**Regulating European Union lobbying: in whose interest?**

**Author: Adriana Bunea, University of Southampton, UK**

**ORCID: 0000-0002-2348-9676**

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**Abstract**

Designing a regime regulating supranational lobbying is a contentious topic in the EU interinstitutional dialogue. Recently, the Commission drafted a proposal for an Interinstitutional Agreement on a Mandatory Transparency Register, and during this formulation process it consulted broadly with stakeholders. A key question is to which stakeholders has the Commission aligned itself with when designing this proposal?I argue the Commission acted as a legitimacy maximizer aiming to bolster its leverage in interinstitutional negotiations. To enhance input legitimacy, it had to build a reputation for being a responsive and representative policy initiator. To enhance output legitimacy, it needed a reputation for being a competent regulator. The analyses show the Commission prioritised input over output legitimacy and building a reputation for regulating lobbying in line with preferences of stakeholders representing the public interest. In politicised contexts, the Commission trades long-standing policy networks for a realignment with stakeholders that serve its legitimacy needs.

**Key words:** European Commission, bureaucratic reputation, interinstitutional agreements, input and output legitimacy, lobbying regulation, policy networks.

**Introduction**

Designing a regulatory regime that governs and structures interactions between interest groups and EU decision-makers has been a contentious topic in the interinstitutional dialogue at supranational level (Mazey and Richardson 2015). Throughout time, the European Parliament (EP) advocated a mandatory regulatory regime that would apply to all three main institutions; the European Commission (EC) evolved from supporting the creation of a ‘partnership agreement’ with interest groups to that of a voluntary, incentives-based regulatory scheme consisting of a Transparency Register (TR); the Council has systematically rejected any form of lobbying regulation that would cover its interactions with private actors (Bouwen 2007). In September 2016, the Commission published a proposal for an Interinstitutional Agreement on a Mandatory TR aimed to further institutionalise and strengthen regulation of supranational lobbying by expanding the regulatory scope of the Register, enhancing its transparency and data provision quality, strengthening its enforcement mechanisms and improving its administrative management structures. The proposal answered the EP’s repeated calls for a more stringent and ambitious in scope lobbying regulation, and continued the line of administrative reforms introduced by the Juncker Commission to design a better-defined institutional framework for managing the EU system of interest representation as part of its Better Regulation policy (Bunea and Ibenskas 2017). The proposal led to an important shift in the status quo of EU lobbying regulation and transparency policy, and a change in Council’s position: in December 2017 Member States agreed to extend the TR ‘in an appropriate way to the Council’ to regulate interest groups access to senior staff of the Council’s General Secretariat.[[1]](#endnote-1)

When formulating this proposal, the Commission consulted broadly with stakeholders as part of a twelve-weeks online consultation (March-June 2016). Stakeholders (citizens and interest groups) were asked to evaluate the current TR performance and to express their opinion about introducing a set of measures to reform the current lobbying regulation system. The context in which the Commission tabled this proposal was contentious and marked by an anticipated Council’s reluctance to join any regulatory scheme, the EP’s demand for more stringent lobbying regulation, and a surprising subsequent shift in the Council’s position. Therefore, a key question regarding the formulation of this regulatory initiative is *to which constituencies of stakeholders has the Commission aligned itself with when designing the proposal for an interinstitutional agreement on a mandatory TR to regulate supranational lobbying?*

I elaborate and test the argument that in formulating this proposal, the Commission acted as a political agenda-setter and *legitimacy maximizer* aiming to bolster its leverage and power during interinstitutional negotiations over the terms of the agreement. Instrumental in achieving strong negotiation leverage was building the right organizational reputation with the right audiences (Carpenter and Krause 2012), which for the Commission meant crafting a reputation for *political legitimacy*. To enhance its input legitimacy, the Commission had incentives to build a reputation for being a *responsive and representative policy initiator* of lobbying regulation. To enhance its output legitimacy, the Commission must build a reputation for being a *competent regulator*. The expectation is that on politicised issues pertaining to the regulatory scope of lobbying regulation, the Commission tabled a proposal aligned with the preferences of stakeholders representing the European public, broadly defined. On technical aspects of lobbying regulation, the Commission’s proposal should be more closely aligned with preferences of stakeholders that were part of policy networks articulated over time around the issue of designing and institutionalising the supranational system of interest representation.

The analyses show that, in designing the interinstitutional agreement, the Commission prioritised maximising input over output legitimacy and building the reputation for being a policy initiator that is responsive to the preferences of stakeholders speaking on behalf of the public (i.e. citizens, public subnational authorities and public interest organisations) and regulating transparency and lobbying in the public interest. Across both political and technical issues, the text of the Commission’s proposal was more likely to be congruent with the preferences expressed by these stakeholders. On only two (out of five) technical issues, the proposal was more likely to be congruent with the preferences expressed by stakeholders that were members of its policy networks. In contentious and politicised interinstitutional negotiations, the Commission is ready to trade long-standing and arguably trusted policy collaborators for a realignment with stakeholders that can better serve its goal of building a politically legitimate and powerful negotiation mandate.

