

Public Consultations in Cyprus: A Comparative Analysis with Model Democracies

NICOLAS KYRIAKIDES,¹ ATHANASIOS CHRISTIAS,¹ JESSICA HINDLE¹

Abstract

A comparative analysis of public consultations in Cyprus, United Kingdom and the European Union with the aim of refining the important and successful elements which could be most simply transplanted into the focus country, Cyprus. The article commences with an analysis of the background on public consultations. Subsequently, it analyses the factors that should be considered when conducting public consultations with the view to gathering input from the public. The main part of the article consists of a comparative analysis of public consultations in Cyprus, the United Kingdom and the European Union. The article highlights that in Cyprus -unlike in the United Kingdom and the European Union- there is no institutionalised common practice for public consultations. Finally, it concludes that Cyprus should immediately take drastic steps, preferably by adopting a flexible framework like the one of the UK, whilst simultaneously incorporating the general principles and minimum standards set out by the EU framework.

Keywords: public consultations, Cyprus, EU, lobbying, democracy

Background on Public Consultation

Overview

Democracy might be the worst form of government except for all others that have been tried, as Churchill said, but it is suggested that, depending on the quality and quantity of public participation, the standard of living of the majority of the population can fluctuate a lot. Public consultations are an important tool as they are the ideal means to improve democratic governance; they help governments consult their citizenry on the key public policy issues they face.² British MP John Hutton once said:

¹ Dr Nicolas Kyriakides, Adjunct Faculty, School of Law, University of Nicosia; Athanasios Christias, PhD candidate, University of Athens, attorney-at-law; Jessica Hindle, BA Oriental Studies, Hertford College, University of Oxford.

² Konstantin Kovshenin, 'What is Public Consultation?' (Program for Public Consultation) <<https://publicconsultation.org/what-is-public-consultation/>> accessed 14 July 2021.

*Government is committed to effective consultation; consultation which is targeted at, and easily accessible to, those with a clear interest in the policy in question. Effective consultation brings to light valuable information which the Government can use to design effective solutions.*³

The exact aim of this article is to examine to what extent Cyprus uses public consultations in its current policymaking processes, as well as to analyse the United Kingdom and the European Union as examples where public consultations have been successfully carried out over the years. Moreover, this article will propose measures that could be taken to improve the utilisation of public consultations in the developing domain of Cyprus. The decision to use the UK and EU specifically as comparative models is based on their efficient public consultation systems at present. In this regard we can view them as models for other countries.

For the sake of this article, it is most useful to consistently refer to the select model countries above. Having said this, we should acknowledge public consultation occurring in other countries in Europe. For example, public consultation is mandatory for all primary laws in Greece⁴. However transparent publication of how comments from such public consultations are taken into account is often amiss. In the case of Portugal, a series of recommendations were made by the OECD in 2010 in an attempt to better regulate the country's public consultation system. At the time, the country tended to use public consultations too late in the process of drafting but was praised for its use of the internet in hosting open consultations.⁵

History of Public Consultations

Notably, the very first steps of popular participation in political decisions were taken during the Golden Age of Pericles. It was at this time that democracy was established as a political system. Under this system, political power was in the hands of the people, manifesting in popular assembly known as Ecclesia. All problems concerning domestic or foreign policy were decided at these assemblies on the iconic Pnyx hill, gathering at least 40 times a year. Every male adult Athenian, regardless of his financial background, had the right to take part, speak, and finally vote by raising his

³ John Hutton, 'Code of Practice on Consultation' [2008] HM Government.

⁴ OECD Regulatory Policy Outlook 2018, available at <https://www.oecd.org/gov/regulatory-policy/greece-country-note-regulatory-policy-2018.pdf>, accessed 28 March 2022

⁵ OECD Better Regulation in Europe: Portugal 2010, available at <https://www.oecd.org/gov/regulatory-policy/44830208.pdf>, accessed 28 March 2022

hand. The decision was made according to majority rule.⁶ However, those who could attend these meetings remained a small and select sample of the total citizen population. This was due to the inaccessibility for non-wealthy citizens who lived far from the urban centre. Access was however improved eventually with the introduction of financial motivation for attending assembly meetings.⁷

Over the last forty years, public consultation has become an established, major aspect of urban planning.⁸ The main reason is a shift in the role of citizens, the conception of public and the notion of ‘participation’, as a result of significant societal changes, such as the revolt against the urban renewal and the increased awareness of global environmental and ecological disasters⁹. [Therefore, it is worth using this area to illustrate the origin of public consultation before exalting its value or comparing its implementation in various states. Public participation has not always been part of urban planning and development. In the distant past, in dynastic China or Imperial Rome, land-use was either a highly institutionalised government function or a series of decisions concentrated in the hands of powerful land-owning elites.¹⁰ The centrally directed approach to planning continued into the twentieth century, arguably sustained by both the civil and military planning that accompanied the two world wars.¹¹ There were many factors that prevented a more democratic approach beyond the simple desire of elites to monopolise power. A lack of widespread education

⁶ D.John Smart, «*H APXAIA AΘHNAÏKH ΔΗΜΟΚΡΑΤΙΑ*» (1975) <https://olympias.lib.uoi.gr/jspui/bitstream/123456789/30100/1/H%20αρχαία%20Αθηναϊκή%20Δημοκρατία.pdf> accessed 13 July 2021, (p.404-405)

⁷ Britannica, Ecclesia, available at <https://www.britannica.com/topic/Ecclesia-ancient-Greek-assembly>, accessed 9 December 2021

⁸ See Aarhus Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters. Its second pillar refers to public participation in environmental decision-making; Sherry Arnstein, A Ladder of Citizen Participation (1969) 35(4) *Journal of the American Institute of Planners*, p. 217.

