standards and legislation (...). However, logically they should be based on welfare standards [and] on welfare indicators and we thought it was easier to have a more flexible approach that would rapidly endorse scientific progress'. This may be a valid argument but, as such, was not explained publicly.

The question of feedback was, in both cases, tied to the Impact Assessment of the policy. As the Impact Assessment is a procedural requirement of many EU legislation ventures, a report needs to be compiled. In the harmonisation case, this report was partially based on the various consultation inputs. The report was produced by the same people in charge of the online consultation and provided a comprehensive view of how the DG saw the policy issue and options and included the views of various participants. In principle, therefore, participants had the possibility of receiving feedback on how the Commission valued the comments, as well as the views, of other participants. That is, if they went on the website of the DG and downloaded the said document. However, this detailed feedback report including the stance of the Commission was not provided in the animal welfare Case. 'In effect it [the Impact Assessment report] does not exist. For that period, it was not mandatory for the procedural work to prepare a formal Impact Assessment. So it is not developed. Logically we consider supporting documents as an IA [Impact Assessment]. The IA was of course done without following the procedures, we did not prepare the IA to be published together [with the Action Plan] as it is today' (S, 2). Thus, the DG deliberately decided not give any form of detailed feedback for people outside of Brussels because the interviewee believed it was not mandatory to do so. It is worth noting that impact assessments were introduced in 2002-03, all undertakings of the

EU's within 'Legislative and Work Programme' were required to compile an Impact Assessment (Cecot, Hahn, Renda, & Schrefler, 2008, p. 405). It is true though that new guidelines for conducting Impact Assessments were rolled out in June 2005 (TEP, 2007, p. 3). Interviewee (S, 5) described the process as follows: 'Then we had responses from all sides and then we put together the number of options, we saw that they were integrated... [pause]. It was some sort of Impact Assessment process in which we looked on the analysis of the inputs and what were the most convenient options to keep alive - with the vision of improving animal welfare in Europe. The questions on the web and on the Eurobarometer were wider in terms of possibilities so we had to develop it from there. We had to read between the lines'. Here again, the process and the result of 'reading between the lines' was not made public. Thus, in the case of the animal welfare consultation no feedback was given to participants who were not part of the offline consultation regime of the Commission. 'Feedback was given in the supporting documents for the Action Plan and then at several meetings, on the Council and the Parliament, and then replying to letters. There was not more than this because we did not have so many complaints about this. Nobody said why didn't you consider this' (S, 2). This form of inter-institutional feedback was, of course, also provided in the Product harmonisation case. Thus, in cases where feedback was provided it took place, for the world outside of Brussels, in a non-transparent or inaccessible way.

Generally, the process of transforming the inputs into a policy proposal was not documented in procedural terms. The question of whether feedback needs to be provided on why an input has been included or not was seen as unnecessary. The possibility of a two-way communication process was not seized. Participants who were not part of the 'offline' consultation regime were, in effect, talking to a black box. Yet, these reactions are probably even more understandable if you consider that the consultation had virtually no impact on the policy, which will be discussed in the next section.

Overall and contrary to theoretical expectations, if we look at the transformation of inputs it appears from the outside that in the harmonisation case more efforts were made to assure input-legitimacy.

Concept	Indicator	Harmonisation Case	Animal Welfare Case
<i>Policy-impact</i>	Agenda setting	Low, via perversions consultation	None, actively avoided
	Policy-contestation	Minimal (CE marking)	None, actively avoided
	Change of the policy proposal	No	No
<i>Feedback</i>	Criteria why something is included	None	None
	Internet accessible feedback given	Yes, via Impact Assessment report	None

Table 15: Indicator overview meaningful transformation

This of course leads us to the question of why the DGs initiated online consultation at all. For all its frankness and clarity, the following excerpt of interview material (related to the harmonisation case) is worth transcribing here in full:

Interviewer: 'So the strategic aim of the consultation was to receive confirmation of the established views within the DG?'

Interviewee (E, 1): 'Yes'.

Interviewer, presenting the same interviewee with a paraphrased statement of US academic Bevir ('[S]ystem governance is, for all its talk of inclusion and participation, primarily about securing consensus for policies and delivering them effectively' (2006, p. 429)):

(E, 1): 'I think he has got a point here. I would subscribe to it. After all, it is these people [government officials] who have to work with it.'

Even more revealing regarding the incentives for using a consultation is this comment prompted by a question on the added value of online consultations: 'It is an easy tool for us. A Commission official preparing a proposal has to keep to certain deadlines. It is easy because otherwise if [I] use a consultancy I [would have] had to make a call for tender. First of all, writing the call for tender and everything, then select between the different contractors, undergo half a year process and then you are not happy with what the consultancy is doing. So it [an online consultation] facilitates our life. If it is the most appropriate tool for consulting ... I am not sure' (P, 5).

Hypothesis 3: Legitimacy belief of participants

The third hypothesis centres on the direct impact of participation on the legitimacy belief of participants. Central factors (stake and salience, efficacy) of an individual cost-benefit calculation are based on the theory of vested interests. After leaving the

participation arena, acknowledgement of impacts is crucial for understanding the impact on the legitimacy belief, too. Indicators for the concepts of salience and stake are the degree of personal relevance and personal consequences related to policy. The key indicator for efficacy is self-attestation. Finally, the indicator for acknowledging impacts is whether participants followed the consultation after the submission of inputs.

One of the main problems when talking about the participants' side of online consultations is the relative absence of data about individual citizens as participants in them. Like other research on this topic, this thesis mainly produced original data on CSOs as participants. The research design is not aimed to deliver conclusive results on the legitimacy belief aspect of online consultations. Nevertheless, interview data from the participants of the two consultations was gathered. On the one hand, to shed some light onto the legitimacy belief aspect and on the other hand to provide a contrast with the views of the Commission, which were given proportionally more attention in the empirical research. Accordingly this part of chapter 6 is split in two sections. The first part complements the previous parts on the Commission, while the second part discusses the interview material in light of the participants' hypotheses.

With regard to how participants became aware of the consultation and in the context of the efforts by the Commission to achieve this, three aspects are noteworthy. First, no respondent in either case used the Your Voice in Europe website to access the respective consultations. The website went unmentioned by nearly all respondents apart from one (P, 5). This supports the assumption that the Your Voice in Europe portal does not deliver what it is supposed to deliver. It furthermore supports the assumption that outside scrutiny is indeed low, as suggested in the technology discussion of this chapter. Neither did this result offer much promise for the idea of spontaneous participation as mentioned by interview (E, 1) from the Commission: 'Someone who might have bumped into our consultation and thinks, "oh that is interesting, I might participate" '.

Second, in the harmonisation case the interview data indeed supports the statement of the policy officer which, suggests that, for the most part, their usual clientele took part. A typical statement regarding the relationship between participants and the Commission was: 'I stay in close contact with the policy officers responsible so I learnt about the consultation from DG Enterprise' (P, 1).

Third, two participants in the animal welfare case were people who read the emailed newsletters of a disseminating organisation and clicked on the link within the email newsletter (P, 7) and (P, 6). The interesting point here is that this behaviour supports the transmission belt idea that CSOs educate their membership base and members subsequently become active in EU politics. This is in contrast to the dismissal of the transmission belt idea as discussed in chapter 3. However, with low numbers of respondents for the empirical research on this issue, this finding is of course inconclusive. Another channel of dissemination mentioned in an interview was the email equivalent of word-of-mouth, i.e. personal email sent to the participants by a friend (P, 5).

The previous part of this chapter argued that participation input had no significant impact on the policy outcome. But if the participation input was of a low quality, can we blame the Commission for disregarding it? In the harmonisation case, no interview partner had a bad word to say about the participants. The impression, which they gave was more of customer/service provider relationship ('we have our usual clients, who know us very well') (E, 1). In addition, in the animal welfare case, the quality of the contributions was not an issue per se as this response to the question of participation inputs and their quality suggests: 'Some contributions were too specific and some of them were not really what we were demanding. So we had to filter some. Some were quite useful regarding animal welfare labelling' (S, 2). It is worth noting, too, that it is of course not considered opportune to criticise participants in front of an external researcher.

Also both Commission officials (E, 3) and participants (P, 5) questioned whether IPM consultations are the best way to consult in terms of producing relevant inputs. In the case of the animal welfare consultation, the lack of impact was seen even more critically, with clear signs that the lack of genuine participation can backfire and have negative consequences on the legitimacy belief. Participant (P, 5) voiced his criticism in the following stark words: 'If they really care about stopping further animal abuse... I mean, I am sure this poll wasn't an effective way to do it. Personally, I think the EU doesn't give a damn about animals and for me this so-called consultation proved it. I deeply despise animal cruelty but things like this will only make it worse. Things like this trap people with the idea that they can do something by clicking something on the internet'. In a similar vein another participant (P, 6) commented, 'I think it's rigged. This is all a bit of scam to keep the people calm.' Nevertheless there were also more

positive comments on the Consultation: 'Why did the Commission not deal with [the] conundrum of pets versus other animals, head-on? Literally, billions of farm animals suffer daily but people only seem to care about their fluffy pets. But I do accept, it was an effort to bring animal cruelty to the public and raising public awareness of the suffering of all non-human animals that are oppressed and suffering' (P, 7).

In the harmonisation case similar concerns were raised over the 'predetermined' nature of the IPM consultations, yet a more careful wording was chosen: 'Questions have to be open (otherwise you get the impression that the Commission has already made up their mind and the consultation is only to justify a decision already taken before), there must be sufficient time (associations need to organise their response internally)' (P, 2). Also, another participant of the harmonisation case suggested that the IPM format was too restrictive and bound by the Commission: '[O]nline consultations can be tricky as you can often only tick "yes" or "no" and the questions already speak for themselves. I mean that they are formulated in a certain way and because of that they already have a certain tendency and are not neutral. This means that it is sometimes difficult to explain a position in every detail' (P, 1).

Moving beyond this participant-led assessment of the Commission and coming to results for the participant hypothesis, indicators for stake, salience and efficacy were sought. Second, and in terms of the meaningful transformation of inputs, the indicators for the recognising of, and acknowledgement of, impacts were used as outlined in the hypothesis.

Concerning the salience and stake component of the decision to participate, this is linked, in the harmonisation case, to the professional backgrounds of the participants. A typical reply referred to the role of the whole organisation in a policy area: 'Our industry sector is regulated under the New Approach so the consultation was relevant for us and we would like to be involved in the shaping of the legislative landscape that affects our member companies' (P, 1). As these people are monetarily rewarded for giving the policy issue prominence in their belief system, this aspect is not likely to be overly meaningful with regard to the impact of consultations on their legitimacy belief.

In the animal welfare case, replies to the salience questions were more diverse. 'Curiosity' (P, 6) and to 'see what it's like' (P, 5) were mentioned, as were to 'make a difference' (P, 6) and the expectation that it is 'a good thing' (P, 7) Also, a history of campaigning (P, 5) was mentioned and support for 'animal rights' (P, 5). Moreover,

some of the more pronounced comments related to the animal welfare case cited above suggest that for these participants the issue of animal welfare has a high saliency. In contrast with the harmonisation case, salience in the animal welfare case appeared not to be tied to material rewards. The interesting question of how salient the issue of animal welfare was with non-participants could, of course, not be answered. Also, the question of how the salience of the issue varied across the collectivity of participants is unanswered by this research. However, it is likely that most potential participants never got into the predicament of deciding against participation as they were not even aware of the existence of the consultation.

