Backdoor Neo-Corporatism? The European Commission’s Responsiveness in Online Consultations

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Introduction
In the last decade the European Commission has significantly extended consultative opportunities for civil society organisations (CSOs) beyond European umbrella organisations (Kohler-Koch and Quittkat 2010: 74ff.). Especially via the instrument of online consultations (OC), organised at http://ec.europa.eu/yourvoice/, most new policy proposals (Green papers etc.) are now exposed to the attentive eye of the “general public”.

The often recognized rhetorical shift seems to indicate a change from a more corporatist to a more pluralist instrument of interest group consultation. The rhetorical move alone was astonishing, as pluralist inclusion of civil society organisations into more transparent EU policy deliberations should be expected to make consensus-style decision-making – a key feature of European policy making - less likely to succeed (compared to the sole inclusion of few representative umbrella organisations) (Lijphart 1999: 171ff.).

Prima facie empirical research seems to support the view, that the Commission’s rhetorical shift has been complemented by more pluralist policy making: it is hardly to contest that - especially via online consultations - the Commission has provoked a broader variety of interest group ‘input’ (Kohler-Koch and Quittkat 2010; Schmidt 2006).

But letting them talk only might be cheap for the Commission, as long as there is no effective response by the Commission to this pluralist input. It is the core aim of this paper to present the empirical results of a case study analysing the contributions of CSOs in online consultations as well as the Commission’s responses.

In section 1, the history of the Commission’s online consultations is briefly outlined. In section 2, normative aspirations and empirical expectations are brought together to lay out the
theoretical framework for this analysis. Sections 3 and 4 introduce the case and the empirical
data.

1. The Commission’s Online Consultations
In the course of the deliberations on the White Paper on European Governance (Commission
2001) and its follow-up process, the Commission has outlined three aims connected to more
civil society involvement. First, civil society involvement is expected to contribute to
democratising the EU (Commission 2002b). Second, the Commission intends to improve the
quality of EU policies by introducing more openness to “sound science” presented by external
experts. Third, both aims are integrated in impact assessments processes (IA).¹ These are *inter
alia* an instrument through which the Commission is symbolically held accountable. The
Commission has to justify why certain issues have been put on the political agenda and why
proposed actions or policies are appropriate. A core element of this justification is to “proof”
that all relevant claims have been considered and experts have been consulted simply by
answering the questions who has been consulted and whose knowledge has been considered.
The obligation to give account of having consulted those potentially concerned and of
integrating external knowledge is probably one main reason for the huge increase of online
consultations after 2002. As most OC are open for anyone to participate (Quittkat 2011), the
Commission can give a procedurally convincing answer when being called to account for the
inclusion of affected interests and expertise.

In an encompassing analysis of OC participation of the DG SANCO and EMPLOYMENT
Christine Quittkat (2011) could show that each policy activity has attracted a variety of actors
and generated a specific policy activity community. Further, and more importantly, the
composition of the core actors as well as of the policy activity communities is diverse.
Regarding different issues different association groups participate, where some of them
clearly represent competing interests and we find very different actors, ranging from business
interests to a wide spectrum of general interests associations to public authorities.

But she could also show (again) that the more pluralist involvement of societal concerns and
perspectives comes with strong biases (dominance of older EU member countries and the

¹ Since 2005 the Commission is obliged to carry out impact assessments with respect to all essential legislative
initiatives. See the foundational Communication on ‘better lawmaking’ (Commission 2002: 2f.), the assessment
guidelines (Commission 2009) as well as the related website (at:
over-representation of associations from Northern EU-member countries relative to the population; large share of business interest representatives).

Finally, Quittkat could show for the consultations of DG EMPLOYMENT and DG SANCO that only for less than half of the online consultations the contributions have been made publicly accessible on the web and for only about a third of them reports are available.

In the following case study I present results from OC of DG EMPLOYMENT and DG SANCO which are best cases from the pluralist perspective outlined in the White paper on Governance, where the Commission complies at least with the formal requirements of a pluralist approach to CSO involvement, i.e. OC where the general public is addressed to contribute, the contributions are made transparent and the Commission finalized the consultation at least with a report.

