Participation in European agencies: Keeping promises in institutional practice
Pernus, S.

Citation for published version (APA):

General rights
It is not permitted to download or to forward/distribute the text or part of it without the consent of the author(s) and/or copyright holder(s), other than for strictly personal, individual use, unless the work is under an open content license (like Creative Commons).

Disclaimer/Complaints regulations
If you believe that digital publication of certain material infringes any of your rights or (privacy) interests, please let the Library know, stating your reasons. In case of a legitimate complaint, the Library will make the material inaccessible and/or remove it from the website. Please Ask the Library: http://uba.uva.nl/en/contact, or a letter to: Library of the University of Amsterdam, Secretariat, Singel 425, 1012 WP Amsterdam, The Netherlands. You will be contacted as soon as possible.
The present chapter explains the methodological approach to assessing whether and how European agencies have lived up to the central promises of participation. It elaborates, in particular, the choice of a qualitative research method, including the case selection for the purpose of this study, as well as the main sources of data and the manner in which data was collected and analysed.

### 3.1 Method: Qualitative Research and Case Studies

Considering our research purpose and the lack of a previous systematic assessment of participation in European agencies and its added value, we are facing an “intellectual puzzle” and thus attempt “to produce some kind of explanation of that puzzle, or an argument.”¹ The central promises of participation as outlined in the previous chapter constitute the evaluative framework of this study. The inquiry into the complex participatory mechanisms (i.e. different forms of participation and participatory structures) in European agencies is, however, context-specific and essentially exploratory in nature. This requires the use of a qualitative research method, which is well suited to gaining “an understanding of the nature and form of phenomena, to unpack meanings, to develop explanations or to generate ideas, concepts and theories.”² As defined by Denzin and Lincoln, qualitative research is:

> “a situated activity that locates observer in the world. It consists of a set of interpretative, material practices that make the world visible. These practices transform the world. They turn the world into a series of representations [...]”³

In the best of all worlds, one might be able to study the involvement of interested parties in every single European agency and determine the extent to which the agencies have lived up to the central promises of participation. However, given the aforementioned abundance and diversity of European agencies, the whole spectrum of different forms of participation and participatory structures, that would render the research virtually impossible. Thus, considering the present research objectives, a case study method is particularly fitting. In a case study, “the sample is small [...]”, consisting of the single case or handful of cases that the researcher has under her lens.⁴ Such small number of cases is “expected to provide insight into a causal relationship across a larger population of cases.”⁵ As further observed by Gerring, “[t]he case study (by definition) attempts to tell us about something broader than the immediate subject of investigation. It is a synecdochic style of investigation, studying the whole through intensive focus on one (or several) of its parts.”⁶ Another advantage of such an approach is that it “typically presents original research of some sort. Indeed, it is the opportunity to study a single case in great depth that constitutes

---

⁵ Ibid, p. 86.
⁶ Ibid, p. 83.
one of the primary virtues of the case study method.” A study of a handful of carefully selected cases (i.e. European agencies) will allow us to determine, explain, and analyse the functioning and the relevance of the diverse participatory mechanisms in European agencies in detail, and to evaluate whether and how the promises of participation have been fulfilled. Additionally, this method offers the opportunity to assess the broader significance of participation in European agencies. It is precisely for these reasons that we have chosen to employ the case study method in the present study.

3.2 Case Selection Procedure: Agency Sample

As mentioned, this research attempts to present in-depth, as well as more general insights into participatory arrangements and practices in European agencies. Taking into consideration that in a case study research the sample is by definition small, it remains oriented towards portraying the broader relevance of the subject investigated. The selection procedure, as such, needs to be carefully designed in order to produce valid results.