The issue of the benefits of participation as personal consequences (or stake) was, in the harmonisation case, seen in the context of the organisational aims of the participant. Also, the question of whether – apart from on the professional side – they had any personal stake in the consultation was routinely denied. This further supports the assessment that participants in this case were paid for regarding the issues of the consultation as personally relevant.

Interestingly one interview partner from the participants' side also made the suggestion that the IPM made his working life easier, an opportunistic argumentation surprisingly similar to the one sported by DG Enterprise: '[I]f you write a report for your members, it is always important to show that you were actively involved with EU politics – these IPM hosted exchanges are an easy way to achieve this' (P, 2). This reply was triggered by the question of whether there was anything the participant would like to comment on further, criticise or add. In contrast, the responses in the animal welfare case to the question of whether the participant expected any direct consequences from participation were more diverse, ranging from 'none at all', to 'can't remember' and 'feeling good because having done something that hopefully matters to the right people.' Stake was mainly seen here as affecting personal well-being.

If we look at the broader picture, salience and stake as the perception of relevance of an EU policy is rooted at the level of the individual. However, the shaping of the perception of relevance does not take place in a societal vacuum. If the individual perception of relevance is conceptualised as a political attitude then, according to the classic view of attitudes (Berelson, Lazarsfeld, & McPhee, 1954), three of the main factors shaping this attitude are rooted in the private realm - peers, parents and education. If we only take those three factors into account, the perception of

relevance can be seen as an individual lifestyle choice. In a simplified view of liberal democracy, they are not primarily in the political realm and hence should not be addressed by the state with political power (although agents with political power may of course engage as one amongst other actors in a communication process about lifestyle choices). However, the fourth actor in shaping political attitudes links the private dimension with the political dimension, the media and the public sphere. Whilst the other three factors are not irrelevant (Ottati, Steenbergen, & Riggle, 1992), the mass media can influence the salience citizens attribute to policy issues.

The main function of the media in relation to political attitudes is to define which issues are worth considering from a virtually endless list. The mass media sets the agenda on what people think about (and, much less, changes the attitudes of people by providing content and opinions). This is probably the most universally accepted role of the media for political attitudes. In addition, various authors (such as Entman, 2004; Entman & Rojecki, 1993; Nelson, Clawson, & Oxley, 1997; Reese, Gandy, & Grant, 2003) suggest that the media frame a policy issue on the agenda. Framing refers to the process by which the media interprets a policy issue and provides a narrative for the policy issue in the context of classic conflict lines and/or political cleavages within a society.

In a broader approach, Koopmans and Erbe attribute five functions to the mass media in the EU context:

'First, in the absence of direct communicative links, European actors, issues, and policies have to be made visible by the mass media, and it is in this public forum that they may gain (or fail to obtain) public resonance and legitimacy (legitimation function). Second, (...) European policy-makers must depend for their information about the desires and concerns of the citizenry on the communicative channels of the mass media (responsiveness function). Third, and conversely, the public can build its opinion about the distant European institutions and the complexities of multilevel policies only to a very small extent on direct personal experience and therefore must also rely on how Europe becomes visible in the mass media (accountability function). Finally, participation of citizens in the European policy process usually also requires access to the mass media. Although a small number of resourceful and well-organised actors may gain access to European policy-makers directly (e.g., in the context of the Brussels lobbying circuit), most forms of citizens' participation through NGOs, civic initiatives, and social movements can only indirectly influence policy-makers by way of the visibility, resonance, and legitimacy they may mobilise in the mass media (participation function)' (Koopmans & Erbe, 2004, p. 98).

Arguably, the internet in general and online consultations in particular contest the position of traditional mass media as the sole facilitators of communication between policy makers and the citizenry: First, online consultations allow policy makers to probe for 'information about the desires and concerns of the citizenry' (Koopmans, 2004, p. 2). Second there is a wealth of information on the internet to develop an 'opinion about the distant European institutions' and their policies. Third, in principle online consultation allows direct participation in the policy process. What the internet has not achieved is what Koopmans and Erbe call the 'legitimization function' (2004, p. 98), i.e. making EU policies and the online consultations as an arena of participation visible.

Although an online consultation allows direct interaction between citizens and political actors, it cannot work in a communication void. Forming an attitude towards participating in online consultations can only work if information about the political process is available in the public arena (McNair, 2003, p. 18). In the case of the EU, various scholars (Hüller, 2007; Meyer, 1999; Siff, Brüggemann, Königslöw, Peters, & Wimmel, 2007) ascribe it a 'publicity deficit', i.e. the EU does not attract the amount of attention that its policy making powers would warrant.

The mass media has been blamed for not informing citizens adequately about EU policy issues. Risse and Kleine went so far as to claim that the 'fundamental legitimacy problem of the EU is the lack of a fully politicized and transnational public discourse on EU policies and politics as a pre-condition for a developed European democracy beyond the nation-state' (2007, p. 70). Risse and Kleine's argument is convincing as long as we do not acknowledge that a fully politicised public sphere is a rare sighting even in nation states. A more promising approach is to look for similarities in the historical development of the public sphere at EU level and in nation states. If the EU is a democracy in the making it is worth pointing out that the nation states and their democracies did not start with fully politicised public spheres either. Nevertheless, the weak European public sphere is, of course, not only a problem for the legitimacy potential of online consultations. Also, the reforms based on expanding the competences of the EP are affected by this problem as discussed in chapter 1.

One problem appears to be that the established mass media does not pay much attention to consultations. This has been highlighted in a conference paper by Altides and Kohler-Koch, which analyses the transmission function of CSOs. They investigated how effective CSOs are in creating print media attention. They conclude

that '[n]either do CSOs engage particularly energetically in conveying the content of EU consultations and their participation therein to their members or the larger public. Nor does national (print) media give coverage to civil society participation in EU consultations, even if relevant information is provided. If the media take up a controversial issue the diversity of views is reduced to the conventional cleavage lines. Thus it is plausible to assume that publicity is mainly shaped by the (national) communication traditions of the media system and not by the input from CSOs. Consequently, in our assessment CSOs have only a limited role to play in strengthening EU accountability' (Altides & Kohler-Koch, 2009, p. 15). They see their results as confirmation that CSOs do not fulfil the transmission function and not as confirmation that print media do not cover EU politics adequately.

In the broader discussion of the legitimacy belief in the context of stake and efficacy, the problem is not so much that participants may have professional interests in a consultation as suggested by the interview data but the fact that due to unseized opportunities for designing an accessible participation arena and a lack of media attention, many EU citizens may not have had the chance to make an informed choice about participation or non-participation, simply because they did not know what issues were at stake.

Moving on to the indicator of efficacy, this was, in the harmonisation case, tied to expertise and organisational background. In terms of efficacy, the replies often had a generic touch as this statement suggests: 'I hope it was relevant as we represent a sector that is regulated under the New Approach, meaning that we are stakeholders that are affected and have something to say' (P, 1). It is likely that the time lag between the interview and the act of participation made accurately answering this question difficult. Also, it should be noted that a bit of simple 'mouse clicking' was well within the ability range of participants in the animal welfare case. Interviewed participants could not remember either whether they had provided additional input or written comments or denied having done so.

However, beyond the simple 'button clicking' consultation, efficacy in the deliberative process quickly becomes a literacy issue. The beauty of participating in policy making as a citizen is to experience the state at work - first hand. If we follow Max Weber's verdict that 'political domination in everyday life means public administration' this means a welcome blurring of the lines between rulers and the ruled. But it also poses unique challenges because one of the core values of public

administration and something elemental in the 'rise of bureaucracy' (again an allusion to Weber) was the ability to communicate in written form, which itself rests on the ability to read. Hence, in terms of barriers to participation, we can expect that the higher the literacy level of an individual, the lower the cost of participation; or the higher the literacy level, the higher the efficacy of participant and the higher the likelihood of participation. Arguably, e-participation has an additional threshold, associated with the use of computers, something that is usually referred to as ICT literacy (or computer literacy or, more generally, media literacy).

One can argue that a prerequisite for meaningful participation in an election are passive literacy skills – i.e. the ability to listen and read. In contrast, online consultations require active literacy. Meaningful participation in an online consultation is hardly imaginable without the ability of the participant to read, write and understand abstract texts. We must ask then, given the requirement of active literacy, what proportion of the EU population can or cannot participate in online consultations.

The Organisation for Economic Co-operation and Development (OECD) conducted the International Adult Literacy Survey (IALS) during the mid-1990s using a multi-dimensional approach leading to a 5 point scale of literacy. It is meanwhile a common scale also adopted by United Nations Educational, Scientific and Cultural Organization (UNESCO) and their measurement of literacy worldwide. In the IALS, literacy is measured operationally in terms of three domains - prose literacy, document literacy and quantitative literacy. Based on these domains, five levels of literacy are defined: Level 1 indicates people with very poor skills. Level 2 respondents can deal only with material that is simple, clearly laid out, and in which the tasks involved are not too complex. It identifies people who can read but test poorly. Level 3 is considered a suitable minimum for coping with the demands of everyday life and work in a complex, advanced society. It denotes roughly the skill level required for successful secondary school completion and college entry. Levels 4 and 5 describe respondents who demonstrate command of higher-order information processing skills (OECD & Statistics Canada, 2000, p. xi, 2000).

In total 22, countries took part in the IALS of which 15 were, or later became, EU Member States (Denmark, Ireland, Finland, Italy, France, Germany, Ireland, the Netherlands, Portugal, Sweden, the United Kingdom, the Czech Republic, Hungary, Slovenia, Belgium – only the Flemish Community – and Poland). The other non-EU

Member States were Canada, Norway, Switzerland, Chile, USA, Australia and New Zealand.

We can safely assume that at least a level three literacy is needed for meaningful participation in online consultations. Although now 15 years old, the results of this survey are quite sobering with regard to the ability of general population to meaningful participate in online consultations. According to the OECD, '[i]n 14 out of 20 countries, at least 15 per cent of all adults have literacy skills at only the most rudimentary level, making it difficult for them to cope with the rising skill demands of the information age' (OECD & Statistics Canada, 2000, p. xiii). Also better scoring countries (with less than 15 per cent of adults at the lowest level of literacy, namely the Scandinavian countries, Germany and the Netherlands) have a sizeable literacy problem. Even in the highest scoring country, Sweden, 8% of the adult population has a severe literacy deficit in everyday life and at work. The report concludes that 'even the most economically advanced societies have a literacy skills deficit. Between one-quarter and three-quarters of adults fail to attain literacy Level 3, considered (...) as a suitable minimum skill level for coping with the demands of modern life and work' (OECD & Statistics Canada, 2000, p. xiii).