2. Commission-CSO-relations in EU policy deliberations – some theoretical considerations

It is quite uncontested among political scientists, that the Commission (as College and Commissioners) is a policy seeking actor dominated by supranationalist ideology (Hooghe 2012), whose influence in the routine secondary lawmaking primarily depends on how well it plays its role in agenda setting and policy deliberation. The Commission has formal competences in setting the political agenda and the tone of policy proposals. But these proposals might be modified or even vetoed by the Council and mostly by the EP as well.

Thus, the Commission is generally in search for political support. Regarding core issues such support is expectable only if relevant political actors expect at least non-negative future outcomes regarding their own preferences. On less salient issues Commission’s policy proposals can expect to survive the more the Commission can back such proposals with unambiguous expertise and external political support.

Consequently, the ‘old’ style of Commission initiated policy formation fostered the idea of a hardly contestable implementation of European primary law, which is in the objective interest of all major societal groups and is in fact also supported (at least not refused) by member states and major umbrella organisations (Moravcsik 1998, 2002). And the influence of the Commission depends on both: a plausible relation to the common good (e.g. as Pareto optimality) as well as on an inclusion of few affected parties (which secure absence of political opposition).
By the premature termination of the Santer Commission both parts of the ‘old’ legitimation theory were under heavy attack: the close-to-routine occurrence of popular vetoes (against Maastricht and Nice treaty), a significant decline in surveyed public support as well as the persisting debate of the democratic deficit put some burdens on the input side of the legitimation chain. And a Commission accused of fraud, nepotism and incompetence is more or less inconsistent with the picture of it as a public trustee (Kohler-Koch 2003: 203ff.).

One key result from this well-known story was the Commission’s approach to wider involvement of civil society organisations in European policy deliberations to foster democratic legitimacy (Commission 2001; Kohler-Koch and Finke 2007). If there are roughly two plausible modes of formal CSO inclusion leading to more democratic political systems, then the Commission’s activities might be interpreted as substituting a more neo-corporatist approach for a more pluralist one.²

By intending to improve democratic quality, it should be clear that we can not rely on a ‘narrow conception of accountability’ (Bovens 2010; Bovens et al. 2010) or responsiveness but have to apply a variant of a democracy related approach to accountability (see e.g. Schmitter and Karl 1991). For a discussion of the two kinds of approaches, see Hüller (2012: 252ff.).

In a general sense neo-corporatist approaches of CSO involvement should have three democracy related key features, the (a1) effective responsiveness of a political system to (a2) unanimous preferences (including compromises) of (a3) few representative CSOs. Alternatively in pluralist approaches the democracy related features consist of (b1) effective symbolic accountability which is given to the (b2) inclusively involved diverse preferences of (b3) a multitude of CSOs (see Lijphart 1999: 171ff.). Where in the neo-corporatist model CSOs are expected to have an effective say in the determination and/or implementation of policies, the pluralist ideal is more restrictive expecting just an effective say for CSOs in policy deliberation.³

It should be clear, that there is a quasi natural fit between the consensus style of policy making and a neo-corporatist involvement of CSOs, because associational compromises in

² Of course there are some more possible roles for CSO in the EU (Kohler-Koch 2010), but these two are consistent to important democratic functions of CSOs within processes of policy formulation.
³ Sometimes the normative demands on the Commission is overstretched expecting sanction-based means for CSOs to hold the Commission accountable (Persson 2009).
working neo-corporatist settings more or less automatically warrant Pareto optimality of their policies. And if Pareto optimality is congruent with the common good, then a common good oriented Commission might rely on any neo-corporatist compromise. And as a policy seeker the Commission would approach solutions among those which are beneficial (compared to upholding the status quo) for all represented parties which are closest to the Commission’s own preferences.

