

Consultations, Citizen Narratives and Evidence-Based Regulation

The Strange Case of the Consultation on the Collaborative Economy

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Abstract

The 2015 Better Regulation Communication advocates an evidence-based approach to regulation, which includes better consultations and broader civic engagement. In this article, I consider the recent EU public consultation on the regulatory environment of online platforms and the collaborative economy. I enquire in this context whether citizens were seriously regarded as evidence providers and how their knowledge that materialized in individual narratives could contribute to more legitimate and thus better regulation. I argue that an evidence-based approach to regulation should also include citizen narratives as they can provide first-hand and diverse perspectives, which might not be considered in standard consultation questions. I contend that citizen narratives can be particularly useful in complex and rapidly evolving fields where there is still little empirical evidence and where participants are likely to have diverse personal experiences. Drawing on the literature on narratives, I contend that this method of collecting information can help regulators identify new problems and structure solutions in rapidly changing and diverse regulatory fields such as the collaborative economy.

Keywords: Better Regulation, consultations, evidence-based lawmaking, sharing economy, narratives.

A Introduction

In the 2015 Better Regulation Communication, the European Commission affirmed its commitment to serving citizens, providing better regulation and “ensuring that measures are evidence-based, well designed and deliver tangible and sustainable benefits for citizens, business and society as a whole”.¹ The new better regulatory package aims to strengthen stakeholders’ participation in the

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1 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, ‘Better Regulation for Better Results – An EU Agenda’, COM(2015) 215.

rulemaking process by extending the scope of consultations and improving their transparency throughout the regulatory cycle.² It innovates while following the footsteps of three decades of better and smarter regulation packages that have attempted to improve the quality of EU regulation.³

A European Union with better regulation is also a union where regulation is prepared in a transparent fashion, based on neutral and complete evidence, and is imbued with democratic legitimacy. It is nonetheless unclear whether this renewed approach to Better Regulation will respond to the democratic deficits of EU regulation, promote the necessary citizen participation and be truly evidence based rather than politicized. As the Communication itself acknowledges, “better regulation is a tool to provide a basis for timely and sound policy decisions – but it can never replace political decisions”.⁴

In the Communication ‘Better Regulation for Better Results’, it remains uncertain what type and amount of evidence should be considered, who will provide the evidence and how evidence will be taken into account in the ultimate drafting and implementation of regulation. Moreover, it is also unclear how divergent information and positions put forward by stakeholders with opposing views (e.g. small business owners vs. large corporations) are contemplated in the regulatory process.⁵

Public consultations have been used for years now in the European Union to gather and feed the best available evidence into the lawmaking process. ‘Consulting more, listening better’ is the motto of this new approach that should be characterized by openness, transparency and the broad consultation of stakeholders. Technology has facilitated public consultations, allowing the European Commission to take this instrument to ordinary citizens who would otherwise not be directly involved in the rulemaking process. This is particularly visible in the recent ‘Better Regulation’ package as in addition to the consultation of stakeholders, the Commission also aims to promote broader participation of anonymous citizens by allowing them to express their views on EU regulation at any time and on different regulatory subjects on the website ‘Lighten the Load – Have Your Say’.⁶ The literature has nonetheless casted doubt on the potential of this platform to promote the consultation of the most vulnerable stakeholders who might not have the digital skills to offer their contribution.⁷ Furthermore, the success of consultations and other participatory instruments is undermined by the lack of

2 F. Sarpi, ‘Better for Whom?’, *European Journal of Risk Regulation*, Vol. 6, No. 3, 2015, pp. 372, 374.

3 W. Voermans, ‘Beating About the Bush in “Better Regulation”’, in B. Steurnberg, W. Voermans & S. van den Bogaert (Eds.), *Fit for the Future? Reflections from Leiden on the Functioning of the EU*, The Hague, Eleven Publishing, 2016, pp. 69 and 72.

4 Communication from the Commission to the European Parliament, *supra* note 1.

5 On how the different ability of lobbies to shape European policies, see e.g. H. Kluever, ‘Lobbying as a Collective Enterprise: Winners and Losers of Policy Formulation in the European Union’, *Journal of European Public Policy*, Vol. 20, No. 1, 2013, p. 59.

6 See European Commission, ‘REFIT Platform: Lighten the Load, Have your Say’, available at: <http://ec.europa.eu/smart-regulation/refit/simplification/consultation/contributions_en.htm> (last accessed 22 January 2017).

7 Sarpi, 2015, pp. 372, 374.

interest of citizens in these tools, which, according to research, are generally unknown to most EU citizens or unable to attract their participation.⁸

Research has shown that this lack of interest in EU participatory mechanisms can be explained by the limited promotion of opportunities for engagement at EU level; citizens' perception that these tools do not have a meaningful impact on EU policies and regulations; and their complex and technical character that discourages many citizens from engaging in policy processes.⁹ In this article, I discuss this last problem and suggest a small but possibly significant solution for the limited participation of citizens in public consultations at EU level: the use of citizen narratives, that is, the gathering of broad information by asking open questions and asking citizens to share their personal experience with the phenomena under analysis.

In this article, I enquire whether citizens are seriously regarded as evidence providers and how their knowledge materialized in individual narratives – rather than in static answers to previously formulated questions – can be used to contribute to more legitimate, effective and thus better regulation. Citizen narratives have not been systematically considered in the EU lawmaking process as sources of information and evidence. Policy narratives are nonetheless well-known instruments in the literature and practice, which can help policymakers understand the causes and the evolution of a problem, its underlying facts and existing solutions put in practice by citizens in the absence of regulations.¹⁰

Narratives are a type of discourse that report events placed in time and space that “communicate something meaningful to [an] audience”.¹¹ Narratives are commonly associated with storytelling. Narratives can be richer contributions than decontextualized comments or answers to standardized consultation questions as they offer an individual's first-person experience that can help structuring arguments. The inclusion of narratives in policy and rulemaking might appear at first to be opposed to the adoption of evidence-based lawmaking, which should rely on empirical evidence and turn away from ‘anecdotal’ facts. Indeed, scientists are trained to be sceptical of stories as they reflect personal bias and do not constitute objective data.¹² Narratives can nevertheless “retain their power to enable people make sense not only of their own lives and circumstances [...] but also of collective goals and how these might be realised”.¹³

Narratives have been long employed, for example, in sociology, gender studies, history and anthropology. Furthermore, the literature has more recently sug-

8 E. Lironi, ‘Potential and Challenges of E-Participation in the European Union’, European Parliament, Directorate General for Internal Policies, 2016, p. 9, available at: <www.europarl.europa.eu/supporting-analyses>.

9 *Ibid.*

10 D.A. Stone, ‘Causal Stories and the Formation of Policy Agendas’, *Political Science Quarterly*, Vol. 104, No. 2, 1989, p. 281.

11 M.-L. Ryan, ‘Toward a Definition of Narrative’, in David Herman (Ed.), *The Cambridge Companion to Narrative*, Cambridge, Cambridge University Press, 2012, pp. 22, 29.

12 P. Mortola, ‘Collecting an Anecdote: The Role of Narrative in School Consultation’, *The Family Journal*, Vol. 11, No. 1, 2003, p. 17.