The results of the IALS were later confirmed by the OECD's research on functional illiteracy. A person is regarded as functionally illiterate who, although having received formal education, nevertheless has an insufficient reading and writing level for coping with everyday life (Eme, 2011, p. 753). Again, EU wide data on functional illiteracy is scarce. According to the Human Development Report, between 8- 22% of the literate population is functionally illiterate in Europe (United Nations Development Programme, 2009, p. 180). The Commission's 2009 figures based on the OECD's Programme for International Student Assessment (PISA) estimated that 24.1% of 15-year-olds in the EU have a 'poor' reading ability (EU Commission, 2009b, p. 11).

In summary, if we assume that since the publication's report the literacy level has improved or at least stagnated in most EU countries this means that about 25% of the EU population cannot participate in EU e-consultations, regardless of other factors. In the light of these findings, it is worth recalling what Atkinson et al phrased as their recommendation 30 for the development of the EU: 'There should be investment in the development for use in the EU monitoring process of measures of literacy and numeracy, reflecting their relevance both to skill levels in the labour

market and to *social participation*' (Atkinson, Cantillon, Marlier, & Nolan, 2002, p. 169, emphasis added).

Arguably, there is another language related barrier. Although the key consultation document is usually published in most official languages, many of the working documents are only available in one or two of the EU's working languages (i.e. English, French and German). These documents are essential for the process as they often include the only feedback provided by the Commission. In practical terms, it means that the consultation process is conducted predominantly in English. At the same time only about 40% of EU citizens (in the EU 15) claim to speak English, and far fewer will have adequate writing skills (Nugent, 2006, p. 5). The other 60% would be systemically disadvantaged.

Additionally, online consultation brings with it at least one other potential barrier: Technology and the ability to use technology. After all, access to the internet is a basic condition for participating in online consultations. With this in mind, what do we know about internet usage in the EU? First, there are no real surprises in the empirical literature. This literature shows that certain socio-economic and demographic groups are less likely to use internet related technology (for one of the early texts reviewing literature see Rogers, 2001; and for more recent overview see Tsatsou, 2011). Those on low incomes, those with lower degrees of formal education, the elderly, the disabled and those who live in rural areas are all less likely to use internet technology. Additionally, being a woman and/or belonging to an ethnic minority correlates with a lower likelihood of internet usage. It is worth mentioning, though, that consistently the most relevant factors for predicting internet use have been income and education (which in turn reinforce the lack of equality of online consultations). These phenomena are summarised in the term 'digital divide'. The digital divide is used to describe the disparity between people or organisations with effective access to ICTs and those without sufficient access (Zhong, 2011, p. 736). The term normally refers both to technical preconditions (physical infrastructure, computers etc.) as well as personal resources (literacy, IT and communication skills).

Apart from socio-demographics, what else do we know about rates of ICT access and use in the EU? In a nut shell, around 60% of EU inhabitants have access to the internet at home. Data on European Union internet penetration is available both from the Commission and from the *Internet World Stats* site. The latter estimates that in 2011 75.5 % of the EU population had access to the internet (Internet World Stats,

2012). The Commission has published a variety of surveys on this topic. In 2008, the 'E-Communications Household Survey' found out that '[t]he majority of European households (57%; +3 points) have a computer and nearly half of the household population now has access to the internet (...). The main reason by far for not having an internet connection (49% of all households) is a lack of interest among household members (50%) (...)' (DG Communication, 2008, p. 6). Cost-related reasons for not having the internet at home were the other main reasons named by 15% of respondents (DG Communication, 2008, p. 67). This survey was repeated in 2011 and then 68% of households had access to a computer while household internet access rose to 62% (DG Communication, 2011, p. 9).

The technology aspect should not be overplayed. At the moment, we can expect that the spread of ICT will continue. Prices for ICTs will decrease even more rapidly if seen in the context of online consultations. Compared to other content rich application, it is mostly text based. Computers built in 2002 are readily capable of dealing with the technological demand of online consultations, while the technology of 2005 is available today for a fraction of the prices prevailing in 2002. Access to ICT will probably be ubiquitous in the near future throughout the western world, much like written information and books are cheaply available today nearly everywhere in the western world. We can think here, for instance, about the spread of public libraries. And much like printed information the question is much less one of accessibility, affordability or availability but of personal skills and the ability to use them. In short, literacy and, probably to a lesser extent, computer literacy is, and will be, the main challenge for online consultations.

However, are low literacy levels not only the beginning of the problem? Is expert knowledge not another, much bigger, threshold for participation? After all, most citizens are not experts about a given policy proposal by the Commission. Is expert knowledge a necessary pre-condition participating in a consultation? The following section argues against this assumption.

First, it is not clear what constitutes an expert. In a general approximation of what experts are we could describe them as people who have extensive knowledge, ability and skills in one area - may it be swamp cabbage growing, gas pipe welding or gravitational indifference. Their expert status must be recognised by peers and/or certain authorities and/or the public. Falter suggests that only someone who knows more about a subject than 99% of the population and more than 75% of his or her

peers in the field should be called an expert (2008, p. 77). Although he gives seemingly clear criteria for how to establish the expert status of an individual, it would be rather difficult to gather the relevant information to dismiss or confirm her or his status. Even if we can establish what an expert is (probably with the help of an expert on experts), the bigger problem is that experts do fail. Research by behavioural economists and psychologists (notably the 2002 Bank of Sweden Prize in Economic Sciences in Memory of Alfred Nobel laureate Daniel Kahneman) have highlighted the fact that people in general and experts in particular 'do not exhibit rational expectations, (...) use heuristics that lead them to make systematic blunders, exhibit preference reversals, make different choices depending on the wording of the problem, and suffer from problems of self-control' (Boumans, 2008, p. 390). Boumans concludes that '[a]fter an impressive series of experiments and tests carried out [sic] the last few decades, the view arose that rationality is tough for all, skilled field experts not excluded' (2008, p. 401). Tetlock reports that in the political realm experts perform just as badly as in other fields. 'Who experts were - professional background, status, and so on - made scarcely an iota of difference to accuracy. Nor did what experts thought - whether they were liberals or conservatives, realists or institutionalists, optimists or pessimists (Tetlock, 2005, p. 20). Kahneman claims that 'in long-term political strategic forecasting, it's been shown that experts are just not better than a dice-throwing monkey' (Luscombe, 2011).

Second, a proposal that will result in a moral decision does not need necessarily require expert knowledge to engage. Casebeer and Churchland suggested that 'moral reasoning deals with cognitive acts and judgements associated with norms, or with facts as they relate to norms' (2003, p. 171). Moreover, the difference between moral decisions and technical decisions is a gradual one. Participating by giving a moral reasoning on what the EU ought to do, aims to produce a norm, improving life for human beings in the EU. Nevertheless, moral reasoning is improved by knowledge about an issue. There is no substantial difference between moral reasoning and empirical reasoning. In fact, one can argue that ultimately all policy consultation depends on moral reasoning because the aim of a consultation is to find the best policy choice. Hence, there is no convincing reason to outsource policy decisions exclusively to experts. At the same time, there is evidence for the competence of non-experts. Coleman and Blumler emphasizes findings that report that there are no substantial differences in the verdicts of legal experts (i.e. judges) and

groups of lay legal practitioners (i.e. juries) in jury trials where a judge was asked to produce separate verdict (2009, p. 29).

On the contrary, the sociologist Ulrich Beck considers the over-reliance on 'the expert', besides the desire for a simple yet authoritative method for generating knowledge, as one of the underlying problems of democracy in western society. By delegating societal problems to 'the experts', citizens are in danger of losing their sense of efficacy of being able to effectively learn and act on different issues. He fears that because citizens surrender their own responsibilities and powers, decisions are made with less reference to human qualities (Beck, 1997, pp. 15–23; Cottle, 1998). This phenomenon is also well documented in the practical aspects of legal systems. Caudill and LaRue found out by using the sociological output of the field of Science Studies that the actors in the legal system tend to idealise scientific knowledge. It is regarded as some form of pure truth, which is in un-mediated congruence with the 'real world' and detached from individual and/or social influences and interests (Caudill & LaRue, 2006; Mnookin, 2007).

Hence, the main difference between an expert and non-expert in an online consultation setting is that the expert has easier access to relevant information and knowledge due to her or his training, mind-set and professional network. Therefore, we would expect that the participation threshold for experts is lower than for non-experts. The underlying claim here is that anyone with a certain degree of literacy can become an expert. From the participant's side, the key challenge of an online consultation is therefore not expert knowledge but the fact that participation requires literacy. Above all, let us not forget that politicians are not experts either.

Coming to the last indicator of the participants' hypothesis, acknowledging the impacts, it became clear that a 'professional participant' was not one participant but rather a representative of his/her organisation which participates on behalf of a group of people: 'Several people within our association and also member companies; difficult to say how many exactly. We informed all member companies, we have more than 3000, and all departments within the association, 39 departments (...) input was gathered in meetings of working groups, via personal contact, emails etc. I estimate that about 20 people gave input' (a reply by (P, 1) to the question, 'how many people were involved in drafting the reply to the Commission?'). Hence, impact acknowledgement took part on two levels: first, on the direct impact of participants

and second on the assessment of the impact, not only by the participant him- or herself but also by organisations that were represented by the participant.

Moreover, in the harmonisation case, participation was not a one-off; two interviewees, (P, 3) and (P, 1), also mentioned participation in other forms of consultation forms by the Commission. Additionally and as expected, the work of the Commission was followed in the policy area the organisation was involved, as stated by two respondents, (P, 2) and (P, 1). In contrast, in the animal welfare case none of the interview partners stated that they made any attempt to see what was emerging out of the consultation personally but interviewee (P, 6) suggested that 'Four Paws' (an animal welfare organisation, see Four Paws, 2011) will keep him informed – something that again hints at the transmission between the EU, CSOs and individual members. All in all though, it appears that for most participants the consultation was a 'fire and forget incident', as suggested by this comment 'I haven't thought of the outcome until you contacted me' (P, 5).

One interviewed participant of the animal welfare case made a direct suggestion on how to improve the participation experience, referencing an idea some businesses have introduced as customer charters: 'I haven't thought of the outcome until you contacted me. Wouldn't it be nice to be kept informed? Also, I believe there are no rules of engagement. There is no charter of participation ... kind of telling me how it works from my perspective' (P, 6).

In conclusion and based on the interview data the direct impact on the legitimacy belief of participants in the harmonisation case is relatively high compared to the animal welfare case. However, this comparison is misleading in so far as it compares representatives of businesses and CSOs with citizens. If their professional behaviour or life compartmentalisation has consequences on their legitimacy beliefs regarding the EU, is unknown. The following table gives an assessment of the named four components of the participants' hypotheses.

Concept	Indicator	Harmonisation Case	Animal Welfare Case
<i>Salience and stake</i>	Statement of personal relevance	Yes, via their organisation and as part of their enumeration	Yes
	Personal consequences related to policy	Indirect, via their organisation	Unclear
<i>Efficacy</i>	Self-attestation	Yes	Unclear
<i>Acknowledgement of impacts</i>	Following the course of the policy cycle	Yes	None

Table 16: Indicator overview of participants hypothesis

Concluding remarks

An interview partner told me that after a cursory reading of my email requesting a research interview he was wondering why I wanted to talk about IPMs with him – as, in his area of expertise, the acronym usually refers to 'Integrated Pest Management'. This little anecdote is representative of the attitudes of Commission staff - even if they associated IPM with the internet tool. Online consultations are at best a tool, which makes working life, in some regards, more convenient. In contrast, the input legitimacy aspects of online consultations in general do not form an important part of the officials' everyday working lives - certainly not when compared to the grandiose words and promises of the key publications of the Commission on EU governance.