With the turn to more pluralist involvement of CSOs the theoretical connection between the results of expectably more diverse CSO input with somewhat dubious representative social backing of their positions on the one hand and any common good on the other remains unclear. There are at least three kinds of problems:
First pluralist settings come with a huge increase of participating actors and that increases democratic ‘transaction costs’: more input, means first of all more positions to be attentive to in a short period of time with limited resources.
Second if there are many representatives for similar issues with different positions, then it becomes automatically unclear who is exactly represented by the representatives. Even a neutral umpire would have to detect who is effectively represented by whom.
Third the same diversity of issues and positions increases the Commission’s burdens of judgement to detect, what the common good prescribes. As pluralist settings normally do not expect any inter-CSO preference formation, the probability increases, that there won’t be Pareto superior solutions at all, the more CSOs (of all kinds) are involved.

So, theoretical expectations are ambivalent: On the one hand, the Commission advanced the pluralist reform, so we might expect compliance with its own participatory program. And as contributions, reports and other follow-up documents are mostly transparent, defective behaviour can easily be detached, the Commission might be entrapped to perform responsive activities. On the other hand as a policy seeker we should expect the Commission to make ‘differentiated’ use of pluralist input highlighting supportive positions. And against the background of scarcity of resources and attention as well as the perception of diverging interest group relevance we might expect rather selective responses from the Commission.
3. The Case Study on the Commission’s Online Consultation

In a case study, a content analysis of contributions to four online consultations from DG Employment and DG SANCO was conducted. The four consultations are:

1. Green paper "Modernising labour law to meet the challenges of the 21st century"
2. Action at EU level to promote the active inclusion of the people furthest from the labour market
3. Labelling: competitiveness, consumer information and better regulation for the EU
4. Green paper "Promoting healthy diets and physical activity: a European dimension for the prevention of overweight, obesity and chronic diseases"

The case study consists of two rather politicised (1; 3) and two non-politicised (2; 4) issues in the field of social regulation. It is worth noting that a wider sample (n=12) proved the length of time an OC allows for contributions to be sent in, to have some influence on participation rates and that the selected OC were open for 10 to 18 weeks. For each consultation about 50 contributions were randomly selected. For a longer description of the case selection, see Hüller (2010: 175ff.).

4. CSO Contributions and Commission Responses in four Online Consultations

The kind of Commission response we should expect depends to some extent from the content and quality of prior contributions. The Commission’s obligation to respond is higher the more contributions addressing a consultation’s subject, they make plausible arguments, demand specific policies etc. And the way the Commission should respond (in accordance with democratic aspirations) depends to some extent on positions and representativeness of the speakers. Thus, before analysing the Commission’s responsiveness and accountability (4.2) it is advisable to investigate the contributions (4.1).

4.1 Contributions to the Commission’s Online Consultations from CSO

In the four consultations the Commission was confronted with 974 contributions overall. 511 of these contributions came from CSO (broadly defined), among them 223 contributions from business interest associations (BIA), 67 from trade unions and 147 from general interest associations (GIA). So like in the general participation picture, involvement in the four consultations is pluralist but somewhat biased (see above, section 1).

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4 The empirical analysis has been conducted as part of the MZES research project “Democratic Legitimacy via Civil Society Involvement? The Role of the European Commission (DemoCiv)”. Especially Beate Kohler-Koch and Christine Quittkat contributed valuable help in conducting the research.
Yet, participation alone does not say much about the quality of the contributions and we need to focus more closely on the contributions of CSO participants, on the positions presented by CSOs, their formal discursive qualities and on their persuasiveness.

### 4.1.1 CSO Positions

First we ask if in the contributions the positions concerning the main issues of a consultation are presented at all. This is the case if contributions make evaluative judgements on the given issues. For example in the consultation on labour law, the Commission has set three main issues:

1. Increased flexibility of work contracts and lower ‘costs’ of dismissals
2. European social protection and security of employment
3. Integration of outsiders into the labour market

Of the 61 contributions we have investigated more closely, 54 take a position on the first issue, 60 on the second, but only 36 on the inclusion of outsiders. Thus, flexibility and social protection have been the key issues that were important to almost all CSO. Table 1 exemplarily shows that employer organisations and unions presented conflicting positions with respect to the first issue. As this is rather unsurprising, more interesting are the positions beyond these groups. With respect to flexibility, we see more or less evenly spread positions, but regarding Europeanised social protection there is almost unanimous support among the other CSOs.