13 D. Prior & M. Barnes, *Subversive Citizens: Power Agency and Resistance in Public Services*, The Policy Press, 2009, p. 205.

gested a more prominent place for the use of narratives in public policy as they can be employed to reconstruct history and diagnose future policy problems.¹⁴ Cynthia Farina and other Cornell scholars have also supported a similar position in the context of regulation. They have defended the need for enhanced citizen participation through narratives as this method may bridge the gap between policymakers focussed on economic, technical and quantitative data originated by experts and citizens who can provide first-hand context-based experiences.¹⁵

Drawing on the literature on the use of narratives in research, I argue that the collection of stakeholder narratives could complement the better regulation package and improve the participatory process. Narratives could be employed in the spirit of allowing citizens, including the least resourceful ones, to provide some form of counter-evidence about the factual information underlying proposed regulations.¹⁶ I suggest that citizen narratives should be considered as an instrument to promote the collection of different types of evidence and personal knowledge that, as Friedrich Hayek explained many decades ago, “is dispersed among the different members of society”.¹⁷ A broader use of narratives could be implemented in practice, for example, by creating more space for comments and open-ended questions in consultations or by resorting to social media platforms so as to reach a broader audience of stakeholders.

This article analyzes the inclusion of citizen narratives in the Better Regulation Toolbox in light of the results of the 2016 public consultation on the EU regulation of online platforms, cloud & data, liability of intermediaries and the collaborative economy. The involvement of citizens in the lawmaking process at EU level is particularly important in the context of the collaborative economy as citizens are susceptible of contributing with a great deal of information on how these transactions work. These sharing initiatives replace professional service providers by peers. In other words, the majority of users, beneficiaries and individuals, positively or negatively affected (*e.g.* neighbours experiencing nuisance caused by Airbnb guests), will be citizens. These users can thus provide regulators with first-hand information on the potentials and challenges of the collaborative economy to an extent that traditional stakeholders (*e.g.* hotel associations) cannot as they are primarily concerned with the competition offered by collaborative economy services but not with its advantages to consumers.

- 14 See *e.g.* R. Franzosi, ‘Narrative Analysis or Why (and How) Sociologists Should be Interested in Narrative’, *Annual Review of Sociology*, Vol. 24, 1998, p. 517; C. Boswell, A. Geddes & P. Scholten, ‘The Roles of Narratives in Migration Policy-Making: A Research Framework’, *British Journal of Politics and International Relations*, Vol. 13, No. 1, 2011, p. 1; L. Levidow & T. Papaionnou, ‘Policy-Driven, Narrative-Based Evidence Gathering: UK Priorities for Decarbonisation through Biomass’, *Science and Public Policy*, Vol. 43, No. 1, 2015, pp. 46, 49; W.L. Bennett & M. Feldman, *Reconstructing Reality in the Courtroom*, Quid Pro Books, 2014; K. Abrams, ‘Hearing the Call of Stories’, *California Law Review*, Vol. 79, No. 4, 1991, p. 971.
- 15 See C. Farina *et al.*, ‘Knowledge in the People: Rethinking “Value” in Public Rulemaking Participation’, *Wake Forest Law Review*, Vol. 47, 2012, pp. 1185-1187.
- 16 Voermans, 2016, pp. 69, 87.
- 17 Farina *et al.*, 2012, p. 1185; F.A. Hayek, ‘The Use of Knowledge in Society’, *American Economic Review*, Vol. 35, No. 4, 1945.

The public consultation on online platforms and the collaborative economy was open between 24 September 2015 and 6 January 2016 and was part of the broader analysis of the role of online platforms in the Digital Single Market Strategy.¹⁸ While empirical research conducted by the European Commission shows that the majority of citizens are aware of the existence of collaborative economy platforms, only one-third of the participants in the public consultation responded to the questions on the legal framework of the collaborative economy.¹⁹ Moreover, a close examination of the published responses to this part of the consultation is not very enlightening from an evidence-based lawmaking perspective. An analysis of the questions of this section of the consultation reveals that there was little room for comments and the sharing of personal narratives regarding certain aspects of the regulatory framework of the collaborative economy. Nevertheless, the perception and the regulation of the collaborative economy is based not only on hard economic facts, regulatory burdens and regulatory uncertainty, as suggested by the questions, but also on individual experiences with service providers and digital platforms. In addition, the benefits of the collaborative economy (*e.g.* additional income and diversity of experiences) as well as its risks also refer to an experiential dimension that can often only be captured by participants' narratives.

In this article, I suggest that in innovative sectors such as the collaborative economy, citizen narratives should be included in consultations and regarded as valid sources of evidence. The participants in this new digital sector can provide first-hand information that might otherwise be dispersed, unavailable to experts or appear to be one-sided when provided by special interest groups that are negatively affected by this disruptive model (*e.g.* hotel associations participating in the consultation). Moreover, as the collaborative economy is rapidly evolving and is dependent on individual interactions and personal experiences, regulators could benefit from these narratives that might shed light on issues such as racial discrimination, risk and safety and the individuals' perceptions of privacy when they rent a couch in shared apartment.²⁰ In addition, participants in the collaborative economy could also provide more information on a number of fuzzy topics involving the regulatory framework of platforms: for example, what happens when an Airbnb user has problems with a tourist (*e.g.* something gets stolen)? Did

18 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, 'A Digital Single Market Strategy for Europe', COM(2015) 192.

19 European Commission, 'Full Report on the Result of the Public Consultation on the Regulatory Environment for Platforms, Online Intermediaries and The Collaborative Economy', available at: <<https://ec.europa.eu/digital-single-market/en/news/first-brief-results-public-consultation-regulatory-environment-platforms-online-intermediaries>> and the study of Eurobarometer as reported on the European Commission's Staff Working Document Accompanying the Communication 'A European Agenda for the Collaborative Economy', COM(2016) 356.

20 On racial discrimination in the sharing economy, see B. Edelman, M. Luca & D. Svirsky, 'Racial Discrimination in the Sharing Economy: Evidence from a Field Experiment', *Working Paper No. 16-069*, Harvard Business School, 2015, available at: <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2701902>; A. Belzer & N. Leong, 'The New Public Accommodations', *Georgetown Law Journal*, Vol. 105, 2017 (forthcoming), available at: <www.ssrn.com>.

Airbnb ultimately solve the problem? How do guests typically leave the accommodation when they depart? What do hosts learn from the interactions with their guests? How do the neighbours of Airbnb hosts experience home-sharing initiatives? These remarks are related to the general question on regulatory uncertainty posed by the European Commission in the public consultation.

In this article, I question whether – but do not provide answers – the European Commission would have been able to obtain a better idea of what is truly happening in the collaborative economy if the responses had been coloured by individual narratives. Although this article limits itself to offering a normative argument, the existence of diverse experiences – even if at times stained with a certain degree of subjectivity – can be an important source of diverse perspectives on the different dimensions of this new economic model.

This article is organized as follows. Section B analyzes the recent consultation on the regulatory environment on platforms, online intermediaries, cloud computing and the collaborative economy that would have benefited from more active civic engagement and citizen narratives. This analysis is focussed on the last part of the consultation that delved into the regulatory framework of the collaborative economy and received very few comments, in particular from citizens. All responses to this section were analyzed. Section C delves into the concept of evidence-based policy and lawmaking and examines how public consultations can contribute to this goal. Section D provides a brief overview of the relevance of narratives in social research and, drawing on the literature, explains how and why life stories, in-depth interviews, oral arguments and other methods of gathering narratives should be included in a Better Regulation Toolkit. This article acknowledges the methodological limitations of narratives as evidence-gathering instruments and the budgetary constraints that might impede their widespread use.