The training of staff encountered appears not to be geared towards providing an accessible arena of participation. Inputs in the participation are processed non-transparently and do not alter the policies in question. Basic documents outlining guidelines on aspects of participation seem either non-existent or inaccessible to staff. At the end of a research interview, interviewee (E, 1) was so kind as to search for those documents on the intranet and the pages of the Secretariat-General. She could not find them, commenting that '[o]ne of the problems is that there is much on the Commission in the web but it's very badly structured... we have the same problem on the inside' (E, 1).

It is amazing that a researcher coming from the outside with a theoretical interest in input-legitimacy was able to point out some very simple organisational issues. This was especially apparent in the inter-DG communication. Without exception, personnel confronted with the disappearing links issue were baffled. None of the

policy officers knew that responsibility for the IPM had been moved from DG Market to DG Digit. It shows once again that it comes down to the gritty aspects of implementation. It is amazing how very basic issues can affect the whole process, something that confirms that researchers have to look on the ground at the actual implementation, even before addressing the challenging aspects of deliberation. Only if these small but essential issues of the process – how it is set up and transforms inputs - are addressed by the Commission, then it does make sense to talk about how to ensure that the process of deliberation in itself is improved, as this is likely to be an even bigger challenge. The reality of the Commission's online consultations has to contend with other issues such as the simple accessibility of the consultation and not only the quality of deliberation.

At same time, this is of course another example of why technology - in itself - will not solve socio-political problems. On the question of technology and what it can do for an organisation, it is simply not an automatic process and will not make policy formulation fully automated or 'interactive'. This is despite what interviewee (S, 3) tells us, namely that everything should be neat and tidy because '[s]ervices generally use the IPM format because then it is easier [to] analyse replies and to summarize. Also, there is a special template that has been approved to use across the Commission. Once the template is used, the Consultation automatically appears on the Your Voice in Europe website. If a service makes an open consultation, which is rarer because it is more resource intensive to go through the answers, this then would only appear on our website, the respective DG. It would be put up on *Your Voice in Europe* if pro-actively requested'.

It is worth noting that the assertion that a consultation will only appear on the Your Voice website if actively requested is at odds with information provided by DG Market, which stated that all public consultation should appear on the website. Confronted with a different account from the DG Market web-master team, the respondent backed down from this self-confidently stated argument that everything happens automatically. The potentially worrying aspect here is that an outside researcher was able to tell the staff how their own process works in reality. This statement on IPM technology exemplifies the policy officer's viewpoint: 'DG Market trains you how to create questionnaires and it is up to you. I thought it is an automatic process – isn't that the reason why we have it? The idea of the website is to have central point for online consultation so I take it for granted. That's [the] essence of

that because otherwise I put it only [on] our [DG's] website. For me that problem did not rise at all' (E, 1). This comment is also insofar revealing as it suggests that the interviewee sees online consultation mainly as a device that makes her working life easier.

The central promise of internet technology with regard to online participation is that one can meaningfully participate without physically being in the arena of participation, thereby lowering the transaction costs for participation. However, if nobody finds the arena of participation because a single link does not appear on the central website than the technology cannot deliver on this main promise (although in principle two-way communication is possible). Yet, the even bigger problem is, as we have seen above, that nobody cares about the website – none of participants interviewed for the research used the Your Voice portal as a gateway for the participation arenas. Despite the idea of having a 'one stop shop' for the Commission, online participation ventures that cut across the lines of DGs are potentially promising for attracting participation, although in reality participation is centred around individual DGs and their individual consultation regimes. Online consultations have not departed from the Brussels-centric view of doing consultations in the Commission.

A somewhat surprising result in the context of theoretical issues is that the harmonisation case made a relatively bigger effort to address issues of accessibility and the transformation of inputs. The following two aspects offer an explanation for this. First, DG Enterprise regards itself as an open DG. Interviewee (E, 1) pointed out that the guidelines on how to consult the public originated in their DG ('[t]his DG is very strong on Impact Assessment and the consultation was part of the Impact Assessment. Therefore, the [DG] Enterprise's view is already quite strong in these general guidelines'). Hence, there may be a stronger culture of consultation in DG Enterprise compared to DG Health. Second, the harmonisation case led to hard policy in one of the core areas of EU legislation competence. It seems plausible that procedural requirements are enforced more strictly within the DG in such cases, anticipating greater outside scrutiny. This corresponds with interview data. Staff from DG Health suggested that consultation requirements were partly a loophole to jump through ('The Action Plan was part of procedural consultation that was not so much formalised as it is today' (S, 2)), bearing in mind that in principle both consultations took part roughly at the same time so procedural requirements should have been similar, while interview partners from DG Enterprise emphasized the usefulness of

fulfilling requirements in order to support the proposal. Both aspects, the less rigid handling of consultations and the fact that the Action Plan was not a hard policy did not help participants to use the internet for an open exchange, although the goal of the consultation was to produce a coherent policy outlook, which would favour a political debate as it did not have to determine technical details.

In order to achieve input legitimacy via direct electronic participation in the policy process, greater clarity is needed in defining both the goals and dimensions of participation. Input legitimacy will not be achieved if participation is merely seen as a means to achieve output-legitimacy oriented aims. If participation itself is not seen as an end in itself, input legitimacy is not within the reach of the Commission.

This leads on to the question of whether one can burden the Commission with the task of creating input legitimacy while a) being streamlined towards output legitimacy and b) having at its disposal the same amount of resources as before? The answer is probably not. Can the Commission deliver input-legitimacy via its online consultations? Maybe - but it is unlikely in an organisation that is understaffed and overworked (Levy, 2006). Instead online consultations are actually used as a tool for enhancing output legitimacy, as the cheaper option compared with hiring a consultancy firm.

The more general question is whether an institution – that by its design and functions is trimmed to deliver output legitimacy – should be burdened with the task of creating input legitimacy. While this thesis argued in favour of such an idea, it also identified one of the major shortcomings – that the people working on the ground neither are trained nor see it as their main duty to work and think in terms of input legitimacy. This also implies that their usual clientele does not complain as they are still being served. At the same time reaching out is not a priority. The opportunities provided by the internet are not embraced, also because the usual subjects use up all institutional resources and provide all the services and so both sides are happy with the status quo.

Policy officers of course have an incentive to keep participation rates low. Clearly, protocol on the application of the principle of subsidiarity and proportionality annexed to the Treaty of Amsterdam states in point 9 that the Commission should consult all interested parties (see also Bouwen, 2007, p. 270). Indeed this seems to be a crucial requirement. Interview partner (E, 1) on the Harmonisation cases informed me that in the past they received complaints about unbalanced consultations. Thus, there is no

incentive to offer wider participation beyond including input from representatives of all sectors and actors with possible diverging interests. Input that goes beyond sector representation causes more work for the policy officer, whilst possibly not adding much to the justification of the proposal.

Is there, then, any hope for a more participant-orientated approach to online consultations? This comment by interviewee (S, 2) suggests so: 'It is not that developed by the Commission because it is not part of the normal way of acting. We have to dedicate resources to communicate and consult in the DGs. But I saw the change and I suppose it will develop even further. In fact, there is clear evolution day by day and it is clear that we still don't have sufficient resources. So it is a question of priorities'.

Thus, based on the overall assessment that online consultation are unlikely to provide input legitimacy for the EU in the current set-up, the final concluding part of this thesis will give an outlook on what might be within reach for the Commission's online consultation and their input legitimacy potential, if it were to make it a priority and devote more resources to it.

Conclusion

The final part of this thesis summarises the research results as well as providing room for wider reflections. This research began with the aim of exploring whether online participation offers a sound opportunity to help tackle the EU's input legitimacy problem. Key theoretical assumptions made it appear promising to study online participation in this context, as we discussed in the first three chapters. After the theoretical considerations and questions were forged into an empirical case study research design in chapter 4, the real world examination commenced. High hopes concerning the potential of online consultations and their capacities to create input legitimacy were dashed by the research findings presented in chapter 6 after chapter 5 extensively discussed the policy background of the two case studies.

This conclusion is divided into three parts. The first summarises and reviews the results, the second part outlines the limitations of the research and the potential further research, while the third and final part looks beyond the two case studies and asks what challenges the Commission faces when using e-participation in policy-making. This last part also makes suggestions for improving the current regime.

Review and summary of the results

The previous chapter 6 discussed in depth the empirical findings of the thesis against the background of the main theoretical assumptions on accessibility and the transformation of inputs. The following three tables from chapter 6 briefly summarise the analysis in relation to the three hypotheses used to examine the input legitimacy potential and the positive impact on legitimacy belief respectively. The first hypothesis suggested that the more accessible a consultation, the more input legitimacy it potentially bears. The hypothesis on accessibility is sub-divided into the aspects of creating public awareness and inclusion. Both factors contribute positively ('the more x... the more y') to the input legitimacy potential, as do all other factors in the remaining three hypotheses.

Concept	Indicator	Harmonisation Case	Animal Welfare Case
<i>Public Awareness</i>	Actively approaching individual citizens	No	No
	Reaching out beyond Brussels	No	No
<i>Inclusiveness</i>	Adapting consultation to different participants	No, but idea has been discussed	No
	Educational material provided	No	No
	Accessibility as guiding principle of the consultation	Partly	No

Table 17: Accessibility hypothesis

The testing of the second hypothesis (the meaningful transformation of inputs) produced the following results.

Concept	Indicator	Harmonisation Case	Animal Welfare Case
<i>Policy-impact</i>	Agenda setting	Low, via perversions consultation	None, actively avoided
	Policy-Contestation	Minimal (CE marking)	None, actively avoided
	Change of the policy proposal	No	No
<i>Feedback</i>	Criteria as to why something is included	None	None
	Internet accessible feedback given	Yes, via Impact Assessment report	None

Table 18: Meaningful transformation hypothesis

The two concepts for assessing the meaningful transformation of inputs are the provision of feedback and the policy impact of the consultation.

While the previous two hypotheses have concentrated on analysing the inner workings of the Commission, hypothesis 3 was used to analyse the participants of the consultations. This also shifts the focus from increasing the legitimacy potential (of institutional arrangements) to the positive impact on the legitimacy belief of the citizenry.