In the present research, I have opted to apply a diverse case selection technique, which aims at achieving a “maximum variance along relevant dimensions.” This means that the sample needs to be “as diverse as possible within the boundaries of the defined population.” Diversity serves a dual purpose. On the one hand, “it optimises the chances of identifying the full range of factors or features that are associated with a phenomenon. The greater the diversity of characteristics or circumstances, the more opportunity there is to identify their different contributory elements or influences.” Moreover, “diverse cases are likely to be representative in the minimal sense of representing the full variation of population (though they might not mirror the distribution of that variation in the population).” This is important for the present project because it allows us to pinpoint the whole range of arrangements for the involvement of interested parties and thus enhance representativeness of the selected cases across the broader population. On the other hand, diversity “allows some investigation of interdependency between variables such that those that are most relevant can be disengaged from those of lesser import.”

The sampling strategy was guided by another principle. In research with a small number of cases, random sampling needs to be avoided as it is unreliable and risks being “wildly unrepresentative.” Besides, “there is no guarantee that a few cases, chosen randomly, will provide leverage into the research question that animates an investigation.” Instead, the selection of the sampling units needs to be purposive: the cases are chosen because they have “particular features or

7 Ibid, p. 79.
8 Ibid, p. 97.
9 Ibid, p. 83.
13 J. Gerring, p. 87.
14 Ibid.
characteristics which will enable detailed exploration and understanding of the central themes and puzzles which the researcher wishes to study.”\textsuperscript{15} This means that in order to be included into the study, the selected cases (i.e. European agencies) need to meet a certain set of predefined criteria.

To sum up, in the present research I have opted to apply a \textit{purposive} and \textit{diverse} case selection. The case selection was based on a careful and detailed inquiry into a broader population of cases – each European agency in existence in January 2011, focusing on all formalised interested parties’ participatory arrangements. The preliminary mapping was conducted on the basis of the founding regulations establishing individual agencies, as well as agencies’ policy documents (i.e. agencies’ decisions) and established practices. This mapping exercise produced the \textit{first and main criterion} for the case selection: the variety of different forms of participation and participatory structures.\textsuperscript{16} In order to narrow the number of potential cases, a \textit{second criterion} was applied, namely the function exercised by each European agency. The combination of these two criteria ensured the comprehensiveness of the selected cases.

\textit{(i) Forms of participation:} This criterion is important because different forms of participation are characterised by different responsibilities and audiences and, thus, may convey different promises of participation. The purpose of this research is to cover the whole spectrum of formalised participatory structures that have emerged in European agencies and to ensure representativeness across the cases. This means that the sample needs to include every internal (i.e. organic) and external form of interested parties’ participation existing in European agencies: (i) managerial participation, (ii) participation in general matters, (iii) quasi-regulatory participation, and (iv) public consultations.\textsuperscript{17}

\textit{(ii) Function:} This second criterion is based on a functional classification reflecting the nature of the tasks of agencies.\textsuperscript{18} As observed in Chapter 1, participation has an instrumental value for the effective and credible exercise of agency functions. Thus, the more far-reaching the functions of European agencies, the more important it is that they provide for participatory arrangements in order to ensure better and more informed outcomes, foster implementation and acceptance, promote inclusiveness and responsiveness of their operation, enhance transparency, ensure monitoring of their activities, and generate trust. The agencies with the “strongest” function are \textit{quasi-regulatory agencies}. Such agencies are entrusted with a wide range of tasks, which include the drafting of eventually binding implementing rules adopted by the Commission and/or regulation by soft law. Additionally, quasi-regulatory agencies often perform more than one task (they may also fulfil information, co-ordination and decision-making tasks) and, as such, constitute the “richest” (i.e. the most diverse) cases to investigate. In this vein, it was decided to narrow the sample to quasi-regulatory agencies.

To better understand how the case selection was conducted following the two criteria, the table below provides an overview of all potential cases.