**Table 1: CSO positions on increased flexibility of work contracts and lower ‘costs’ of dismissals**

<table>
<thead>
<tr>
<th></th>
<th>Positive</th>
<th>Ambivalent</th>
<th>Negative</th>
<th>None</th>
</tr>
</thead>
<tbody>
<tr>
<td>Trade Unions</td>
<td>1</td>
<td>3</td>
<td>11</td>
<td>1</td>
</tr>
<tr>
<td>Professional organisations</td>
<td>4</td>
<td>0</td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td>BIA</td>
<td>19</td>
<td>1</td>
<td>0</td>
<td>4</td>
</tr>
<tr>
<td>GIA</td>
<td>2</td>
<td>4</td>
<td>2</td>
<td>1</td>
</tr>
<tr>
<td>Others associations</td>
<td>2</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Research</td>
<td>1</td>
<td>3</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>29</strong></td>
<td><strong>11</strong></td>
<td><strong>14</strong></td>
<td><strong>7</strong></td>
</tr>
</tbody>
</table>
For all expectably contested issues in both ‘politicized’ consultations we find very similar pictures. CSO positions do not aggregate to more or less unanimous support of one of the options (see Hüller 2010: 186ff.). Thus, the Commission can not gain any unanimous or majoritarian support for any of the discussed issues. What is more, regarding consultation on labour law it is important to know that on all three issues the Commission was sympathetic to the positive judgements. Thus, all deviant positions can also be interpreted as criticising the Commission.

This result has two consequences for our analysis. First responsiveness regarding a consultation’s core issues is impossible due to the fact that the Commission has to face conflicting opinions. Second, regarding the Commission’s symbolic accountability it is interesting to know, if the contributions are worth to be deliberated.

4.1.2 Discursive Positions of CSO

Regarding the deliberative ideal of opinion and will formation, the representativeness of societal positions is a precondition but it is not sufficient for adequate policy deliberations. Equally important is argumentative support for the presented positions (see below, 4.1.3) as well as the integration of different perspectives and types of argumentative positions in these processes. To this purpose we have examined different types of discursive positions. In general, discursive assertions aim at contestation, whereby proposed positions are supported by justificatory and reasoned backings (Peters et al. 2007: 212ff.). To put it another way, discursive positions consist of two parts, the position itself and a justificatory backing, answering the question why a contributor is in favour of this position. Depending on the presented kind of argumentative backing, we distinguish three types of discursive positions:

1. Normative argumentations are discursive positions, whereby the justificatory burdens are carried by explicated norms or assertions, in which different, potentially conflicting norms are ordered.
2. Empirical, pragmatic and instrumental discursive positions have a backing resting dominantly on facts or empirical evidence.
3. Juridical argumentations either support their positions by referring to valid juridical norms and plausible interpretations of these rules or assess possible functions (benefits, frictions, etc.) of policy proposals from the perspective of positive law.\footnote{For a more extensive elaboration on these types of argumentation, see (Peters/Schultz/Wimmel 2007: 238ff.).}
As Table 2 shows, in the huge majority of CSO contributions we find neither normative nor juridical argumentations, but dominantly empirically and pragmatically supported positions. With respect to the normative argumentations, it is also worth noting that they were predominantly expressed by two particular kinds of associations (unions and general interest associations).