Concept	Indicator	Harmonisation Case	Animal Welfare Case
<i>Salience and stake</i>	Statement of personal relevance	Yes, via their organisation and as part of their enumeration	Yes
	Personal consequences related to policy	Indirect, via their organisation	Unclear
<i>Efficacy</i>	Self-attestation	Yes	Unclear
<i>Acknowledgement of impacts</i>	Following the course of the policy cycle	Yes	None

Table 19: Participants hypothesis

Based on the results of this thesis, the input-legitimacy potential of the Commission's online consultation in its current form is negligible. Input legitimacy is not a prime concern, neither for the citizens nor for the Commission. This of course stands in stark contrast to the official line of the Commission: 'Democracy depends on people being able to take part in the public debate. To do this, they must have access to reliable information on European issues and be able to scrutinise the policy process in its various stages' (EU Commission, 2001a, p. 11). Yet, based on the analysis of the two case studies, there is no culture of inclusive participation aimed at individual citizens in the Commission's online consultation regime. Although the Commission's officials encountered in the course of the research for this thesis are by no means blind to ideas of widening the participation base, there is no evidence that they facilitate an inclusive consultation process beyond the confinements of Brussels, nor provide a meaningful transformation of online inputs that could be part of a deliberative process. Beyond realm of online consultations this finding is backed up by a recent study by Hooghe on how Commission staff conceive their institution's role. She comes to conclusion that '[n]ew public management reforms, which prioritize management over initiative, and EU enlargement, which triggered unprecedented personnel turnover and multiplied policy challenges, have further eroded the Commission's sense of purpose' (Hooghe, 2012, p. 104).

Instead, online consultations are an instrument used to make the working life of policy officers easier. A prime example of this is the harmonisation case where an explicitly stated reason for carrying out the online consultation was that it would be cheaper and faster than a traditional consultation – cheaper and faster that is, in

comparison to a commissioned analysis by an outside consultancy. For a traditional consultation, a DG has to publish a tender, which is inherently more cumbersome to administer than an online consultation.

Even policy aspects that appeared to provoke policy contestation were not what they seemed. In the case of product harmonisation, the most unconventional topic included was that of abolishing the CE marking. The Commission staff included this in the proposal for the consultation as a test balloon, expecting it to be rejected. In fact, this is exactly what happened. All organisations apart from a few consumer groups wanted to keep the CE marking as it was. From the Commission's point of view, the interesting point was not so much that it was rejected but the fact that they suggested an idea that they thought would never achieve a consensus. This can be seen as typical behaviour of a group of people who have their own view of their role, mainly in the sense that they know things and they run things. Unquestionably, their technocratic belief is fuelled by the perception that they have access to a body of knowledge, which allegedly puts them in a unique position to understand the 'true content' of the policies at stake (Kalu, 2001, p. 313).

Increasing accessibility to the participation arena is a particularly significant issue for the Commission. Yet, it lacks a coherent strategy, which aims to 'maintain a dialogue which is as open as possible' (EU Commission, 1993b, p. 1; see also Mendes, 2011, p. 112). This is because DGs and 'different services are responsible for their own mechanisms of dialogue and consultation' (EU Commission, 2012b). Therefore, every DG handles its online consultations differently so that a prospective participant has to learn a new participation pattern for each DG. The way in which DGs and the Your Voice website staff handle online consultation makes it rather difficult to find these consultations. Additionally, the Your Voice website had several inconsistencies, mainly because of the lack of communication between DGs and the Your Voice staff.

In summary, the Commission did not attempt to overcome problems of communication with the public by adopting web technologies with a decent user interface, especially since more and more people lack the patience to use sub-standard interfaces when they are increasingly accustomed to the good interface design of major technology firms. On the contrary, the whole situation is comparable to a government that calls an election but does not tell the people where the polling station is. Experienced citizens can always make a good guess as to where to find it

but for the rest it may be too time consuming even if they want to vote. In short, the whole system is designed for the 'experienced user'.

The situation is similar regarding the mechanisms used by the Commission to provide feedback. There are often detailed arguments as to why some ideas are included and others not. The problem is rather that feedback on the consultation is often not to be found at the same place as the consultation itself; even more problematically, feedback is often hidden in other documents. Again, the system is streamlined towards the 'experienced user'. On top of that, there is an inherently serious delay between input provision and the provision of feedback notwithstanding that Commission itself aims to give some form feedback via the internet within 15 working days (EU Commission, 2002a, pp. 21–22).

In both cases, invitations to participate only went out to the 'usual suspects', i.e. the established CSO networks orbiting around the work of a DG. Hence, the threshold for participation was already high through the sheer lack of publicity. However, creating more publicity might not tackle the problem of selective participation. Abels argues in the case of the Commission's online consultation that 'lowering thresholds is not enough, it requires also incentives for participation. I argue that this strategy does not really improve the situation, since the majority of citizens is neither aware nor prepared to participate in consultations (even if participatory thresholds are lowered) because they typically require technical and specialized knowledge. Therefore, only "interested citizens" can be activated (...)' (2009, p. 25).

Neither consultation had a significant influence on the policy formulation process or the policy agenda. In the animal welfare case, this was never intended. Agenda setting took place long before the consultation. In the case of product harmonisation only pseudo-options were given. From the beginning, the Commission staff had very clear ideas regarding the best options for tackling the issues. These were merely confirmed by the consultation. Agenda setting had taken place in previous consultations. The interviews with staff showed the widespread opinion that the consultation did not bring out new insights. Moreover, all the issues of the animal welfare consultation were already included as topics in a Special Eurobarometer survey of 2005 (DG Communication, 2005) and then slightly modified in a 2007 Special Eurobarometer (DG Communication, 2007) for which the field work took place in autumn 2006. In all fairness though, the follow-up Action Plan did have an extensive and relatively transparent consultation process, including an online

consultation. Afterwards a very thorough Impact Assessment report, that also included detailed arguments for policy choices, was published by DG Health. The results were published in a report (DG Health, 2010) produced by two consultancies (GHK and ADAS).

Because consultation inputs provided online have no substantial impact, the problem of how to deal with controversial inputs internally does not arise, i.e. the question of what happens if a consultation input is disputed within the Commission. This problem was pointed out by interview partner (O, 3) from DG Legal: 'The internal decision making process is a dynamic process, which is supposed to be "one voice". This dynamic process includes the different interests of DGs that are involved in the decision making process and who will try to influence it. In the case of a Green Paper or Action Plan for the public, particular lobby groups and Member States will reply and, only rarely, individual citizens. (...) The European Commission has a hierarchical structure, which means that ideas have to be communicated to the head of unit in order to make them heard within the European Commission. The next step is to propose it to the cabinet. The result of this process is not necessarily the original idea'.

Summing it up, the main empirical findings in relation to the core research question, i.e. if online consultations are a viable mechanism to create input legitimacy are as follows. First, the Commission does not create enough awareness for its online consultations outside Brussels. Second, the design of the consultations is not inclusive. Third, online consultation do not have any significant impact on the policy. Fourth, although feedback is given, it is inaccessible for people who are not familiar with the Commission's online consultation regime. Therefore, the legitimacy potential of the Commission's online consultations in its current form is negligible. The following figure gives a schematic overview of the causal mechanism of main findings.

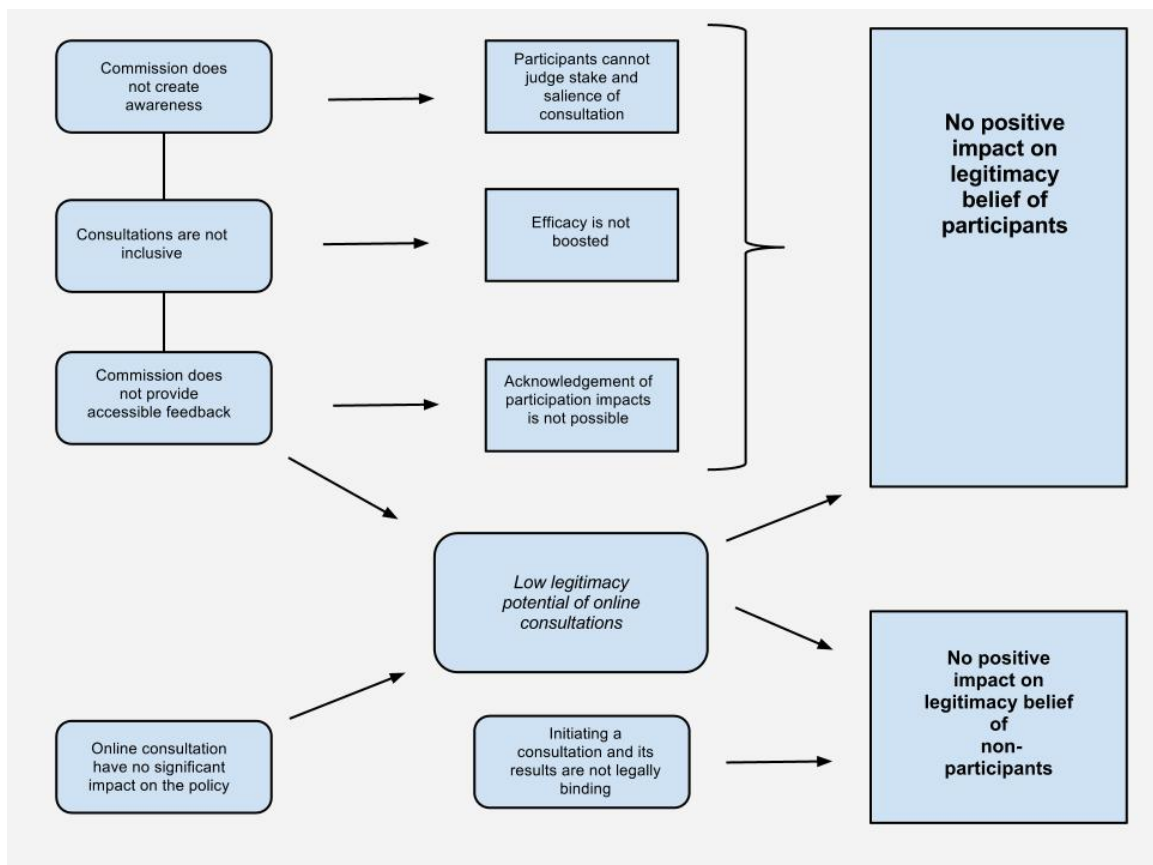


Figure: Causal mechanism of (not) creating input legitimacy

The results of this thesis also pose a question about the Commission's motivations when it comes to online consultations. As others have noted (Broscheid & Coen, 2003; Zittel, 2008; Zittel & Fuchs, 2007), the Commission has a strong tendency to try to widen its competences, although it lacks de jure competence to acquire more competences (or so-called competence-competence). Acquiring more competences is, in particular, relevant for policy areas where the Commission's powers have a weak treaty base.

Policies without, or with only a weak treaty base, are in special need of other mechanisms of legitimisation. One Commission strategy is to seek the help of actors outside of the EU's institutional framework, namely CSOs and experts. Also, the Commission can try to mobilise a wider public and go campaigning. Zittel described this approach of a top-down mobilisation of societal actors as 'participatory engineering' (2008, p. 120). The basic argument is that the weaker a treaty base for a particular policy is and the greater the wish of the Commission to expand this policy, the higher the rate of mobilisation of outside actors and entities; conversely,

the stronger a treaty base for policy is and the lower the wish of the Commission to expand a particular policy, the lower the rate of mobilisation of outside actors and entities. This argument offers an explanation for the mobilisation of the consultations in both case studies. The rate of outside mobilisation was high in the case of the animal welfare consultation – a policy with a weak treaty base – and low in the case of product harmonisation – a policy with strong treaty base.