Addressing this question is relevant in several ways. *First*, the question taps into the fundamental issue of democratic deficit, legitimacy and accountability of EC’s agenda-setting and policy formulation powers in a reform initiative that is key for the democratic credentials of EU governance (Smismans 2014). The extent to which the Commission’s proposal reflects the views of a majority vs. a minority of stakeholders is informative about its perceived legitimacy with regulated actors and EU decision-making institutions. The extent to which this proposal was informed by a variety of views expressed by organisations defending the public interest as well as those representing concentrated interests provides important information about the Commission’s level of responsiveness to societal vs. corporate demands on the fundamental issue of lobbying regulation. *Second*, the question allows examining EC’s strategies employed to formalise key institutional arrangements of supranational governance under unfavourable and adverse policy conditions marked by important divergences in policy preferences between institutional actors. Understanding the strategy used to formulate a key initiative that is directly related to EU accountability and transparency, and in which the Commission managed to shift the status quo in a direction initially opposed by the Council, is of paramount importance considering the constant loss of EC’s agenda-setting power following recent treaty reforms (Costello and Thomson 2013). *Third*, the formulation strategy examined provides invaluable insights into how the Commission successfully politicises its regulatory agenda (Rauh 2016) and legitimately ‘engages in competitive representation in the public sphere by ‘claiming’ to represent particular policy preferences, constituencies, interests or values’ (de Wilde 2011: 571).

This study speaks to the extensive literature on EC as an agenda-setter (Kassim and Menon 2003, Kreppel and Oztas 2017), the well-established literature on EC’s bureaucratic legitimacy (Ellinas and Suleiman 2012, Kassim et al. 2013, Kassim et al. 2017, Murdoch et al. 2018) and the scholarship examining EU executive lobbying (Klüver 2013, Bernhagen et al. 2015). Its contribution is threefold. First, it addresses a question that remains currently unaddressed by the sparse literature on EU lobbying regulation: what drives and defines the EU lobbying regulation agenda (for exceptions see Greenwood 2011, Smismans 2014, Bunea 2018). Second, it elaborates and tests empirically a theoretical framework that outlines the conditions under which the European executive is more likely to act as a *democratic legitimacy maximizer* and design proposals congruent with stakeholders representing the public interests, adding an additional scenario to the conditions under which public interest organizations are more successful than business in supranational lobbying (Dür et al. 2015). The study outlines an additional mechanism through which public support may affect advocacy success, which revolves around the politicised or de-politicised nature of policy issues being regulated (Rasmussen et al. 2018). Lastly, the study innovates empirically by examining an original dataset that allows observing in detail the congruence between stakeholders’ positions on the design and reform of EU lobbying regulation and EC’s measures included in its proposal, and identifying those stakeholders that are part of policy networks created over time around the creation of a formalised supranational system of interest representation.[[2]](#endnote-2)

Section one presents the policy context in which the proposal was formulated. Section two presents the theoretical framework, section three the research design, section four the empirical analysis. Section five concludes.

**THE POLITICS OF REGULATING EU LOBBYING**

Whether, how and to what extent EU institutions should regulate their interactions with interest organizations and structure their participation in supranational policymaking has been a constant source of interinstitutional debate (Bouwen 2007). Several reasons explain this. First, interest groups and EU decision-makers are highly interdependent, with the latter depending heavily on the technical information, policy feedback, support and claim for legitimacy offered by the former (Mazey and Richardson 2015: 390). This disincentivised decision-makers to adopt stringent regulatory rules limiting or reducing the quality and frequency of interactions with private actors. Second, EU institutions have come under sustained public pressure to address their perceived ‘democratic deficit’ and address the need for legitimate, accountable and transparent policymaking by adopting a set of transparency rules regulating private actors’ access to decision-making (Smismans 2014). The salience of lobbying regulation for the main EU institutional actors is to a large extent a function of how much their claim for legitimacy, decision-making processes and policy performance depend on interactions with organizations and their feedback. Therefore, lobbying regulation was far more salient for the Commission (a non-elected bureaucracy in search for democratic legitimacy and interest groups’ policy support and feedback) and the EP (an elected body, marked by corruption scandals and dependent on groups’ expertise).

Throughout time, regarding the shape and form of lobbying regulation, the three institutions could be placed on a policy continuum in which the Council was at one extreme (no regulation), the Commission was somewhere in the middle (supporting voluntary, incentives- and transparency-based regulation) while the EP was located closer to the ‘more regulation’ side of the spectrum by adopting a rhetoric demanding a more comprehensive in scope and transparency regulatory regime.[[3]](#endnote-3)

The Commission evolved over time from a strong preference for a ‘partnership arrangement’ with certain organizations and no formalised regulation, to that of a voluntary, incentives-based TR, to now supporting a mandatory Register covering all three institutions (Cini 2013). On issues of accountability and procedural transparency, the Commission and EP’s positions became more closely aligned amid ongoing debates about EU democratic deficit, increasing Euroscepticism and distrust in supranational institutions. Yet, notable differences persisted: for example, in the negotiations on a mandatory Register, their choice of legal instrument to regulate lobbying differs significantly. The EP suggested adopting a regulation or directive, while the Commission proposed an ‘interinstitutional agreement’ based on article 295 TFEU, arguing that this ‘is the most pragmatic and promising option to achieve a mandatory scheme in a reasonable timeframe’ and that ‘the proposal’s core aim is to make interactions with the EU institutions more transparent, not to regulate lobbying activity at Member State level’ (EC 2016). These different and evolving preferences of institutional actors regarding EU lobbying regulation explain partially the ongoing review processes of the TR since its launch in 2011, during which stakeholders were consistently consulted.[[4]](#endnote-4) The 2016 consultation marks however the most comprehensive, inclusive and high-stake consultative event that preceded the formulation of a new interinstitutional agreement proposing a significant change for the Council (its inclusion in the regulatory scope of a mandatory TR), while rejecting the EP’s suggestion to regulate lobbying through a regulation or directive.[[5]](#endnote-5)