B Public Consultation Online Platforms and the Collaborative Economy

I Introduction to the Collaborative Economy

The sharing or collaborative economy has been in the spotlight for the past two years. Originally, collaborative initiatives were developed in small communities to enable sharing and exchanges among neighbours.²¹ The idea of sharing under-used goods appeared to be inherent to humankind, a survival strategy in a world of scarce goods.²² These initiatives remained unregulated for centuries as they pertained to the personal sphere. With the development of technology, in particular digital platforms, collaborative consumption evolved into more complex sharing-economy initiatives that allow individuals to request a multitude of on-demand services.

21 See e.g. R. Botsman & R. Rogers, *What's Mine is Yours: The Rise of the Collaborative Economy*, New York, Harper Collins, 2010; L. Gansky, *The Mesh: Why the Future of Business is in Sharing*, New York, Portfolio Penguin, 2012.

22 R. Belk, 'You Are What You Can Access: Sharing and Collaborative Consumption Online', *Journal of Business Research*, Vol. 67, No. 8, 2014, pp. 1595-1596.

The European Commission has defined ‘collaborative economy’ as “a complex ecosystem of on-demand services and temporary use of assets based on exchanges via online platforms”.²³ This system offers alternatives to traditional professional services such as hotels, restaurants and private transportation services. Well-known examples are Airbnb and BlaBlaCar, respectively in the home-sharing and long-distance private transportation sectors. Both platforms intermediate peer-to-peer transactions between individuals who would like to share underused goods: a spare guestroom in the case of Airbnb and a ride to the same destination in the case of BlaBlaCar.

The regulation of the collaborative economy has sparked much debate both in the European Union and in the United States. In the home-sharing sector, digital platforms such as Airbnb have been criticized for facilitating the operation of illegal hotels in disregard of the applicable regulatory framework such as zoning and fire safety regulations, and de-characterizing residential neighbourhoods, which were not originally meant to host tourists.²⁴ Traditional services have also argued that collaborative economy platforms do not operate on the same level as they do not comply with similar regulations and rely on the existence of regulatory grey areas. Supporters of the sharing economy claim nonetheless that the collaborative economy has simply challenged regulations that have become obsolete with the development of technology.²⁵ As Saskia Sassen has put it to explain the similar phenomenon of urban informal economy, “economic processes tend to diverge from the model for which extant regulations were designed”, creating ‘regulatory fractures’.²⁶ National and EU regulators felt nonetheless compelled to act as these regulatory fractures started becoming a source of regulatory uncertainty, potential risks for consumers and regulatory divergences. While local regulators in Brussels acted against Airbnb enacting restrictive regulations that impose, for example, fire safety inspections, registration obligations and compliance with rules on the decoration of facilities, not so far away, the municipality of Amsterdam negotiated with Airbnb as to its terms of operation.

Considering the differentiated local and national approaches and their potential to undermine the implementation of the Services Directive as well as the broader lack of regulatory clarity regarding, for example, the legal liability of

23 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, ‘Upgrading the Single Market’, COM(2015) 550, p. 3.

24 See e.g. S.R. Miller, ‘First Principles for Regulating the Sharing Economy’, *Harvard Journal on Legislation*, Vol. 53, 2016, p. 147; S. Ranchordás, ‘Does Sharing Mean Caring: Regulating Innovation in the Sharing Economy’, *Minnesota Journal of Law, Science & Technology*, Vol. 16, No. 1, 2015, p. 413; J. Jefferson-Jones, ‘Airbnb and the Housing Segment of the Modern Sharing Economy: Are Short-term Rental Restrictions an Unconstitutional Taking?’, *Hastings Constitutional Law Quarterly*, Vol. 42, No. 3, p. 557.

25 See e.g. C. Koopman, M. Mitchell & A. Thierer, ‘The Sharing Economy and Consumer Protection Regulation: The Case for Policy Change’, *Journal of Business, Entrepreneurship & the Law*, Vol. 8, No. 2, 2015, p. 529.

26 S. Sassen, ‘The Informal Economy: Between New Developments and Old Regulations’, *Yale Law Journal*, Vol. 103, 1994, pp. 2289, 2291.

online intermediaries, the European Commission decided to intervene.²⁷ The European Commission reflected upon the possibility and the need to enact a new directive on online platforms. Up until now, as far as the collaborative economy is concerned, this intervention has been limited to the release of the Communication 'A European Agenda for the Collaborative Economy' in June 2016.²⁸ In this section, I analyze the public consultation that preceded this intervention by examining both the questions asked by the European Commission as well as the responses submitted by individual citizens and made publicly available.²⁹

II The Public Consultation on the Regulatory Environment for Platforms

The public consultation on the regulatory environment for platforms, liability of intermediaries, data and cloud and the collaborative economy was open between 24 September 2015 and 6 January 2016.³⁰ The consultation received 1,034 replies via the procedures foreseen in the consultation and 10,599 individual contributions through one single advocacy group, mostly addressing only some of the questions posed in the consultation. In this analysis, I focus on the responses given by individual citizens whose answers were not confidential and thus publicly available on the European Commission's website. In most cases, their names were disclosed and in others they were referred to as an 'individual citizen' or 'anonymous'.³¹ While some of these citizens had a special interest in participating as they were academics, small businesses using online platforms or lawyers representing the industry, a very small minority appeared to consist of citizens eager to engage with EU lawmakers.

As to the geographical distribution of responses, the Commission indicated that the contributions originated from all (then) 27 EU Member States except Estonia and Cyprus. Approximately 10% of the replies came from outside of the European Union, more than half of them from the United States, including from

27 Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market, OJ L 376.

28 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, 'A European Agenda for the Collaborative Economy', COM (2016) 356.

29 See European Commission, Responses to the Consultation on the Regulatory Environment of Platforms, Online Intermediaries and the Collaborative Economy, available at: <<https://ec.europa.eu/digital-single-market/en/news/responses-public-consultation-regulatory-environment-platforms-online-intermediaries-data-and>>.

30 European Commission, First Brief Results on the Public Consultation on the Regulatory Environment for Platforms, Online Intermediaries, Data, Cloud Computing and the Collaborative Economy', available at: <<https://ec.europa.eu/digital-single-market/en/news/first-brief-results-public-consultation-regulatory-environment-platforms-online-intermediaries>> (last visit 10 October 2016).

31 Responses to public consultation and list of participants non-subject to EU transparency register. Available at: <http://ec.europa.eu/information_society/newsroom/image/document/2016-10/platforms_eu_survey_replies_-_respondents_not_applicable_for_the_eu_transparency_register_14406.pdf>.

prominent US academics (e.g. Frank Pasquale).³² The largest number of responses came from Germany (17%), Belgium (13%) and the United Kingdom (11%). As mentioned in the introduction of this article, not all respondents answered every question or section. According to the European Commission, more than 80% of the respondents replied to the sections on 'platforms' and 'online intermediaries & tackling illegal content', around 60% of the respondents replied to the section on 'data and cloud computing' and around one-third replied to the section on 'collaborative economy'.

According to the European Commission's final report, 330 individuals and organizations replied to the questions on the collaborative economy. Almost half of these responses referred to individuals or their representatives.³³ In this section, I delve exclusively into the responses to the section on the regulatory environment of the collaborative economy. In order to avoid a repetition of the analysis made by the Commission in the final report on the public consultation, I focus on specific questions and the comments provided by individual citizens.