⁹ Sally Hussey, *International Public Participation Models 1969-2020*, available at <https://www.bangthetable.com/blog/international-public-participation-models/>, Robert Shipley, Stephen Utz, “*Making it Count: A Review of the Value and Techniques for Public Consultation*” [2012], *Journal of Planning Literature* Vol 27, Issue 1, 2012,

¹⁰ Robert Shipley, Stephen Utz, “*Making it Count: A Review of the Value and Techniques for Public Consultation*” [2012], *Journal of Planning Literature* Vol 27, Issue 1, 2012,

¹¹ Ibid

meant that national issues and an understanding of the framework through which they could be dealt was something relatively few citizens possessed. Furthermore, an efficient means through which to spread this information widely and quickly was not at their disposal at the time.

One view is that drastic change occurred during the 1980s when public consultation entered the stream of planning practice, derived from the most basic principles of democracy. Hereafter, legislation mandating public consultation became common practice in planning regimes for most developed countries and even constitutes a requirement for the World Bank aiding developing countries.¹² There unfortunately remains little to no significant and formal literature on the theory of consultation, or how it works in practice.¹³

Alternatively, some people have also argued that public consultation is a legal phenomenon, primarily rooted in common law. According to this, the distinction between primary and secondary legislation was established during the nineteenth century in the United Kingdom¹⁴. Due to rapid social change brought about by the Great Reform Act of 1832,¹⁵ the legislative authority of administrative bodies and authorities whose purpose was to produce binding rules, increased rapidly. Specifically, the Rules Publication Act 1832 was introduced and concerned a specific range of regulatory acts. It required pre-legislative publication at least forty days before the notification of the rule proposal, along with a clear indication of the points from which copies of the draft could be obtained. Written submissions and proposals from each public body were taken into consideration by the drafting committee before the final text was completed. The provisions of this act were a precursor to the Administrative Procedure Act 1946, another turning point in the legislative development of the public consultation.¹⁶ For example, this 1946 Act required most rules to have a thirty-day delayed effective date.

¹² Ibid

¹³ Centre for Public Impact, available at <https://www.centreforpublicimpact.org/insights/public-consultation-everywhere-worry-politics>

¹⁴ *Legislation of the United Kingdom: subordinate legislation, Social Sciences Collection Guides Official Publications*, available at <file:///C:/Users/thchr/Downloads/subordinate-legislation.pdf>

¹⁵ Mitsi Christina (2020), «Το δικαίωμα στη δημόσια διαβούλευση στο ενωσιακό και ελληνικό δημόσιο δίκαιο: μια συγκριτική θεώρηση με τις έννομες τάξεις της Γαλλίας και του Ηνωμένου Βασιλείου», PhD Thesis, National and Kapodistrian University of Athens. Available at: <https://freader.ekt.gr/eadd/index.php?doc=49219&lang=el#p=92> (Accessed 13 July 2021),(p.90)

¹⁶ Ibid, p. 91

It is worth caveating that across the examples of imperial Rome, dynastic China or industrial Britain, women did not have the right to vote or to be elected under any circumstance. As we all know, it would take a lot longer for this to change.

Importance of Public Consultation

Public consultation improves the quality of rules, compliance, and reduces enforcement costs for both governments and the citizens to whom rules are applied. Additionally, it increases the data available to governments on which policy decisions can be based.¹⁷ The utilisation and evaluation of policy tools have revealed that public consultation is increasingly vital for collecting empirical information for analytical purposes, measuring expectations, and identifying non-evident policy alternatives when taking a policy decision. As is well established, regulation and its reforms affect all the participants in civil society.¹⁸ Therefore, in order to better assess the impacts and minimise costs, all relevant stakeholders should be facilitated to participate in the regulatory processes.

Furthermore, public consultation will help to improve regulatory quality by bringing into the discussion the expertise, perspectives, and ideas for alternative actions of those directly affected. It can help regulators to balance opposing interests and identify ramifications and practical problems. Also, by using pre-notification, it is possible to foresee the consequences of some planned policies more easily, thus constituting it as one of the most productive ways to identify potential administrative problems. Moreover, it can provide a quality check on the administration's assessment of costs and benefits and identify interactions between regulations from various parts of government.