Regulating EU lobbying is therefore a highly politicised matter. As part of his Political Guidelines (2014), President Juncker pledged to propose ‘an interinstitutional Agreement to Parliament and Council to create a mandatory lobby register covering all three institutions’ and that ‘the Commission will lead by example’.[[6]](#endnote-6) The political character of the matter is further attested by the Commission’s choice of the legal instrument for regulating interest groups’ participation in policymaking: an interinstitutional agreement, instead of a regulation or directive as demanded by the EP. The adoption of interinstitutional agreements requires unanimity in the Council and EP’s consent, making the Council the key decision-maker. Institutional agreements are key in the process of ‘informal constitutionalisation’ aimed at addressing issues that were unaddressed or only incompletely addressed in the text of the Treaties (Christiansen and Reh 2009: 9, cited in Cini 2013). Embedded in article 295 of the Lisbon Treaty, interinstitutional agreements constitute a legal instrument that rest somewhere in between a legal act and a political declaration (Cini 2013). They are legally binding and rest on the idea of ‘sincere’ or ‘loyal’ cooperation between EU institutions. Their underlying logic taps directly into the institutional balance of power principle (Hummer 2007) and the literature indicates that throughout time they helped enhance EP’s institutional relevance and power, while ‘the Council has to an appreciable extent lost its freedom of action and is now “tied” to the Parliament by very many threads of conventions that, whilst individually not of extreme importance, together constrain the institutions’ freedom to act in many ways’ (Driessen 2008: 558). Legal analyses outline the resemblances between interinstitutional agreements and constitutional conventions, emphasizing their politically binding nature (Driessen 2008: 555). Using interinstitutional agreement to regulate lobbying signals the political charge of the issue that is elevated from the status of a technical spin of EU policymaking to one of a highly politicised regulatory matter. By increasing the political stake of the issue, the Commission most probably hoped to increase the likelihood that the Council becomes more accommodating towards a proposal for a mandatory Register that includes the Council and thus changes the status quo for this institution. Refusing such a proposal equals with a strong political statement about the level of transparency and accountability the Council is willing to accept concerning its decision-making.

This policy context illustrates a policy formulation process that was susceptible to politicisation and strong opposition on behalf of the Council, in which the Commission had strong incentives to build a reputation for being a politically legitimate agenda-setter whose negotiating mandate on transparency and lobbying regulation was informed by the preferences of organisations representing the European public broadly defined.

**BUILDING REPUTATION AND LEGITIMACY FOR INTERINSTITUTIONAL NEGOTIATIONS**

Enjoying the right of sole formal initiator of legislation, the Commission performs a multifaceted and versatile institutional role: an executive bureaucracy (Kassim et al. 2013), a formal and informal agenda-setter (Princen 2011), a supranational agent serving multiple principals (Pollack 2003) and custodian of the European, supranational interest (Majone 1999). Theories of bureaucratic politics (Balla 2000, Carpenter 2001, Gormley and Balla 2013) constitute thus a relevant theoretical background to understand and explain the policy formulation process of the proposal on a mandatory TR.

Similar to other bureaucracies, the Commission is motivated by two key logics of bureaucratic behaviour: increasing its *institutional power* (Kassim et al. 2016, Kreppel and Oztas 2017) and preserving and enhancing its *bureaucratic autonomy* (Ellinas and Suleiman 2012). Both depend on how successfully the Commission builds *input and output legitimacy* (Murdoch et al. 2018). Maximising legitimacy requires instead building the right *institutional reputation* (Carpenter 2001). In line with Carpenter and Krause (2012: 26), reputation is defined here as ‘a set of beliefs about an organization’s capacities, intentions, history and mission that are embedded in a network of multiple audiences’. Crafting ‘a salutary organizational reputation’ allows bureaucracies ‘not only to accrue autonomy […] but also to offer a protective shield in the presence of opposition in the form of hostile external audiences’ (Idem). A good reputation is both legitimising and empowering. However, a key challenge is that ‘the audiences are multiple and diverse, so satisfying one audience (e.g., a congressional committee) often means perturbing another (e.g. the media)’ (Carpenter and Krause 2012: 27).

To strenghten its legitimacy and leverage in interinstitutional negotiations for a mandatory Register, the Commission must perform a fine balancing act and strategically craft a reputation as policy initiator that appeals to the EP, the Council and regulated stakeholders. I argue therefore that, when drafting the proposal, the Commission had incentives to maximise both its input (political) legitimacy and its output (technical and problem-solving oriented) legitimacy (Schmidt 2013). Building a reputation for being *a responsive and representative policy initiator* is key in achieving the former. A reputation for being a *competent regulator* is essential in achieving the latter.

An effective way to build reputation and legitimacy is to use stakeholder consultations to craft policy proposals allowing the Commission to make a legitimate ‘claim to a hearing’ in front of decision-making actors (Kingdon 2003: 180-181). Consultations play a key role in strengthening the informal agenda-setting power of the Commission: research shows that EC’s stakeholder consultations (especially those including a high number of diverse stakeholders) ‘strengthen its bargaining success relative to legislative actors’ (Bunea and Thomson 2015: 528). For an unelected bureaucracy under constant criticism for its lack of democratic accountability such as the EC, building the reputation of an actor whose proposals are informed by and formulated through extensive public consultations with a diverse set of stakeholders contributes substantially to increasing its reputation for legitimacy and power during interinstitutional negotiations (Bernhagen et al. 2015: 572). Mazey and Richardson label this ‘strategic group politics’ (2015: 390). I argue that different constituencies of stakeholders participating in consultations allow the Commission to build different reputations for legitimacy by signalling the public and other institutional negotiators that its policy measures are closely aligned with the preferences of certain constituencies of interests over others, across different policy issues.