The consultation addressed eight challenging questions on the interaction between law and technology. Contrary to topics such as cloud computing, the regulation of the collaborative economy might be closer to the average citizen as it refers, for example, to the ability to rent one's house to tourists on Airbnb during vacation. A search on the Internet will reveal that thousands of European houses are being rented on home-sharing digital platforms. Despite the tangible character of the collaborative economy, only one-third of the respondents answered this section of the consultation.

III The Questionnaire

In this subsection, I examine the questions posed in the public consultation in order to understand why only a limited number of citizens responded to the questions posed in the public consultation and how their responses to the consultation attempted to contribute to the solution of the underlying regulatory problems.

1 The Definition of the 'Collaborative Economy'

The section on the collaborative economy in the consultation questionnaire starts with a number of definitions including that of the 'collaborative economy', which the European Commission defined it as follows:

the collaborative economy links individuals and/or legal persons through online platforms (collaborative economy platforms) allowing them to provide services and/or exchange assets, resources, time, skills, or capital, sometimes

32 See <http://ec.europa.eu/information_society/newsroom/image/document/2016-10/platforms_eu_survey_replies_-_respondents_not_applicable_for_the_eu_transparency_register_14406.pdf>.

33 European Commission, Full Report on the Results of the Public Consultation on the Regulatory Environment on Platforms, Online Intermediaries and the Collaborative Economy, available at: <<https://ec.europa.eu/digital-single-market/en/news/first-brief-results-public-consultation-regulatory-environment-platforms-online-intermediaries>>.

for a temporary period and without transferring ownership rights. Typical examples are transport services including the use of domestic vehicles for passenger transport and ride-sharing, accommodation or professional services.³⁴

This definition says very little about the defining elements of the collaborative or sharing economy, in particular the ability of individuals to share underused goods often in a non-professional way, that is, sporadically and without the aim of making a significant profit, and the reputational or rating mechanisms that are employed to promote the trust of parties. The collaborative economy may imply a compensation for the goods shared or services provided, but it can also operate on a pure exchange basis (e.g. NightSwapping). Airbnb, HomeExchange and Bla-BlaCar are the most well-known collaborative economy platforms in Europe: the first two platforms allow you to rent your house or a spare room during vacation or even exchange your house with someone else's and the latter connects drivers and riders looking for a long-distance ride, for example, between Amsterdam and Paris. Ride-sharing platforms such as Lyft and Uber appear to be left outside this definition. Their inclusion in the world of the 'sharing or collaborative economy' has been considered controversial because drivers often provide services in a quasi-professional fashion. Drivers receive strict guidelines from the platforms and, even though they claim not to be comparable to taxi drivers, they have been sanctioned in different European countries (e.g. Germany, Belgium and the Netherlands) for operating as unlicensed taxicabs.

The text of the consultation does not provide much practical information to participants who were not well informed beforehand about this new form of the economy. In order to understand whether the collaborative economy is an unknown phenomenon to most Europeans, the European Commission organized a Flash Eurobarometer survey after the public consultation, in March 2016, and gathered more information about the citizens' perception of the collaborative economy.³⁵ According to this study, the majority of the respondents were aware of the services provided by collaborative platforms (52%), but only 27% of the respondents who were aged between 25 and 39 years and those who had finished higher education were likely to use the services of collaborative platforms. About one-third had, however, already provided services in the context of the collaborative economy. While the results of this research are optimistic about the European citizen's knowledge, they also show that only the youngest and most educated part of the population might have been able to respond to the consultation without additional information.

Despite the limited number of responses to the consultation, the legal controversies surrounding the collaborative economy are everything but theoretical: throughout Europe, a large number of individuals have been fined for providing

34 Consultation Document on the Regulatory Environment on Platforms, *supra* note 29.

35 European Commission, 'Flash Eurobarometer 438: Collaborative Platforms' (2016), available at: <<http://ec.europa.eu/COMFrontOffice/PublicOpinion/index.cfm/Survey/getSurveyDetail/instruments/FLASH/surveyKy/2112>>.

illegal hotel services by subletting their apartments on Airbnb without the permission of their landlords, in violation of their housing association agreements or local regulations. In the Netherlands, for example, individuals have been evicted and lost welfare benefits as a result of renting out their spare rooms.³⁶ Many alleged that they were simply trying to make ends meet in times of crisis. Although some European cities were initially sympathetic to this idea, the emergence of legal problems, nuisance and professional abuse of collaborative economy platforms has made even the most permissive cities such as Amsterdam rethink their strategies.

In the analysis of the responses to the questionnaire, the Commission concluded that “some [respondents] had problems with the definition of the collaborative economy”.³⁷ Respondents were not asked their opinion about the different dimensions of this definition and whether their experiences with collaborative initiatives fitted within the definition offered in the consultation. Instead, the main question asked in this part of the consultation was “whether EU law is fit to support this new phenomenon and whether existing policy is sufficient to let it develop and grow further, while addressing potential issues that may arise, including public policy objectives that may have already been identified”. Eight questions with legal and non-legal nature then followed with little room provided for comments.

2 Questions on Regulatory Uncertainty

The consultation included a number of questions on the regulatory framework of the collaborative economy in an attempt to understand the industry and citizens’ position regarding these new initiatives. The multiple-choice questions posed had a specific character and delved into the main risks and challenges associated with the growth of the collaborative economy. The question on the regulatory environment included “a not sufficiently adapted regulatory framework”, “uncertainty regarding rights and obligations for providers”, “rise in undeclared work and the black economy”, “weakening of employment and social rights for employees/workers”, “non-compliance with health and safety standards and regulations”, “the opposition from traditional providers”, “uncertainty related to the protection of personal data” and “insufficient funding for start-ups”.

Besides the first general points on regulatory challenges, the consultation delved into the impact of the collaborative economy on the different forms of employment (self-employment, freelancers, shared workers, economically dependent workers, teleworkers, etc.) and the creation of jobs. Moreover, the

36 See e.g. *Rechtbank Amsterdam*, 22 October 2014, available at: <<https://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:RBAMS:2014:7231>> (last accessed 13 October 2016). More recently, see also a similar case in *Amsterdam, Rechtbank Amsterdam*, 7 July 2015, available at: <www.uitspraken.nl/uitspraak/rechtbank-amsterdam/civiel-recht/civiel-recht-overig/eerste-aanleg-enkelvoudig/ecli-nl-rbams-2015-4335> (last accessed on 3 March 2017).

37 European Commission, Full Report on the Results of the Public Consultation on the Regulatory Environment on Platforms, Online Intermediaries and the Collaborative Economy, available at: <<https://ec.europa.eu/digital-single-market/en/news/first-brief-results-public-consultation-regulatory-environment-platforms-online-intermediaries>>, p. 21.

consultation asked binary (yes/no) questions regarding the cross-border development of the collaborative economy in Europe and the emergence of European market leaders. The same types of questions were asked regarding the need for action at the EU level, specifically to promote the collaborative economy and to foster innovation and entrepreneurship in this context. However, here the option “I don’t know what the current regulatory environment [is]” was included as a possible answer that, as the final report would show, turned out to be a popular answer among respondents.

