Countering Bias?

The EU Commission's Consultation with Interest Groups

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Abstract

The EU Commission has always consulted with external actors when preparing policy proposals. This has led to concerns about bias in whose voices the Commission listens to. In this paper we investigate bias in the Commission's current consultation with external actors. We map the full range of consultation instruments used by the Commission and analyze variation in group representation across types of consultations and policy areas. Our analysis draws on a dataset of more than 350 major cases between 2011 and 2016 covering the full range of areas subject to EU regulation. Our analyses show that the Commission has established a consultation regime with widespread use of standard consultation instruments, including open online consultations, stakeholder conferences, and consultation in closed fora. As to bias, we find that the range of consulted actors depends on both consultation instruments and policy types. Open online-consultations are most inclusive. Our findings indicate that the Commission may be able to counteract the influence of business by selecting the most appropriate format for consultation.

Executives such as the EU Commission play a major role in the formative stages of the policy process. In this capacity, executives consult regularly with external interests such as business groups, groups of concerned citizens or other public authorities. Such consultation provides crucial input to the policy process and helps legitimizing the proposals put forward by executives (Van Ballaert 2017; Bunea & Thomson 2015). For organized interests, consultations provide a welcome chance to advance the concerns of their members and raise attention to their policy demands. While the inclusion of external interests comes with many benefits, the literature also contains ample warning that such participation may be biased. Most crucially, not all organized interests have equal opportunities to voice their concerns vis-à-vis executives and business groups have repeatedly been found more active than other groups in consultations (Binderkrantz, Christiansen & Pedersen 2014; Rasmussen & Carroll 2013).

Studying bias in interest group representation is a long-standing scholarly field (Schattschneider 1960). With respect to the EU, significant progress has been made in mapping the amount of bias in group mobilization, in the political activities carried out by groups and in the access of groups to the EU system (Beyers et al. 2008; Berkhout et al. 2017; Binderkrantz & Rasmussen 2015; Rasmussen & Gross 2015; Wonka et al, 2010). In addition, a number of recent studies have analyzed group participation in EU Commission consultations with a focus on the use of open online consultations (Klüver 2013; Rasmussen & Carroll 2013; Quittkat 2011; Røed & Hansen 2018). While open consultation is the most high-profiled type of consultation, these co-exist with a range of other consultative forms such as stakeholder consultations or meetings with selected actors. In this paper, we provide a comprehensive analysis of the type of consultations carried out by the EU Commission in the formative stage of the policy process. This allows us to map the type of consultative instruments used – ranging from open online consultations to meetings with the responsible DG - and the types of external interests consulted by the Commission. Importantly, we combine the two aspects and analyze differences in the actors consulted across different types of consultation instruments.

Consultation with external interests can be seen as a strategic instrument. Previous studies have for example demonstrated how the Commission shapes its consultations based on political logics (Van Ballaert 2017) and how consultation with external interests serve to strengthen the Commission's bargaining position (Bunea & Thomson 2015). We argue that the Commission faces an overall incentive to use a broad range of consultative instruments and to consult widely with external interests. Over the past 15 years, the Commission has pursued this objective as part of its "better regulation" agenda. Broad consultation is therefore instrumental in legitimizing the policy proposals of the Commission. In addition, we expect variation in the types of organized interests consulted depending on the type of consultative instrument as well as the policy content of proposals (Rasmussen and Carroll 2013).

To map consultations, we have established a dataset of all major policy initiatives undertaken by the Commission in the years 2011-2016, a total of more than 350 cases. Our coding of these cases is based on the impact assessment reports issued by the Commission. These reports are made for all major policy initiatives and account for consultations with outside interests. We use this dataset to map the Commission's efforts to structure its relations with outside interests. For each policy initiative, we register the policy content of the proposal, the type of consultative instruments used as well as the type of external interest consulted.

The paper is structured as follows. We first explain the Commission's attempt to establish a regular consultation regime. We also review the literature that seeks to evaluate this attempt. We then theorize the Commission's consultation practices. On this basis, we turn to describing the research design and the empirical analysis. Based on our mapping of consultation practices, we analyze how successful the consultation regime really is and the variation in types of interests consulted. Our findings show that the use of a wide range of consultation mechanisms is an integrated element of EU policy making, but also indicate that the choice of consultation instrument

and the type of proposed policy affects the balance between different actors involved in the consultation. We conclude that the Commission carries out many different instruments to reduce bias in the representation of interest, however, while some instruments allow for equal access to policy proposals for a broad range of actors, others still resemble older patterns of interest representation which have been criticized in the past.

The Commission's consultation regime

Since the establishment of the European Community, the Commission has consulted external experts and organized interests in order to build support for and increase the quality of its policy initiatives. The consultation strategies have evolved over time. They have gradually been refined and expanded and can today be characterized as a regime in the sense of Krasner (1982): a set of implicit or explicit principles, norms, rules, and decision-making procedures around which actors' expectations converge.