\textsuperscript{15} J. Ritchie, J. Lewis and G. Elam (2003), p. 78.
\textsuperscript{16} See Chapter 2, Section 2.2.
\textsuperscript{17} Ibid.
\textsuperscript{18} See Chapter 1, Section 1.1.3.
Table 3.1 Participation in European Agencies: Case Selection

<table>
<thead>
<tr>
<th>Internal Participation</th>
<th>External Participation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Managerial Participation</td>
<td>Participation in General Matters</td>
</tr>
<tr>
<td>BEREC Office</td>
<td></td>
</tr>
<tr>
<td>EASA</td>
<td>X</td>
</tr>
<tr>
<td>EBA</td>
<td></td>
</tr>
<tr>
<td>EFSA</td>
<td>X*</td>
</tr>
<tr>
<td>EIOPA</td>
<td></td>
</tr>
<tr>
<td>EMA</td>
<td>X*</td>
</tr>
<tr>
<td>EMSA</td>
<td>X</td>
</tr>
<tr>
<td>ERA</td>
<td>X</td>
</tr>
<tr>
<td>ESMA</td>
<td></td>
</tr>
</tbody>
</table>

* Voting rights in the management board.

On the basis of the criteria presented above, the following four quasi-regulatory agencies were selected:

- **EASA**: managerial participation (advisory board assisting the management board and observers to the management board), internal quasi-regulatory participation and public consultations.
- **EBA**: internal quasi-regulatory participation and public consultations.
- **EMA**: managerial participation (participation in the management board), internal participation in general matters and public consultations.
- **EFSA**: managerial participation (participation in the management board), internal participation in general matters and public consultations.
To gain both in-depth and more general insights into the participation of interested parties in European agencies, I attempted to create a final sample of European agencies that would capture each formalised arrangement - i.e. each form of participation by interested parties. Applying the first criterion for the case selection, a choice was required between various agencies with different forms of participation and participatory structures. Hence, the first step was to exclude all European agencies with no formalised participatory arrangements (i.e. CdT, CEPOL, CPVO, ECDC, EDA, EEA, EFCA, EIGE, EMCDDA, ETF, EUISS, Eurojust, Europol, EUSC, FRA, FRONTEX, GSA, and OHIM). Then, the potential sample was narrowed by employing the second criterion – the type of function conducted by an agency. In this second step, the aim was to eliminate “less powerful agencies” (i.e. CEDEFOP, ENISA, EUROFOUND, EU-OSHA and BEREC Office) in favour of including the “most powerful ones”, namely the quasi-regulatory agencies.

The final choice was made among the remaining eight agencies that fulfilled both criteria. At this stage, it was possible to opt for any of these agencies; however, I deemed it important to ensure that the selected cases allow a certain degree of “within-case” comparison of different forms of participation and their promises, as well as “cross-case” comparison of a single form of participation. With this purpose in mind, the EMSA was excluded due to the fact that it envisages only one form of participation by interested parties. In terms of analysis, such a case study would not be sufficiently diverse for a “within-case” comparison of participatory arrangements and its inclusion into the study would provide only limited insights.

Given that the EASA has the most diverse forms of participation (i.e. managerial participation, internal quasi-regulatory participation and public consultations), enabling “within-case” comparison, it was included in the final sample. To ensure “cross-case” comparison, it was essential to include an agency with similar participatory arrangements. The financial supervisory bodies (ESAs) are the only agencies besides the EASA with internal quasi-regulatory participation. Specifically, these agencies are entrusted with remarkable quasi-regulatory powers similar to those of the EASA and have detailed formal participatory structures. In 2011, when the case selection was made, the three ESAs – the EBA, the EIOPA and the ESMA - had recently become operational and at the time it was impossible to predict how they would further develop. According to their founding regulations, the three agencies are very similar in terms of the nature of their tasks and their participatory arrangements (i.e. internal quasi-regulatory participation and external consultations). Given their similarities, it was assumed that it suffices to include only one of these agencies as representative of the rest of the ESAs. As a result, I opted for the EBA.