A third set of questions regarding the experiences of citizens was also asked. These questions are as follows:

- a “Have you used a service or asset via a collaborative platform?” (Yes/No)
- b “Have you exchanged your assets or services against other persons’ assets or services or did you pay for them?”
- c “In which sectors have you used services or assets offered through platforms?” (Transport/Tourism Accommodation/Professional services/Other)
- d “Do you receive, on the collaborative economy platform, sufficient information on the provider in the collaborative economy (including whether the provider is an individual or a legal person), your consumer rights, the characteristics and modalities of the offer and your statutory rights (such as withdrawal/cancellation right when applicable)?”
- e “How important are reputation/rating systems in facilitating transactions on collaborative economy platforms?” (Very important/Important/Not important)
- f “Do you rely on other elements when deciding to use a service or asset via collaborative economy platforms?” (Vetting of the provider/Existence of a complaint process/Reputation of the platform/Other)³⁸

3 *Analysis of Responses in the Final Report*

According to the final report on the results of this consultation, a large majority of both businesses and consumers considered there to be regulatory obstacles to the development of the collaborative economy in Europe. These obstacles included a high degree of uncertainty over the rights and obligations of users and providers. Collaborative economy stakeholders such as traditional providers, platforms and public authorities underlined the need for more guidance and clear information on the applicable rules. Individuals were nonetheless primarily concerned with the possibility that the collaborative economy could be hindered by the opposition made by traditional providers or the lack of funding.³⁹

According to the Commission’s analysis of the findings, the participants in this consultation were also concerned with tax evasion but did not have particularly negative views on the positive or negative impact of the collaborative econ-

38 Consultation Document on the Regulatory Environment on Platforms, *supra* note 29.

39 European Commission, Full Report on the Results of the Public Consultation on the Regulatory Environment on Platforms, Online Intermediaries and the Collaborative Economy, p. 21, available at <<https://ec.europa.eu/digital-single-market/en/news/first-brief-results-public-consultation-regulatory-environment-platforms-online-intermediaries>>.

omy. Interestingly, this is in practice the most perplexing aspect of the collaborative economy as with the development of this alternative to traditional transactions, stable employment has been challenged, the concept of ‘employer’ has become unclear and the negative consequences of the automation of labour have once again been discussed.⁴⁰

The Commission also concluded that a majority of consumer respondents take the view that collaborative economy platforms provide sufficient information on service providers, consumer rights, characteristics and modalities of the offer and statutory rights. The Commission did not analyze in particular the specific comments provided by citizens.

4 *Comments by Respondents*

Very little room for comments was provided in the consultation’s questionnaire. The space devoted to comments took up the form of additional explanations or specifications depending on their responses (‘please specify’ and ‘please explain’). Therefore, it is not surprising that no individual experiences or narratives were offered.

Some individual citizens voiced their concerns regarding the regulatory uncertainty concerning the collaborative economy. To illustrate, an individual citizen added: “I think the way the law affects these platforms is generally fairly unclear, particularly on the platforms themselves” and another Austrian citizen added that one of the main obstacles was the ‘regulatory differences’ between countries.⁴¹ In addition, the opposition offered by traditional providers and lobbying were not overlooked, for instance, by a non-EU citizen who underlined that “traditional providers turn to legislators to demand barriers be erected to preserve the status quo. Copyright extensions, trade barriers and asymmetric tax strategies impose undue burdens on emerging collaboration platforms”.⁴²

A non-EU citizen discussed the regulatory challenges of the collaborative economy as well as a potential solution, stating “There is tremendous uncertainty for many in this space right now, even as the benefits are quite clear and quite large. Better promotion at the EU level could help grow these businesses and pro-

40 See e.g. A. Sundararajan, *The Sharing Economy: The End of Employment and the Rise of Crowd-based Capitalism*, London, MIT Press, 2016; V. Stefano, ‘Introduction: Crowdsourcing, The Gig-Economy and the Law’, *Comparative Labor Law & Policy*, Vol. 37, No. 3, 2016, p. 1; J. Prassl, *The Concept of the Employer*, Oxford, Oxford University Press, 2015.

41 See Response to public consultation by individual citizen, ‘Regulatory Environment for Platforms, Online Intermediaries, Data and Cloud Computing and the Collaborative Economy’, 12 December 2015, available at: <<https://ec.europa.eu/eusurvey/pdf/answer/c972a980-5993-4dae-858e-59a94688eacf>>.

42 See Response to public consultation by individual citizen, ‘Regulatory Environment for Platforms, Online Intermediaries, Data and Cloud Computing and the Collaborative Economy’, 31 December 2015, available at: <<https://ec.europa.eu/eusurvey/pdf/answer/597374e2-6da5-4f18-8302-392cde279bda>>.

vide much better service for the public”.⁴³ A German citizen also referred to the comparison between the European Union and the United States, arguing that there was much more opposition to the collaborative economy in Europe than in the United States.⁴⁴

In the context of the impact of the collaborative economy on employment, an individual respondent added that more should be done about “workers rights, rate oversight. Most notably in the transport industry, though nothing else comes to mind quite yet”. As to the impact of the regulatory environment of the collaborative economy on cross-border competition and the emergence of market leaders, an individual citizen suggested that “It might be that EU companies and US companies don’t operate under the same rules with regards to data handling, which creates a competitive disadvantage”.⁴⁵

The analysis of the responses to the public consultation appears to suggest that the majority of the respondents were more interested in the first sections of the questionnaire than on the questions on the collaborative economy. Only one-third responded to this section and a minority of individual citizens provided additional comments. Does this mean that individual citizens do not wish to share their experiences? Or that personal narratives could not shed additional light on the regulatory environment of the collaborative economy? This article answers both questions negatively, contending that users of the collaborative economy could potentially offer more information as to the risks and opportunities of the collaborative economy than the ones presented in the consultation’s questionnaire.⁴⁶ When reading the media, we observe that there are multiple tales of positive and negative experiences that could have arguably contributed to a more complete image of the collaborative economy.⁴⁷ These personal – albeit anecdotal – narratives were nonetheless not solicited in the context of this consultation and were not considered in the final communication on the collabora-

43 See Response to public consultation by individual citizen, ‘Regulatory Environment for Platforms, Online Intermediaries, Data and Cloud Computing and the Collaborative Economy’, 6 January 2016, available at: <<https://ec.europa.eu/eusurvey/pdf/answer/24b7c5ac-6aab-4a8d-a191-60033d140de2>>.

44 See Response to public consultation by individual citizen, ‘Regulatory Environment for Platforms, Online Intermediaries, Data and Cloud Computing and the Collaborative Economy’, 17 November 2015, available at: <<https://ec.europa.eu/eusurvey/pdf/answer/370a25e5-c39a-4740-b267-dfc009d2e627>>.

45 See Response to public consultation by individual citizen, ‘Regulatory Environment for Platforms, Online Intermediaries, Data and Cloud Computing and the Collaborative Economy’, 5 January 2016, available at: <<https://ec.europa.eu/eusurvey/pdf/answer/2fee4337-0852-48a2-ba78-beb377fc72de>>.

46 As mentioned in the introduction of this article, I acknowledge that the limited participation of citizens in public consultations can only be partially explained by the complex and technical character of consultation questionnaires.

47 See e.g. R. Lieber, ‘Airbnb Horror Story Points to Need for Precautions’, *New York Times*, 14 August 2015, available at: <www.nytimes.com/2015/08/15/your-money/airbnb-horror-story-points-to-need-for-precautions>; D. Robert, ‘Our Year of Living Airbnb’, *New York Times*, 25 November 2015, available at: <www.nytimes.com/2015/11/29/realestate/our-year-of-living-airbnb.html>.

Sofia Ranchordás

tive economy that relied on the results of consultations as well as on experts' studies and position papers.