Three generations of Commission consultation regimes can be identified over the course of the EU's history (Bouwen 2009; Quittkat and Finke 2008; Quittkat and Kohler-Koch 2013). The first generation prioritized output legitimacy and efficient implementation. The Commission therefore established close ties with European federations of associations of trade and industry, of farmers, of professional interests, and of employers and trade unions. Interactions were intense, but informal, irregular and ad-hoc. The second – starting in the mid-1980s – was characterized by a broadening and deepening of societal involvement in the Commission's preparation of policy initiatives. The Commission now consistently emphasized the social dialogue, which was included in the Single European Act in 1987, and the partnership principle. Consultation instruments were increasingly institutionalized. A growing concern with the broader public acceptance of EU policies led to consultations being opened to NGO's to a larger extent. Commission funding of NGO's was

introduced to balance the influence of business interests and continues to be an important element of the Commission's consultation regime (Mahoney 2004; Mahoney and Beckstrand 2011; Salgado 2014).

The third generation of the consultation regime was developed as part of the "better regulation agenda" that the Commission has pursued over the last 15-20 years. It originates in the disgraceful dismissal of the Santer Commission in 1999 and the ensuing reform of the Commission by President Romano Prodi and Vice-President Neil Kinnock. The better regulation agenda was launched with the white paper "European Governance" (Commission 2001), which promised more openness, transparency, participation, and involvement of public and civil society organizations. The Commission explicitly stated its ambition to create a consultation regime that counterbalances bias. The regime should:

> "reduce the risk of the policy-makers just listening to one side of the argument or of particular groups getting privileged access on the basis of sectoral interests or nationality, which is a clear weakness with the current method of ad hoc consultations" (Commission 2001: 17).

The new consultation ambitions were specified in more detail in a communication one year later. They took the shape of a set of minimum standards to be followed by the individual DG's on the content of their consultation processes, consultation target groups, publication, limits for participation, acknowledgement, and feedback (Commission 2002a). These official guidelines have been reiterated and complemented several times (Commission 2012a; 2015a; 2015b). The latest commitment to comprehensive consultation was made in the Commission's 2015 proposal for an inter-institutional agreement on better regulation, which was concluded in 2016 (Commission 2015c; European Parliament, Council and Commission 2016).

The core elements in the Commission's present consultation regime are three instruments (Quittkat 2013). The first is *open online consultations*, which are open to everyone including interest groups, public institutions, individual businesses, and individual citizens. These consultations are organized by the Commission DG responsible for the policy initiative and published on its website. The Commission has also launched a special consultation webpage, which functions as a single access point for online consultations (https://ec.europa.eu/info/consultations). Online consultations are done on the basis of a policy document. Interested parties are given the opportunity to provide feedback either as answers to an online questionnaire or via email. Their contributions are published, and the Commission completes the process by accounting for the number of responses and how it has dealt with them. Online consultations sometimes attract a high number of responses. For example, the online consultation of the REACH initiative resulted in 6,400 responses (Persson 2007).

The second instrument is *stakeholder conferences*. These take the form of meetings, seminars, or workshops in which the Commission and stakeholders meet. They are normally organized in Brussels and open to everyone, but typically frequented by EU level interest representatives. Their function is to disseminate and discuss policies and create networks and coalitions. The Commission normally carefully selects speakers so that opposing interests are given a voice.

The third and final instrument is *consultation in more restricted fora* in which a specified, limited and thus exclusive number of interests are included. This type of consultation can take place in various institutional settings. Examples include advisory committees and expert groups (Gornitzka and Sverdrup 2008), administrative networks (Mastenbroek and Martinsen 2017), comitology committees (Brandsma and Blom-Hansen 2010), and specialized policy forums. The defining characteristic is that their composition is limited and defined by the Commission or by legislation. They therefore represent a more privileged way of representation.

The Commission's consultation regime is informal, and the guidelines, that structure it, are non-binding. Still, it is embedded in a set of formal rules that encourages widespread consultation. Treaty provisions include a general obligation for the Commission to "carry out broad consultations with parties concerned" (TEU, article 11) as well as more specific consultation requirements in the various policy areas. Secondary legislation also includes a high number of provisions that require the Commission to consult before taking initiatives. One example is the Council decision that establishes the Advisory Committee on Safety and Health at Work composed of representatives of national governments, trade unions and employers' organizations with "the task of assisting the Commission in the preparation, implementation and evaluation of activities in the fields of safety and health at work" (Council 2003).

From the above description, it is clear that the Commission pursues an ambitious consultation agenda that is embedded in a favorable institutional setting. What is less clear is to what extent this ambition is successful. We therefore now turn to the scholarly literature that has sought to evaluate the effectiveness of the Commission's consultation regime.

A number of evaluations are relatively favorable. Bunea (2017) analyzes the responses from two stakeholder evaluations organized by the Commission in 2012 and 2014 in which stakeholder feedback was sought on the Commission's consultation practice. She finds that the stakeholders' responses show that the Commission has been successful in creating conditions for alleviating bias in stakeholder participation. A comparable conclusion is drawn by Quittkat and Kotzian (2011), who analyze all consultation instruments employed by two Commission DGs (DG Employment and DG Sanco) in the years 2000-2007. They conclude that these two DGs have been successful in reaching out to all categories of actors, all kinds of functional and territorial interests and to all organizational levels. A more in-depth analysis of the use of online consultations by these

two DGs reaches a similar conclusion and finds that online consultations constitute an "open and inclusive instrument of consultation" (Quittkat 2011: 671).