*Input legitimacy: building a reputation for regulating together with and in line with the public’s preferences*

On politicised issues of accountable and transparent supranational governance and policymaking, the Commission has incentives to *maximise input legitimacy* by designing proposals congruent with the preferences of the general public and by building a reputation for being a bureaucracy that is representative and ‘responsive to participatory input demands’ (Schmidt 2013: 6) made by citizens or organizations representing the European public broadly conceived. A straightforward and effective way to make this claim is to signal that its proposal for regulating lobbying is informed by the preferences expressed in the public consultation preceding the formulation process by stakeholders representing the European public. This argument recognizes that within the EU polity, ‘throughput governance with the people through pluralist-type consultation […] has deliberately been encouraged as a way of counterbalancing the paucity of input governance by the people through political participation’ (Schmidt 2013: 15). In the absence of citizens’ participation in European policymaking through majoritarian institutions, stakeholders’ participation in public consultations allows the Commission to identify what Scharpf described as a key condition for input-oriented legitimization, namely the preferences of stakeholders representing the general public: ‘Political choices are legitimate if and because they reflect the ‘will of the people’ – that is, if they can be derived from the authentic preferences of the members of a community’ (Scharpf 1999: 6). In line with Schmidt (2013: 15), this argument assumes that functional representation through interest organizations as part of consultations becomes thus ‘an additional form of democratic legitimization’ at EU level. This proposal formulation strategy alleviates the Commission’s lack of a democratic mandate and allows anticipating and rejecting potential criticisms about having too close ties with business groups and suspicions of regulatory capture (Murdoch et al. 2018).

Maximising input legitimacy is particularly relevant for those measures described in the regulatory regimes literature as setting the ‘regime orientation’ (Vogel 1996: 20-21 cited in Levi-Faur 2011: 13) or the *scope of the regulatory regime,* since this dimension is most salient from a public interest perspective. These measures are easier to politicise since they define the regulatory remit of lobbying regulation and thus tap into ‘the nature of the EU polity itself and raise the issue of legitimacy’ (de Wilde 2011: 564). On such measures, presenting a proposal backed by a ‘representative mandate’ (broadly defined), weighs heavily in determining the outcomes of interinstitutional negotiations (Kassim et al. 2016). Thus, the expectation is that in formulating its proposal for a mandatory Register, on issues related to the scope of the regulatory regime, the Commission has reputational incentives to design a proposal congruent with preferences expressed by stakeholders that participated in the consultation as representatives of the public (i.e. citizens, public local authorities and public interest organizations). This alignment is aimed to enhance its legitimacy and leverage in negotiations. The expectation is that:

H1: *On measures defining the regulatory scope of the Register, the Commission proposal was more likely congruent with preferences expressed by stakeholders representing public interests than with preferences expressed by stakeholders representing concentrated (business) interests.*

*Output legitimacy: the importance of being a competent regulator and effective problem-solver*

To enhance its negotiating leverage, in addition to input legitimacy, the EC has equally strong incentives to maximise its *output legitimacy* by signalling its ‘effective problem-solving capacities’ (Risse 2006: 15) and the ability to produce high quality, feasible and expert-informed proposals and regulatory outputs (Lindgren and Persson 2010), that will ‘effectively promote the common welfare of the constituency in question’ (i.e. regulated actors and the public) (Scharpf 1999: 6). In broad terms, ‘output legitimacy requires policies to work effectively while resonating with citizens’ values and identity’ (Schmidt 2013: 7).

Building a reputation for being a *competent, expert-informed and policy-attuned regulator* is a key step towards increasing the Commission’s output legitimacy and enhancing its negotiations leverage, based on the assumption that expertise improves the probability of adopting effective and efficient policy measures that increase aggregate policy and societal welfare (Esterling 2004). An effective way to build this reputation and increase output legitimacy is to show that when drafting measures on issues requiring expert knowledge and technical information, the Commission listens to those stakeholders possessing it. These are also actors most likely to be the affected interests targeted by the proposed regulations. This is particularly the case for those policy measures linked with ‘the regime organization’ (Vogel 1996, 20-21 cited in Levi-Faur 2011: 13), namely *the technicalities specifying how the regulatory regime* should be implemented (technical issues). Furthermore, when implementation success of regulatory measures depends to a large extent on actors outside the regulatory agency (such as interest groups in the implementation of lobbying regulation), then the regulator has strong incentives to ‘choose public advice for policy tasks that present high risk of failure’ so as to share implementation responsibility and ‘diffuse agency blame’ (Moffitt 2010: 883). In regulating supranational lobbying, this makes the Commission particularly susceptible to listen to those stakeholders that are long-standing members of ‘supportive policy networks’ (Héritier 1999) established around the issue of managing interest groups’ participation in supranational policymaking, that possess the necessary expertise and experience on technical issues of lobbying regulation. These are the policy networks that Scharpf (1999: 18-21) identifies as one of the key mechanisms used by EU institutions to build output legitimacy.