The exclusion of citizen narratives from the consultation process is comparable with the disregard for additional evidence that can help to structure the hidden risks of the collaborative economy. My interest as an academic in the evidentiary aspect of narratives was sparked by an array of phone calls and letters that I received after my scholarly work on Airbnb, and the de-characterization of neighbourhoods was cited in the *Wall Street Journal*.⁴⁸ One specific citizen described her personal experience as a landlord of several apartments rented to students that would rent any possible spare space to tourists on Airbnb, regardless of the terms of the contract and fire safety regulations. While this landlord did not wish to prohibit tenants from subletting the apartment, she experienced intense uncertainty regarding the perception of neighbours, their safety as well as that of her tenants. Her story inspired me to look more closely into the role of individual narratives in a rapidly evolving sector that is not experienced the same way by all stakeholders. This diversity in experiences is not adequately considered in traditional consultations because it refers to anecdotal evidence; it is subjective and very often biased. Yet, several social sciences have relied upon narratives. Drawing on the scientific use of this evidence-gathering instrument, I suggest in the following sections that narratives should also be included in the European Commission's effort to promote the enactment of evidence-based regulation.

C Evidence-Based Regulation

The idea of enacting evidence-based lawmaking might appear to be logical and inherent to good lawmaking. Nevertheless, it is far from being a longstanding idea in the legislative practice or in the literature. In the book *Simpler*, Cass Sunstein explains that "pleading for empirical foundations seems obvious, as relying on sense rather than nonsense. But the temptation to favour intuition over information is strong".⁴⁹ Indeed, evidence-based policymaking started out in the field of medicine as an effort to convince physicians to prescribe treatments based on what works and what does not, rather than simply on their opinion.⁵⁰ Evidence-based medicine is, in other words, "the conscientious, explicit, and judicious use of current best evidence in making decisions about the care of individual patients".⁵¹ Both in medicine and regulation, it is clear that the existence of 'the

48 B. Anderson, 'How Airbnb Could Change the Life of City Residents', *Wall Street Journal*, April 25, 2016, available at: <www.wsj.com/articles/how-airbnb-could-change-life-for-city-residents-1461550187>.

49 See, generally, C.R. Sunstein & R.H. Thaler, *Nudge: Improving Decisions About Health, Wealth, And Happiness*, New Haven, CT, Yale University Press, 2008.

50 D.L. Sackett *et al.*, 'Evidence-Based Medicine: What It Is and What It Isn't', *British Medical Journal*, Vol. 312, No. 7023, 1996, p. 71.

51 *Ibid.*

best available evidence' should underlie the search for solutions as the purpose of evidence-based lawmaking is to 'create better law – law informed by reality'.⁵²

In law and policymaking, an evidence-based approach also represents a replacement of the cult of the expert by hard evidence.⁵³ Evidence-based lawmaking refers thus to an objective, interdisciplinary and incrementalist approach to law that seeks effective and customized solutions for legal and policy problems.⁵⁴ Good evidence-based policy implies taking a number of steps, including resorting to solid knowledge-gathering sources that deliver high-quality information, employing officials with the right skills to interpret and understand the gathered evidence and a political decision to ultimately use evidence-based analysis.⁵⁵

Since at least 2001, the European Commission has been determined to take into account evidence-based considerations in the impact assessment of major legislative proposals.⁵⁶ The evidence-based approach has nevertheless been criticized for being excessively technocratic and not including relevant subjective variables such as race and other elements susceptible of indicating discrimination.⁵⁷ In this section, I discuss the implementation of this approach in law as well as the concept of 'evidence' in an effort to understand whether and why narratives should be considered in this approach.

Evidence-based practice is a paradigm or model that aims to replace the traditional intuitive,⁵⁸ experiential or opinion-based methodology by empirical evidence.⁵⁹ While the idea of basing law and policymaking on evidence is not innovative, the concept of evidence-based policy and lawmaking is not necessarily self-explanatory. Rather, the concept of 'evidence' and what should be included in this evidence-based approach has been controversial.⁶⁰ The UK Cabinet Office has described evidence as including "expert knowledge; published research, existing research; stakeholder consultations; previous policy evaluations; the Internet;

52 C.R. Sunstein, *Simpler: The Future of Government*, New York, Simon & Schuster, 2013; see also C.R. Sunstein, 'Empirically Informed Regulation', *University of Chicago Law Review*, Vol. 78, 2011, p. 1349; J.J. Rachlinski, 'Evidence-based Law', *Cornell Law Review*, Vol. 96, 2011, p. 901.

53 M. Burger, 'The Importance of Evidence-Based Decision Making in Legal Reform', *Journal of Personal Injury Law*, 2013, p. 212.

54 For a recent and thorough analysis of pragmatic incrementalism, see S. Balganesch, 'The Pragmatic Incrementalism of Common Law Intellectual Property', *Vanderbilt Law Review*, Vol. 63, 2010, p. 1543.

55 B. Head, 'Reconsidering Evidence-based Policy: Key Issues and Challenges', *Policy and Society*, Vol. 29, No. 2, 2010, p. 77.

56 N. Lee & C. Kirkpatrick, 'Evidence-based Policymaking in Europe: An Evaluation of European Commission Integrated Impact Assessments', *Impact Assessment and Project Appraisal*, Vol. 24, No. 1, 2006, p. 23.

57 S. Starr, 'Evidence-based Sentencing and the Scientific Rationalization of Discrimination', *Stanford Law Review*, Vol. 66, No. 4, 2014, p. 803.

58 See C.L. Williams, 'Evidence-Based Medicine in the Law Beyond Clinical Practice Guidelines: What Effect Will EBM Have on the Standard of Care?', *Washington & Lee Law Review*, Vol. 61, 2004, p. 479.

59 J.E. Laurin, 'Gideon by the Numbers: The Emergence of Evidence-based Practice in the Indigent Defense', *Ohio State Law Journal of Criminal Law*, Vol. 12, No. 2, 2015, p. 325.

60 G. Marston & R. Watts, 'Tampering with the Evidence: A Critical Appraisal of Evidence-Based Policymaking', *Australian Review of Public Affairs*, Vol. 3, No. 3, 2007, pp. 143-144.

outcomes from consultations; costings of policy options; output from economic and statistical modelling”.⁶¹ However, in practice, a more limited range of evidence is used by regulators, in particular, research and statistics, policy evaluation, economic modelling and expert knowledge.

‘Valid knowledge’ is therefore limited to objective sources of information that are considered to be the closest to the ‘truth’ in decision-making processes and policy argument.⁶² A ‘hard fact’ or any other naturally occurring phenomena or a research artefact becomes ‘evidence’ when “it is constituted and inserted into a research practice and then deployed in the framework of an argument”.⁶³ In other words, a wide array of facts can be included in the concept of evidence as long as they scientifically validate assumptions about the nature of the social world.

Evidence-based practices assist regulators in the quest for answers for questions such as: Who will benefit from a new rule? Who might be harmed? Is this measure effective? And are the costs higher than the benefits?⁶⁴ Evidence-based lawmaking is therefore a problem-solving approach to policy and legislation guided by the need to find the best available evidence for a problem. The reliance on evidence and expertise is far from being a novelty in law: for decades, experts have played an important role in courts, assisting judges in their decisions regarding complex evidence.⁶⁵ With evidence-based practices, legislators and agencies initiate a transition from relying on opinions, anecdote, external evidence and external expertise to the effectiveness of policies and laws.

