UACES 46th Annual Conference

London, 5-7 September 2016

www.uaces.org

The European Commission's use of consultation during policy formulation: the effects of policy characteristics.

Bart Van Ballaert

Email: bart.vanballaert@uclouvain.be

LinkedIn: https://be.linkedin.com/in/bavbll

Abstract

This article asks to what extent the European Commission's use of consultation depends on policy characteristics of the proposal being formulated. It examines all consultations organized during a formulation process and looks at the proportion of open consultations restricted consultations as well as the proportion of consultations comprising of a single versus repeat meetings. Three types of use of consultation are conceptualized. A multinomial logistic regression is performed on a cross-sectional sample of 150 policy proposals adopted between 2010 and 2014. Data are triangulated from official documents. The empirical analysis confirms that the use of consultation depends on the complexity, newness and salience of a proposal and reveals only limited evidence for the effects of organizational features.

Keywords

Consultations – European Commission – Policy characteristics – Policy formulation – Public administration –

Stakeholders – Multinomial logistic regression – Rational choice theory

Introduction

The European Commission frequently organizes consultations in order to discuss its draft policies with various kinds of stakeholders – member state representatives, interest groups and interested citizens among others. The Directorate-Generates (DGs) within the European Commission can do so in different ways by seeking advice from expert groups, policy fora or conducting online consultations, seminars and so on. Recent literature witnessed that the Commission's use of consultation varies strongly across policy areas and even across policy proposals (Rasmussen and Toshkov, 2013; Quittkat and Finke, 2008). It is, however, still a pending question how this variation can be explained. This article therefore asks to what extent the Commission's use of consultation varies in response to the policy characteristics of a proposal being formulated.

Theoretically, policy characteristics entail the basic attributes touching upon the complex, the legal or salient nature a policy under formulation. These characteristics are relevant for understanding EU lobbying (Bunea, 2013; Mahoney, 2008; Klüver, 2011; Klüver et al., 2015) and this article tests whether they can also provide a plausible explanation for variation in the use of consultation. Thus, the Commission is assumed to estimate the policy characteristics related to a draft policy rudimentarily. This assessment enables the Commission to identify its precise needs and to organize consultation accordingly, by choosing the practices most suited to attain those needs. Hence, the Commission is expected to assess anew how to consult for each formulation process and this is why we observe so much variation. Alternatively, the use of consultation might also vary because Commission DGs have developed diverging routines over time (DiMaggio and Powell, 1991; March and Olsen, 1989).

This article studies consultation patterns which cover the entire range of consultation practices within the formulation process. It therefore considers each consultation practice as a single unit making part of the consultation pattern associated with that formulation process. Such a comprehensive approach to consultation is advantageous in two ways. On the one hand, this article introduces a higher level of analysis than previous research on Commission consultations which allows outlining the broader picture about how the European Commission consults with stakeholders. Studies in the field of bureaucratic politics, executive politics and public administration which previously studied Commission consultations analyzed only part of all the consultations carried out by the

European Commission throughout the formulation process. On the other hand, the comprehensive view ties in more closely with the daily work practice inside the European Commission, where stakeholder consultations are carefully planned as part of the formulation process.

Scholars recently focus their attention on assessing the impact of particular consultation practices on policy-making. As such, we know that online consultation potentially delays intra-Commission decision-making because information processing is resource-intensive (Chalmers, 2014). Others added that Commission DGs use expert groups mainly for problem-solving, to supplement their in-house expertise, although sometimes expert groups also provide a strategic means to strengthen the responsible DG's bargaining position vis-à-vis other bureaucratic departments (Hartlapp et al., 2014). In similar vein, online consultation enables the European Commission to reinforce its bargaining position at the inter-institutional level (Bunea and Thomson, 2015). As inter-institutional negotiations intensify, this explains why online consultation signals that decision-making will last relatively long (Rasmussen and Toshkov, 2013). Another known example is that the Commission frequently consults with the member states through its system of expert groups from the start of the drafting process to increase political support for its draft initiative (Haverland, 2009).

In addition, there exists a vast amount of literature on interest group politics which also studies consultation. Recent studies mapped the stakeholder population attending online consultations (Rasmussen and Alexandrova, 2012) and expert groups (Rasmussen and Gross, 2015; Gornitzka and Sverdrup, 2015). More generally, online consultations frequently constitute the empirical background against which scholars analyze interest group position alignment (Bunea, 2014) or lobbying influence in the EU formulation process (Rasmussen and Carroll, 2013; Klüver, 2013; Hermansson, 2016). Likewise, scholars also analyzed stakeholder involvement and influence throughout the formulation process in expert groups (Metz, 2015; Robert, 2013). These literatures converge by their interest for Commission consultations although, one by one, they interpret the diversity of consultation in a minimalist way. As such, this article provides an analytical framework to study consultation patterns to facilitate cross-fertilization between these literatures.

This article hereafter conceptualizes the Commission's use of consultation and presents four hypotheses about the effect of policy characteristics on the use of consultation. The research design is presented next. The empirical analysis is based on a cross-sectional sample of 150 policy proposals, drafted by four Commission DGs and adopted by the College between 2010 and 2014. Data are triangulated through inspection of official documents. The next section presents the statistical results of a multinomial logistic regression; the empirical findings are interpreted in a separate section. To conclude, the broader implications of this research are framed in view of the recent reform of Better Regulation.

Consultation patterns and the Commission's use of consultation

As a general rule, the Commission consults stakeholders with two goals in mind: capacity-building and legitimization (Bouwen, 2009; Princen, 2011; Klüver, 2013). On the one hand, the Commission operates in an increasingly complex policy environment while possessing only limited in-house expertise (Chalmers, 2013). Hence, the Commission uses consultation to strengthen its problem-solving capacity by collecting expertise from stakeholders (Princen, 2011). On the other hand, the Commission is also a non-majoritarian institution and, for this reason, it requires political support of stakeholders to legitimize its policy plans. The Commission therefore organizes consultation to gain attention for its policy proposals and to mobilize support from key constituencies, varying from the public at large to specific economic groups (Klüver, 2013). Nonetheless, consultation patterns presumably differ in their extent to attain the Commission's need for capacity-building and legitimization.

To be clear, a consultation pattern is defined as the whole of consultation units organized regarding the same formulation process and having a minimum degree of institutionalization. A consultation pattern thus relates to diverging practices such as seminars, workshops, expert groups, policy networks as well as conferences and online consultations (but matters like office appointments, lunch meetings or even phone calls fall outside the scope of the analysis). These practices are studied at the aggregated level of a consultation pattern. This means that one consultation pattern might – but does not need to - include multiple units of consultations as the relation between consultation units and formulation processes is seen as 'many units-to-one formulation process' and not

necessarily as 'one unit-to-one formulation process'. Consultation patterns are hereafter compared on the basis of two design properties, being the relative accessibility and repetition of consultation.