The results of this thesis also raise the question how they reflect on the overall digital agenda of the EU. It would not be advisable to dismiss large parts of the EU's digital agenda based on the findings presented here. The results of this thesis with regard to the democratic potential of the Commission's online consultations are sobering. One might say that the Commission set itself a Herculean task and while tackling it, did not fare as well as the famous Greek demigod. But at least it tried. However, the scale of the challenges was clear early on and is known within the Commission (Fassian, 2012). Hence, it is clear that priorities for the EU's digital agenda are to be found elsewhere and not in the area of legitimacy and digital democracy. Overall, the results suggest that the EU's digital agenda is still stuck in a technology and economically driven perception of the information society, which gives market-oriented measures the highest priority. One of the latest developments supporting this view is the demise of DG Information Society and Media which became DG for Communications Networks, Content and Technology on the 1st of July 2012 (DG Connect, 2012). In comparison to its predecessor DG Connect almost solely focuses on technology, infrastructure and economic issues.

The missed opportunities for deliberation and politicisation

Clearly, online consultation did not lead to any policy learning for the Commission in either case. This is one of the core criteria for successful deliberation but there was hardly a meaningful exchange between participants and the Commission. The mere 'offer of commenting on policy drafts' is not enough for a positive legitimacy effect. Deliberation did not take place in the online participation arena. Whilst this was true in both cases, it was especially disappointing in the animal welfare case as it was chosen in particular for its comparatively higher deliberative potential, given its less technical nature. Of course, as neither case provided room for engaging in wider debate, we should ask whether it is really fair to blame the animal welfare case for not addressing fundamental issues such as animal rights. The harmonisation case,

while discussing mechanisms for preventing unwanted market distortion, did not discuss the merits and pitfalls of a market based economy and the possibility of alternatives. This is because there is probably no support for this systemic change within the elites and the wider European population. In the same vein, changing the treatment of animals based on ideas of animal rights philosophy is a comparable systemic shift within the societies and economies of Europe but it was not included either. After all, only a minority of people strongly dislike the idea that the primary distribution of wealth and income is achieved by using market mechanisms.

The animal welfare consultation's aim was to improve the welfare based on an anthropocentric concept of animal welfare. The animal welfare case did not have to burden itself with policy specific issues. Hence, there was the chance to discuss the underlying philosophy of a policy area. Arguably, although animal rights as a practical concept is without much chance of realisation in the near future, its value as a regulative idea should not be underestimated. From the viewpoint of animal welfarism, it is likely that an ideology that opposes an anthropocentric view of animals has something to say even for the goals of animal welfarism. Similarly, in the development of market based societies, rival ideologies played a crucial role in ensuring that income is not solely determined by market mechanisms. A secondary round of income distribution is often based on needs and a state-directed intervention in the market based economy by taxation and other mechanism of the welfare state is common. These adaptations of the market economy owe their existence partly to rival ideologies. Hence, even seemingly outlandish concepts such as animal rights have the potential to contribute to a mainstream ideology. The main difference between the consultations with regards to animal welfare and market economy is that the former case provided every opportunity of it being incorporated into the debate whilst the harmonisation case did not. Of course, the bigger picture may well be more complex, as the political pressure, the general line of the Commission and/or mechanism of non-decision-making (Lukes, 2005) may all play a part here.

In a broader perspective, neither consultation advanced the agenda of politicisation of issues and/or citizens. The politicisation implies that previously non-negotiable issues become negotiable and decidable, i.e., these issues are dragged out from non-political arenas to be subjected to public contestation and scrutiny, where decisions have to be justified also with the help of democratic processes. The politicisation of people implies that citizens or groups of citizens who

have previously been disinterested in politics and excluded from it become engaged in political debates and turn into political actors. In the most general sense, politicisation is the realisation that established social norms, social practices and social relations are contingent rather than sacrosanct, that things could also be different, and that citizens, individually and collectively, have political agency by means of which alternatives can be explored and implemented (Blühdorn, 2006a, p. 313). Seen from a politicisation agenda, the Commission's online consultation regime comes close to what Crouch describes as an institutional arrangement that has 'little interest in widespread citizen involvement or the role of organizations outside the business sector' (2004, p. 3) and where online consultations are simply a 'means of encouraging the maximum level of minimal participation' (2004, p. 112).

If we turn to the particularities of online consultations and the challenges of deliberation from the participants side we have to ask what are the consequences for the input legitimacy potential of online consultations if 25% of the citizens cannot take part in this form of democratic governance simply because they lack the literacy to do so. What does it mean if 25% of all those affected by political decisions are not able to have an influence on the process of formulating policies? The issue here is not that everyone should contribute but that a significant minority is not even theoretically able to contribute although they are citizens of the EU.

The lack of equality of participation is the single most serious challenge for the input legitimacy potential of online consultations. To put this into perspective, we can compare online consultations with elections. In an election, the central act of participation – casting a vote – is open to all regardless of the socio-economic and literacy status of individual. Every electoral system aims to ensure the equality of each vote. As long as other votes are not counted, each and every single vote has the same weight. In reality, there are of course various factors that violate this principle. For instance, the UK has constituencies with different voting populations (Curtice, 2010). The German general elections have the peculiar phenomenon of so-called excess mandates where because of the number of directly elected MPs in a federal state a party can win one or more seats in parliament in excess of the number of the seats to which it would be entitled on the basis of its share of total votes (Behnke, 2003).

After the counting of votes, the equality of the vote disappears because the value of the vote depends on the total distribution of votes between the electoral choices. In

many majoritarian and proportional election systems, if a voter did not vote for the winning candidate, party or coalition his or her vote is lost. This is very clear in the UK's first-past-the-post system. In contrast, electoral systems based on preferential voting try to minimise this form of loss of equality.

We can expect similar effects regarding a contribution to an online consultation - the relevance of an act of participation depends on other contributions. Moreover, we can also expect that the relevance of a contribution depends of the communication ability of the participant. This in turn strongly depends upon his or her socio-economic and literacy status. In contrast, the participation process in an election does not strictly require that a citizen be literate. Oral and visual communication can be enough to form an opinion about different election choices. And, even more essentially, the central act of participation does not require any literacy skills – casting a vote can arguably be done without the ability to read or write. The participation threshold for this arena is low. By sheer design, participation in elections is a rather inclusive process compared to the much higher 'entrance requirements' for online participation.

If we accept this argument, there is no easy way to overcome this problem for online consultations. For their advocates, the first line of defence would be to stress the fact that in comparison to elections, literacy levels only make a gradual difference. Likewise, various election studies have shown that the possibility of casting a vote rises with socio-economic status (Hill, 2011, p. 28). Disproportionality in voter turnout is linked 'to privilege, as those who are already marginalised find themselves even further disadvantaged through the effective exclusion of their interests and priorities from the political sphere' (C. Fischer, 2011, p. 38). Although compulsory voting could be a counter strategy to ease disproportionality in voter turnout, this is obviously not an option for public participation in policy making as the act of participation is far more complex. Arguably, efforts to educate citizens on how to effectively participate may drive the process towards higher equality, as well as ensuring that inputs are treated equally by the Commission before they are processed.

Limitations of the research and further research

In this second part, we look at the limitations of this research project and thesis. Prima facie, there are two main limitations: first, the lack of scope with regard to the

examined cases and second the lack of data on participants. If we do not change the focus of the research interest, i.e. the input legitimacy potential of the Commission's online consultations, then there are two main avenues for further research. The first is to engage more broadly in the Commission's online consultation regime. After all, the picture that emerged here is based on two case studies and may be grossly distorted taking into account a larger number of cases, which is steadily growing. This would also imply broadening the scope of the research by analysing online consultations in quantitative terms, which would require a robust scale for measuring the input legitimacy potential in order to handle a greater number.

The second main weakness of this research is the lack of data on participants. Hence, it appears to be advisable to expand on this aspect in potential future research and in doing so shift the focus from input legitimacy to legitimacy belief. However, apart from a purely descriptive purpose, this approach is only fruitful if the main result of this thesis – the low legitimacy potential of online consultations – is weak or invalid. This is because comprehensive research on participants is comparatively more resource intensive than research on legitimacy potential and therefore only makes sense if the Commission fulfils its obligation to create accessible arenas of participation that are, in principle, able to meaningfully transform the inputs of participants into policy. Only then is it justifiable to look into the specifics of EU online participation. Of course, the generic analysis of political participation is not affected by this assertion. On the contrary, insights from the online political participation studies are needed to improve the consultation regime.

Another line of inquiry could focus on how online consultations are embedded in the wider consultative regime of the Commission and in particular across different DGs. It is a potentially promising approach as many DGs have developed their own consultation culture with specific links and communication patterns with societal actors. This may be particularly fruitful for researching inter- and intra-organisational power struggles in the context of deliberative attempts to create input legitimacy.

The future for e-participation Commission policy-making

The third and last part of the conclusion provides an outlook for the future of e-participation in the Commission's consultation regime. First, we look at lessons that can possibly be learnt from the case studies by making suggestions for low cost improvements, which do not alter institutional arrangements either within or outside

the Commission. These suggestions are presumably easier to implement in the current format of the consultation regime. Second, we suggest a best case scenario for improving the input legitimacy of consultations based on the underlying problems of the current set-up and, based on this, we discuss whether it is worth improving the input legitimacy potential of online consultations.

The following suggestions are based on the results of this thesis and are intended to foster incremental changes in the consultation regime. Democracy is by design not the simplest solution to the challenges of government and legitimate rule and compared to voting, participation in policy-making is not the simplest solution to the challenge of democratic legitimacy. The government has to make sure that participating does not become more cumbersome than it already is. And here the Commission's online consultations fail miserably. The suggestions presented here will not change the big picture of online participation but may change the consultation regime in the long the run for the better. Whilst ultimately the resources required for expanding online consultation regimes are necessary so that they deliver input-legitimacy on a grand scale, a first step is to make sure that on the smaller scale, the regime is, in principle, able to deliver input legitimacy.

The first realistic aim is to have a coherent and more accessible website. An interview partner from a Brussels-based think tank suggested that the Commission has to go even further with their websites: 'The Commission's site is a failure. It is a very inaccessible, rather user-unfriendly site. You would never go there in your free time, which should [be the] aspiration for this site... to be so user friendly so that people go there in their spare time' (O, 1). Of course, it is debatable whether the Commission's web presence should aim to become a political edutainment site, so attractive that people visit it regularly in their free time; yet as a guiding principle, it is worth considering. It is also worth noting that rework of the site in September 2009 was a step in the right direction.

The next realistic aim is to establish a more transparent long term communication process between participants and a DG (especially for people who do not take part in 'offline' consultations) that moves beyond the linear input/output model envisaged at the moment by the Commission's consultations. The schematic model of policy-formulation within the Commission (initial paper – consultation input – policy draft) is not valid for the 'offline world', where ideas and concepts are discussed and bounced backwards and forwards – or, as Neyer (2003) claims, are deliberated with

all the legitimacy implications - across many levels and meetings. Nevertheless, in principle, online consultations still follow this scheme. Hence, a more comprehensive approach to governance and communication via the internet is needed.