Furthermore, the EMA and the EFSA were chosen because of their various and comparable forms of participation. Both agencies provide for managerial participation and external consultations, and are also the only agencies that ensure participation in general matters. Their inclusion not only provides a basis for a “cross-case” comparison between the two, but they can also be compared to the EASA, which is the only other agency besides the EMA and the EFSA with a form of managerial participation. The one remaining agency, the ERA, has two participatory arrangements – managerial participation and external consultations. I attempted to create a final sample that is as complete and manageable in terms of analysis as possible. Since the forms of participation that exist in the ERA were considered to be sufficiently covered by other more diverse cases (i.e. the EASA, the EMA and the EFSA), I decided to exclude the ERA from the final sample.
3.3 **Main Sources of Data**

The present work relies on two different sources of data: (i) legal and policy documents, including preparatory acts of EU legislation and agency specific documents and information, and (ii) qualitative expert interviews.\(^{19}\)

### 3.3.1 Legal and Policy Documents

Legal and policy documents constitute one of the main sources of evidence for the present research. Such data allows the mapping and depiction of the various participatory arrangements that have emerged in European agencies and, thus, offers a “backbone” for further empirical analysis and assessment of the promises of participation. The documents examined include EU legal texts, such as the Treaty on European Union (the TEU) and the Treaty on the Functioning of the European Union (the TFEU), as well as the founding regulations of European agencies. In order to understand the logic behind the participation of interested parties in European agencies, the present research, where possible, also draws on the on several (inter)institutional policy documents (e.g. the Commission’s White Paper on European Governance, the Draft Interinstitutional Agreement on the Operating Framework for the European Regulatory Agencies, and two Commission Communications “European Agencies – The Way Forward” and “Towards a Reinforced Culture of Consultation and Dialogue – General Principles and Minimum Standards for Consultation of Interested Parties by the Commission”). In addition, I also consult agency-specific documents, such as agencies’ policy documents, the participatory forums’ rules of procedure, agendas and minutes, agencies’ rulemaking procedures, codes of conduct, (annual) reports, and consultation documents. Finally, other sources of information, *inter alia*, include Council decisions appointing the members of the agencies’ management boards, decisions of the European Ombudsman regarding European agencies, and agencies’ websites.

### 3.3.2 Qualitative Expert Interviews

“Interviewing is rather like a marriage: Everybody knows what it is, an awful lot of people do it, and behind each closed door there is a world of secrets.”\(^{20}\)

We conducted 38 qualitative expert interviews, which together comprise another main source of data for assessing the various participatory arrangements and practices in European agencies.

---

\(^{19}\) Here, the term “sources” is used in a broader sense than in Chapter 2, Section 2.1.

Additionally, these interviews are used to measure the extent to which the promises of participation are advanced. Such interviews constitute a “living source” of information for the present research. In-depth interviewing is a “data collection method typical for qualitative research,” which aims to gather exhaustive information and to understand the nature of the phenomena at issue. Given the purpose of this study, it was crucial to interview individuals who possess “specific contextual knowledge of the structures, procedures and events” regarding the participation of interested parties in the agencies selected. In other words, the interviewees needed to be experts in and knowledgeable of the field under study. As observed by Littig, “experts serve as informants and possess knowledge otherwise not accessible to researchers. [...] Ultimately, anyone who is responsible for and has privileged access to knowledge of specific groups of people or decision-making processes can be seen as an expert. [...] The explication and reconstruction of these different forms of knowledge and their practical consequences form the focus of expert interviews and their subsequent analysis.” The interviews needed to be “theory gathering”, meaning that they were not only targeted at the “experts’ explicit specialist knowledge”, but also at “his or her tacit specific interpretive knowledge (know-why) and procedural knowledge (know-how) obtained through (professional) practice.”

According to this approach, the choice of respondents followed the twofold criteria that already applied in the case selection approach: the sampling of the respondents within the four case studies was purposive and aimed to be as diverse as possible in order to avoid bias, while at the same time remaining sufficiently small in order to facilitate further analysis and assessment. It was essential, therefore, to examine the four agencies under study, as well as the whole range of participatory arrangements and practices of interaction with interested parties within the selected cases. Additionally, it was important that the sample of respondents covers different perspectives on the topic, including both high level agency practitioners and interested parties (representatives) who have interacted continuously with, and were involved in, the various participatory forums of the agencies.