The consultation process can also enhance voluntary compliance in two ways: changes are announced in a timely manner so there is time to adjust to changes and the process emphasises a sense of legitimacy and shared ownership that motivates affected parties to comply.¹⁹ In addition, public consultations can ensure transparency and accountability.²⁰ Contributions by stakeholders can undoubtedly render the policymaking process more open and inclusive. Therefore, the output of the poli-

¹⁷ Delia Rodrigo, Pedro Andrés Amo, “*Background Document on Public Consultation*” ,[-], < <https://www.oecd.org/mena/governance/36785341.pdf> > (accessed 13 July 2021), (p.1-2)

¹⁸ Ibid (p.2)

¹⁹ Ibid

²⁰ The World Bank, Environmental Department, Environmental Assessment source book, 1999, available <http://web.worldbank.org/archive/website00672/WEB/PDF/UPDATE26.PDF>

cymaking process gains legitimacy and the overall level of trust towards regulators exponentially rise.

Public consultations enhance the quality of democracy by enabling people to express their views and ideas in regards to the policymaking process. Public input into the policymaking process is an indispensable part of democracy.²¹ The larger the input of stakeholders and the general public, the increasingly democratic the whole process becomes.

In a theoretical context, German intellectual Habermas analysed consultation as the process that legitimises and strengthens the rule of law. The individual, regardless of gender, race, age, or social class, independently forms their identity through their participation in public life. Translating into a democracy which includes the interaction of law and open discussion. Thus, the consultative policy becomes crucial, providing a mechanism to will channel the voice of the citizens to the decision-making centres.²²

American philosopher John Rawls suggests a general view that through consultations, political groups are able to engage in debate with those with alternative views. In this way, they will be forced to sharpen their views to convince a wider audience of their rationality. If they succeed beyond the benefit of the majority that has gathered around them, a political conception of justice of wide acceptance and legitimacy will be formed.²³

The democratic qualities of public consultation can be assessed against the backdrop of theories of deliberative democracy. According to Bohman, deliberative democracy shall be defined as a “family of views according to which the public deliberation of free and equal citizens is the core of legitimate political decision making”.²⁴ Admittedly, public deliberation of citizens can take place through the institutionalization of public consultation processes. Nevertheless, for the deliberative processes to function properly, participants should be given access to reasonably accurate information.²⁵ Thus, transparency is part and parcel of deliberative processes. In the light

²¹ JS Fishkin, RC Luskin, R Jowell, Deliberative polling and public consultation, *Parliamentary Affairs*, Volume 53, Issue 4, October 2000, Pages 657–666

²² Ibid, footnote 6

²³ Ibid, p. 45-46

²⁴ Weller Julian, Democratic legitimacy? The online consultations of the European Commission, 2012, available at https://pure.port.ac.uk/ws/portalfiles/portal/6085480/PhD_10_24.pdf

²⁵ Fishkin James, *When the People Speak: Deliberative Democracy and Public Consultation*, Oxford Scholarship Online, 2011

of the above, it is obvious that democracy, public consultation and transparency are inextricably linked.

Comparative Analysis of Cyprus and Model Democracies

Cyprus

In general, there is no set common practice for public consultations in Cyprus. Moreover, Cyprus along with Luxembourg are the *only* EU countries without a central consultation portal or separate websites on ministries for ongoing consultations for either primary laws or subordinate regulations.²⁶

However, over the past few years a positive advancement of public consultations usage in this domain can be observed. Some concrete examples include the Consultation Guide of the Ministry of Finance and the Public Consultation Decree of 2005. This decree is under sections 26 and 152 of the Law on the Regulation of Electronic Communications and Postal Services of 2004, which describes the procedure for conducting a public consultation by the Commissioner. The Consultation Guide of the Ministry of Finance text states the following:

The Consultation Guide was prepared in collaboration with the Law Office of the Republic of Cyprus and aims to provide general guidelines to all Ministries, which in cooperation with competent Departments, Services, Offices, Independent Services, intend to adopt new legislation. The content of the Consultation Guide was approved by the Council of Ministers at its meeting on 8/7/2009.

However, unfortunately there is nothing to indicate that this guide needs to be widely used or that it has been institutionally ratified by Parliament. In addition, and in the absence of a broader framework, dozens of posts from various ministries and public bodies inviting stakeholders to “public consultations” can be found. For example there was a Public Consultation for the new bill on Open Data and the Further Use of Public Sector Information - Department of Public Administration and Personnel;²⁷ the Cyprus Sports Organisation announced the holding of a Public Consultation for the amendment of the Private Gymnastics Schools Regulations from 1995 to 2012;

²⁶ OECD, Better Regulation Practices Across the European Union, Chapter 2, Stakeholder Engagement across the European Union, 2019, available at <https://www.oecd-ilibrary.org/sites/dd9b13ad-en/index.html?itemId=/content/component/dd9b13ad-en>

²⁷ Andreas Mallouppas and Takis Stylianides, ‘Public administration characteristics and performance in EU28: Cyprus’ [2018] European Commission 158

the Digital Security Authority announced a Public Consultation on the Decision on the Public Hearing Procedure; the Ministry of Finance issued an invitation to Public Consultation regarding the Bill entitled ‘the Law on Stamps’. Another instance of public consultation also took place at the University of Cyprus recently: the President of the European Commission, Ursula von der Leyen, and the President of the Republic of Cyprus, Nicos Anastasiades discussed the Recovery and Sustainability Plan with students and researchers.