Table 1: The suitability of consultation in terms of capacity-building and legitimization based on design.

	Single meeting	Repeat meetings
Open access	**Capacity-building:** collecting/cross-validating information **Legitimization:** gaining maximum attention/mobilizing broad support	**Capacity-building:** collecting/cross-validating information **Legitimization:** gaining maximum attention/ mobilizing broad support
Restricted access	**Capacity-building:** collecting/cross-validating information AND problem-solving **Legitimization:** gaining attention/mobilizing AND building targeted support	**Capacity-building:** collecting/cross-validating information AND problem-solving **Legitimization:** gaining attention/mobilizing AND building targeted support

Accessibility and repetition create diverging opportunities and limitations in consultations. Accessibility indicates the extent to which the Commission restricts access to consultations for stakeholders in a consultation pattern. By organizing mostly open consultations, the Commission can gain most attention or mobilize broad and diverse societal support for its policy plans (Klüver, 2013). The reverse side of consulting a large and diverse audience is that the transaction costs to exchange information increase likewise (North, 1990) and turn consultation into a series of dyadic exchanges between the Commission and each participants. As regards capacity-building, open consultation constrains the Commission to collect and cross-validate policy-relevant information submitted by participants. Alternatively, the Commission could restrict access to consultation to a limited number of stakeholders but this inevitably raises the chance of participation bias. Restricted consultations are suited to legitimize a proposal in the eyes of a limited target audience of particular stakeholders but not with respect to the public at large. On the benefit side, a smaller and potentially more homogeneous stakeholder audience limits transaction costs and could turn consultation into a web of interaction, permitting the Commission as well as any participants to exchange information more freely. For this reason, restricted consultation potentially sustains more intense forms of interaction needed for capacity-building as the Commission can engage in substantive (group) discussions with stakeholders besides collecting information.

In order to find out the extent to which Commission can use these opportunities, one should also take into account whether consultation practices resemble single or repeat meetings. Repeat meetings provide stakeholders the prospect of exchanging information with the Commission regularly. In return the Commission expects stakeholders to adopt a more pragmatic stance which increases the likelihood that stakeholders might gradually change or refine their policy views. This further enables the Commission to engage in more intense forms of consultations with stakeholders like problem-solving (in terms of capacity-building) and consensus-building with a specific target audience (in terms of legitimization). Otherwise, stakeholders are less likely to alter their policy views when the time span of consultation is limited to a single meeting. The intensity of consultation is therefore limited to collecting information or discussing closely defined topics (for capacity-building) and to mobilize support of a specific target audience (for legitimization).

When studying accessibility alongside repetition, it is possible to differentiate in the Commission's use of consultation in terms of fixed use, custom use and all-round use. The use of consultation is a novel concept describing how the Commission interacts with stakeholders in the formulation of policies.

Fixed use (open access – one-off meeting)

The fixed use of consultation denotes that a consultation pattern mainly consists of one-off meetings with open access. One can think of online consultations, with the Commission reaching out to a broad audience to mobilize societal support for its policy plans. Public support as well as more targeted support from specific economic groups is often crucial to legitimize a policy proposal in the face of political opposition. At the same time, the Commission can only enhance its capability to deal with a policy by collecting policy-relevant information from stakeholders. This presumes that the Commission is sufficiently acquainted with a policy to cross-validate the collected information. These consultations are said to follow a 'fixed' course as their design excludes alternative ways to consult stakeholders.

Custom use (restricted access – one-off meeting)

The custom use indicates that a consultation pattern mainly consists of one-off meetings with restricted access. These consultations have a 'custom-made' design to fit specific policy-needs of the Commission. The Commission is especially interested here in gaining attention from a targeted group of stakeholders and less so in involving the public at large in consultation. Even though the Commission can triangulate information, the Commission rather aims to engage in substantive discussions with stakeholders when using consultations like workshops. Note that these discussions are handled relatively fast which suggests that consultation is probably tailored to detailed policy aspects and less to broader discussions about strategic political goals.

All-around use (restricted access – repeat meetings)

The all-round use of consultation notes that a consultation pattern mainly includes repeat meetings to which access is restricted. The Commission could simply collect information for capacity-building but these consultations are more likely to thoroughly discuss policy problems in all their aspects. Furthermore, the Commission invites a specific target audience to become a member of, for instance, an expert group to negotiate with stakeholders in a secluded setting (Rasmussen and Toshkov, 2013). This way the Commission not only aims to mobilize the support of these stakeholders but actually tries to enhance the political support for its policy plans. The notion of 'all-round' emphasizes the highly versatility nature of these consultations.

Implausible use (open access – repeat meetings)

Finally, the Commission could, in principle, organize open consultations which consist of repeat meetings. For example, the Commission measures popular opinion at multiple occasions through its default Eurobarometer surveys. However, these surveys focus on revealing general political attitudes and less on detailed opinions that are relevant for the formulation of one specific policy proposal. Evidently, the Commission could organize more than one online consultation but it is more suited to treat these as independent events. Given that my empirical data confirm that the Commission rarely consults this way within the context of policy formulation, this type of use of consultation is disregarded in the remainder of the article. My empirical data, however, confirm that no

consultation patterns is classified this way within the context of policy formulation, this type of use of consultation is disregarded in the remainder of the article.

The Commission's use of consultation in view of policy characteristics

This article reasons that the Commission's need for capacity-building and legitimization depends on the policy being formulated and, as explained earlier, that consultation patterns differ in the extent that they can attain those goals. As a result, the Commission's use of consultation is also expected to be policy-specific. This section presents hypotheses about the effect of specific policy characteristics on the Commission's use of consultation. These policy characteristics are settings, scope, newness and salience. One other legal characteristic, the bindingness of a proposal, is being controlled for as well as two organizational features of the Commission.