Other studies have investigated the impact of the Commission's consultation regime on the interinstitutional balance of power in the EU and found indications that the regime empowers the Commission. Bouwen (2007) demonstrates that the European Parliament feels threatened by the Commission's consultation agenda and even adopts formal resolutions stressing that informal consultation by the Commission must never replace decisions and involvement of the Parliament. Bunea and Thomson (2015) analyze 151 controversial issues in 54 legislative proposals and find that the Commission has more success in its bargaining with the Council and Parliament, when it consults widely before bargaining. These findings do not reveal the extent to which the Commission succeeds in countering bias, but they do suggest that the Commission's consultation regime is more than a paper tiger.

A final set of studies are more skeptical of how successful the Commission has been in establishing a systematic regime without bias. Rasmussen and Carroll (2014) analyze 220 online consultations conducted over the years 2001-2010. They find that business interests dominate even more than they do in the population of EU interest groups. A comparable analysis of expert groups also found domination by business interests, although less clearly so (Rasmussen and Gross 2015). Van Ballaert (2017) analyses consultation practices in 150 policy proposals made by four Commission DGs in the period 2010-2014. He finds that the different consultation instruments are used to different degrees depending on the policy characteristics in the different areas. Finally, Røed and Hansen (2018) study 350 online consultations between 2001-2012 and find that participation patterns are more biased when the policy proposal is complex, and less biased when the proposal is more salient.

In sum, the available evidence points in different directions. It is difficult to gauge what the studies add up to because they focus on different selections of consultation instruments, have selected different parts of the Commission for analysis, or are based on different data sources. In the following, we contribute to this debate by a more comprehensive analysis that include all the Commission's DGs and all consultation instruments in all consultations done as part of impact assessments over a relatively long period. But first, we present our theoretical argument.

Theorizing the Commission's consultation practices

A main argument in the literature on the political access of organized interests is that such access may be seen as the result of a resource exchange between interest groups on the one hand and public officials on the other. To the extent that both actors stand to gain, organized interests are expected to be granted access to policy processes (Binderkrantz et al. 2015; Bouwen 2004; Dür & Mateo 2016). Interest groups value access to consultations as this is a crucial step towards influencing policies (Binderkrantz & Pedersen 2017) and bureaucrats value the expertise and legitimacy that groups may provide. Here, we draw on this theoretical logic, but with a main focus on the incentives facing the Commission. With its unique powers to initiate and draft EU legislation as well as its discretion in choosing consultative instruments, we see the Commission as the key actor in shaping the consultation regime.

Commission incentives are shaped by the development in consultation regimes described above. However its consultation practice may also be driven by concerns of autonomy and legitimacy. From a strategic perspective, the Commission can be expected to design consultation practices as a means to protect and increase its overall autonomy and legitimacy through shaping its organizational reputation. A number of recent studies of the Commission's behavioral logic reaches conclusions that are compatible with a reputational perspective (Ellinas & Suleiman 2012; Harlapp

et al. 2014; Kassim et al. 2013; Wille 2013). An agency's reputation is defined as a set of symbolic beliefs about the agency's capacity, history and mission that are embedded in multiple audiences (Carpenter 2010: 33). In this sense, reputation is a valuable political asset, which increases the autonomy and legitimacy of the agency. It can be used to build political support, to increase formal discretion, to protect the agency from political attack and to build a set of constituencies in the agency's environment.

More specifically, an agency reputation is composed of four dimensions (Carpenter 2010: 33-70). First, technical reputation encompasses the agency's scientific and analytical capacity. Second, performative reputation expresses the agency's capacity for achieving its goals. Third, moral reputation indicates the agency's ethical standards. Finally, legal-procedural reputation relates to the justness of the agency's decision procedures. Consultation is useful if it protects the Commission's performative, moral, technical and/or legal-procedural reputation.

With respect to the technical reputation of the Commission, consultation with external interests may enhance the policy capacity of the Commission. The Commission operates in a complex environment while possessing limited in-house expertise and external interests may thus provide the EC with crucial expertise (Van Ballaert 2017: 407). As argued by Bunea and Thomson (2014: 518): "consultations can be viewed as large-scale brainstorming exercises that increase policy-makers analytical capacity and ability to tackle policy problems". In addition, including organized interests can enhance the chances that proposals will be successful – the performative reputation of agencies – as consultation may mobilize support and provide valuable information about the preferences of involved actors including the positions of legislative actors. Consultation will thus further the chances that proposals ultimately gain support (Van Ballaert 2017: 407; Bunea & Thomson 2014: 521). Lastly, consultation may help legitimize Commission proposals and thus its moral and legal-procedural reputation. From this perspective, consultation is part of a self-legitimization process

(Bunea & Thomson 2014: 521) strengthening the overall reputation of the Commission as well as the legitimacy of specific proposals. *In sum, based on the reputational perspective there is reason to expect the Commission to engage in consultation with a diverse range of external actors.*

While the Commission faces incentives to consult broadly, variation in the types of external actors consulted can be expected based on the type of consultative instrument used as well as the nature of the policy proposed. As argued by Van Ballaert (2017) different consultation instruments can be used depending on the balance between the goals of building capacity and legitimizing proposals. Notably, more open forms of consultation are well suited to collect information and mobilize broadly, while more closed types of consultations may be better at focused discussions with central stakeholders and mobilization of targeted support. In other words, the Commission may want to know very specific positions on certain parts of a proposal that are more likely to become visible in closed fora.