### Table 2: Types of argumentation in CSO positions in the four consultations

<table>
<thead>
<tr>
<th></th>
<th>Number of contributions</th>
<th>Normative argumentations</th>
<th>Empirical and pragmatic argumentations</th>
<th>Juridical argumentations</th>
</tr>
</thead>
<tbody>
<tr>
<td>Trade Unions</td>
<td>22 (10.8%)</td>
<td>11</td>
<td>21</td>
<td>5</td>
</tr>
<tr>
<td>Professional organisations</td>
<td>12 (5.9%)</td>
<td>1</td>
<td>11</td>
<td>3</td>
</tr>
<tr>
<td>BIA</td>
<td>81 (39.7%)</td>
<td>9</td>
<td>81</td>
<td>15</td>
</tr>
<tr>
<td>GIA</td>
<td>83 (40.7%)</td>
<td>27</td>
<td>80</td>
<td>10</td>
</tr>
<tr>
<td>Others associations</td>
<td>6 (2.9%)</td>
<td>2</td>
<td>6</td>
<td>1</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>204 (100%)</strong></td>
<td><strong>50</strong></td>
<td><strong>199</strong></td>
<td><strong>34</strong></td>
</tr>
</tbody>
</table>

The dominance of empirical and pragmatic argumentations corresponds to the idea the Commission associates with online consultations. But actually this is one of the major problems of the ‘deliberative supply’ of the totality of the associational contributions to these consultations. In policy deliberations each of the different aspects has to be discussed independently as well as in a comprehensive and integrating way. An important question, for example, is which aims, values, and norms at all ought to be realised in which order via labour law. But this important discussion did not take place within the Commission’s online consultation on future labour law. Beyond this, these normative judgements are a precondition for sound pragmatic and instrumental reasoning, as their persuasiveness depends not solely on the quality of the empirical backing but also on the persuasiveness of the normative ends themselves. And juridical deliberations have – among others – an important function in assessing the feasibility of policy proposals.

Maybe some deliberative functions can be delegated to the Commission (e.g. assessing the juridical coherence of certain policy proposals), but neither the normative argumentations nor the political connections among the different types of argumentations should be delegated to the Commission, as this is the (potentially contested) core of policy deliberations.

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6 A contribution has been included in the table when there is at least one discursive position of the categorised type.
The associational contributions to the Commission’s OC have a strong ‘technocratic’ bias. Even if we cannot make any generalisations from our small empirical data base, this technocratic bias is especially surprising with respect to the consultation on labour law, as this is a strongly contested policy field, where the main differences are of an ideological and not of an empirical nature. This is simply not mirrored in the contributions to the consultation. This result is obviously a defect if the contributions should bring in the multitude of societal preferences in European policy deliberations. When the diversity of positions (see 4.1.1) discourages any ideas to consensual or easy-to-access compromises and thus democratic corporatism, then the technocratic bias is a burden for the pluralist view.

4.1.3 Persuasiveness of CSO Arguments

According to conceptions of deliberative democracy, discursive positions should persuade the addressees. We have not assessed if a shift of opinions actually has occurred via deliberation, but we have explored an important precondition and an observable consequence: (1) The persuasiveness of speech acts depends heavily on the argumentative quality of the presented arguments. (2) If the Commission is convinced by sufficiently reasonable arguments, we can expect a complying signal in evaluative reports. Without analysing the quality of contributions we cannot differentiate between mere responsiveness to exogenous preferences and a deliberatively induced change of mind. And without analysing the impact, we cannot be sure if good arguments lead to anything at all.

But is it possible to distinguish good from bad arguments in a reliable way, beyond in-depth analysis of individual cases? Is it possible to assess persuasiveness of speech acts or written contributions at all? It is at least very difficult. Our pragmatic solution was to assess the prima-facie persuasiveness of the discursive positions (see Table 3). How does this work? The persuasiveness of speech acts depends mainly on three things: To what extent do (virtual) addressees share the positions, the argumentative backing of a discursive position, and to what extent do they think it to be appropriate with respect to a given context (problem etc.). What makes the assessment of persuasiveness so tricky is not that we have to integrate all three dimensions, but that it is impossible to give a universal formula for the adequate mixture.7

7 Positions can convince us without being argumentatively backed at all. Some positions are more or less universally valid, others only in very specific contexts. Here we cannot discuss the merits of such an
Due to these problems, we have only very roughly estimated the persuasiveness by coding high, middle and low persuasiveness. The filtered discursive positions have been coded ‘high persuasiveness’ if a (magnanimous) qualified majority can support or at least not openly oppose a specific argument.\(^8\) Low persuasiveness has been coded when even minorities or the own constituency would rarely be convinced by a discursive position.