Previous work presents complexity as one catch-all concept to denote how policy-makers cope with uncertainty in decision-making (Klüver, 2011; Neshkova, 2012), but I introduce settings and scope as two distinct characteristics of complexity. Firstly, I borrow the concept of settings from the work of Hall (1993: 278) who defines settings as the technical provisions constituting a policy, in addition to the overall goals steering a policy in a field and the choice of policy instruments applied to achieve those goals. Regulatory settings, like the maximum CO_2 emission level defined for cars, matter for stakeholders because they have redistributive consequences, in this example for car manufacturers who should adjust their production process to comply with regulations (Majone, 1996). The Commission is poorly capable to assess the adjustment costs of proposed settings as these differ for particular stakeholders (Rasmussen, 2015). Consulting the stakeholders targeted by such regulations is essential to formulate effective policies. Hence, the Commission is expected to involve these stakeholders as closely as possible in consultation to ensure their cooperation and the sharing of policy-relevant information. All-around use of consultation enables the Commission to negotiate with stakeholders as well as to discuss substantial policy aspects such as the level at which to calibrate a regulatory setting, the feasibility of technical provisions in view of economic cost-benefit analyses.

8

H1: The more settings a policy includes, the more likely the Commission chooses all-round use of consultation.

Secondly, scope indicates the extent to which policy effects are spread out over multiple policy fields (Mahoney, 2008). Historical institutionalism provides that the Commission might not always foresee the policy effects created directly or indirectly through interaction with other existing policies. Such unintended consequences are, however, likely to arise in specific circumstances (Pierson, 2000). The likelihood for unintended consequences presumably increases along with the scope of a policy. The Commission can, however, minimize this risk by gaining a maximum of attention for its policy plans and by collecting policy-relevant information on a large scale. In other words, the Commission is expected to consult a large and diverse audience and only fixed use of consultation is suited for this purpose. In addition, the Commission can mobilize broad support which is welcome given that a policy with a wide scope might generate variable costs and benefits for economic groups.

H2: The wider the scope of a policy, the more likely the Commission chooses fixed use of consultation.

The legal characteristics of a policy proposal are also studied by looking at newness and bindingness. Thirdly, newness refers to the proposed legal change in a policy which is highest for new proposals (instead of amending ones) that aim to change the policy acquis substantially (instead of procedurally) (Reh et al., 2013; Bunea, 2013). Changes in policy also incur adjustment costs on stakeholders and, as such, mainly require the Commission to legitimize its policy plans. This is mostly so for new/substantial proposals which potentially incur the highest adjustment costs for a potentially diverse range of stakeholders. Fixed use of consultation is most suited to gain attention from all interested stakeholders, to mobilize support among both the public at large and economic groups or, alternatively, to ease the minds of opponents for a policy that is in the making. In addition, the Commission can collect policy-relevant information although this is not of primary importance.

H3a: When formulating a new/substantial proposal, the Commission most likely chooses fixed use of consultation.

The situation is quite different for amending proposals which only affect the stakeholders who "adapted to the existing policy path over the course of time" (Hartlapp et al., 2014: 19). Amending/procedural proposals leave most of the policy acquis intact. The changeover from the old into new situation should therefore proceed smoothly for the majority of stakeholders (Alexander, 2001: 258). The Commission is also expected to have more internal capacities to formulate an amending proposal given its prior experience in drafting a legal basis. Hence, consultation most likely aims to mobilize support of a specific target group of concerned stakeholders and less to enhance its problem-solving capacity. The custom use of consultation is suited to attain this goal. The analysis should point out whether these arguments also apply to new/procedural and amending/substantial proposals.

H3b: When formulating an amending/procedural proposal, the Commission most likely chooses custom use of consultation.

Moreover, this article studies non-binding policies unlike previous research which usually focuses on studying proposals for legislation. Bindingness indicates whether the Commission proposes a non-binding instrument (soft law) or a specific legally binding instrument (hard law) to implement policies. This type of variation is controlled for although the formulation of non-binding and binding proposals is identical in terms of decision-making within the Commission and, as such, is not expected to affect the Commission's use of consultation.

Fourthly, salience is defined as the relative importance attached to a policy by the Commission (Warntjen, 2012). The Commission prioritizes policy problems on its working agendas, with salience being its 'cognitive shortcut' to choose which policy problems should be addressed by public policy (Oppermann and de Vries, 2011: 3-4). The Secretariat-General ensures that the responsible DG (or lead DG) coordinates the planning of all important policies prior to policy formulation with other concerned Commission DGs through the Impact Assessment or IA procedure (Radaelli and Meuwese, 2010). Commission DGs are compelled to mutually agree on the policy content under the IA procedure. The link between salience and Impact Assessment is convenient for two reasons. First, the Commission's perception of salience matters as draft policies almost never receive public attention prior to consultation. Second, salience can have the effect of a spotlight on decision-making and stir up political opposition which is why the lead DG intensifies the planning of a salient proposal through Impact

Assessment. The IA procedure focuses on defining a policy problem, identifying policy options, performing cost-benefit analyses. As regards the use of consultation, the lead DG/Commission is hypothesized to organize online consultations to engage with a broad stakeholder audience in order to get insight in the policy positions of all concerned stakeholders and, eventually, to mobilize their political support. At the same time, fixed use enables the Commission to collect information relevant for its IA analysis.

H4: The more a policy is considered as salient, the more likely the lead DG chooses fixed use of consultation.

Furthermore, I control for two organizational features which could also explain variation in the Commission's use of consultation. On the one hand, I control for the Commission DG responsible to conduct consultation. Bureaucratic organizations such as the European Commission are highly conducive environments for the creation of standard operating procedures (DiMaggio and Powell, 1991; March and Olsen, 1989). This would cause the use of consultation to vary in the first place across organizational units, instead of being policy-specific. The Commission is fragmented in functional DGs (Egeberg, 2012) who could develop particular routines for consultation over time (Spence and Edwards, 2006). Previous research on Commission consultations noticed that the use of consultation varies across DGs without taking policy characteristics into account (Gornitzka and Sverdrup, 2008; Quittkat, 2011; Quittkat and Finke, 2008). On the other hand, I control for differences in administrative capacity because organizational units with more staff have a higher internal capacity to deal with a policy problem (Princen, 2011). This might decrease the need to use consultation for capacity-building due to which consultation would be mainly used for the purpose of legitimization. Gornitzka and Sverdrup (2008) argued that Commission DGs consult expert groups to supplement poor in-house expertise. Chalmers (2014) stressed that processing input from online consultations is a labor-intensive process, especially for smaller DGs.

Research design

Each formulation process linked with a policy proposal is considered an individual case. This is consistent with the view that multiple consultation practices are likely nested in a consultation pattern per formulation process. Cases are identified through EUR-Lex, the online database gathering documents issued by EU institutions. A cross-sectional sample includes policy proposals formulated by DG Climate Action, DG Communications Networks,

Content & Technology, DG Environment and DG Internal Market and Services, which have been adopted by the College of Commissioners in the period between 2010 and 2014. The selected DGs have policy-making competences which were transferred to the EU level at different times. Given that the Commission developed new consultation practices through time, a relatively young department such as DG Climate Action might be more inclined to use recently developed consultation practices like online consultation than an old department like DG Internal Market and Services or, vice versa, the latter might use expert groups more frequently than the former. This makes a total of 260 cases with the Commission actually using consultation in 150 or 57.7 per cent of the cases. The empirical analysis thus focuses on a subsample of 150 cases. The remainder of this section discusses the operationalization of the variables as summarized in Table 2.