From a group perspective, the resources required to participate in different consultation practices also vary. Compared to other types of consultation forms, online consultations are particularly easy to participate in, as there are few hurdles to overcome. It is not necessary to be specifically invited and participating does not depend on geographical location (Røed and Hansen 2018: 1448). Participation in direct meetings with the involved DG or other types of closed fora require groups to be more continually present in the policy process. Therefore, we expect: *Open consultation forms will exhibit greater diversity in the types of external actors consulted than more closed consultation forms.*

Policy proposals differ with respect to their level of complexity, their societal effects and the distribution of costs and benefits between different societal groups (Lowi 1972; Wilson 1980). These features affect both Commission incentives to consult and the mobilization of groups seeking access

to consultations (Van Ballaert 2017; Rasmussen & Carroll 2013; Røed and Hansen 2018). As argued by Rasmussen and Carroll (2013) it is particularly crucial that EU policies differ in the extent to which they incur costs and/or benefits to specific societal sectors as well as in the level of concentration of the costs associated with for example regulation.

The EU is particularly strong in business-related policy areas and the main conflict among external actors is oftentimes between business interests on the one hand and civil society on the other (Dür et al. 2015; Rasmussen & Carroll 2013). Therefore, the most relevant line of distinction is between policies regulating specific business sectors, regulation of business in general and other types of policies. Regulatory policies often limit the discretion of certain actors and/or compel them to engage in various types of behavior. While the directly concerned parties may thus face strong incentives to engage, large parts of the public are usually unconcerned. This is particularly prevalent, when the costs are concentrated on a small number of industries (Rasmussen and Carroll 2013).

This aspect of policy can also affect the Commission´s choice of consultation. As argued above, open consultations may be good for broad information gathering and mobilization, while more focused consultation allows for incentive discussion with targeted groups (Van Ballaert 2017). Also, the more directly the Commission is targeting specific economic sectors, the more involvement of these sectors may enhance the capacity and legitimacy of the Commission. In sum, we therefore expect: *consultations in policy areas where specific business sectors are targeted to be more biased towards business interests than consultations in other policy areas.*

Methods and Data

To map the range of consultative instruments used by the Commission, we have built a dataset on consultation by the Commission in all major policy initiatives in the period 2011-2016. The dataset

includes 368 cases and is based on coding of reported consultation practices in the Commission's impact assessment reports.

Systematic impact assessment was launched by the Commission as part of the better regulation agenda that also led to the third generation consultation regime described earlier in the paper (Radaelli and Francesco 2007: 129-165; Radaelli and Meuwese 2010; Renda 2006). In the white paper "European Governance" the Commission (2001: 30) introduced impact assessments as a tool to improve the quality of policy proposals. This ambition led to a set of guidelines on impact assessment that the individual Commission DGs were to follow in their preparation of important policy initiatives (Commission 2002b). These original guidelines have been revised several times, most recently in 2015 (Commission 2015a). Originally, impact assessment reports should only be made for important legislative proposals, but in 2009 the guidelines were changed to include important Commission acts adopted under comitology procedures (Alemanno and Meuwese 2013). Since the entry into force of the Lisbon Treaty, impact assessment reports have therefore been made of all major Commission legislative proposals, delegated acts and implementing acts. The Commission produces an annual amount of 50-100 impact assessment reports. Their length varies from around fifty to several hundred pages.

Important for our purposes, draft impact assessment reports are subjected to outside consultation, and the final version must include a detailed description of the responsible DG's consultation strategy and the results obtained from it (Commission 2015a: 16). Impact assessment reports are normally structured in a semi-standardized fashion. A brief account of consultation is provided in the main text of the report in a section entitled "Consultation and expertise", and one or more annexes then provide more details. The Commission's 2012 impact assessment report on its proposal on simplifying the transfer of motor vehicle registrations across borders (Commission 2012b) provides an example. In this 181-page report, the main text has a one-page explanation of the

consultation of outside interests. The responsible DG briefly explains that it involved selected external experts by way of different surveys, conducted a public online consultation in the period March to May 2011, and finally organized a stakeholder conference on 21 June 2011. This brief description is then explained in more detail in a 22-page annex to the report. The annex first explains how the public online consultation was organized and analyzes in considerable depth what the 828 responses show. Second, it explains how the ensuing stakeholder conference was organized, that it was attended by stakeholders from 22 Member States, and what issues were raised. Third, it accounts for how the surveys of experts were made and what they showed. And finally, it explains an additional initiative, not included in the main text of the report, namely that it supplemented these consultation instruments with commissioning a study with a consulting firm on citizens' and businesses' practical experience with transferring motor vehicles across borders.

Impact assessment reports constitute a rich and detailed data source on the Commission's use of consultation instruments in practice. Compared to alternative sources, e.g. the explanatory memoranda in COM-documents, it provides much more detail. But of course, the validity, representativeness and limitations of the data should be carefully evaluated. First, one worry might be that the reports paint a too rosy picture of consultation because the responsible DG has an interest in demonstrating that it lives up to the official guidelines. This is a legitimate concern. But having studied hundreds of reports we are struck by the level of exact detail – dates, numbers and types of participants, responses given and issues raised. While over- or underreporting of consultation cannot be completely ruled out, we feel confident that, on average, the reports paint a fairly accurate picture of consultation practices.