The identification of the possible respondents was based on an extensive prior study. First, the agency practitioners, e.g. chief legal advisors, rulemaking directors, communication and information officers, and stakeholder relations officers, were interviewed because of their specific knowledge and understanding of the participatory arrangements of interested parties in European agencies. Such interviews were particularly important in order to gain a “helicopter view” of the topic, as well as an agency-specific perspective on the participation of interested parties. Secondly, for each agency selected and with respect to each form of participation (i.e. managerial participation, participation in general matters, quasi-regulatory participation and public consultations), interviews were conducted with members of the diverse participatory forums representing different interests. Where applicable, these included the members of the agencies’ management boards (EMA and EFSA), members of the advisory boards assisting

23 Ibid.
management boards and observers to the management board (EASA), members of advisory
groups and working parties involved in general matters (EMA and EFSA), and members of
consultative groups engaging in quasi-regulatory matters (EASA and EBA). In addition, where
possible, interviews were conducted with individuals and organisations which participated in
external consultations.

To arrange the interviews respondents were approached via email. The interviews with the
agencies’ respondents were primarily conducted at the seats of the respective agencies. On
average, the interviews lasted approximately an hour and a half and were digitally recorded with
the prior permission of the interviewees. The interview style applied in the present study was
qualitative, open, semi-structured, in-depth and primarily face-to-face (mediated interviews were
rather an exception). The interview questions were prepared in advance and were flexible, thus
adapting to the interview situation. The interview questions aimed at being clear, singular, open-
ended, non-directive, informative as well as evaluative, ranging from general to more specific
comprehensive exploration. In the light of new data, the interview questions were constantly
reviewed in order to achieve utmost precision and clarity.

Within each research topic (different forms of interested parties’ participation) I tried, as much
as possible, to follow the same structure to ensure validity and comparable data. To assess
whether and how European agencies have lived up to the central promises of participation, the
interviews were structured along two main components of analysis which were introduced in
Chapter 2: access to participation and the overall quality of deliberation. For example, with
respect to access to participation emphasis was placed on, in particular, selection and appointment
procedures (i.e. selection and appointment of interested parties as members of a participatory
forum), questions about sectors, organisations and interests represented in the work of agencies,
as well as the representativeness of such interests. Regarding the quality of deliberation, the
investigation comprised the organisation of work in the participatory forums, and questions
about different facets of participation i.e. information, commenting and recognition. A further
set of questions was evaluative and covered the positive and the negative effects of participation.
Such an approach ensured that the information gained by the interviews was proportionate and
consistent, and that the common patterns were comparable.

The interviews, which produced rich and extensive empirical evidence, were subsequently
transcribed and systematically analysed. To ensure the anonymity of respondents, the identity
of the interviewees was not disclosed. Instead, individual respondents are indicated by numbers.
Nevertheless, most of the cases disclose the respondents’ position (e.g. agency representatives
or membership in a specific participatory forum). Where permitted, the specific respondents’
interests are listed (e.g. consumer, end user, profession, and industry). In terms of assessment,
I attempted to respect the uniqueness of each case and, to the extent possible, also conduct a
“cross-case” analysis. The approach to the data analysis was open to “emergent concepts and
ideas” and aimed at producing “detailed descriptions and classification”, identifying “patterns of
association” and developing “typologies and explanation.”25 In the words of Spencer, Ritchie and

O’Connor, “[a]nalysis is a challenging and exciting stage of the qualitative research process. It requires a mix of creativity and systematic searching, a blend of inspiration and diligent detection. And although there will be a stage dedicated to analysis, the pathways to forming ideas to pursue, phenomena to capture, theories to test begins right at the start of the research study and ends while writing the results. It is an inherent and ongoing part of qualitative research.”

In summary, this research utilises a qualitative research method and focuses on the participatory arrangements and practices of interested parties at four European agencies: the EASA, the EBA, the EFSA, and the EMA. The research is based on a comprehensive analysis of relevant legal and policy documents, and is supplemented by a number of qualitative expert interviews in order to elucidate and gain further understanding of the various participatory mechanisms existing at European agencies. The empirical chapters below will not only portray and analyse different components of the various participatory arrangements existing across the agencies, but will also compare the various forms and forums of the participation of interested parties and reveal common features as well as indicative differences.