Table 2: Operationalization of variables.

| Variables	Indicators	Distribution (min; max) or (%)	Sources
Use of consultation	Consultation units; Accessibility; Repetition	Fixed use (40.7 %); Custom use (24.0 %); All-round use (35.3 %)	Commission proposal, IA report, personal correspondence
Settings	Weighted share of indicators, standards or targets.	Ratio (0; 21.6)	Commission proposal
Scope	Number of EUROVOC-descriptors of a proposal	Interval (1; 7)	EUR-Lex
Newness	Nature of policy change	Procedural/amendment (13.3 %); Substantial/amendment (22 %); Procedural/new (1.3 %) Substantial/new (63.3 %)	Commission proposal; Legislative Observatory
Bindingness	Legal instrument under proposal	Non-binding document (39.3 %); Proposal for a Decision (4.0 %); Proposal for a Directive (26.7 %); Proposal for a Regulation (30.0 %)	EUR-Lex
Salience	Number of meetings of IASG	Ratio (0; 8)	IA report
Commission DG	Lead DG which formulated the proposal	DG Climate (8.7 %); DG Connect (18.7 %); DG Environment (20.0 %); DG Internal Market (52.7 %)	EUR-Lex
Administrative capacity	Number of staff working within the Directorate	Ratio (24; 570)	Annual activity reports, personal correspondence

Dependent variable

I identified all consultation practices organized in relation with the 150 sampled formulation processes on the basis of Commission proposals, Impact Assessment reports and personal correspondence with Commission officials. Each consultation practice is then classified as having open or restricted access; as comprising a single meeting or repeat meetings. If this distinction was unclear at first sight, a meeting agenda and/or report of the respective consultation has been inspected. As such, I could derive relative frequencies for accessibility and repetition in a consultation pattern. First, the relative frequency for accessibility is the proportion of the number of open consultations by the number of restricted consultations in a consultation pattern. Second, the relative frequency for repetition is the proportion of the number of single interactions by the number of repeat interactions.[1]

I performed a logarithmic transformation to make these relative frequencies symmetric in nature due to which they are expressed as a value between -∞ and +∞. These relative frequencies are depicted in Figure 1 below, with the vertical axis representing differences in accessibility and the horizontal axis representing repetition. Values below 0 indicate that the accessibility in a consultation pattern is relatively restricted. Values above 0 indicate that a consultation pattern contains mainly open access consultations. Odds equal to 0 mean that a consultation pattern includes as many open as restricted consultations. The measure for repetition is identical in principle, with values below 0 denoting a higher proportion of single meetings and values above 0 indicating a higher proportion of repeat meetings. Likewise, values equal to 0 imply that a consultation pattern includes as many single meetings as repeat meetings. The dots show the empirical distribution of consultation patterns in the research sample. The size of these dots indicates the number of consultation patterns lying at the same position, thus, having a similar composition. Overall, the Commission's use of consultation stands out as highly diverse. Consultation patterns situated close to the corners of the graph have a relatively uniform composition whereas those lying in the middle of the graph consist of diverse consultation practices.

---

[1] Values of 0 are replaced by 0.1 as it is mathematically impossible to divide by 0.

**Figure 1:** Distribution of the use of consultation.
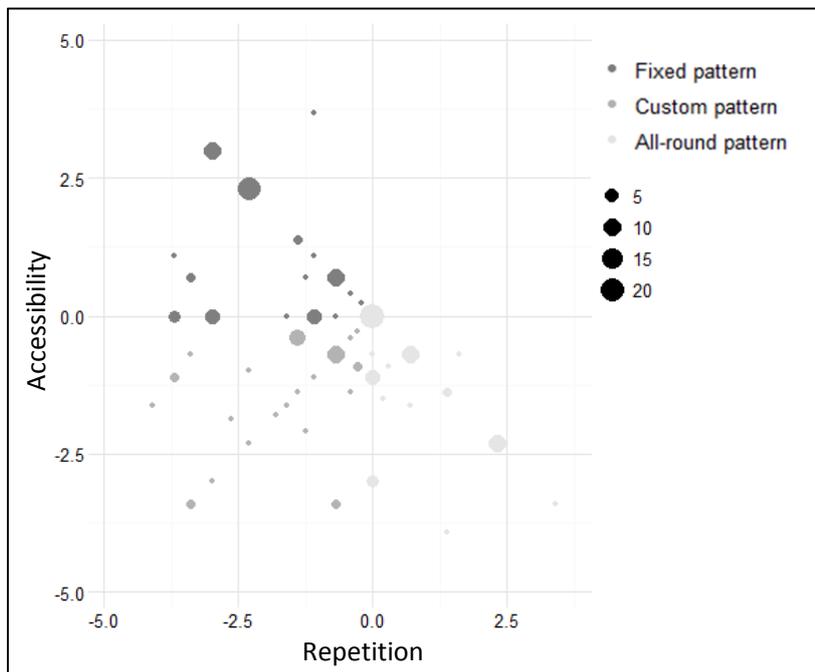
Finally, I recoded these relative frequencies into one categorical variable, i.e. the use of consultation. The cut-off lines correspond with the values of 0. When a consultation pattern is situated exactly on the cut-off line, all-round use is given priority over fixed use and custom use in the process of classification to compensate for the fact that repeat meetings are counted as only one unit of consultation. When applicable, fixed use is given priority over custom use as the former requires more effort to organize. Evidently, the recoding entails some loss of information although the resulting measure is more comprehensible and simultaneously captures differences in terms of accessibility and repetition. The color of the dots also marks the three uses of consultation: dark grey corresponds with fixed use, medium grey with custom use and light grey with all-round use of consultation. There are 61 consultation patterns with fixed use, 36 patterns with custom use and 53 patterns with all-round use of consultation. The upper-right half of the map is empty which reaffirms that open access in combination with repeat interaction was not observed in the research sample.

In addition, the absolute number of consultation practices constituting a consultation pattern is also relevant as the use of consultation is measured based on relative frequencies. Figure 2 shows the relationship between, on the one hand, the proportion of fixed use, custom use and all-round use and, on the other hand, the number of

consultation practices. Fixed use occurs relatively less frequently as the number of consultations increases. To a lesser extent the same trend marks the all-round use. Custom use occurs more frequently as the number of consultations increases.