Second, the data are not representative of the Commission's general consultation practices, since they only cover important cases. According to the guidelines, impact assessment should be done for "initiatives that are likely to have significant economic, environmental or social

impact" (Commission 2015a: 17). In practice, the responsible DG decides in consultation with the Commission's Secretariat-General whether a given initiative falls under this criterion. This fact does not mean that all cases are equally important, but variation is limited which must be taken into account when evaluating the results. Third, the data make it possible to map who is involved in consultations, but not the extent to which consultations have an impact. The study is thus limited to mapping access to the decision arena, not influence. But since access is often a prerequisite for influence, mapping and analyzing access is substantially important (Binderkrantz & Pedersen, 2017).

The consultation practices described in the reports need to be coded to be amenable for analysis. After several coding-workshops with the authors, two coders have hand-coded our sample of Impact Assessment Reports. To assess inter-coder reliability, the two coders both coded 38 cases (out of the 368 cases). For the variables used in this paper, this resulted in an average Krippendorff's α of 0.68 (minimum $\alpha = 0.57$; maximum $\alpha = 0.83$), which indicates reasonable reliability (Krippendorff 2004).

With these caveats in mind, we now turn to the map that we can provide of the Commission's consultation regime. Our prime focus is the three consultation instruments that constitute the core of the Commission's consultation regime, but our coding further distinguishes between subtypes of these consultation instruments. In addition to this core, we also register whether the responsible DG in the Commission meets more informally with selected outside interests, whether EU agencies are consulted, and whether academic experts or consultancy firms are involved. Our coding scheme thus includes:

1. Open online consultations that are announced on the internet and that allow for answers by email or online questionnaires.

2. Restricted online consultations among invited constituents

3. Stakeholder conferences that take the form of open meetings, seminars, or workshops

4. DG meeting with selected external actors

5. Selected fora with restricted and pre-defined participation. This category includes formal settings with limited participation of privileged interests. They may take the form of expert groups, advisory committees, administrative networks, comitology committees, and specialized policy forum.

6. Discussion with EU agency

7. Academic consultation or involvement of private consultancy firms

In order to map the type of interests involved in consultations for consultation type 1-4 we register which categories of interests were included in the consultation. Here, we adopt a broad definition of interests encompassing both associations, individual business firms and citizens. To determine the extent to which different substantive interests are involved and balance obtained in consultations, we distinguish between: Trade unions; business groups or individual business firms; national or subnational public authorities (including associations of such) from the member states; citizen groups; individual citizens; and other actors.

Finally, to investigate possible differences across policy areas we have registered the issue of each proposed regulation. This is operationalized as the first directory code mentioned in the file in the EU's legal database, EUR-lex. Table 2 shows the distribution of consultation across policy areas. As can be seen, there is fairly large variation across policy areas with areas such as "industrial policy and internal market", "freedom, security and justice" and "environment, consumers and health protection" among the ones with the largest number of cases. Not surprisingly, this also means that there is ample variation in which DG is responsible for consultation (numbers not shown). No DG is thus responsible for more than 11 percent of cases (DG internal market and services).

Table 1. Cases according to policy areas

|	No. of cases	%
General, financial and institutional matters	17	4,6
Customs Union and free movement of goods	7	1,9
Agriculture	14	3,8
Fisheries	13	3,5
Freedom of movement for workers and social policy	17	4,6
Right of establishment and freedom to provide services	29	7,9
Transport policy	27	7,3
Competition policy	1	0,3
Taxation	13	3,5
Economic and monetary policy and free movement of capital	5	1,4
External relations	14	3,8
Energy	14	3,8
Industrial policy and internal market	42	11,4
Regional policy and coordination of structural instruments	3	0,8
Environment, consumers and health protection	37	10,1
Science, information, education and culture	7	1,9
Law relating to undertakings	14	3,8
Common Foreign and Security Policy	1	0,3
Area of freedom, security and justice	39	10,6
People's Europe	2	0,5
Missing	52	14,1
Sum	368	100,0

To test the expectation of differences in consultation across policy areas we have classified each policy proposal depending on the degree to which it invokes concentrated costs or benefits on specific business sectors. For this, we have used the classification of the policies according to the EUR-lex directory codes and re-coded polices into four categories: 1) Regulation of specific business sectors, 2) General regulation of business, 3) EU institutional matters and 4) General regulation. The exact recoding of directory codes can be found in appendix A.

Investigation the Commission's Consultation of External Interests

Our ambition is to map the full range of consultation formats utilized by the Commission. Figure 1 provides an overview of the consultation instruments used in the 368 cases included in the study. In addition to the major instruments from the Commission's consultation regime we map whether external interests met with the responsible DG and whether EU agencies, academics or private consultancies were consulted. Several traits are noteworthy here. First, it is striking that the instrument that allows for the most open involvement of external actors – open online consultations – is used in almost three out of four cases. Stakeholder conferences, which also allows for relatively broad involvement of external actors, is used in about half of the cases. Some kind of selected forum – expert groups, advisory committees or the like – is used in about 60 percent of the cases. Meetings between the responsible DG and external actors are about as frequent.