Our indicator of *prima facie* persuasiveness thus encompasses all discursive positions of an analysed contribution. This finding is aggregated to one measure, i.e. ‘primarily high/middle/low persuasiveness’. The indicator is magnanimous in two respects: First we expect the addressee of discursive positions to be empathetic as regards the contributors’ intentions (interpreting it in the best possible way), and the assessment is also magnanimous relating to the actual material quality of argumentative backing.

### Table 3: Persuasiveness of empirical and pragmatic positions

<table>
<thead>
<tr>
<th>Sample</th>
<th>Number of empirical and pragmatic Positions / Number of specific associations</th>
<th>Prima-facie-persuasiveness of empirical and pragmatic Positions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Trade Unions</td>
<td>9.16</td>
<td>High: 11 (61.11%) Medium: 6 (33.33%) Low: 1 (5.55%)</td>
</tr>
<tr>
<td>BIA</td>
<td>6.83</td>
<td>High: 15 (45.45%) Medium: 17 (51.51%) Low: 1 (3.03%)</td>
</tr>
<tr>
<td>Professional organisations</td>
<td>12.00</td>
<td>High: 2 (40%) Medium: 3 (60%) Low: --</td>
</tr>
<tr>
<td>GIA</td>
<td>4.15</td>
<td>High: 24 (75%) Medium: 8 (25%) Low: --</td>
</tr>
<tr>
<td>Research</td>
<td>2.67</td>
<td>High: 2 (66.67%) Medium: 1 (33.33%) Low: --</td>
</tr>
<tr>
<td>Others associations</td>
<td>3.75</td>
<td>High: 2 (66.67%) Medium: 1 (33.33%) Low: --</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>6.07 (average)</td>
<td>High: 56 (59.57%) Medium: 36 (38.30%) Low: 2 (2.13%)</td>
</tr>
</tbody>
</table>

operationnalisation, neither with respect to an appropriate conception of deliberative democracy nor compared to other empirical approaches, but see Hüller (2010: 162ff.)

\(^8\) To put it another way: high persuasiveness of positions does not imply that they are close to the result of a reasoning by applying a moral point of view (e.g. Kant’s categorical imperative), but if the presented position should be *integrated* in such a more sophisticated reasoning.
The low proportion of contributions with low persuasiveness cannot surprise us, as making contributions to transparent OC only makes sense if the authors rely on their arguments (there are other means more appropriate for non-reason based communication). It is noteworthy that nearly 60 percent of the contributions have a high prima facie persuasiveness. Why is it, however, that so many contributions perform well despite the conflicting character of the consultation on labour law? The answer depends of course to a great extent on the moderate demands we expect from discursive positions, but it should be also seen as a result of a general strategy of the contributors to bring up rather specific judgements concentrating on empirical and pragmatic questions. The overall persuasiveness is measured as regards to these concerns.

From the general finding that the CSO contributions bring up reasonable as well as critical positions concerning the Commission’s aims, we can conclude that the Commission has a ‘sound’ basis for a deliberative reply. And how does the Commission respond?

4.2 The Commission’s Responsiveness and Symbolic Accountability

Due to the procedural framework, there are no mechanisms of material accountability in online consultations. The Commission cannot be forced to take up certain positions, perspectives, etc. As CSOs in general and European associations in particular are not the final legitimising authority for democratic will formation, mere symbolic accountability seems to be appropriate also for normative reasons. Without egalitarian backing of the CSO contributions, any aggregative version of symbolic accountability (responsiveness to median preferences) is not a plausible option. Thus, in our perspective, a normative ideal of inclusive and open deliberations is appropriate.

With respect to the adequate treatment of CSO input to OC, the Commission should act in an accountable manner: Symbolic accountability is assumed, if (a) the contributions’ positions on the most important issues of a consultation are absorbed and explicitly recognised by the Commission, and if (b) any plausible answer is given with respect to the totality of claims and concerns presented in the consultation process as well as if specific Commission related proposals are directly answered.