Figure 2: The Commission's use of consultation in relation with the number of consultations organized.
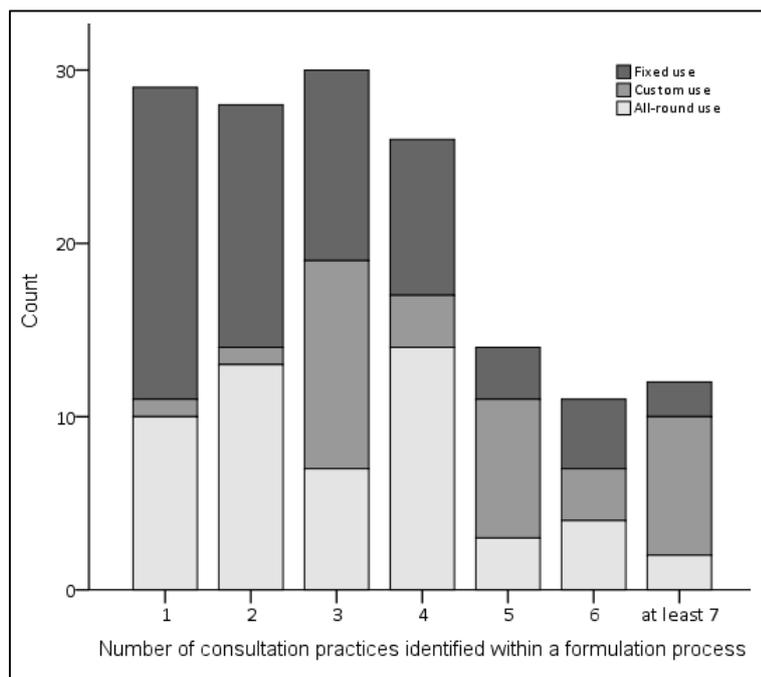
Independent variables

The following paragraphs discuss the operationalization of the independent variables, starting with the complexity characteristics. Settings are measured by searching in each Commission proposal for the terms 'standards', 'standardi', 'indicator' and 'target' as policy-makers use these terms interchangeably, while referring to a similar practice of calibrating economic processes through settings. I then added the number of search hits for each proposal and weighted this summed score by the text length of the respective proposal. Thus, the relative importance of settings in each proposal is reflected in how pronouncedly that proposal treats indicator-, standard- or target-setting (Van Ballaert, 2015). Scope is measured on the basis of EUROVOC-descriptors. EUROVOC is a multilingual thesaurus, managed by the Publications Office of the European Union, which includes thousands of keywords that are hierarchically organized into 21 fields and 127 subdomains. The assigned keywords reflect a document's conceptual content and cover all policy fields in which the EU institutions are active (Steinberger et al.,

2002: 417). Hence, wider scope should coincide with multiple EUROVOC-descriptors referring to different policy fields.

The legal characteristics of a Commission proposal are studied in terms of newness and bindingness. Newness identifies whether proposed changes mainly amend an extant policy or introduce new policy provisions as inferred from the proposal's title (Rasmussen and Toshkov, 2013; Reh et al., 2013) while also taking into account whether the proposed changes are mainly procedural or substantial in nature (Reh et al., 2013). Hence, the measure for newness can take on four categorical values: procedural/amendment, substantial/amendment, procedural/new and substantial/new, although the final sample contains no procedural/new proposals (due to no use of consultation). Bindingness is measured in four categorical values. Non-binding documents cover green papers, white papers or Commission communications which are all instances of 'soft law' and therefore the least instrusive. In ascending order of intrusiveness, legally binding instruments include a Commission proposal for a Decision, a Commission proposal for a Directive or a Commission proposal for a Regulation (Chalmers et al., 2010: 98-103).

The salience attributed to a proposal by the Secretariat-General is measured as the number of formal meetings organized in an Impact Assessment Steering Group.[2] The IA procedure empowers the Secretariat-General in intra-Commission decision-making because the lead DG requires the Secretariat-General's approval for every IA report to proceed with the formulation process (Radaelli and Meuwese, 2010). Information is retrieved via IA reports.

Finally, as regards the organizational features, Commission DG indicates which department is responsible for the formulation of a policy proposal, thus, acting as the lead DG. The sample includes dossiers managed by DG Climate action, DG Connect, DG Environment and former DG Internal Market. Administrative capacity measures the absolute number of staff working within a Directorate (one hierarchic level below the DG) (Chalmers, 2014: 9-10). Information is retrieved from the annual activity reports of DGs and through correspondence with DG Human Resources and Security.

---

[2] A Pearson correlation analysis confirms that this measure is unrelated with the measurement indicators for complexity.

Data analysis

Multinomial logistic regression is selected to analyze the use of consultation which is a nominal variable. Independent variables are related linearly with the dependent variable and collinearity statistics did not reveal problems with multicollinearity. The Durbin-Watson test confirmed independence between observations. The analysis is performed on 137 cases as 7 cases were excluded after residual inspection. Maximum likelihood is used to estimate the model parameters. Table 3 provides information about the model fit. The fitted model predicts the use of consultation significantly better than the null model. This is evidenced by the decrease in -2LL between the null and the fitted model which is significant at the level of $p < 0.001$. McFadden R^2 is equal to 0.250 which indicates that this improvement in model fit is excellent (McFadden, 1979). More precisely, five independent variables predict the use of consultation significantly in the regression model. In decreasing order of significance, these are settings ($p \cong 0.000$), newness ($p = 0.023$), salience ($p = 0.009$), Commission DG ($p = 0.021$) and scope ($p = 0.040$). In contrast, bindingness ($p = 0.112$) and administrative capacity ($p = 0.161$) cannot significantly predict the use of consultation.

Table 3: Model fit parameters (N = 137).

Independent variables	Likelihood ratio
Settings	31.047***
Scope	6.421*
Newness	11.322*
Bindingness	7.500
Salience	9.467**
Commission DG	14.851*
Administrative capacity	3.654
-2LL of the null model	294.030
-2LL of the fitted model	220.451
Likelihood ratio chi-square	***

Notes: Dependent variable —Use of consultation. Significance testing is done
by likelihood ratio tests; significance levels: ***$p \le 0.001$; **$p \le 0.01$; *$p \le 0.05$.
McFadden R^2 = .250.