In addition to these types of consultation formats, where a range of different interest might potentially participate, it is also very widespread to consult with academics or private consultancy forms. EU agencies are involved to a lesser extent. These findings are evidence of a well-established consultation regime where no single type of consultation is uniformly used, but where most proposals involve at least 3-4 different types of consultation formats. It is particularly notable that some sort of online consultation is used in most cases – only 25 percent of cases did not involve either open or restricted online consultations.

Figure 1. Cases according to consultation formats (percentages)
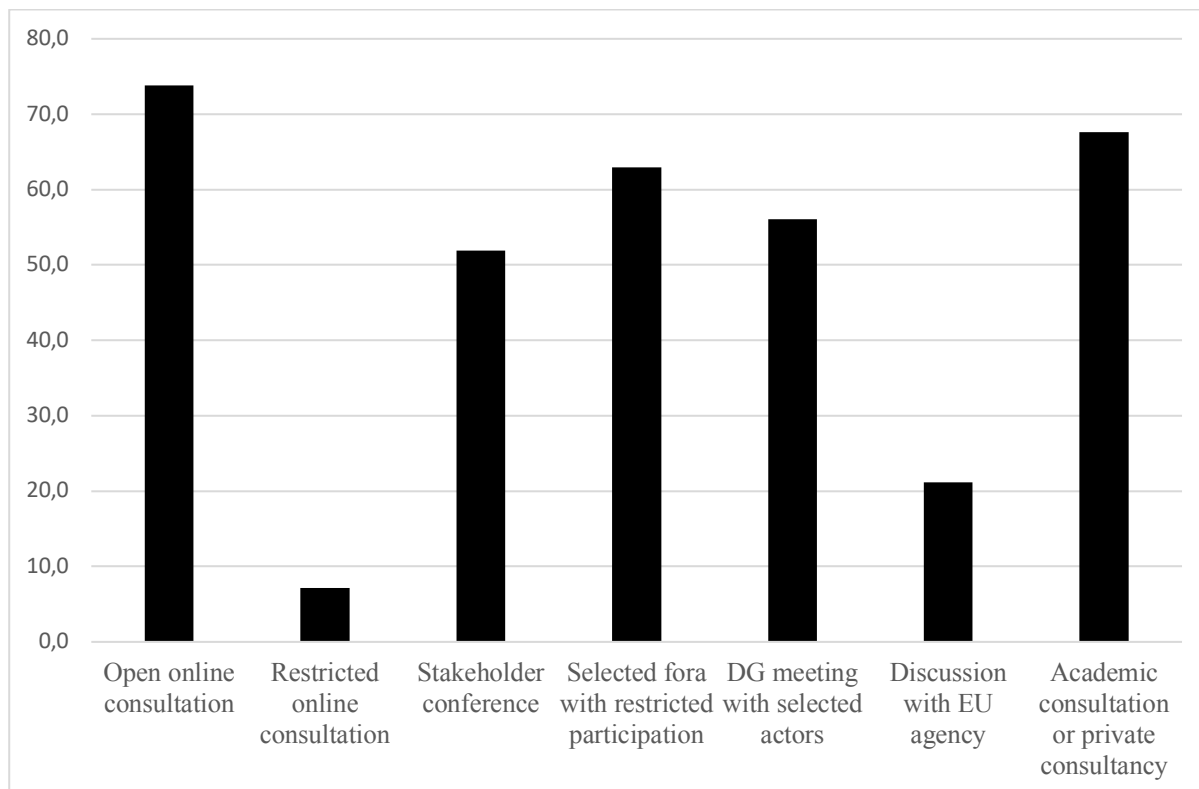
In sum, our mapping shows that the Commission has developed a consultation regime which relies on a semi-standardized set of consultation formats. This is in line with our first expectation that the commission engage in widespread consultation as it prepares policy proposals. The overview in Figure 1 also provides a useful background for investigating whether the Commission's consultation practices are associated with a balanced involvement of external interests and avoid dominance by business interests. We turn to this question now.

A major ambition of the Commission's consultation regime is to avoid, or reduce, bias in the interactions between the EU and interest groups. Since EU lobbying has traditionally been seen as dominated by business interests, the most pressing concern is whether consultation leads to increased involvement of other types of interests. This is not an easy question to evaluate because the evaluation standard is far from straight-forward. What does unbiased consultation look like? The

literature has struggled with this question and provided different solutions. For example, Rasmussen and Carroll (2014) compare the distribution of consulted interests in online consultations to the distribution of interest groups registered in the EU's transparency register. This comparison reveals whether consultation is associated with more or less bias than the registered EU population of interest groups. While insightful, this evaluation standard suffers from the limitation that the degree of bias in the registered EU population of interest groups is unknown, so the comparison is relative, not absolute.

Our take on this question is different. Instead of comparing to an external standard, we compare across consultation formats as well as across policy areas. This type of comparison is still relative, but it allows an evaluation of the extent to which bias varies across consultation formats and policy types. Or in more concrete terms, do business interests for example dominate equally across consultation formats, or are some formats associated with a more balanced involvement of actors?