Past initiatives have tried to increase transparency in Cyprus. However, many of these are now inactive. Vouliwatch Cyprus was an innovative, politically independent and nonprofit, online platform that aimed to introduce transparency and accountability into Cyprus’ Parliament, bridging the gap between the citizens and their parliamentary representatives.²⁸ Despite the importance of this initiative, after approximately 2 years of operation Vouliwatch had to close their Cypriot branch in 2019, due to insufficient funds. Recently, another independent parliamentary observatory was launched by the non-governmental organisation Oxygono, called Nomoplatform.²⁹

Another related problem in Cyprus is the lack of transparent and evidence-based lobbying culture.³⁰ At first glance lobbying does not seem to ‘exist’ in Cyprus, neither the term ‘lobbyist’ nor ‘lobbying’ are defined in the Greek language. The term lobbying has its origin at the gathering of Members of Parliament and peers in the hallways (or lobbies) of Houses of Parliament before and after parliamentary debates. After many negative reports, the Government of Cyprus put together a set of rules that aim to prevent political corruption and will restrict unregulated lobbying. It is also noted that the regulation of lobbying is included in the recommendations of the Council of Europe’s Group of States against Corruption (GRECO).³¹ Moreover, the need to establish a holistic legal framework regulating lobbying has been highlight-

²⁸ ‘Vouliwatch Cyprus: Η Πλατφόρμα Που Δίνει Στον Πολίτη Ρόλο Και Θέση Στη Βουλή’ (Συμβούλιο Νεολαίας Κύπρου, 29 May 2017) <[https://cyc.org.cy/vouliwatch-cyprus->](https://cyc.org.cy/vouliwatch-cyprus-) accessed 26 July 2021

²⁹ Found at www.nomoplatform.cy.

³⁰ Mary Pyrgos, ‘Lobbying in Cyprus’ [2018] LPAP Cyprus Association of Lobbyist & Public Affairs Professionals 1-15

³¹ See Greco, Fourth Round Evaluation Report on Cyprus, GrecoEval4Rep(2016)7, available at <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900016806c2fb1>; Greco, Fourth Round Compliance Report Compliance Report GrecoRC4(2018)9, available at <https://rm.coe.int/fourth-evaluation-round-corruption-prevention-in-respect-of-members-of/16808d267b>; Greco, Second Compliance Report Greco RC4(2020)17, available at [https://www.pio.gov.cy/assets/pdf/other/GrecoRC4\(2020\)17-Final-Cyprus-2ndRC-PUBLIC_%CE%95%CE%9D.pdf](https://www.pio.gov.cy/assets/pdf/other/GrecoRC4(2020)17-Final-Cyprus-2ndRC-PUBLIC_%CE%95%CE%9D.pdf)

ed by the Organisation for Economic Co-operation and Development (OECD).³² Undoubtedly, transparent lobbying constitutes an indispensable part of the democratic process, given that it ensures that citizens actively and equitably participate in the decision-making process. Lobbying regulations are intricately related to the problems of transparency and corruption. Lobbying and decision-making must be under public scrutiny in Cyprus to create a more just society. The adoption of the bill regulating lobbying activities will serve as a significant milestone in the battle against corruption and bribery. The adoption of the said bill constitutes a prerequisite in order for the European Stability Mechanism to release the first instalment of the Cyprus Recovery and Resilience Plan.³³

According to a survey with 1521 Cypriot participants, conducted by the organisation “Transparency Cyprus”, there is a severely negative image of corruption in Cyprus. The results revealed that 70% of participants considered corruption a major issue in Cyprus, with 60% reported to have been directly affected by a form of corruption directly. In addition, the Global Corruption Barometer for the European Union for 2021, reports that 65% of Cypriots think corruption has increased over the past year, whereas 78% fear of retaliation for reporting corruption.³⁴

From the above as well as from other empirical evidence, it becomes clear that positions in public bodies in Cyprus are often ceremonial. They may seem to be potentially accessible to the general public, but are nevertheless difficult or impossible to be appointed to without working through unregulated networks. Moreover, public consultations are limited to sending suggestions from stakeholders without any substantive consultation. In addition, in the above-mentioned practices there is an ambiguity regarding various terms and parameters of public consultation, like what defines a stakeholder and what are the restrictions on topics of discussion.

Finally, Cyprus is among several EU member states that are consistently facing legal action from the European Commission for failing to comply with their obligations under EU law. A typical example can be seen in the investor citizenship scheme. The Commission initiated infringement procedures against Cyprus, putting forward

³² OECD, Recommendation of the Council on Principles for Transparency and Integrity in Lobbying, OECD/LEGAL/0379

³³ See Cyprus’ Recovery and Resilience Plan for 2021-2026, available at [http://www.cyprus-tomorrow.gov.cy/cypresidency/kyprostoavrio.nsf/all/B37B4D3AC1DB73B6C22586DA00421E05/\\$file/Cyprus%20RRP%20For%20Upload%20052021.pdf?openelement](http://www.cyprus-tomorrow.gov.cy/cypresidency/kyprostoavrio.nsf/all/B37B4D3AC1DB73B6C22586DA00421E05/$file/Cyprus%20RRP%20For%20Upload%20052021.pdf?openelement)