Multinomial regression is basically an extension of a binomial logistic regression model for which the custom use of consultation is here set as the referent category. The regression model as shown in Table 4 estimates parameters

separately for (1) the likelihood of finding custom use relative to fixed use, (2) the likelihood of finding custom use relative to all-round use and, as a logical consequence, (3) the likelihood of finding fixed use relative to all-round use. However, it also provides the overall significance of variables across these binary models and produces smaller estimates of standard errors. The regression coefficients assigned to the independent variables (and their categorical values) are odds ratios. An odds ratio indicates whether and how an increase in one measurement unit of an independent variable affects the likelihood for having fixed use of consultation relative to the likelihood that we find the custom use of consultation. The interpretation for continuous variables is quite straightforward: When an odds ratio has a value smaller than 1, the outcome of the DV becomes less likely in response to a unit increase of the IV. When an odds ratio is larger than 1, the outcome of the DV becomes more likely in response to a unit increase of the IV. The interpretation is slightly more difficult for categorical variables where a referent category is chosen against which to compare each other category. Finally, Table 4 also includes confidence intervals for which we can say with 95 per cent confidence that the odds ratio lies between the bottom and upper limit. The 95 per cent confidence interval is only meaningful for interpretation as long as it does not include the value of 1.

Table 4: Multinomial logistic regression model for use of consultation (N = 137).

Independent variables	(1) Fixed use relative to Custom use		(2) All-round use relative to Custom use		(3) All-round use relative to Fixed use	
	Odds ratio	(95% C.I.)	Odds ratio	(95% C.I.)	Odds ratio	(95% C.I.)
Settings	3.192 ***	(1.717; 5.933)	1.792	(0.975; 3.296)	.562 **	(.375; .841)
Scope	1.755 *	(1.087; 2.833)	1.569 *	(1.015; 2.425)	.894	(.606; 1.318)
Newness (referent category = substantially new)						
• procedural/amendment	.200	(.036; 1.129)	.401	(.076; 2.121)	2.001	(.417; 9.604)
• substantial/amendment	.106 *	(.016; .703)	1.066	(.219; 5.189)	10.592 **	(1.954; 57.423)
Salience	.607 *	(.397; .930)	1.017	(.729; 1.419)	1.675 **	(1.143; 2.456)
Bindingness (referent category = proposal for a Regulation)						
• non-binding COM document	.317	(.049;2.077)	1.231	(.238; 6.367)	3.878	(.746; 20.155)
• proposal for a Directive	4.017	(.838; 19.261)	1.145	(.277; 4.740)	.285	(.071; 1.150)
Commission DG (referent category = DG Internal Market)						
• DG Climate Action	.510	(.055; 4.754)	2.739E-10	(2.739E-10; 2.739E-10)	5.369E-10	(5.369E-10; 5.369E-10)
• DG Connect	1.848	(.207; 16.497)	2.352	(.425; 13.023)	1.273	(.198; 8.168)
• DG Environment	.717	(.152; 3.381)	.327	(.080; 1.339)	.456	(.106; 1.969)
Administrative capacity	.988	(.971; 1.006)	.998	(.992; 1.003)	1.009	(.992; 1.027)

Notes: Dependent variable—Use of consultation. Reference categories: Commission DG —DG Internal Market; Bindingness—proposal for a Regulation; Newness —substantial/new. Coefficients represent odds ratios; 95 per cent confidence intervals in parentheses; significance levels: ***p ≤ 0.001; **p ≤ 0.01; *p ≤ 0.05.

Policy characteristics significantly explain variation in the use of consultation. First, proposals with a higher degree of settings are most likely associated with the fixed use and least likely with the custom use of consultation (custom < all-round < fixed use). The empirical data refute H1. Second, proposals with a wider scope are most likely associated with all-round use or fixed use of consultation (custom < fixed = all-round use). This confirms H2 although this relationship is equally strong than the one between scope and all-round use of consultation. It is therefore more adequate to infer that increasing scope is least likely associated with the custom use of consultation. Third, a substantial/new proposal is set as the referent category for newness. This means that the lead DG most likely opts for fixed use of consultation (instead of custom use) when formulating a substantial/new proposal relative to an amending/substantial as well as procedural/amending proposal. In similar circumstances, the lead DG also more likely chooses fixed use instead of all-round use of consultation which confirms H3. Fourth, bindingness cannot predict the use of consultation significantly. Finally, a relatively salient proposal is most likely subject to custom use or all-round use of consultation (fixed < custom = all-round use). This also confirms H4 although the all-round use of consultation occurs equally likely.

Organizational features only explain a small portion of variation in the Commission's use of consultation. The likelihood ratio test indicates that Commission DG significantly improves the prediction of the use of consultation even though none of the regression coefficients is significant. Furthermore, administrative capacity cannot predict the use of consultation in a meaningful way.

Discussion of results

This article initially asked why the lead DG consults stakeholders in different ways with variation occurring even at the level of policy proposals. The analysis points out that the Commission decides how to consult based on the following policy characteristics: the complexity (in terms of settings and scope), newness and salience of a policy.

Complexity characteristics significantly explain the Commission's use of consultation within a regulatory environment. On the one hand, the Commission prefers fixed use of consultation (open access – single meeting) regarding proposals with relatively many settings instead of granting stakeholders a seat directly at the negotiation table. Given the redistributive consequences which settings might have, it is not hard to imagine that diverse

stakeholders ranging from associational groups to competing enterprises and national regulatory authorities all want to have a say in the formulation process. The Commission benefits from consulting a diverse audience as it can then play out regulatory competition between economic groups by collecting and cross-validating information. Stakeholder involvement is therefore relatively limited and rather supports a pluralist view of Commission-stakeholder relations than a view of the executive being 'captured' by specific economic groups which possess informational advantages.

On the other hand, the Commission is as likely to opt for fixed use (open access – single meeting) as for all-round use of consultation (restricted access – repeat meetings) regarding cross-cutting proposals. The Commission frequently organizes online consultations and consults expert groups on the same proposals, with its emphasis on either type of use of consultation varying slightly. As hypothesized, collecting policy-relevant information minimizes the risk for a policy proposal to create unintended side-effects. However, consulting a captive stakeholder audience on repeated occasions implies that more intense cooperation between the Commission and stakeholders is needed on cross-cutting policies to ensure effectiveness. This raises fundamental questions about the extent to which the Commission uses these consultations in a complementary or rather strategic way, for example, by venue-shopping.