I argue that stakeholders participating in previous EC public consultations on initiatives aimed to design and reform institutional arrangements for managing interest participation in policymaking constitute a relevant source of expert information and output legitimacy. This builds on the assumption that stakeholders attending such thematic consultations on a more regular basis became part of policy networks on key issues of participatory supranational governance. Presumably, these stakeholders are Commission’s long-trusted, expert informants on technical aspects of lobbying regulation. This assumption is well-grounded in a relevant policy reality flagged in the EC report on the consultation on a mandatory Register, which indicates that in order ‘to ensure that a range of informed views were considered, particular attention was given to those organizations which have been particularly active in the debate around lobbying transparency in the recent past as well as representing the views of organizations from different sections of the Register.’ (RPA 2016: 11). Therefore, the following hypothesis is tested:

H2: *On technical measures, the Commission proposal was more likely congruent with preferences expressed by stakeholders that were part of policy networks articulated around issues of participatory supranational policymaking than with the preferences of stakeholders that were not part of these networks.*

The analysis controls for whether stakeholders had a mandate to represent broad, encompassing European societal or economic interests and participated in consultation as European associations. These actors are key players in supranational policymaking and preferred partners of dialogue for decision-makers because they can claim to speak on behalf of large, cross-national constituencies and thus convey both input and output legitimacy to EU policymaking (Mazey and Richardson 2015). This puts them in a unique position to inform and shape policy formulation processes. The analysis includes a dichotomous control variable indicating whether the stakeholder is a European association (1) or not (0).

**RESEARCH DESIGN**

To test this argument, I proceeded in three steps. First, I identified the main policy measures included in the proposal based on an attentive reading and qualitative content analysis of the ‘Proposal for an Interinstitutional Agreement on a mandatory Transparency Register’ (COM/2016/0627)[[7]](#endnote-7) and the explanatory memo accompanying the EC press release announcing it (issued on September 28th, 2016).[[8]](#endnote-8) Column 1 in Table 1 in the Online Appendix presents the ten main measures tabled in the proposal. Second, for each measure, I identified the corresponding question item asked in the online consultation preceding the proposal. Out of thirty-one closed-ended consultation questions,[[9]](#endnote-9) nine were substantively linked with nine of the ten measures proposed, as indicated in column 2. Columns 3-5 present the frequency distribution of stakeholders’ responses. On four questions, stakeholders’ responses were dichotomous while on five items they were ordered-categorical. Stakeholders’ did not answer all consultation questions and column 6 indicates the number of ‘non-responses’. These are treated as missing values.

For each of the nine measures in relation to which a consultation question was identified, a dichotomous variable was constructed to indicate whether the stakeholder’s consultation response was congruent or not with the proposal measure. This constitutes the dependent variable used in the nine regression models and labelled ‘stakeholder-proposal congruence’. On measures 1, 2 and 5, response-category ‘yes’ was considered congruent with the measure and coded 1, while category ‘no’ as not congruent and coded 0. On issue 9, category ‘yes’ was coded as not being congruent with the measure (0) since stakeholders giving this answer wanted for the names of organisations suspended under the alerts and complaints procedures to be publicised but the EC proposed measure about suspensions does not stipulate this. Therefore, response-category ‘no’ was coded as congruent (1) with the measure. On measures 3, 6, 7 and 8: response-categories ‘Disagree’ and ‘Partially agree’ were coded as congruent with the measures proposed (1), while category ‘Fully agree’ as not congruent (0). These measures proposed improvements of the regulatory status quo for which reason stakeholder answers fully endorsing the status quo (‘Fully agree’) are interpreted as not being congruent with the measures. Measure 4 corresponds to a situation in which the regulatory scope of the mandatory Register is tailored in a way that allows excluding certain entities (i.e. local and regional governments and their associations) in addition to those that are already exempted. This is congruent with stakeholders’ answers indicating that the scope of the register should be changed to exclude certain entities (1), but not congruent with responses wanting to preserve the status quo (response-category 2) or include certain entities (response-category 3), and coded 0.

Table 2 in Online Appendix presents the distribution of the dependent variable coded for each measure, across stakeholders. In line with the regulatory regimes literature (Levi-Faur 2011), I distinguish conceptually between measures linked with the *regulatory scope* of a mandatory Register (measures 1-4) and *technical measures* indicating how the Register should be organized (measures 5-9).

*Independent variables*

Based on the Commission’s data file detailing stakeholders’ consultation responses, I identified six *categories of stakeholders*: individual respondents (citizens), business (firms or associations), consultancies, professional organizations, public subnational authorities, public interest organizations. Table 3 in the Online Appendix details the distribution of observations across stakeholder categories.

In line with the EU lobbying literature (Dür et al. 2015), I argue that, within public consultations, it is reasonable to assume that citizens, public (subnational) authorities and public interest organizations are stakeholders representing the ‘public interest’ broadly defined, whereas business groups, consultancies and professional organizations represent specific/concentrated interests. However, employing a more fine-grained (six-fold) categorization of stakeholders allows a more nuanced empirical analysis able to unveil substantively interesting differences between stakeholders regarding their preferences for a new interinstitutional agreement.

To capture *stakeholders’ participation in the policy network* formedaround the issue of transparency and lobbying regulation,I observed their *participation in previous consultations* on the design and management of EU interest representation. For each stakeholder, a dichotomous variable indicates whether it participated in one of the following five public consultations: Consultation on the Green Paper on the European Transparency Initiative (2006); Consultation on the Code of Conduct for Interest Representatives (2007); Consultation on the Transparency Register (2012); Stakeholder Consultation on Smart Regulation in the EU (2012); Consultation on Draft Stakeholder Consultation Guidelines (2014). These consultations correspond to key developments in the design and reform of the EU system of interest representation such as the adoption of the Transparency Initiative, the latest Better Regulation reform and the new guidelines on EU public consultations (Bunea 2017). They represent key milestones in introducing targeted transparency as an instrument of lobbying regulation and increasing the participatory and democratic legitimacy of supranational policymaking. They allow identifying the stakeholders that throughout time and various consultations publicly revealed their interest in and expertise on supranational transparency and interest representation. This strategy adopts a positional approach to identify policy network members and approximates well the characteristics of an issue network (Rhodes 2017: 39): diverse actors, representing a wide range of affected interests, equipped with various levels of resources and fluctuating participation across consultation events. Only 87 organizations were part of this network.