³⁴ Global Corruption Barometer, European Union 2021, Citizens Views and experiences of corruption, available at https://files.transparencycdn.org/images/TI_GCB_EU_2021_web_2021-06-14-151758.pdf

that the granting of Cypriot citizenship –and thereby EU citizenship- in exchange for a pre-determined payment or investment and without a genuine link with Cyprus, contravenes the principle of sincere cooperation set out on Article 4(3) TEU. Moreover, it undermines the status of EU citizenship set out in Article 20 TFEU.³⁵ Several of the regulations and directives that Cyprus has failed to transpose into its national laws concern matters on the theme of transparency, corruption and bribery. Striking examples are the setting up of an anticorruption agency, the protection of whistleblowers and the regulation of lobbying.³⁶ All these have very recently been regulated after long battle.³⁷

From the above, it is clear that Cyprus needs a new model of participatory democracy with regulated lobbying, transparency in decision-making and more a sophisticated process of public consultations.

United Kingdom

In the UK, public consultations conducted by central government departments are governed by a flexible non-binding framework based on the Code of Practice on Consultation and a set of Consultation Principles. The first Code was enacted in 2000 and has since been reviewed twice, in 2004 and 2008.³⁸ The most recent version of Consultation Principles is from 2018.³⁹

There is no general legal, and therefore strictly binding, duty for the public authorities to consult, so it is the relevant ministers who have discretion in the matter. However, it is customary to conduct consultations on every ‘policy area’ and it is expected that the Code will be utilised in conducting such consultations, with a few exceptions, such as emergency legislation or tax.⁴⁰ There is no exact definition of what constitutes a ‘policy area’; this is decided on a ‘case-by-case’ basis.⁴¹ However, a

³⁵ European Commission - Press release, Investor citizenship schemes: European Commission opens infringements against Cyprus and Malta for “selling” EU citizenship, 20 October 2020, available at https://ec.europa.eu/commission/presscorner/detail/en/ip_20_1925

³⁶ European Commission (2021), Commission Staff Working Document, 2021 Rule of Law Report – Country Chapter on the rule of law situation in Cyprus, SWD(2021), 704 final, available at https://ec.europa.eu/info/sites/default/files/2021_rolr_country_chapter_cyprus_en.pdf

³⁷ See Cyprus Mail, After long battle, anti-corruption body bill is finally passed, available at: <https://cyprus-mail.com/2022/02/17/after-long-battle-anti-corruption-body-bill-is-finally-passed/>

³⁸ Code of Practice on Consultation (2011), available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/100807/file47158.pdf.

³⁹ Consultation Principles (2018), available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/691383/Consultation_Principles__1_.pdf.

⁴⁰ OECD, “Better Regulation in Europe: United Kingdom” (2010), 79.

⁴¹ *Ibid.*

decision not to use the Code where it might have been expected, customarily calls for a public explanation from the relevant Minister.⁴²

Notwithstanding the general rule, there might be a specific statutory duty to consult on a particular matter. For instance, section 5D of the Childcare Act 2006 requires a local authority to conduct consultations before providing or before ceasing to provide children's centres.⁴³ Moreover, a legal duty to consult may arise if there is an overarching duty to act fairly, or if there is a legitimate expectation that the public at large or a particular group should be consulted.⁴⁴

The UK has an impressive and deeply rooted tradition of consulting the general public rather than merely focusing on narrow groups of stakeholders such as businesses and trade unions, as is the case in other European countries such as Sweden.⁴⁵ Companies are the most represented group of respondents in public consultations but civic society engagement through non-governmental organisations and direct participation of individuals is significant too.⁴⁶

This tradition of consulting the general public, has resulted in the creation of streamlined systems for the public to lobby for new policies, as shown by Acts like Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration 2014.⁴⁷ Corruption is also kept to a minimum through the extensive anti-corruption laws and monitoring agencies. This is illustrated by organisations like the National Crime Agency established in 2013, and reports like the 2014 UK Anti-Corruption Plan.

The UK has ensured that the Code will be used, and properly controlled when used, for the most part by a system of political accountability rather than an enforceable legal framework. This is an option often used in UK public law. The Code and Principles set a common standard but leave room for the discretion of the Minister.⁴⁸ A system of checks is also supported by a regular gathering of data about the usage of public consultations, although a more robust approach to quality assurance would

⁴² Ibid.

⁴³ Childcare Act 2005, s 5D.

⁴⁴ *R (Plantagenet Alliance Ltd.) v Secretary of State for Justice*, [2014] EWHC 1662 at [98].

⁴⁵ OECD, "Better Regulation in Europe: United Kingdom" (2010), 79.

⁴⁶ Anne Rasmussen, "Participation in Written Government Consultations in Denmark and the UK: System and Actor-level Effects", *Government and Opposition* 50(2) (2015) 271, 285-287.

⁴⁷ Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Act 2014 available at: <https://www.legislation.gov.uk/ukpga/2014/4/contents/enacted>

⁴⁸ Didier Chabanet and Alexander H. Trechsel, "EU Member States' Consultation with Civil Society on European Policy Matters", EUDO Report, 2011/04.

be welcomed.⁴⁹ However, according to section B of the 2018 Consultation Principles, there are situations that constitute a legal duty to consult and that in these scenarios the relevant departmental lawyers should advise.⁵⁰ For example, local planning authorities are required to undertake a formal period of public consultation prior to deciding a planning application; however, how they inform interested parties about the application submission falls within their discretion. Herein we can observe the characteristic flexibility of the UK structure.