The relationship between newness and the use of consultation confirms prior expectations and requires no further explanation. It is noteworthy that the use of consultation does not vary meaningfully depending on the bindingness of a policy proposal. Even though legally binding proposals potentially impose harder commitments on actors (Bouwen, 2007), proposals for binding legislation frequently build further upon decisions that were already communicated in previous non-binding proposals, hence, demonstrating that EU policy formulation frequently follows a path-dependent logic (Delreux and Happaerts, 2016: 151). In other words, soft law often signals the lead DG's plans on future binding policies. The Commission's need for capacity-building and legitimization is just as important for non-binding proposals and given that such proposals signal the Commission's plans on future binding policies, this also arouses the interest of stakeholders.

The saliency of a policy, as captivated through the IA procedure, encourages the Commission to consult stakeholders by means of custom use or all-round use. The lead DG consults stakeholders in parallel with the IA

procedure which breaks policy planning down into multiple stages like problem definition, identification of policy options, cost-benefit analyses. The lead DG de facto consults a broad audience at an early stage of IA about general plans, with additional restricted consultations taking place when policy planning has progressed into the more advanced stages of IA. The lead DG then organizes seminars to engage in substantive discussions with specific stakeholders (i.e. custom use) and/or it consults the same stakeholder groups repeatedly (i.e. all-round use). This is surprising insofar as online consultations are relatively underrepresented while constituting the main opportunity to participate in consultation for many stakeholders. However, as noted earlier, custom use is characterized by a relatively high number of consultations and so the Commission prefers organizing relatively many consultations in relation with salient proposals. This likely increases the possibility of observing strategic behavior on part of the Commission (cherry-picking stakeholder recommendations, playing out rivalry between different fora, etc.).

Contrary to prior expectations, open consultations are not necessarily beneficial for the Commission when formulating a salient policy. The succession of online consultations could draw too much attention, rather increasing political tensions and reducing the willingness to compromise. For this reason the Commission aims to rationalize policy planning under the IA procedure and by means of the accompanying consultations so that it can present its proposal as being evidence-based and 'objective' in nature. The need for capacity-building and legitimization become relatively intertwined for salient proposals.

There is only limited evidence that organizational features have a fixed effect on the Commission's use of consultation. First, the lack of differences between the Commission DGs is surprising as the sample has been designed to compare consultation patterns between departments of varying age. One minor observed difference entails the all-round use of consultation as DG Connect, DG Internal Market and to less extent also DG Environment choose the all-round use of consultation more frequently than DG Climate action. The latter became an independent Commission department in 2010 when there was already repeated public criticism of the use of expert groups. Since then an overall decrease could be noted concerning the creation of new expert groups (Metz, 2015) and this dynamic appears especially strong in new policy fields such as the one dealing with climate change. To be clear, DG Climate action does consult expert groups and the like but, in terms of relative frequencies, these consultation practices are accompanied by alternative consultation practices like online consultations or seminars.

Moreover, the stakeholder landscape in older policy fields is shaped more strongly by previously established policy communities, which gather policy-makers as well as stakeholders with an interest in a single policy sector (Sabatier and Weible, 2014). One can think of the many business or policy fora created in the field of water policy (DG Environment), telecommunications policy (DG Connect) and procurement policy (DG Internal Market) to name but a few examples. Second, the number of staff working in the Directorate responsible for policy formulation has no effect on the type of use of consultation. This is probably so because consultation patterns are studied in terms of relative frequencies whereas the administrative workload is determined rather on the basis of the absolute number of consultations.

Conclusions

This article examined consultation patterns in the EU comprehensively in order to demonstrate that the European Commission consults stakeholders differently depending on policy characteristics. More precisely, policy characteristics can encourage Commission DGs to use consultation in one of three different ways. The Commission mainly organizes online consultations, conferences or hearings in order to collect and assess information about complex policies or to gain wide attention for policies introducing substantial/new changes (i.e. fixed use). The Commission mainly organizes seminars or workshops regarding proposals that amend existing legislation and regarding salient proposals. These consultation practices are most suited for the Commission to engage in focused substantive discussions with stakeholders about detailed aspects of a policy or to mobilize support of a targeted audience (i.e. custom use). The Commission relies mostly on expert groups, policy fora and other consultative networks with regard to the preparation of policy proposals with a wide scope, amending proposals and salient proposals, although these findings are contingent on the Commission DG in charge of consultation. To be precise, the newest DG in the study sample, DG Climate action, is far less likely to consult expert groups than the older sampled DGs. Consultation practices like policy fora are relatively versatile and enable the Commission to engage in problem-solving as well as to mobilize a targeted audience and build support for its policy plans.

These findings are all the more relevant in view of the recent reform of Better Regulation in May 2015. Better Regulation includes, among others, a stronger political commitment to consultation as the Commission announced

to consult stakeholders even more frequently. The Commission now publishes roadmaps or inception impact assessments at the beginning of the formulation process to inform stakeholders about any planned consultations, among others. At the same time, stakeholders can provide feedback on these consultation plans right away so that the Commission could still adjust its plans. Hence, these reforms create additional opportunities for stakeholders to influence EU policies. It remains to be seen to what extent these reforms will make the Commission more prone to stakeholder pressure.

The relationship between stakeholders and the Commission is normally characterized as an interdependent one, in which access goods are exchanged for access to consultation (Bouwen, 2004). This static view speaks particularly well to the fixed use of consultation with its clearly defined rules of conduct, but less to the custom and all-round use of consultation where the Commission interacts in more dynamic ways with stakeholders. As such, the Commission and stakeholders are not necessarily interdependent under custom and all-round use of consultation. There is a larger chance for unbalanced participation in such consultation patterns which, eventually, also influences policy outcomes. That is why the Commission's use of expert groups has been repeatedly criticized in recent years and started convening standalone 'expert seminars' or 'policy workshops'. Stakeholders with limited resources have reason to keep consultation as transparent as possible and will most likely try to further advance the fixed use of consultation. By contrast, resourceful stakeholders, especially economic groups or national authorities, should prefer to limit the number of participants and to spread consultation over multiple occasions in order to maximize their involvement and the likelihood for influencing policy outcomes.

References

Alexander G (2001) Institutions, path dependence, and democratic consolidation. *Journal of Theoretical Politics* 13(3): 249-269.

Bouwen P (2004). Exchanging access goods for access: A comparative study of business lobbying in the European Union institutions. *European Journal of Political Research* 43(3): 337-369.Bouwen P (2007) Competing for consultation: Civil society and conflict between the European Commission and the European Parliament. *West European Politics* 30(2): 265-284.

Bouwen P (2009) The European Commission. In: Coen D and Richardson J (eds) *Lobbying the European Union: Institutions, Actors and Issues*. Oxford University Press.

Bunea A (2013) Issues, preferences and ties: determinants of interest groups' preference attainment in the EU environmental policy. *Journal of European Public Policy* 20(4): 552-570.