An evidence-based perspective is not an end but a means that implies ‘muddling through’ a vast amount of evidence.⁶⁶ The adoption of this perspective also shows the need to understand lawmaking from an interdisciplinary point of view as a multi-dimensional reality. In this effort to gather evidence, lawmakers rely here on the opinions of experts, operational assumptions and frameworks in order to select the evidence that should inform their judgements.⁶⁷ Contrary to social research, lawmakers remain sceptical when it comes to embracing narratives as an evidence-gathering mechanism. Stakeholders’ narratives are often more mediatized and have a high impact on the final decisions of politicians, but they are also imbued with emotions, values and beliefs rather than scientific evi-

61 United Kingdom Cabinet Office, *Modernising Government White Paper*, London, Centre for Management and Policy Studies, 1999, p. 33.

62 Marston & Watts, 2007, pp. 143, 146.

63 *Ibid.*, pp. 143, 155.

64 See M. Spottswood, ‘Evidence-based Litigation Reform’, *University of Louisville Law Review*, Vol. 51, 2012, p. 25.

65 An important step in the direction of the reconciliation between science in the sense of evidence and law was given by the Supreme Court in *Daubert v. Merrell Dow Pharmaceuticals*, 509 U.S. 579, 113 S. Ct. 2786 [1993]. The Supreme Court decided that trial judges should ensure the scientific merit of evidence that is entered into court, that is, the evidence should have “grounding in the methods and procedures of science”.

66 For the original concept of ‘muddling through’ see C.E. Lindblom, ‘The Science of “Muddling Through”’, *Public Administration Review*, Vol. 19, 1959, pp. 79, 84.

67 J.M. Eisenberg, ‘What Does Evidence Mean? Can the Law and Medicine Be Reconciled?’, *Journal of Health Politics, Policy & Law*, Vol. 26, 2011, pp. 369, 371.

dence.⁶⁸ The literature has, therefore, regretted the frustration of experts when they realize that public opinion has often been shaped by policy narratives rather than by hard facts.⁶⁹ Notwithstanding the risk of regulatory capture, which also affects scientific evidence, stakeholder participation is an important part of civic engagement and a source of legitimacy of rulemaking decisions.

D Narratives as Evidence-Based Methods

In the context of the collaborative economy, regulators are faced with a growing challenge: designing future-proof rulemaking that can adapt to constantly evolving realities. The advent of social media has revealed that it is possible to gather additional information about present and future events by giving a voice to citizens and allowing them to contribute with their thoughts and opinions.⁷⁰ YouTube, Twitter and many other digital platforms offer accessible venues for the dissemination of citizen narratives.⁷¹

Although very few users (*i.e.* citizens) of the collaborative economy participated in the public consultation on the regulation of the collaborative economy, it does not mean that this group of consumers and prosumers does not have a solid opinion on these economic transactions. On the contrary, citizens engaged in the collaborative economy appear to gladly justify their support or opposition to these initiatives based on their personal experiences and voice them on social media.⁷² They do so by offering narratives that could not be taken into account in the consultation process owing to methodological reasons, the self-selection bias that tends to characterize online consultations and the limited scope for additional comments that characterized the consultation questionnaire. Nevertheless, evidence for several of the questions asked in the public consultation on the collaborative economy could have been found in individuals' personal experiences with the collaborative economy. To illustrate, the reputation of collaborative economy platforms and service providers that the Commission found to be one of

68 D. Golding, S. Krinsky & A. Plough, 'Evaluating Risk Communication: Narrative v. Technical Presentations of Information about Radon', *Risk Analysis*, Vol. 12, No. 1, 1992, p. 27; D.L. Lybeck, M.K. McBeth & J.W. Stoutenborough, 'Do We Understand What the Public Hears? Stakeholders' Preferred Communication Choices for Discussing River Issues with the Public', *Review of Policy Research*, Vol. 33, No. 4, 2016, p. 376.

69 Lybeck *et al.*, 2016, pp. 376, 378.

70 F. Accordino, 'The Futurium - A Foresight Platform for Evidence-Based and Participatory Policy-making', *Philosophy & Technology*, Vol. 26, No. 3, 2013, p. 321.

71 E.A. Shanahan, M.D. Jones & M. McBeth, 'Policy Narratives and Policy Processes', *Policy Studies Journal*, Vol. 39, No. 3, 2011, pp. 535-536.

72 For an analysis of how participants in the collaborative economy offer their narratives on social media, see S. Ranchordas, 'Digital Agoras: Democratic Legitimacy, Online Participation and Uber's Petitions', *Theory and Practice of Legislation*, Vol. 5, No. 1, 2017, pp. 31-54.

the most important selection criteria for consumers in the consultation is built upon narratives of users materialized in peer-review systems.⁷³

Notwithstanding the widespread presence and importance of narratives in the collaborative economy, this method of gathering information and knowledge has thus far not been seriously considered by the legal scholarship, legal education and regulators.⁷⁴ Broader participation relying on offline or online storytelling is, however, a participatory and evidence-based instrument of growing importance in legal and social sciences research that should be more widely used by 'better regulators'. This argument is supported by three arguments. First, narratives are well-recognized sources of information that have been employed broadly in social science research.⁷⁵ Second, citizen narratives comprehend first-hand experiences and aggregate dispersed facts that cannot always be captured through standardized empirical methods. Third, law is not estranged from narratives as they are widely present in litigation training as trials are organized around storytelling: the different actors bring evidence forward to corroborate allegations and offer stories that bear on what they understand to be the truth.⁷⁶ In the context of the collaborative economy, a fourth argument could be added: the business model and success of this new type of transactions are built upon peer-reviews and other forms of reputational feedback that, in a context of regulatory uncertainty, tend to shape individuals' experiences of trust and risks in these initiatives. In several cases, the comments conveyed through these rating and reputational mechanisms also consist of small narratives of users' experiences with each other's services.

I What Are Narratives?

Narratives are ubiquitous stories and historical accounts that are solicited from others. They can be either oral stories that are told in response to interviews or written accounts that are drafted in response to open-ended questions.⁷⁷ Stories that are shared by several people can help policymakers and regulators understand how people see the 'whole picture' and what and how meaning is given to facts.⁷⁸ From a communication perspective, narratives and metaphors are among

73 See European Commission, 'Full Report on the Result of the Public Consultation on the Regulatory Environment for Platforms, Online Intermediaries and The Collaborative Economy', available at: <<https://ec.europa.eu/digital-single-market/en/news/first-brief-results-public-consultation-regulatory-environment-platforms-online-intermediaries>>.

74 D.R. Papke, *Narrative and the Legal Discourse: A Reader in Storytelling and the Law*, Deborah Charles Publications, 1991, p. 2.

75 R.E. Dowling, 'The Morals of the Story: Narrativity & Legal Ethics', *Indiana Law Review*, Vol. 27, 1994, p. 191.

76 K.L. Scheppelle, 'Foreword: Telling Stories', *Michigan Law Review*, Vol. 87, 1989, pp. 2072, 2080.

77 D.E. Polkinghorne, 'Validity Issues in Narrative Research', *Qualitative Inquiry*, Vol. 13, No. 4, 2007, pp. 47-48.

78 J.S. Dochterty, 'Narratives, Metaphors, and Negotiations', *Marquette Law Review*, Vol. 87, 2004, p. 847.

the most universal means of representing human events and are regarded as effective means of communication.⁷⁹

II Narratives in Research

In the last decades, a reform movement in social sciences has re-established the value of qualitative enquiry, including narrative research. Narrative researchers argue that there are important aspects of the human realm and the personal and social reality that cannot be understood within the limitation of traditional numeric data.⁸⁰ Therefore, these researchers turn to narratives that account for stories on personal life experiences. More recently, narratives have started being employed in multiple legal research areas such as gender studies as well as in policymaking.