There is little information on how effectively the system of public consultations works in general and how much it contributes to genuine public participation. That is because, as mentioned above, data is gathered about the usage of public consultations, but it is not analysed properly and further quality assurance is needed.⁵¹ Academic commentary seems to focus on a single area in which consultation is conducted, for example planning or environmental matters, and analysis of effectiveness seems to be heavily context dependent.⁵² The Consultation Principles do dictate that ‘consultation should facilitate scrutiny’ and that any responses should be visible along with a clear indication of the governmental response. In this way, the system is at least transparent and easily moderated and critiqued by those who do choose to engage. Additionally, most departments operate a Consultation Hub; this is a website which clearly displays all open consultations, the date upon which they close and prior consultations relevant to the specific department.⁵³

There are some limitations, of the flexible and lightly enforced framework, the OECD notes that there does appear to be a desire, especially amongst stakeholders, for better consultation practice.⁵⁴ Concerns included self-serving selection of the issues put forward and their timing by the government. Also, some guidelines regarding appropriate response time were also reported as not being followed. On a positive note, the OECD remarked upon stakeholders’ request for a single, unified website which would streamline the entire consultation process. The aforementioned ‘Con-

⁴⁹ OECD, “Better Regulation in Europe: United Kingdom” (2010), 78.

⁵⁰ Consultation Principles (2018), available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/691383/Consultation_Principles__1_.pdf.

⁵¹ Ibid.

⁵² See for instance, Yvonne Rydin and Lucy Natarajan, “The materiality of public participation: the case of community consultation on spatial planning for north Northamptonshire, England” [2016] *The International Journal of Justice and Sustainability* 21; or Axel Kaehne and Helen Taylor, “Do public consultations work? The case of the Social Services and Well-being (Wales) Bill” [2016] 31(1).

⁵³ Ministry of Justice, Consultation Hub. Available at <https://consult.justice.gov.uk/>

⁵⁴ OECD, “Better Regulation in Europe: United Kingdom” (2010), 78.

sultation Hubs' do appear to satisfy this with the caveat that the hubs remain segregated by department; however, this seems unlikely to hinder stakeholders and their specific fields of concern.

It is argued that replicating a similar regime of public consultations in Cyprus would be easier than establishing a more institutionalised and binding system of public consultations. Introducing the UK's flexible approach would not require many structural changes in the public administration system, and it would consume less resources. Moreover, the UK's approach is characterised by a desirable degree of flexibility, leaving discretion to a particular department to decide on given facts if and how public consultations should be conducted (provided, of course, that requisite explanations are provided by the relevant Minister). However, such a flexible framework relies on highly developed political accountability mechanisms to serve its purpose, an aspect which cannot easily be transplanted to Cyprus.

European Union

The European Union's legitimacy crisis in the early 2000s was a trigger to revise and improve the policies relating to public participation in policymaking.⁵⁵ Since then, the EU has put the inclusion of social partners, such as business companies or trade unions, as well as the public, at the forefront of policy development.⁵⁶ One can now speak of a well-established, non-binding, ie not legally enforceable, yet institutionalised regime for public consultations.⁵⁷

The pivotal role of stakeholder consultations in the EU legal order is demonstrated by the fact that Article 11 para 3 of the Treaty on European Union (TEU) provides that "[t]he European Commission shall carry out broad consultations with parties concerned in order to ensure that the Union's actions are coherent and transparent".⁵⁸ In addition, Article 2 of the Protocol on the application of the principles of subsidiarity and proportionality annexed to the Treaty states that "[b]efore proposing legislative acts, the Commission shall consult widely".⁵⁹ Therefore, it is self-evident

⁵⁵ Raphaël Kies and Patrizia Nanz, *Is Europe Listening to Us?: Successes and Failures of EU Citizen Consultations*, Taylor & Francis Group (2013) 30.

⁵⁶ *Ibid.*

⁵⁷ Christine Quittkat and Barbara Finke, "The EU Commission consultation regime," in B. Kohler-Koch, D. d. Bièvre, & W. Maloney (Eds.), *Opening EU-governance to civil society: gains and challenges*, Mannheim: Universität Mannheim, Mannheimer Zentrum für Europäische Sozialforschung (MZES), 188.

⁵⁸ Article 11 para. 3 TEU

⁵⁹ Article 2 of Protocol on the application of the principles of subsidiarity and proportionality

that consultations of interested groups constitute part and parcel of the EU legal order.