Bunea A (2014) Sharing ties and preferences: Stakeholders' position alignments in the European Commission's open consultations. *European Union Politics*.

Bunea A and Thomson R (2015) Consultations with Interest Groups and the Empowerment of Executives: Evidence from the European Union. *Governance* 28(4): 517-531.

Chalmers AW (2014) In over their heads: Public consultation, administrative capacity and legislative duration in the European Union. *European Union Politics*.

Chalmers D, Davies G and Monti G (2010) *European Union law: cases and materials.* Cambridge University Press.

Delreux T and Happaerts S (2016) *Environmental Policy and Politics in the European Union.* London: Palgrave MacMillan.

DiMaggio PJ and Powell WW (1991) *The new institutionalism in organizational analysis.* University of Chicago Press Chicago, IL.

Egeberg M (2012) Experiments in Supranational Institution-Building: The European Commission as a Laboratory. *Journal of European Public Policy* 19(6): 939-950.

Gornitzka Å and Sverdrup U (2008) Who consults? The configuration of expert groups in the European Union. *West European Politics* 31(4): 725-750.

Gornitzka Å and Sverdrup U (2015) Societal Inclusion in Expert Venues: Participation of Interest Groups and Business in the European Commission Expert Groups. *Politics and Governance.* DOI: 10.17645/pag.v3i1.130.

Hall PA (1993) Policy Paradigms, Social Learning, and the State: The Case of Economic Policymaking in Britain. *Comparative Politics* 25(3): 275-296.

Hartlapp M, Metz J and Rauh C (2014) *Which policy for Europe?: power and conflict inside the European Commission.* Oxford University Press.

Haverland M (2009) How leader states influence EU policy-making: Analysing the expert strategy. *European Integration online Papers (EIoP)* 13.

Hermansson H (2016) The European Commission's environmental stakeholder consultations: Is lobbying success based on what you know, what you own or who you know? *Interest groups & Advocacy*.

Klüver H (2011) The contextual nature of lobbying: explaining lobbying success in the European Union. *European Union Politics* 12(4): 483-506.

Klüver H (2013) *Lobbying in the European Union: interest groups, lobbying coalitions, and policy change.* Oxford University Press.

Klüver H, Braun C and Beyers J (2015) Legislative lobbying in context: towards a conceptual framework of interest group lobbying in the European Union. *Journal of European Public Policy* 22(4): 447-461.

Mahoney C (2008) *Brussels versus the beltway: Advocacy in the United States and the European Union.* Georgetown University Press.

March JG and Olsen JP (1989) *Rediscovering institutions : the organizational basis of politics.* New York (N.Y.): Free Press.

McFadden D (1979) Quantitative Methods for Analyzing Travel Behaviour on Individuals: Some Recent Developments. In: Hensher D and Stopher P (eds) *Behavioural Travel Modelling.* London: Croom Helm, pp.861.

Metz J (2015) *The European Commission, Expert Groups, and the Policy Process: Demystifying Technocratic Governance.* UK: Palgrave Macmillan.

Neshkova MI (2012) Salience and Complexity in Supranational Policymaking: The Case of Subnational Interests. *Governance* 1-28.

North DC (1990) A Transaction Cost Theory of Politics. *Journal of Theoretical Politics* 2(4): 355-367.

North DC (1992) *Institutions, institutional change and economic performance.* Cambridge university press.

Oppermann K and de Vries CE (2011) Chapter 1: Analyzing Issue Salience in International Politics. Theoretical Foundations and Methodological Approaches. In: Oppermann K and Viehrig H (eds) *Issue Salience in International Politics.* Routledge.

Pierson P (2000) The limits of design: Explaining institutional origins and change. *Governance* 13(4): 475-499.

Princen S (2011) Agenda-setting strategies in EU policy processes. *Journal of European Public Policy* 18(7): 927-943.

Quittkat C (2011) The European Commission's Online Consultations: A Success Story? *Journal of Common Market Studies* 49(3): 653-674.

Quittkat C and Finke B (2008) The EU Commission consultation regime. In: Kohler-Koch B, De Bièvre D and Maloney W (eds) *Opening EU-Governance to Civil Society: Gains and Challenges.* pp.183-222.

Quittkat C and Kotzian P (2011) Lobbying via Consultation - Territorial and Functional Interests in the Commission's Consultation Regime. *Journal of European Integration* 33(4): 401-418.

Radaelli CM and Meuwese ACM (2010) Hard Questions, Hard Solutions: Proceduralisation through Impact Assessment in the EU. *West European Politics* 33(1): 136-153.

Rasmussen A and Alexandrova P (2012) Foreign Interests Lobbying Brussels: Participation of non-EU Members in Commission Consultations. *Journal of Common Market Studies* 50(4): 614–631.

Rasmussen A and Carroll BJ (2013) Determinants of Upper-Class Dominance in the Heavenly Chorus: Lessons from European Union Online Consultations. *British Journal of Political Science*.

Rasmussen A and Gross V (2015) Biased access? Exploring selection to advisory committees. *European Political Science Review* 7(03): 343-372.

Rasmussen A and Toshkov D (2013) The effect of stakeholder involvement on legislative duration: Consultation of external actors and legislative duration in the European Union. *European Union Politics* 1-22.

Rasmussen MK (2015) The battle for influence: the politics of business lobbying in the European Parliament. *JCMS: Journal of Common Market Studies* 53(2): 365-382.

Reh C, Héritier A, Koop C, et al. (2013) The Informal Politics of Legislation: Explaining Secluded Decision-Making in the European Union. *Comparative Political Studies* 46(9): 1112-1142.

Robert C (2013) Expert Groups in the Field of Eurocracy. In: Georgakakis D and Rowell J (eds) *The Field of Eurocracy. Mapping EU Actors and Professionals.* Basingstoke: Palgrave Macmillan, pp.137-165.

Sabatier PA and Weible C (2014) *Theories of the policy process.* Westview Press.

Spence D and Edwards G (2006) *The European Commission.* London: John Harper Publishing.

Steinberger R, Pouliquen B and Hagman J (2002) Cross-lingual document similarity calculation using the multilingual thesaurus eurovoc. *Computational Linguistics and Intelligent Text Processing.* Springer, pp.415-424.

Van Ballaert B (2015) The Politics behind the Consultation of Expert Groups: An Instrument to Reduce Uncertainty or a Strategy to Offset Salience? *Politics and Governance* 3(1): 139-150.

Warntjen A (2012) Measuring salience in EU legislative politics. *Europen Union Politics* 13(1): 168-182.