In practical terms, this would mean communicating policy development through devices such as email newsletters - 'in governance: from the policy officer's desk' - a weekly or bi-weekly email update which provides both official updates as well as the views of someone from within Brussels. It should be noted that whilst informing groups of people is already the task of many policy officers, the reporting often takes place without publishing reports/communiqués – although sometimes minutes and notes can be found, possibly accidentally in some case, on the internet. Ideally, such an email would highlight the latest developments and, maybe, responses or clarifications to the policy question, references to further documents on the web or relevant literature. Additionally, it should address the participation possibilities, including in-person opportunities to connect. The addressees of such newsletters (other forms are of course possible, including fully fledged multi-channel response and content managing systems) would be people who had already signed up to that arena of participation. Moreover, the policy officer in charge should make sure that contributions of other participants are easily accessible to all who are interested. It should also be noted that such a degree of transparency might be controversial within the Commission.

The measures outlined above would increase the input legitimacy potential of the consultation primarily after a participant entered the arena of participation. They would aim to improve the meaningful transformation of inputs. However, the bigger challenge is to attract citizens to enter the arena in the first place. Both strategies of raising the benefits of participation and lowering the costs of participation are worth considering. In terms of lowering the cost of participation, first and foremost, a DG must make the rules of engagement as clear as possible, i.e. explaining what the DG expects from participants and what participants can expect from the DG. It would include highlighting what is at stake and why the DG values the participation. This is also important for any prospective participant in order to assess, ex ante, both the cost and potential benefits. In practical terms making it easier to participate should include measures such as providing reference material for people with different levels of expertise in addition to a code of practice for participants. Second, framing online consultations both as opportunities to influence policy and as learning opportunities is

one of the more unusual attempts for targeting participants outside of Brussels. Online consultations can be used as educational tools especially in the area of secondary education and university education. This approach, if encouraged by the Commission may also overcome the problem of poor media attention vis-a-vis the EU whilst targeting a relevant group for participation. A prominent example of this approach is Canada's Foreign Ministry and their 'Policy eDiscussions' (Potter, 2009, p. 167).

The overarching aim is to have policy officers who understand the participation arena from the perspective of a participant, i.e. they are not part of the 'Brussels bubble', trying to establish a long term relationship whilst avoiding reinforcing the simplistic messages of advertising and political campaigning. The latter is especially relevant for the inside support of policy officers who would stress the importance of participation as opposed to mere communication. The challenge is to promote participation and not only communication as this is not about selling policy but about selling the idea of participatory policy-making. In essence, this means reducing the comparative advantage of being within the 'Brussels bubble' by essentially expanding it. Strategically, the medium term objective would be to create a narrative of the Commission's online consultations for participants, EU officials and the media.

The next step would be to look for improvements on a bigger scale. The aim of imagining the best of all worlds is not to draw up a fantasy world of a possible EU but rather to show the limitations of e-participation. For the sake of the argument, let us assume a best case scenario regarding the environment for online consultations (see also Shane, 2012, pp. 1–2 for his utopian scenario). The Commission would increase the accessibility of its online consultations in a top-down approach by streamlining access to all DGs. The influence of online participation in the consultation procedures would be legally backed-up and therefore bottom-up policy impact would be credible. Online consultations and other, more traditional, forms of consultation would be well integrated. The policy officers on the ground would see themselves both as facilitators of policy and facilitators of democracy. The Commission's communication specialists would not only focus on selling a policy to its audience but also encourage participation in the policy-making. People would have the possibility of reading about the EU consultations because they would be newsworthy in the mass media. Both in the online and offline world have for a where participants meet and can exchange arguments. The mass media would report the process by even highlighting

interesting contributions. At the same time, Member States would amend the curriculum for citizenship classes so as to teach people how they can effectively participate, not only in EU consultations but also in other e-participation tools at national and sub-national levels. A range of CSOs would produce informative material and manuals for participating in consultation procedures and thus the EU online consultation and European public sphere would be able to grow organically.

First, on the question of legally binding structures, on the one hand the Commission's approach of not making the consultation legally binding and generally trying to avoid an 'overly legalistic' (Craig, 2010, p. 69; EU Commission, 2002a, p. 10) approach enables it, in principle, to adapt the consultation regime towards a more meaningful participation which is independent of other actors. On the other hand, the lack of legally binding structures seriously decreases the legitimacy potential of the regime. This argument – as outlined in chapter 3 – is based on the assumption that the possibility of meaningful participation already creates legitimacy potential, not only actual participation. We could argue that the absence of legally binding structures is a problem that can be easily overcome. As discussed above, 'legally binding' refers to measures that first bind the Commission to initiate an online consultation and second, that the synthesized input of an online consultation has to be the position that the Commission, after the formulation stage, introduces into the policy process with the other major EU institutions. A possible side effect of making the online consultation procedures legally binding in such a way is that the process becomes more significant for the Commission's personnel. Nonetheless, it is important to remember that in contrast to elections, where input legitimacy does stem from securing the equality of votes, the online consultations' legitimacy potential depends more on the quality of participation and less on legal safeguarding. In a situation where a consultation has a high degree of participatory quality and no legal safeguards for securing impact, the process still has legitimacy potential. In contrast, in an election with a high rate of participation (i.e. voter turnout) but no legal safeguard, the input legitimacy potential would be negligible.

One might argue that the development of legally binding structures and patterns of participation may evolve over time and therefore does not pose a substantial dilemma. It is more an issue of polity change. The dilemma between legitimacy based on deliberation and elitism is more severe and resource intensive to overcome. Fishkin's attempts to reconcile inclusive participation with high quality

output with his deliberative polling approach can give us a glimpse of the scale of the task (Fishkin, 2009, pp. 159–196).

We can assume that around 25% of EU citizens are not able to participate in online consultations, even if they wish to do so. Surely, the participation threshold for online consultations could be lowered to a certain degree, which would allow more people to participate. Yet, the literacy requirements for participation cannot be lowered without jeopardising the legitimacy potential as the quality of dialogue is the essential factor in establishing the legitimacy potential of online consultations. So either we have a scenario where input legitimacy potential is low because a considerable minority of citizens are unable to have an influence in the forum for policy contestation, or we have a scenario with a low input legitimacy potential because the participation does not fulfil minimum criteria for deliberation. While we could relativise the elitism dilemma by referring to other phenomena of elitism in the functioning of democratic societies, it does not increase the input legitimacy potential of online consultations.

Hence, even if we believe CSOs can provide a democratic infrastructure; even if we believe in the effectiveness of citizenship education; even if we assume that the Commission (let alone its consultations) is more than a medium sized fish in the vast media ocean, there are considerable obstacles to overcome for this strategy for creating input legitimacy.

Another suggestion is to consider the online consultation avenue as an act of desperation. After all, the EU is running out of ideas for tackling the democratic deficit. The EU and Commission, however, already have forums for elite deliberation. It is not clear why the EU needs another one. Therefore, we can ask the question of whether the Commission is the wrong institution – in terms of a history of fixation on output legitimacy, lack of resources and conflicts with other EU institutions – to be undertaking such a project. Is it worth the effort to improve the online consultation regime on input legitimacy grounds?

From the traditional engineering mantra 'strong, light, cheap – pick two' the Commission has a similar problem. As an analogy, the options for the Commission are 'output-legitimacy', 'input-legitimacy' and 'cost effectiveness' and there is a sound reasoning behind the Commission's choice of 'output-legitimacy' and 'cost effectiveness'. If we put the conclusion into two sentences we might say, first, that online consultations do not contribute to the input legitimacy of the EU and that,

second, it is inefficient to improve the online consultation regime on the grounds of input legitimacy. In doing so, we hint at what Dahl calls the 'democratic dilemma'. He sees trade-offs between 'the ability of the citizens to exercise democratic control over the decisions of the polity' and 'the capacity of the system to respond satisfactorily to the collective preferences of its citizens' (1994, p. 28). However, as Blühdorn points out, the situation is not as simple as Dahl suggests:

'The enhancement of efficiency neither automatically implies a reduction of democratic qualities, nor are improvements of the latter necessarily achieved at the expense of the former. Democratic qualities may be beneficial for the efficiency of a process or system but they may also be detrimental or not affect its efficiency at all. They are beneficial if they enhance the ability of a system to fulfil its specific function without increasing the required inputs. They are detrimental if they either reduce the system's output or necessitate a higher input in order to keep the output at the same level. Therefore, any talk of a direct contradiction or trade-off between democracy and efficiency is misleading. Whilst there may well be a direct trade-off between the inclusiveness of decision making and the effectiveness of decision making, it would be entirely wrong to regard democracy and efficiency as opposite poles on the same scale' (Blühdorn, 2006b, p. 78).

In this sense, this conclusion was an attempt to gauge in advance, albeit in a necessarily superficial manner, how much the reform of the online consultation regime could potentially add to the EU's input legitimacy and how much it would cost and may distract from effective and efficient policy making. Finders argues that such a weighing up is difficult, if not impossible (2006, p. 183). Naturally, the future of e-democracy in the European Union and its use by the European Commission is not easy to predict. It will depend inter alia on the evolution of technology and its use, the changing patterns of political participation and of political identities and the shifting perception of the EU's democratic deficit. After all, democracy is an open-ended project – in particular in the case of the EU and in the context of digital media.

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Appendices

Appendix I: Exemplary interview matrix for EU officials

Version Animal Welfare case

I am looking in my PhD at consultation procedures within EC as a means of creating input legitimacy for the EU. I am particularly interested about what will happen if input is gathered via the internet. One of my case studies is the consultation for the 'Action Plan for Animal Welfare 2006 - 2010'. This is in short the reason why I am here today.

Could you describe in a few sentences what were your key duties in drafting the Action Plan?

1/3	offline/CSO/Citizens How did you decide that the consultation was to be opened for a wider public? – Who decided? Which process?	online/CSO/Citizens <i>At which point of the policy making process did you (or the commission) decide to open a consultation?</i>
Specifically in the Case of the Action Plan Consultation approach of the DG	Which organisations were mainly taking part? How come that so many people seemingly without organisational background took part in this online consultation? How was the consultation promoted beyond the EC?	Who decides? Which process? Who decides that a consultation is open for the public or exclusively for stakeholders? Which priority had the proposal compared to other things going on at that time? – Was sind die grauen? How did online consultation interlink with outer consultation exercises?
Prerequisites for meaningful participation	How does the DG seek awareness? Are they campaigning for a particular consultation? – Selection of topics opened for a consultation process? – Who decided? Which process? Selection of topics opened for a consultation process?	You used a closed questionnaire type of consultation as well as open questions where people could write a contribution in response to your consultation document. How come? Did the closed questionnaire bring up anything surprising?

- What about marginalized group topics? Is there strategic use of consultations?
 - Who decided? Which process? From your view, how relevant were the inputs of the consultation relative to other inputs provided? Relevant could be supporting existing views or bring up new/overlooked insights?
- In general, which significance have consultation for the DG?
How often does input provided through consultation challenge implicit/explicit viewpoints of the DG?
- What is your impression of the Communication skills of participants?
Such as literacy skills, tolerance of ambiguity, efficacy ...