(a) For the consultation on labour law a report (55 pages) exists, as well as a shorter communication of the Commission, the latter being more or less a summary of the longer report (Commission 2007a, b).
First we can ask if the CSO positions are adequately mirrored in the report. Altogether, the report gives much room to describe the positions of the core civil society actors (unions and business interests). 146 lines of the document are reserved alone to summarise ETUC’s position, which amounts to approximately 10% of the complete document. The presentation of the contributions made by business associations is roughly of the same length. In both cases the positions on the main issues are mirrored completely and correctly.

The general interests association most frequently mentioned is the ‘Social Platform’, a European umbrella organisation representing social interests. The Social Platform’s position is reported in just 36 lines. Further, contrary to the other two groups, the positions of GIA do not become fully clear. They are neither reported completely nor always correctly. In the report, the GIA positions are presented as being more or less identical (Commission 2007a: 29f., 43), but this does not correspond with our findings (see above Table 1). Even more astonishing in the whole report not a single sentence can be found on one of 74 contributions from citizens without organisational background.

What kind of reception and usage of the contributions by the Commission would be appropriate? A possible normative standard would be responsiveness. Responsiveness to the contributions of CSO is given if the Commission supports and/or implements undisputed policy proposals of a consultation and – in cases of contested issues – searches for majoritarian solutions. Theoretically, this position has some normative merits. If e.g. the European social partners develop common policy proposals with respect to certain issues of the Commission’s consultation on labour law that are not rejected by any GIA, then we can also expect potentially a wide societal support and pursuing such proposals would be an ideal case of responsiveness.

To be sure, the Commission did ask ‘the general public’ to respond to the consultation document and at the moment of consultation the Commission did not have any legal framework indicating privileges for certain kinds of CSOs (what has changed since then only slightly due to the establishment of the transparency register), but the report simply distorts relevant parts of the contributions’ content. More precisely, the report perfectly mirrors the positions of long established ‘social partners’, but neglects much from the more pluralist input. Thus, against the background of the two conceptions of democratic CSO involvement the Commission’s reporting is much closer to the neo-corporatist ideal than the actual CSO input would demand.
(b) In accordance to the democratic conceptions of associational involvement two kinds of responses might be plausible. If there is consonance of CSO positions (unqualified) responsiveness might be desirable. Otherwise, such responsiveness can be demanded – if at all – only with regard to majoritarian positions. But there is no practical way to infer from the OC contributions to the median citizen’s preference (for the problems, see Kohler-Koch 2010a).

More appropriate seems to be a different normative expectation, which is not aligned to a kind of egalitarian representativeness with respect to given preferences but to the persuasiveness of contributions, thus following a deliberative ideal of will formation.\(^9\) What we should expect of the Commission is symbolic accountability – to give reasons if certain CSO positions and proposals should be accepted or not.

Assessing the Commission’s responsiveness and symbolic accountability both have to take into consideration the Commission’s scarce resources. It would be rather impossible and imprudent for the Commission just to try to respond to everything which is stated in all the hundreds of contributions, with single ones having more than 40 pages and with some content which is obviously besides the consultations’ subjects.

So how can we assess the Commission’s responding qualities without overburdening the Commission?

The problem of overburdening the Commission with deliberative efforts is avoided by focussing solely on specific policy proposals which were developed in the CSO contributions. These proposals must have three attributes: They are (a) undoubtedly related to a consultation’s issues and (b) requesting the Commission (c) to do something specified in the relevant passage of the contribution.