Narratives capture the socially constructed elements of public policy, that is, the facts to which meaning is ascribed. As the public policy literature has explained “stakeholders use words, images, and symbols to strategically craft policy narratives to resonate with the public”.⁸¹ At the resemblance of other areas, policy narratives are stories that are populated by characters with emotions and values and aim to target a specific audience.⁸²

Although narratives are merely ‘stories’ in the eyes of many, they have been used not only to shape public opinion but also to categorize sets of litigation claims (e.g. in the context of patent trolls).⁸³ In the last few years, the suspicion that narratives do not influence policymaking has been empirically researched in an attempt to unveil the impact of narratives on policy and public opinion.⁸⁴

Narrative research typically implies two moments: the collection of evidence and the analysis and interpretation of the collected evidence. The validity of narratives depends on their cognoscibility, trustworthiness and the ability to persuade the audience of its authenticity.⁸⁵

III Evidence and Narratives

While narratives refer to subjective perceptions, evidence-based perspectives refer to ‘hard facts’, empirical and objective methods. This does not mean that narratives are not evidence based and cannot be implemented in the context of an evidence-based approach that seeks to improve the quality of regulation. In reality, there is no opposition between a narrative and evidence-based approach

79 W.L. Bennett & M. Edelman, ‘Toward a New Political Narrative’, *Journal of Communications*, Vol. 35, 1985, p. 156.

80 Polkinghorne, 2007, pp. 47, 49.

81 Shanahan *et al.*, 2011, p. 535.

82 D. Stone, *Policy Paradox: The Art of Political Decision Making*, New York, W.W. Norton, 2002.

83 C.V. Chien, ‘Of Trolls, Davids, Goliaths, and Kings: Narratives and Evidence in the Litigation of High-Tech Patents’, *North Carolina Law Review*, Vol. 87, 2009, p. 1571.

84 See e.g. E. Shanahan, M. McBeth & P.L. Hathaway, ‘Narrative Policy Framework: The Influence of Media Policy Narrative on Public Opinion’, *Politics & Polity*, Vol. 39, No. 3, 2011, p. 373.

85 R. Winter, ‘Truth or Fiction: Problems of Validity and Authenticity in Narratives of Action Research’, *Educational Action Research*, Vol. 10, No. 1, 2002, p. 143.

as narratives are constrained by facts and verifiable statements.⁸⁶ Although narratives also embody personal and subjective experiences, they must be supported by evidence and hard facts in order to provide for good narratives.⁸⁷ With the resemblance to other information-gathering instruments, the factual support underlying narratives confers them trustworthiness and validity.

Narratives can be gathered through systematic field research and interviews. In the context of consultations, the search for additional evidence and individual stories should also include the possibility for citizens to tell their personal stories and narrate their experiences with, for example, the collaborative economy in the sections dedicated to comments. The literature has showed that in certain instances narratives have been more powerful than scientific evidence.⁸⁸

The ability of consultations to be more evidence based and result in better regulation depends not only on the information-gathering methods but also on the officials' willingness to demonstrate that they have incorporated the results of the public consultation and how.⁸⁹ In other words, officials should not only consider different voices while gathering information on new and complex regulatory areas but also listen to the facts they bring forward. Besides the widespread perception of a lack of legitimacy and popular support of the EU institutions and policies, EU rulemaking remains a distant phenomenon.⁹⁰ Moreover, the questions asked in public consultations are often formulated by experts to experts, disregarding the need to adapt this quest for information when the aim is to target a broader audience of participants. It is therefore not surprising that the majority of the respondents to the public consultation on the regulatory environment on the collaborative economy were not acquainted with existing regulatory frameworks or did not have a clear opinion on what action the European Commission should take to solve the regulatory uncertainty that characterizes this environment.

E Conclusion

The 2015 Better Regulation Package aims to support better regulation on wider participation so as to close the gap between EU institutions and citizens, improve regulation with facts as to what works and what does not and what citizens think it is necessary. Nevertheless, EU consultations have historically suffered from a well-known selection and sometimes self-selection bias as they either primarily target experts and professional stakeholders or these parties are the only ones who feel compelled to participate given the technical character of the question-

86 P. Garbolino, 'Historical Narratives, Evidence, and Explanations', in D. Dieks *et al.* (Eds.), *Explanation, Prediction, and Confirmation*, Berlin, Springer, 2011, p. 293.

87 P. Roth, 'Normative Explanations: The Case of History', *History and Theory*, Vol. 27, 1988, p. 13.

88 Lybeck *et al.*, 2016, pp. 376, 378; Golding *et al.*, 1992, p. 27.

89 D. Castle & K. Culver, 'Public Engagement, Public Consultation, Innovation and the Market', *The Integrated Assessment Journal*, Vol. 6, No. 2, 2006, pp. 137, 149.

90 R. Kies & P. Nanz, 'Introduction', in R. Kies & P. Nanz (Eds.), *Is Europe Listening to US? Successes and Failures of EU Citizen Consultation*, Farnham, Ashgate, 2013, p. 2.

naire. The lack of appeal of public consultations caused by their complex and technical character has prevented several stakeholders not only from speaking but also from being heard. In this article, I examined the 2016 public consultation on the regulation of digital platforms and the collaborative economy. Notwithstanding the growing popularity of the topic, a few individual citizens responded to the consultation or provided rich contributions. However, this article has identified other sources suggesting that the majority of EU citizens (*i.e.* the primary users of the collaborative economy) are acquainted with these transactions, have an opinion on them and, more importantly, have information on the benefits and risks of the collaborative economy and are happy to narrate them, for example, on social media. This article did not aim to discuss why individuals do not participate in consultations in general but rather suggest the consideration of citizen narratives in the Better Regulation Toolkit, either in the context of consultations or as an addition to them. In the first case, narratives could be gathered by including open-ended questions and broader room for comments where citizens do not feel that they are expected to answer a question in a certain sense, but are rather given the opportunity to share their story or experience with a certain phenomenon without being constrained by the limits of a question.

Although narratives have not been widely used in law and policymaking, they are also likely to contribute to the consolidation of an evidence-based approach to regulation. Drawing on the literature, I argue that citizen narratives provide diverse and first-hand experiences, which can help policymakers structure regulatory problems in new and complex fields where little or no scientific evidence is available or where citizens might have diverse and the most significant experiences. I acknowledge that the inclusion of narratives in a better regulation package might nonetheless have multiple shortcomings, including its methodology and practical implementation. Nevertheless, a sincere wish to 'listen to citizens', as stated in the Communication, might mean that the Commission could at times need to be willing to listen to the whole story that citizens have to tell. In other words, rather than using a technocratic approach to consultations that is not always accessible to most citizens or only focuses on a selected number of regulatory issues, the European Commission should allow for more room for learning from citizens' experiences by favouring open-ended questions and additional room for comments. Citizen narratives are susceptible of offering an additional evidence-based tool that promotes better regulation while addressing the problem of the technocratization of consultations that thus far has kept several citizens with valuable information at bay.