2/3	offline/CSO/Citizens <i>What guidelines are there a consultation process has to follow in your DG – apart from the guidelines laid out in the EC's document on 'General principles and minimum standards for consultation of interested parties by the Commission'?</i>	online/CSO/Citizens How are the inputs recorded? For how long? Where are they published? For me also interesting is the aspect whether they are accessible for me as an outside researcher
Specifically in the Case of the Action Plan Consultation approach of the DG	The same document states 'A Commission Intranet website will provide Commission staff with practical guidance, including examples of best practice.' Does it exist? Do you/ your DG use it? Has the DG developed their own best practice cases?	Esp. the single contributions were once online but it seems they disappeared from the DGs website. What are the reasons for this?
When DG takes over the stewardship of the inputs...	What's happening with the contributions Who is processing them and how? What are criteria for input to be included/ not to be included?	Are you concerned about the representatively of the participants input? Should The EC be concerned about it, or is it more relevant

Who selects relevant contributions/comments? for the EP? Is the quality of the
 How would you define “relevant”? input more important than to
 Process of summarising the contributions: How is it make sure that there is no
 structured? socio-economic bias?
 Which criteria do you use for summing up
 contributions?

How does the DG give feedback on the
 gathered and processed input?

In which form?

**Does the DG communicate criteria why some
 inputs are included or why not?** In which ways?

What is the binding structure of using the
 contributions for policy drafts? If it is non-
 legally, is it morally binding?

Where do summaries/contributions go to in case
 they are not used for policy drafts?

Who else uses these
 summaries/contributions?

**Is the public actively informed about results
 after a closing date?**

**Who decides whether a consolation “Citizens can play an active role in the policy
 is promoted via the 'Your Voice in making process” - what is your view?
 Europe' website?**

How does the process work? Does Critical factors for a successful usage of online
 it depend on definition of consultation? (political, legal, cultural,
 interested parties? economic cost factors?)

Who is in charge of communicating

**with the Webmaster Team of DG In the 2005 survey, 2/3 of the respondents
 Market – they take care of the Your believed that the level of animal welfare
 Voice site? within the EU was poor or very poor? Did
 you agree then? Do you think that**

Do you use the IPM framework publishing the Action Plan has changed this
 provided for gathering feedback? In perception?

which cases? What is your experience You hardly use what???in your official
 with the IPM? documents...s

How do you assess the design of the Generally, what's the difference between online
 online consultation site in terms of and offline consultations

3/3

Specifically in the
 Case of the Action
 Plan

Consultation
 approach of the DG

Technical Issues
Contemplating

“usability”?

Generally, what's the difference between

If you go to the Your Voice in Europe consultation contribution by CSO and citizens Webpage you find a section of open

consultation. Then there is a section for closed consultations. So the site suggests that there is a succession from an open consultation to a closed

consultation. But then there are consultations that were once open and they disappeared altogether from the website. One reason for this is

communication between the DG and Webmaster of DG market who take care of the webpage. But the

webmaster also told me that the DGs sometimes ask to remove the link of their consultation. I am wondering why a DG intentionally doesn't want

that the results of consultation are interlinked to the YViE page?

Does participation need to have impact on a policy? Or is it more important that the participant feels her or his input matters?

Is the responsiveness of the agency more important than the information processing and policy impact)?

How far do online consultations address “hot issues” which supposedly play an important role for the EU’s policy making?

Do you see contestation over policies taking place in consultations?

How would you define a “successful” online consultation?

I have here this statement by an US college of mine on the subject of civil participation and he says: ‘It's not about inclusion and participation, but primarily about securing consensus for policies and delivering them effectively.’ - what is your view?

How far have online consultations influenced your personal work? What was/is the “added-value” of online consultations?

Any good questions I should ask Mr Rhein or Mr Horgan?

Appendix II: Participants interview

Email/Letter Version

University of Portsmouth
Centre for European and International
Studies Research
Park Building
King Henry I Street
Portsmouth PO1 2DZ
United Kingdom

Researcher: Julian Weller

Faculty of Humanities and Social Sciences
Centre for European and International Studies Research

Dear Interviewee

The following questions aim to shed light into the EU Commission's consultation process from the participant's side in the context of my research project outlined in the accompanying information sheet. This interview is particularly interested in your involvement of the 2006 DG Enterprise consultation for the regulation on 'Requirements for accreditation and market surveillance relating to the marketing of products'. The questions are divided into three sections: The first one deals with the motivational issues before the submission of an contribution, the second with the content of the consultation and the last section is concerned with the process after the submission ('follow-ups').

Before

How did you/your organisation know that the Commission launched the Consultation on Product Harmonisation ('Requirements for accreditation and market surveillance relating to the marketing of products')? For Instance were you included in their mailing list, did you learn about it via another organisation or do you have personal ties with the DG?

What was your/your organisation's motivation for participation?

Did you/your organisation expect to gain any benefits from participation?

Was there anything remarkable about how the DG dealt with consultation? How do you/your organisation feel about the mode of Communication with the DG Enterprise (in general/specific to this consultation)?

Apart from the professional issue did you have any personal stake in the consultation?

Content

From your perspective which where the most relevant points raised by the Commission's documents?

How many people were involved in drafting the reply to the Commission?

Was this a one-off participation? Or do you/does your organisation regularly take part in consultation procedures of the Commission (such as other forms of "offline-consultations" and hearings)?

Did you read contributions by other participants?

How important are consultations for your work?

Follow-ups

Did you follow the course of the consultation after the submission of your position to the Commission?

Do you frequently refer to the Commission's 'Your Voice in Europe' web-portal which is listing many of the EU Commission's consultations?

From your perspective, what is a successful online consultation? Do you have an opinion on critical factors for a successful usage of online consultation? (eg political, legal, cultural, economic, cost factors?)

Do you believe your contribution was relevant for the DG? Why?

Anything you would like to comment further, criticise or add?

Thank you very much for your time and for answering these questions. Your help is greatly appreciated.

Julian Weller

Appendix III: Overview Interviewees

Overview Interviews

#	Name	Interview	Alias	Group	Type
				Participant	
###	Claudia Schöler	xx		Enterprise	email
###	Birgit Weidel	xx		DG Enterprise	face-to-face
###	Andrea Gavinelli	xx		DG Sanco	face-to-face
###	Vessela Karloukowska	xx		DG Sanco	face-to-face
###	Antonio Rebelo-Martinho	xx		DG Enterprise	face-to-face
###	Alessandro Gomasasca	xx		DG Market	email
###	Horgan Rex	xx		DG Environment	email
###	Carol Humphrey-Wright	xx		DG Sanco	face-to-face
###	Cornelius Rhein	xx		DG Enterprise	email
###	Hugo Córdova González-Castillo	xx		DG Enterprise	email
###	Alexia Tsapidou	xx		DG Sanco	email
###	Nicolas Dietrich	xx		Sanco	face-to-face
###	Anne Grässer	xx		Sanco	email
###	Bertram Chandelle	xx		Participant Enterprise	email
###	Daniel van Lerberghe	xx		Outside	face-to-face
###	Roberto Ferrigno	xx		Outside	face-to-face
###	Anita Haase	xx		DG Market	email
###	Sascha Leib	xx		DG Market	email
###	Simon O'Connor	xx		Participant Enterprise	face-to-face
###	Maria Laura Franciosi	xx		Participant Enterprise	face-to-face
###	Johanna Jäger	xx		Sanco	telephone
###	Michael Wilderspin	xx		Outside/DG Legal	face-to-face

Appendix IV: Screenshot - Your Voice in Europe consultation portal before Sept 2009


IMPORTANT LEGAL NOTICE: The information on this site is subject to a [disclaimer](#) and a [copyright notice](#).

The screenshot shows the top section of the 'Your Voice in Europe' website. At the top left is the European Commission logo and the text 'Your Voice in Europe'. To the right are two language selection dropdown menus, both set to 'English'. Below this is a dark navigation bar with the breadcrumb 'European Commission > Your Voice in Europe > Home > Consultations' and a 'Contact | Search on EUROPA' link. Underneath are four light-colored buttons: 'Consultations', 'Discussions', 'Your Experience', and 'Useful Links'. The main banner area features a large image of a person speaking, with the word 'Consultations' written in a large, white, sans-serif font across the center.

Take part in shaping European policy by responding to one of our consultations - we are very interested in hearing your views and learning from your experience.


Consultations by policy activity	Recent public consultations											
<p>Select a particular policy activity to find out about consultations in that area.</p> <ul style="list-style-type: none"> ■ General and institutional affairs ■ Agriculture ■ Audiovisual ■ Budget ■ Competition ■ Consumers ■ Culture ■ Customs ■ Development ■ Economic affairs ■ Education ■ Employment & social affairs ■ Energy ■ Enlargement ■ Enterprise ■ Environment ■ Equal opportunities ■ External relations 	<p>Open consultations: give us your opinion by taking part in an open public consultation.</p> <p>Closed consultations: find out about the results of public consultations that have recently closed.</p> <p>Please note that this is only a selection of consultations addressed to the broader public - you can get a complete picture of consultations in various policy activities, including those aimed at more limited target groups, by selecting an activity on the left.</p> <p>Open consultations</p> <table border="1" data-bbox="689 1109 1982 1252"> <thead> <tr> <th>Title & description</th> <th>Policy field</th> <th>Target group</th> <th>Closing date</th> </tr> </thead> <tbody> <tr> <td> Consultation on Responsible Lending and Borrowing in the EU <small>NEW</small> </td> <td>Internal market</td> <td>Stakeholders</td> <td>31.08.2009</td> </tr> </tbody> </table> <p>■ More information</p>				Title & description	Policy field	Target group	Closing date	Consultation on Responsible Lending and Borrowing in the EU <small>NEW</small>	Internal market	Stakeholders	31.08.2009
Title & description	Policy field	Target group	Closing date									
Consultation on Responsible Lending and Borrowing in the EU <small>NEW</small>	Internal market	Stakeholders	31.08.2009									

Appendix V: Screenshot - Your Voice in Europe consultation portal after Sept 2009


European Commission
Your Voice in Europe

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Open Consultations

Take part in shaping European policy by responding to one of our consultations!

If you are responding on behalf of an organization, we invite you to register in the Commission's [Register of Interest Representatives](#). Your contribution will then be considered as representing the views of your organization.

See also:

- ▶ [Closed Consultations](#)
- ▶ [Consultations by policy area](#)

Title	Policy Field	Closing Date	More Information
Public consultation on a possible Innovation Partnership on raw materials	Enterprise	27.05.2011	More Information
Consultation on Strategic Transport Technology Plan (STTP)	Transport	28.05.2011	More Information
Public Consultation on the revision of the Personal Protective Equipment Directive 89/686/EEC	Enterprise	14.06.2011	More Information
Towards the Youth on the Move card: What is needed to increase the mobility and participation of young people in Europe?	Youth	04.06.2011	More Information
Public consultation on the Global Approach to Migration	Home Affairs	06.06.2011	More Information
Consultation on the results of the study on the implementation of the Regulation 1435/2003 on the Statute for a European Cooperative Society (SCE)	Enterprise	15.06.2011	More Information
Review of the Community guidelines on financing of airports and start-up aid to airlines departing from regional airports	Competition	07.06.2011	More Information
The EU corporate governance framework	Internal Market	22.07.2011	More Information
Public consultation on a possible successor instrument to the EU programme for	Employment and social	27.05.2011	More Information

The End