\(^9\) This corresponds also with a dominant view within the Commission, not just as a normative argument but also as an empirical reality of the Commission’s work: “Sehr viel mehr als auf der nationalen Ebene, wo häufig die schiere Größe eines Verbandes oder die Lautstärke des Auftretens (politishe) Wirkungen zeigt, hängt auf EU-Ebene erfolgreiche Einflussnahme von der argumentativen Stärke des vorgetragenen Standpunktes ab.” [On the EU level, successful lobbying depends much more on the argumentative persuasiveness of a position, whereas on the national level, political leverage often is enhanced by the sheer size of an organisation and the vigorousness of its appearance.] (Strohmeier 2007: 66f.)
In the 59 contributions to the consultation on labour law, at least 18 actors have addressed 26 policy issues (e.g. the working time directive), making all in all 42 specific proposals (e.g. for more flexible working time for parents). The content of 24 of the specific proposals is mirrored more or less accurately in at least one of the Commission’s documents. Thus only about half of the proposals are actually addressed in the sections where the Commission is referring to CSO contributions.

The report ‘only’ intends to present “an accurate and objective summary account of the responses”. The data shows that this aim is only insufficiently met. In all three cases we have analysed more closely we find significant deviances from the overall reception of the specific policy proposals.

Does the Commission at least reason on the merits of the absorbed policy proposals? Beyond reporting the content, we can find less than two pages in the communication about the Commission’s intended future handling of the gathered information, making roughly two points: the controversial issues will be handled in other processes, and with respect to the three mentioned but rather marginal and uncontested issues, the Commission sees the need for European action (Commission 2007b: 10ff.). Thus, the Commission functions as a moderator searching for consensual positions. Even the modest kinds of discussions and evaluations regarding conflicting contributions and positions are not developed by the Commission in the documents evaluating the online consultations.
To be sure, this way of dealing with the controversies, like in the case of flexicurity leads to non-decisions. This is precisely what the neo-corporatist solution would ‘prescribe’.

There might have been other solutions: As a neutral moderator among conflicting claims the Commission could have searched for compromises and accommodations between the relevant concerns. A more deliberatively acting moderator would also try to evaluate the quality of the proposals, assess the potential for integrative solutions, etc. It is the Commission’s own claim to evaluate the merits of external expertise. But such an assessment does not take place – at least not within the consultations’ follow up documents. And as an actor oriented towards complying with median-voter preferences, the Commission might have searched for majorities.

5. Conclusion
Obviously the Commission’s online consultations are designed to consult ‘the general public’. And as an instrument of pure consultation, OC can never live up to the ideal of democratic neo-corporatism, with its relative autonomy for participating associations. And also the CSO contributions within the framework of OC go fairly beyond any neo-corporatist ideal. But nonetheless the Commission’s responding activities fit much better to a neo-corporatist ideal (unbalanced reporting privileging few ‘relevant’ associations, decision avoidance when policies are controversial), than to a pluralist one. Scarcity of resources might explain improper and incomplete responding activities to huge amount of associational input, but it is only a kind of neo-corporatist ideology which can explain that some contributions are mirrored accurately and others not.

There is a telling example for what is meant by neo-corporatist ideology within the Commission: When the Commission’s Transparency register secretariat reported about an OC on the experiences with the transparency register only 5% of the registrants answered. Noticing this, the authors commented: “Although this is not a very large proportion of all registrants, it is a level of response that can give clear enough indications as to the operation of the TR from a user's point of view. This is especially true since all major horizontal organisations present in Brussels responded to the public consultation (…)”. (Joint Transparency Register Secretariat 2012)

It’s time to come back to the reasons for the Commission to extent civil society involvement. The ‘old’ style of close-to-neo-corporatist involvement of European umbrella organisations could not prevent popular vetoes against Maastricht, Nice and the Constitutional Treaty. One
core idea in the White paper on European governance was to incorporate these critical views into European policy deliberations to enhance democratic legitimacy, i.e. inter alia popular acceptance. But it should be clear, that pluralist rhetoric is not enough at this point – because at the polls citizens’ will be motivated by their preferences. And these preferences have always been and still are more or less unaware about what European umbrella CSOs or ‘major horizontal organisations’ contributed to any online consultation.

**Literature**


Schmitter, Philippe C., and Terry Lynn Karl. 1991. What Democracy is ... and is Not. *Journal of Democracy* 2 (3).