The 2001 White Paper on European Governance,⁶⁰ along with the 2002 Communication on Consultation entitled ‘Towards a Reinforced Culture of Consultation and Dialogue’,⁶¹ the 2015 ‘Better Regulation Guidelines’⁶² and most recently the 2021 ‘Better Regulation Guidelines’⁶³ and the toolbox which accompanies it,⁶⁴ set out common standards and principles which need to be met when conducting consultations by the EU bodies. It is worth mentioning that the four general principles governing relationships with stakeholders as consolidated in the 2021 “Better Regulation Guidelines” are (i) participation; (ii) openness and accountability; (iii) effectiveness and (iv) coherence. The said principles are complemented by five minimum standards, namely clarity, targeting, outreach, sufficient time for participation and publication of contributions and results.⁶⁵ However, these provisions incorporating principles and minimum standards applicable to consultations are only guidelines that fall short of being legally enforceable at court.⁶⁶ The said guidelines are considered to constitute internal instructions to the Commission staff and cannot be construed as legal commitments towards outside actors and stakeholders.⁶⁷ A situation where a decision of the European Commission could be challenged at court because of lack of consultation with a relevant party was described as ‘over-legalistic’.⁶⁸ Nonetheless,

⁶⁰ European Commission, *European Governance A White Paper* (2001), available at: https://ec.europa.eu/commission/presscorner/detail/en/DOC_01_10

⁶¹ Communication from the Commission, *Towards a Reinforced Culture of Consultation and Dialogue? General Principles and Minimum Standards for Consultation of Interested Parties by the Commission*, COM (02)704 final, December 11, 2002.

⁶² European Commission, *Better Regulation Guidelines* (2018), available at: <https://ec.europa.eu/info/sites/default/files/better-regulation-guidelines.pdf>.

⁶³ European Commission, *Better Regulation Guidelines* (2021), available at https://ec.europa.eu/info/sites/default/files/swd2021_305_en.pdf

⁶⁴ European Commission, *Better Regulation Guidelines* (2018), available at: <https://ec.europa.eu/info/sites/default/files/better-regulation-guidelines.pdf>.

⁶⁵ European Commission, *Better Regulation Guidelines* (2021), available at https://ec.europa.eu/info/sites/default/files/swd2021_305_en.pdf

⁶⁶ Francesca Bignami, “Three Generations of Participation Rights before the European Commission” [2004] *Law and Contemporary Problems* Vol. 68, No. 1, 73. Anne Skorkjær Binderkrantz, Jens Blom-Hansen & Roman Senninger, *Countering bias? The EU Commission’s consultation with interest groups*, (2021) *Journal of European Public Policy*, 28:4, 471-472

⁶⁷ European Commission, *Better Regulation Guidelines* (2021), available at https://ec.europa.eu/info/sites/default/files/swd2021_305_en.pdf

⁶⁸ Communication from the Commission, *Towards a Reinforced Culture of Consultation and Dialogue? General Principles and Minimum Standards for Consultation of Interested Parties by the Com-*

the lack of heavy-handed measures of enforcement, does not take away from how detailed the consultation process and requirements are, especially in the 2015 and 2021 documents and toolbox.

The consultations are to be used for all initiatives subject to impact assessments, initiatives subject to evaluation, fitness checks, and green papers (policy discussion documents).⁶⁹ However, this represents only a minimum and the Commission or national committees of regulators might choose to consult on more specific matters.⁷⁰

Over the years, the Commission has enabled stakeholder participation in multiple stages of the policy cycle, thus promoting inclusivity, reflexivity and transparency,⁷¹ while substantially increasing the overall level of input legitimacy in the EU law-making process. Moreover, since the 2000s, the scope and variety of tools used for consultation have broadened significantly to include, *inter alia*, ad hoc online consultations, online debate forums, public hearings, institutionalised consultations in advisory committees, and business test panels.⁷² E-governance tools especially have been very important in changing the make-up of the consulted groups and widening the diversity of people participating in the consultations through their ability to reach a geographically dispersed audience⁷³. The 2002 Communication on Consultation requires all ‘relevant parties’ to be able to express their views, but it is not entirely clear what is referred to under the expression ‘relevant parties’.⁷⁴

Of utmost importance is the role of civil society organisations. Their role is inextricably linked to the fundamental right of citizens to form associations in order to pursue a common goal, as provided for under Article 12 of the European Charter of

mission, COM (02)704 final, December 11, 2002, at [10].

⁶⁹ European Economic and Social Committee, *EU public consultations in the digital age: Enhancing the role of the EESC and civil society organisations* (2017), 10, available at: <https://www.eesc.europa.eu/en/our-work/publications-other-work/publications/eu-public-consultations-digital-age-enhancing-role-eesc-and-civil-society-organisations>.

⁷⁰ Francesca Bignami, “Three Generations of Participation Rights before the European Commission” [2004] *Law and Contemporary Problems* Vol. 68, No. 1, 73.

⁷¹ Anastasia Deligiaouri, Jane Suiter, *Evaluation of public consultations and citizens’ participation in 2015 Better Regulation Agenda of the EU and the need for a deliberative e-rulemaking initiative in the EU*, *EUROPEAN POLITICS AND SOCIETY* 2021, VOL. 22, No 1, p. 79

⁷² Thomas Persson, “Democratising European Chemicals Policy: Do Online Consultations Favour Civil Society Participation?” [2008] *Journal of Civil Society*, 226.

⁷³ *Ibid*, footnote 46, p. 75

⁷⁴ *Ibid.*, 227.