**ANALYSES**

To test the theoretical argument, a logit regression model was run for each measure to examine the congruence between the EC measure and the expressed stakeholder preference. Table 1 presents the results of the regression analysis, using ‘business organization’ as a reference group for the variable capturing stakeholder category. Table 2 presents the first differences in predicted probabilities of observing this congruence and provides information about the size of the observed effect.

**[Table1]**

**[Table2]**

Models 1 to 4 test hypothesis 1 and indicate that on all four issues linked with the regulatory scope of the Register, the Commission’s measures were significantly more likely to be aligned with preferences expressed by *public interest organizations*. These organizations were particularly supportive of Commission’s measure to make more interactions between EU institutions and interest groups conditional upon prior registration (model 2). The measures of introducing a clearer definition of lobbying activities (model 3) and of excluding certain types of organizational entities from the regulatory scope of the Register (model 4) were more likely to be aligned with the preferences expressed by *public subnational authorities.* These organizations were significantly more likely (by 0.35 points) than business to support the introduction of a clearer definition of lobbying, with the hope that their activities in Brussels were not considered lobbying interactions and therefore would not fall under lobbying regulation and transparency requirements. They were also significantly more likely to support exempting local and regional governments and their associations from the Register’s scope (0.84 points more likely), by arguing that the elected character of these organizations and their democratically representative mandate entitles them to unobstructed access to decision-makers. Noteworthy, the issues of lobbying definitions and regulatory exemptions seem also to have been amongst the most salient ones for the community of stakeholders participating in consultation since they have the highest response rates across all measures (95.5% and 86.4%).

The measure of expanding the TR regulatory scope by requiring prior registration for more interactions between institutions and interest organisations and that of introducing a clearer definition of lobbying activities were significantly more likely to be congruent with citizens’ preferences (by 0.22 points and 0.09 points respectively).

These findings are consistent with hypothesis 1 stating that on politicised issues pertaining to the definition of the TR regulatory remit, the Commission’s proposal was more likely congruent with preferences expressed by stakeholders representing public interests. This indicates the Commission attempted to maximise input legitimacy by building a reputation for regulating EU lobbying following a broad consultation with stakeholders representing public interests and drafting a proposal that is closely aligned with and reflects the public’s preferences on this regulatory matter. Interestingly, the key and highly political measure of including the Council in the regulatory remit of a mandatory Register (model 1) was significantly more likely to be congruent with preferences expressed by public interest organisations only (by 0.08 points).

Models 5 to 9 provide limited support for hypothesis 2 positing that on technical issues the measures were more likely aligned with preferences of organizations that are members of EC policy networks. Only two of five technical measures were significantly more likely to be congruent with these actors’ preferences. Model 6 indicates these stakeholders were significantly more likely than non-network members to have expressed in consultation a position congruent with the Commission’s proposal to introduce systematic ex-ante checks on new registrants to increase data quality (by 0.25 points). Model 8 shows these stakeholders were also more likely to support the introduction of a more robust mechanism to handle breaches in the code of conduct (by 0.28 points).

Models 5 to 9 also provide evidence that goes against hypothesis 2 and indicate that, even on technical issues, the proposed measures were congruent to the preferences of stakeholders representing the public. For example, the measure of introducing systematic ex-ante checks on new registrants to increase data quality was significantly more in line with citizens’ preferences (by 0.13 points, model 6). Poor data quality was a key criticism of all TR assessments (Greenwood and Dreger 2013). Similarly, citizens were 0.42 points more likely to articulate a preference aligned with the measure of reinforcing the Code of Conduct to increase its precision (model 7). *Public interest organizations* were also more likely to express a preference congruent with the Commission’s measure to reinforce and clarify the Code of Conduct as part of the regulatory regime (model 7).

However, on some other technical measures, citizens were in fact significantly less likely to express a preference congruent with the Commission’s proposal to simplify data disclosure requirements (model 5) and the mechanism proposed for dealing with regulatory non-compliance (model 9). Similarly, public interest organizations were 0.21 points less likely to endorse the measure of simplifying the disclosure requirements (model 5) and 0.18 points less likely to express a preference congruent with proposed measures for dealing with non-compliance (model 9). Citizens and public interest organizations did not support such measures because they feared that this procedural simplification might result in deregulation of supranational lobbying and a less effective regulatory regime. This was a fear commonly expressed by public interest organisations regarding the latest EU Better Regulation reform, of which lobbying regulation and the management of supranational interest representation was an important part.

Interestingly, the analyses also show that stakeholders part of EC policy networks were significantly more likely (0.13 points) to have supported introducing a clearer definition of lobbying activities (model 3). However, these stakeholders were significantly less likely (-0.16 points) to support expanding the *regulatory scope* of the regime by making more interactions between institutions and organizations dependent upon prior registration (model 2). Corroborated, this suggests that stakeholders participating in networks were interested in adopting measures preserving the regulatory *status quo* to which they adjusted and adapted.They supported only incremental technical improvements that would make this status quo more effective and efficient.

Across models, the proposed measures were more likely to be congruent with preferences of stakeholders representing public interests than with those of stakeholders that were part of EC policy networks. This suggests that, when formulating this politically sensitive proposal, the Commission prioritized input over output legitimacy and building a reputation for a representative and responsive to public preferences agenda-setter.