The Commission's impact assessment reports allow us to map the types of interests involved in four of the consultation formats listed in Figure 1 above. Table 2 shows the distribution of involved actors in these consultation formats. Several interesting patterns emerge. First, across the four consultation formats, business interests and public authorities from the member states stand out as the most commonly involved. In 75-90 percent of the cases involving open online consultations or stakeholder conferences these types of actors are among the consulted. This fact seems to indicate that consultation is at least to some degree 'business as usual' with representatives of government at different levels and business interests being the most regular participants. Second, trade unions are far less consulted and involved in less than a quarter of any consultation format.

Third, it is also evident that business is not the sole representative of external interests. In online consultations, especially open online consultations, the presence of NGOs representing different kinds of citizen interests and individual citizens is noticeable, and NGOs are also participants

in about half of the stakeholder conferences. Fourth and finally, the involvement of external actors varies across the different consultation formats. The highest level of diversity is found in open online consultations. As expected, there seems to be a link between the level of openness and publicity around a consultation format and the extent to which a diverse range of actors are involved. Or, put differently, business interests are accompanied by other social interest to different degrees depending on consultation formats. This indicates that the Commission's use of consultation formats impact on how well-balanced consultation is across actor types.

Table 2. Cases according to actors involved and consultation formats (percentages)

	Restricted online consultation	Open online consultation	Stakeholder conference	DG meeting	Total
Trade unions	23,8	20,4	15,8	13,7	22,7
Business groups	81,0	89,8	75,4	60,6	85,7
Public authorities	47,6	91,6	81,6	65,7	89,9
NGOs	23,8	66,2	50,9	34,3	62,7
Individual citizens	4,8	66,2	5,3	0	49,7
Other actors	19,0	72,9	64,9	48,6	75,3
N	21	225	114	175	308

Note: N denotes the number of cases in which the different consultation formats were used.

Another take on the question of evaluating bias is to look at policy types. Since the configuration of organized interests varies according to the type of public regulation and the specificity of its impact (Lowi 1972; Wilson 1980), the Commission is likely to be subjected to different types of pressures for consultation across policy types. The question is whether the Commission succeeds in upholding

a balanced consultation regime despite variation in external pressure. To investigate this question, we have recoded the policy areas listed in Table 1 into policy types that vary in the degree to which business interests are likely to exert pressure for involvement. If the Commission has succeeded in establishing an unbiased consultation regime, no particular difference in involvement should be observable across these policy types. However, if business interests succeed in exerting pressure, we would expect them to be more involved in the policy types that deal with business regulation – and in particular where specific business sectors are targeted. The results are presented in Table 3.

Table 3. Cases according to actors involved and policy types (percentages)

	Regulation of specific business sectors	General regulation of business	EU institutional matters	General regulation	Total
Trade unions	26,4	25,6	12,5	23,1	23,8
Business groups	97,2	88,4	75,0	75,9	85,8
(Sub)national public authorities	92,5	83,7	87,5	91,7	90,4
NGOs	61,3	53,5	45,8	74,1	63,7
Individual citizens	52,8	37,2	50,0	56,5	51,6
Other actors	69,8	88,4	54,2	84,3	76,9
N	106	43	24	108	281

Note: N denotes the number of cases under the different policy types, cf. Appendix A.

Table 3 indicates that external pressure also matters for consultation. Business groups and trade unions are consulted more frequently in the two policy types that deal with business regulation, whereas NGOs are consulted more frequently in cases dealing with general regulation. In contrast, public authorities from the member states are more evenly consulted across types of policies. It is

difficult not to interpret these patterns as a reaction to the demand from the trade unions, business organizations and NGO's for being involved in the cases that affect them the most.

In other words, consultation patterns seem to reflect both supply and demand factors as expected based on the resource-exchange model. There is therefore a need to include both types of factors in an analysis of potential bias in consultation. We do this in a more formal test in Table 4, which reports the findings from a series of logistic regression analyses, in which the importance of consultation formats is analyzed both with and without controls for policy types. The dependent variable in these analyses is a dichotomous measure that takes the value of one if the actor type is involved in consultation in the individual cases, and zero if not.

The most interesting question from our perspective is whether the consultation formats affect the likelihood that the various actor types are involved once the policy type is controlled for. Some noteworthy patterns emerge. First, with the exception of trade unions, it is evident that open online consultations increase the likelihood that all actor types are consulted. This finding supports the studies that find that online consultations are an effective way of reaching out to a broad variety of actors (Bunea 2017; Quittkat 2011). In contrast, stakeholder conferences seem to involve "the usual suspects", that is, business groups and public authorities from the member states, although this finding fails to obtain statistical significance once policy types are controlled for.

The findings for the policy types also reveals interesting patterns. In line with the descriptive analyses above, cases that deal with regulation of business increase the likelihood that business groups are consulted. In contrast, NGOs are more likely to be consulted on cases that deal with general regulation.