Fundamental Rights.⁷⁵ These organisations can serve as a connecting point between citizens and the political system and may be the catalyst for addressing the EU legitimacy deficit.⁷⁶ Traditionally, consultations have been dominated by businesses.⁷⁷ However, online consultations have allowed broadening of the range of civil society organisations involved and individual citizens are now more represented than ever.⁷⁸ In this respect, of paramount importance is the web portal called ‘Have your Say’, which constitutes an online portal through which various stakeholders can contribute to initiatives undertaken by the Commission.⁷⁹ Over the years, the Commission has widely promoted the said portal with a view to encouraging more people to engage in the consultation process.⁸⁰ With the aim of achieving inclusivity and in line with its Strategy for the Rights of Persons with Disabilities,⁸¹ the Commission made the portal more accessible to people with disabilities,⁸² thus enabling even more groups of people to be represented and provide their input in the EU policymaking.

The EU also has clear regulations surrounding issues of lobbying. Dividing these regulations into National, European, and International categories, the EU has a clear

⁷⁵ Communication from the Commission, Towards a Reinforced Culture of Consultation and Dialogue? General Principles and Minimum Standards for Consultation of Interested Parties by the Commission, COM (02)704 final, December 11, 2002; See also Article 12 of the European Charter of Fundamental Rights stating that “Everyone has the right to freedom of peaceful assembly and to freedom of association at all levels, in particular in political, trade union and civic matters [...]”

⁷⁶ Kröger, S., ‘Democracy promoter or interest defender? How the European Commission influences non-electoral representation by civil society organizations’, in Kröger, S., Friedrich, D. (Eds.), *The challenge of democratic representation in the European Union*, Palgrave Macmillan, United Kingdom, p. 226; see also European Economic and Social Committee, EU public consultations in the digital age: Enhancing the role of the EESC and civil society organisations, available at <https://www.eesc.europa.eu/sites/default/files/files/qe-07-17-001-en-n.pdf>

⁷⁷ Beate Kohler-Koch and Barbara Finke, “The Institutional Shaping of EU-Society Relations: A Contribution to Democracy via Participation?” [2007] *Journal of civil society* Vol.3(3), 217.

⁷⁸ Christine Quitkat and Barbara Finke, “The EU Commission consultation regime,” in B. Kohler-Koch, D. d. Bièvre, & W. Maloney (Eds.), *Opening EU-governance to civil society: gains and challenges*, Mannheim: Universität Mannheim, Mannheimer Zentrum für Europäische Sozialforschung (MZES), 189.

⁷⁹ European Commission, Better Regulation Guidelines (2021), available at https://ec.europa.eu/info/sites/default/files/swd2021_305_en.pdf

⁸⁰ European Commission, Better Regulation Guidelines (2021), available at https://ec.europa.eu/info/sites/default/files/swd2021_305_en.pdf

⁸¹ European Commission, Union of Equality Strategy for the Rights of Persons with Disabilities 2021-2030, available at file:///C:/Users/thchr/Downloads/KE0221257ENN_002%20proof%202.pdf

⁸² European Commission, Better Regulation, Joining forces to make better laws, available at https://ec.europa.eu/info/sites/default/files/better_regulation_joining_forces_to_make_better_laws_en_0.pdf

framework into which citizens can engage with public consultation. The laws surrounding corruption are equally clear.

Suggested way forward

Taking everything into consideration, conducting public consultations will give the public a greater voice and will create an opportunity for a real dialogue that moves beyond current mistrust. Not only will the law-making process in Cyprus become more transparent and gain legitimacy, but public consultations will help in the application of legislation and addressing the challenge of corruption. As observed from the examples of the UK and EU, public consultations are the ideal means to fight against corruption and to fill the gap between political decisions and citizens. Unfortunately, despite small advancements, Cyprus must take more drastic steps to develop the domain of public consultations. Cyprus should immediately adopt an institutionalised public consultations process and set up a central consultation portal, as is the case in most EU Member States. It seems better for Cyprus to adopt a flexible framework like the one of the UK, by simultaneously incorporating the general principles and minimum standards set out by the EU framework. This will undoubtedly lead to a healthier and more peaceful society, as well as to the enhancement of the quality of democracy in Cyprus.

Public consultations need to provide participants with a feeling that their contribution has a genuine impact, that their stance is fully considered and that the consultation is being conducted at a time where change is possible, and the government has not yet sided with a decision. The demographics which constitute the participants must also be taken into consideration, specifically the contrast between stakeholders like businesses and trade unions as opposed to the public. Questionnaires should comprise a combination of closed and open-ended questions. Closed questions should be mostly used for the gathering of quantitative data, whereas open-ended questions are ideal for the gathering of qualitative data.⁸³ It is vital to strike the right balance in order to achieve the optimal output. It should also be taken into account that outcomes of consultations are not statistically representative and thus should not be perceived as such.⁸⁴ All in all, the public consultation process in Cyprus needs to be inclusive, transparent, relevant, righteous, able to respond to expectations of the participants and credible.

⁸³ European Commission, “Better Regulation Toolbox 2001”, available at https://ec.europa.eu/info/sites/default/files/br_toolbox-nov_2021_en_0.pdf

⁸⁴ Ibid.

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