Lastly, the results indicate that the measure of including the Council in the regulatory scope of the Register (model 1) was significantly more likely to be congruent with the preferences of European associations. Presumably, such a change would facilitate and legitimise their access to an institutional lobbying venue that is currently perceived to be more open towards and susceptible to dialogue with national associations. These stakeholders were however less likely to support the measure stipulating that data disclosure requirements should be simplified (model 5) and the introduction of tougher penalties such as removal from the register or suspension from certain interactions for non-compliant actors (model 9).

**CONCLUSIONS**

This study observed long-standing differences marking the EU interinstitutional dialogue on whether and how to regulate interest groups’ participation in supranational policymaking. It highlighted an important recent development: the Council’s General-Secretariat would join the mandatory TR. Key in understanding this shift is examining the Commission’s strategy to formulate a proposal for an interinstitutional agreement that made the negotiations amenable to compromise, by changing the Council’s strong opposition to accept any form of lobbying regulation, while also satisfying the Parliament’s demands to regulate lobbying through a regulation or directive.

The study shows that in crafting this highly politicised proposal, the Commission acted as a political agenda-setter and legitimacy maximizer, interested in enhancing its input legitimacy and building a reputation for being a representative and responsive to public preferences policy initiator. This strategy allowed the Commission to strengthen its negotiation leverage by tabling a proposal that showed higher levels of congruence with preferences of stakeholders representing the public in the consultation preceding the proposal. In contentious interinstitutional negotiations, on issues with high public salience and visibility, the Commission was ready to trade long-standing policy collaborators for a realignment with stakeholders that better served its contemporaneous needs for democratic legitimacy.

These findings provide interesting insights into the consequences of politicisation of supranational policymaking on the Commission’s agenda-setting strategies and the adaptive mechanisms it developed to enhance its institutional legitimacy and reputation in the context of contentious and politicised decision-making (Haverland et al. 2018). This addresses an important gap in the literature on the consequences of politicisation in the EU (Zürn 2016: 175). The findings illustrate the Commission’s adaptive and strategic behaviour in times of politicisation, decreasing institutional power due to treaty changes and increased public criticism for lack of democratic accountability. The European executive adapts by forming new policy coalitions that suit its reputational incentives and reinforce its claim for political legitimacy (Rauh 2016). An important implication is that, similar to how business groups were Commission’s foremost allies in the creation of a single European market (Coen and Richardson 2009), stakeholders representing public interests are now likely to become the Commission’s foremost allies on initiatives marked by high levels of politicisation and interinstitutional conflict. This is consistent with recent research indicating a decline in the influence of corporate interests over EU decision-making across policy areas (Dür et al. 2015).

Two key questions remain for future research: to what extent the Commission’s proposal and stakeholders’ positions on regulating EU lobbying were congruent to those of the political groupings in the EP? And, to what extent the terms of the adopted interinstitutional agreement reflect the Commission’s proposed measures for regulating supranational lobbying? The negotiations are still underway. Answering these questions would allow assessing the effectiveness of EC’s agenda-setting strategies that rely on public consultations and stakeholders’ feedback in the context of politicised decision-making, and the EP role during negotiation talks and in determining negotiation outcomes.

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**Table 1. Examining the congruence between EC proposal measures and stakeholders’ preferences across measures.**

|  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
|  | **1.Mandatory TR**  **covering the Council** | **2. Regulated**  **interactions** | **3. Definitions** | **4. Exemptions** | **5. Data disclosure** | **6. Ex-ante checks** | **7. Code of Conduct** | **8. Breaches management** | **9. Suspension and removal** |
| *Intercept* | 1.97\*\*\*  (0.33) | 0.41\*  (0.21) | -0.79\*\*\*  (0.16) | -3.76\*\*\*  (0.60) | 0.45\*  (0.20) | 0.10  (0.19) | -2.69\*\*\*  (0.32) | -0.16  (0.23) | -0.42\*  (0.20) |
| ***Interest type (Ref. category: business)*** | | | | | | | | | |
| Citizens | 0.83  (0.48) | 1.12\*\*\*  (0.30) | 0.39\*  (0.18) | 0.88  (0.62) | -0.82\*\*  (0.27) | 0.58\*  (0.25) | 2.64\*\*\*  (0.36) | 0.36  (0.29) | -2.44\*\*\*  (0.40) |
| Consultancies | 1.76  (1.06) | 0.34  (0.40) | 0.23  (0.31) | 1.04  (0.84) | -0.40  (0.39) | -0.55  (0.36) | 1.17\*  (0.50) | -0.68  (0.45) | -1.07\*  (0.44) |
| Professional org. | 0.91  (0.83) | 0.92\*  (0.41) | -0.13  (0.30) | -13.75  (534.49) | -0.37  (0.38) | -0.61  (0.35) | 1.16\*\*  (0.45) | -0.08  (0.39) | -0.31  (0.36) |
| Public authorities | -1.10  (0.91) | 0.13  (0.80) | 1.46\*\*\*  (0.30) | 5.63\*\*\*  (0.68) | 1.21  (1.13) | 0.98  (0.83) | 0.80  (1.13) | -0.06  (0.87) | -0.51  (0.86) |
| Public interest org. | 1.19\*  (0.56) | 1.27\*\*\*  (0.29) | 0.45\*  (0.21) | 1.44\*  (0.70) | -0.86\*\*  (0.27) | 0.09  (0.24) | 1.82\*\*\*  (0.34) | 0.09  (0.28) | -0.88\*\*  (0.28) |
| ***Policy network member*** | -0.57  (0.63) | -0.84\*\*  (0.32) | 0.54\*  (0.25) | 0.38  (0.60) | 0.43  (0.31) | 1.18\*\*\*  (0.32) | 0.59  (0.33) | 1.42\*\*\*  (0.36) | 0.50  (0.31) |
| ***European***  ***association*** | 1.31\*  (0.66) | -0.06  (0.28) | -0.08  (0.22) | -0.79  (0.63) | -0.83\*\*  (0.28) | -0.14  (0.25) | 0.16  (0.31) | -0.08  (0.30) | -0.58\*  (0.29) |
| AIC | 236.31 | 563.86 | 1749.06 | 509.75 | 602.55 | 722.81 | 575.94 | 573.58 | 515.20 |
| BIC | 270.21 | 597.61 | 1790.49 | 550.38 | 635.28 | 757.16 | 610.46 | 605.90 | 549.60 |
| LogLik | -110.15 | -273.93 | -866.53 | -246.87 | -293.27 | -353.41 | -279.97 | -278.79 | -249.60 |
| Deviance | 220.31 | 547.86 | 1733.06 | 493.75 | 586.55 | 706.81 | 559.94 | 557.58 | 499.20 |
| N | 512 | 502 | 1312 | 1187 | 442 | 541 | 553 | 420 | 539 |