Table 4 . Logistic regression analyses of the consultation of actor types

	Trade unions		Business organizations		National or subnational authorities		NGOs	
Consultation format:								
Restricted online consultation	.78	.72	1.00	.28	.26	-.04	.23	.14
Open online consultation	.53	.44	1.56***	1.89***	2.13***	2.11***	1.71***	2.22***
Stakeholder conference	.42	.34	.82**	.60	.74*	.60	.05	-.16
DG meeting	-.05	.01	-2.32***	-2.34***	.68	.46	.01	.03
Policy type:								
Regulation of specific business sectors	-	.13	-	2.44***	-	-.11	-	-.95***
General regulation of business	-	.15	-	.97	-	-.97	-	-1.27***
EU institutional matters	-	-.80	-	-.76	-	-1.19	-	-1.89***
General regulation	-	(ref.cat.)	-	(ref.cat.)	-	(ref.cat.)	-	(ref.cat.)
Constant	-1.96***	-1.83***	2.10**	1.42*	-.11	.48	-.93**	-.43
Pseudo-R^2	.02	.02	.20	.31	.14	.14	.07	.13
N	307	280	307	280	307	280	307	280

*p<0,1; **p<0,05; ***p<0,01

Conclusion and discussion

Lobbying in the EU has been studied intensively. Our study adds to a small, but growing, literature that changes the perspective from lobbying to consultation. This means studying the relationship between the EU institutions and interest groups from the EU institutions' side of the table. The starting point for this literature is that the EU institutions are not passive receivers of input from organized interests. On the contrary, they have interests in influencing the interaction and spend considerable energy on doing so. We focus on the Commission and study the consultation regime, which has carefully been created over the past decades. The core components of this regime are three

consultation formats: online consultations, stakeholder conferences and more exclusive and restricted consultation fora such as expert groups and advisory committees.

A first ambition of our study was to map this consultation regime. How pervasive is it? How often are the different consultation formats used in practice? Which actors are consulted? Answering these questions requires a comprehensive dataset, which we compiled on the basis of consultation practices in all impact assessment reports from 2011-2016, a total of more than 350 cases of major Commission policy initiatives. This dataset allowed us to provide a full map of consultation formats and involved actor types. Our findings show that the Commisson's consultation regime works in the sense that a wide variety of actors are regularly consulted in standardized fashions through either online consultations, stakeholder conferences, more restricted fora, or a combination of these formats.

A second ambition was to contribute to the study of the impact of the Commission's structuring of interaction with interest groups. An explicit ambition from the Commission's side is to avoid bias, that is, reliance on input from a particular type of actor, especially business interests. The question is whether the Commission's decision of which consultation format to use in a given case matters for which interests are is involved. Or, more specifically, can the Commission avoid dominance by business interests by a careful design of consultation format? Our analyses show that some consultation formats, especially open online consultations, are associated with involvement of a broader range of interests than other consultation formats, e.g. stakeholder conferences. Further, we find that the composition of actors consulted vary across policy areas. When the Commission consults on policies targeting specific business sectors it is more likely to consult with business interests, whereas NGO's are more likely to be involved when policies concern general regulation.

Our findings indicate that the Commission may be able to counteract the influence of business by selecting the most appropriate format for consultation. Importantly, in order to avoid bias

the Commission should not only use a broad set of consultation instruments but also actively use the created input. In open consultation this can be more difficult because the amount of the contributions can be overwhelming and less accessible than the contributions from other instruments. However, as is evident from several impact assessment reports the Commission uses new methods (for example, supervised machine learning) to understand large amounts of text in online consultation. This is testimony of the Commission's aim to use consultation as effectively as possible.

We believe that our findings provide an important contribution to the consultation literature. However, the limitations of our data should be kept in mind. They allow a mapping of the relationship between consultation formats and the involvement of external interests. This is an important step, but should only be a first step towards a full investigation of the potential of designing consultation formats. Our data cannot conclusively determine whether the relationship between consultation formats and actor involvement is causal. This requires other data and methods, e.g. experiments or process-tracing analyses. We therefore invite further studies of this relationship and hope that our analysis has provided some inspiration for this endeavor.

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Appendix A: From EUR-lex directory codes to four policy types

Policy type	EUR-lex directory code	Policy area	No. of cases	Focus in cases
Regulation of specific business sectors Highly concentrated costs/benefits on business sectors	03	Agriculture	14	Regulation of animal health and market organization
	04	Fisheries	13	Common fisheries policy
	07	Transport policy	27	Inland transport and air transport
	12 (not 12.10)	Energy	5	Nuclear energy
	06	Right of establishment and freedom to provide services	29	Focus on sectoral application
	13.20 + 13.30	Industrial policy and internal market	28	Specific sectors
General regulation of business Concentrated costs/benefits on business generally	02	Customs union and free movement of goods	7	Regulation and procedures for custom issues
	08	Competition policy	1	Restrictive practices
	09	Taxation	13	Direct and indirect taxation
	13.10 + 13.40 + 13.60	Industrial policy and internal market	14	General regulation
	17	Law relating to undertakings	14	Company law and intellectual property rights
EU institutional matters Less direct impact on interest groups	01	General, financial and institutional matters	17	EU Governance
	10	Economic and monetary politics and free movement of capital	5	Economic policy
	14	Regional policy and coordination of structural instruments	3	Regional development fund
	18	Common foreign and security policy	1	
	20	People's Europe	2	European citizenship
General regulation	05	Freedom of movement for workers and social policy	17	Movement of workers and social policy
	11	External relations	14	Development aid
	12.10	Energy	9	Utilization of energy

Broad benefits/costs	15	Environment, consumers and health production	37	Environment and consumers
	16	Science, information, education and culture	7	Science, education, culture
	19	Area of freedom, security and justice	39	Border control and police