NOTE: Logit regression models. Standard errors in parentheses. Significance levels: \*\*\**p*<0.001, \*\**p*<0.01, \**p*<0.05.

**Table 2. First differences in predicted probabilities of stakeholder-proposal congruence. 95% confidence intervals in parentheses**

|  |  |
| --- | --- |
| **Regression model** | **Change in variable** |
|  | **Business 🡪 Citizen** |
| Model 2. Regulated interactions | 0.220 (0.097; 0.330) |
| Model 3. Definitions | 0.086 (0.009; 0.160) |
| Model 5. Data disclosure | -0.211 (-0.333; -0.085) |
| Model 6. Ex-ante checks | 0.133 (0.016; 0.250) |
| Model 7. Code of conduct | 0.419 (0.332; 0.508) |
| Model 9. Suspension and removal | -0.340 (-0.440; -0.245) |
|  | **Business 🡪 Public subnational authority** |
| Model 3. Definitions | 0.346 (0.206; 0.463) |
| Model 4. Exemptions | 0.837 (0.748; 0.907) |
|  | **Business 🡪 Public interest organisation** |
| Model 1. Mandatory TR | 0.080 (0.004; 0.163) |
| Model 2. Regulated interactions | 0.240 (0.133; 0.353) |
| Model 3. Definitions | 0.101 (0.008; 0.193) |
| Model 4. Exemptions | 0.065 (0.008; 0.120) |
| Model 5. Data disclosure | -0.210 (-0.338; -0.080) |
| Model 7. Code of conduct | 0.231 (0.144; 0.325) |
| Model 9. Suspension and removal | -0.180 (-0.287; -0.063) |
|  | **Participated in previous cons. 0 🡪 1** |
| Model 2. Regulated interactions | -0.163 (-0.313; -0.032) |
| Model 3. Clearer definitions | 0.133 (0.015; 0.253) |
| Model 6. Ex-ante checks | 0.254 (0.136; 0.360) |
| Model 8. Breaches management | 0.278 (0.164; 0.377) |
|  | **European association 0 🡪 1** |
| Model 1. Mandatory TR | 0.040 (0.002; 0.080) |
| Model 5. Data disclosure | -0.199 (-0.333; -0.068) |
| Model 9. Suspension and removal | -0.234 (-0.051; -0.002) |

1. <http://www.consilium.europa.eu/en/press/press-releases/2017/12/06/transparency-register-council-agrees-mandate-for-negotiations/> (Accessed: June 26th, 2018). [↑](#endnote-ref-1)
2. Preference attainment/lobbying success is however not the analytical focus of this study. No assumption or theoretical argument is made about stakeholders’ attempts to influence the Commission proposal. [↑](#endnote-ref-2)
3. However, despite its (relatively) more ambitious rhetoric asking for a mandatory TR, the EP has never introduced a register recording the meetings between interest groups and MEPs or their staff members, nor has it ever adopted more stringent rules regulating lobbying activities within its premises or involving its elected members. Cini (2013) discusses this nuanced EP position on lobbying regulation across time and political groupings. [↑](#endnote-ref-3)
4. <http://ec.europa.eu/transparencyregister/public/staticPage/displayStaticPage.do?locale=en&reference=KEY_DATES> (Accessed July 23rd 2018). [↑](#endnote-ref-4)
5. <http://ec.europa.eu/transparencyregister/public/staticPage/displayStaticPage.do;TRPUBLICID-prod=XLrIFK2e8eQ3n08kboM_bLNouSHZaMnJCVdyPW_qAoLCIf9XAB7t!-158032683?locale=en&reference=KEY_DATES> (Accessed July 23rd 2018). [↑](#endnote-ref-5)
6. Political Guidelines for the next European Commission (2014) (<https://ec.europa.eu/commission/sites/beta-political/files/juncker-political-guidelines-speech_en.pdf>. Accessed July 9th, 2018). [↑](#endnote-ref-6)
7. <http://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:52016PC0627> [↑](#endnote-ref-7)
8. <http://europa.eu/rapid/press-release_MEMO-16-3181_en.htm> [↑](#endnote-ref-8)
9. For a detailed description of the consultation see Bunea 2018. [↑](#endnote-ref-9)