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Countering bias?

The EU Commission's consultation with interest groups

Abstract

The EU Commission regularly consults with external actors when preparing policy proposals. This paper investigates possible bias in the voices the Commission listens to across all policy areas and consultation instruments. We map the full range of consultation instruments used by the Commission and analyse variation in group representation across types of consultations and policy areas. Our analysis draws on a dataset of more than 350 major Commission proposals between 2011 and 2016. We find that the Commission has established a consultation regime with widespread use of standard consultation instruments, including open online consultations, stakeholder conferences and consultation in closed fora. The range of consulted actors depends on both consultation instruments and policy types. Open online-consultations are most inclusive. Our findings indicate that the Commission may be able to counteract the influence of business by selecting the most appropriate format for consultation.

Executives such as the EU Commission play a major role in the formative stages of the policy process. In this preparatory phase, they often consult external interests such as business groups, NGOs or public authorities. These consultations provide crucial input to the policy process and legitimize policy proposals (Van Ballaert 2017: 407; Bunea and Thomson 2015). For organized interests, consultations provide a welcome chance to advance the concerns of their members and raise attention to their policy demands. While the inclusion of external interests comes with many benefits, the literature also contains ample warning that such participation may be biased. Most crucially, not all organized interests have equal opportunities to voice their concerns, and business groups have repeatedly been found more active than other groups in consultations (Binderkrantz et al. 2014; Rasmussen and Carroll 2014).

Studying bias in interest group representation is a long-standing scholarly field (Schattschneider 1975). With respect to the EU, significant progress has been made in mapping the amount of bias in group mobilization, in the political activities carried out by groups and in the access of groups to the EU system (Berkhout et al. 2017; Beyers et al. 2008: 1,114-1,115; Binderkrantz and Rasmussen 2015; Rasmussen and Gross 2015; Wonka et al. 2010). In addition, recent studies have analysed group participation in EU Commission consultations with a focus on the use of open online consultations (Klüver 2013; Rasmussen and Carroll 2014; Quittkat 2011; Røed and Hansen 2018). While open consultation is the most high-profiled type of consultation, these co-exist with a range of other consultative forms such as stakeholder consultations or meetings with selected actors. The extant literature provides valuable insights, but is limited in the sense that it focuses on selected parts of the Commission's DGs or on selected types of consultation formats. The contribution of our study is to provide a comprehensive analysis of all types of consultations carried out by the entire set of Commission DGs in the formative stage of the policy process. We map the type of consultative instruments used – from open online consultations to

meetings with the responsible DG – and the types of external interests consulted by the Commission. Importantly, we combine the two aspects and analyse differences in the actors consulted across different types of consultation instruments.

Consultation with external interests can be seen as a strategic instrument. For example, previous studies have demonstrated how the Commission shapes its consultations based on political logics (Van Ballaert 2017) and how consultation with external interests serves to strengthen the Commission’s bargaining position (Bunea and Thomson 2015). We argue that the Commission faces an overall incentive to use a broad range of consultative instruments and to consult widely with external interests. Over the past 15 years, the Commission has pursued this objective as part of its ‘better regulation’ agenda. Broad consultation is therefore instrumental in legitimizing the policy proposals of the Commission. In addition, we expect variation in the types of organized interests consulted depending on the type of consultative instrument as well as the policy content of proposals (Rasmussen and Carroll 2014).

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

The paper is structured as follows. We first explain the Commission’s attempt to establish a regular consultation regime. We also review the literature that seeks to evaluate this attempt. We then theorize the Commission’s consultation practices. On this basis, we turn to describing the research design and the empirical analysis. Based on our mapping of consultation

practices, we analyse how successful the consultation regime is and the variation in types of interests consulted. Our findings show that the use of a wide range of consultation mechanisms is an integrated element of EU policy making, but they also indicate that the choice of consultation instrument and the type of proposed policy affect the balance between different actors involved in the consultation. The Commission uses many different instruments to reduce bias in the representation of interest, but while some instruments allow for access to policy processes for a broad range of actors, others are associated with patterns of interest representation that have been criticized in the past.

The Commission's consultation regime

The EU Commission consults regularly with external interests and as argued by Bunea (2017: 49) the informal institutional arrangements guiding consultations can be characterized as a 'consultation regime'. Three generations of Commission consultation regimes can be identified over the course of the EU's history (Quittkat and Finke 2008: 187-190; Quittkat and Kohler-Koch 2013: 43-47, cf. also Bouwen 2009: 26-32). The first generation prioritized output legitimacy and efficient implementation. The Commission therefore established close ties with European federations of associations of trade and industry, of farmers, of professional interests and of employers and trade unions. The second generation – beginning in the mid-1980s – was characterized by a growing concern with the broader public acceptance of EU policies. This led to a broadening of societal involvement in the Commission's preparation of policy initiatives and Commission funding of NGO's was introduced to balance the influence of business interests (Mahoney 2004; Mahoney and Beckstrand 2011; Salgado 2014).

The third – and present – generation of the consultation regime was developed as part of the 'better regulation agenda' that the Commission has pursued over the last 15–20 years. This agenda was launched with the white paper 'European Governance' (Commission 2001), which

promised more openness, transparency, participation and involvement of public and civil society organizations. The Commission explicitly stated its ambition to create a consultation regime that counterbalances bias. The ambition was to “reduce the risk of the policy-makers just listening to one side of the argument or of particular groups getting privileged access on the basis of sectoral interests or nationality, which is a clear weakness with the current method of ad hoc consultations” (Commission 2001: 17).

The new consultation ambitions were specified in more detail in a communication one year later. They took the shape of a set of minimum standards to be followed by the individual DGs on the content of their consultation processes, consultation target groups, publication, limits for participation, acknowledgement and feedback (Commission 2002a). These official guidelines have been reiterated and complemented several times, most recently in 2017 (Commission 2017).

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

The core elements in the Commission’s present consultation regime are three instruments varying in the degree to which they allow for open or restricted access and in whether they are one-off occurrences or more enduring (Quittkat 2013: 63-69; Van Ballaert 2017). The first

is *open online consultations*, which are open to everyone including interest groups, public institutions, individual businesses and individual citizens. These consultations are organized by the Commission DG responsible for the proposal and published on its website. The Commission has also launched a special consultation webpage, which functions as a single access point for online consultations (<https://ec.europa.eu/info/consultations>). Online consultations are carried out on the basis of a policy document, and interested parties are given the opportunity to provide feedback either as answers to an online questionnaire or via email. Their contributions are published, and the Commission completes the process by accounting for the number of responses and how it has dealt with them. Online consultations sometimes attract a high number of responses. For example, the online consultation of the REACH initiative resulted in 6,400 responses (Persson 2007: 228).

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

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

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

A number of evaluations are relatively favourable. Bunea (2017) analyses the responses from two stakeholder evaluations organized by the Commission in 2012 and 2014 in which stakeholder feedback was sought on the Commission's consultation practice. She finds that the stakeholders' responses show that the Commission has been successful in creating conditions for alleviating bias in stakeholder participation. A comparable conclusion is drawn by Quittkat and Kotzian (2011), who analyse all consultation instruments employed by two Commission DGs in the years 2000–2007. They conclude that these two DGs have been successful in reaching out to all categories of actors, all kinds of functional and territorial interests and all organizational levels. A more in-depth analysis of the use of online consultations by these two DGs reaches a similar conclusion and finds that online consultations constitute an 'open and inclusive instrument of consultation' (Quittkat 2011: 671).

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

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

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

Theorizing the Commission’s consultation practices

The political access of organized interests is typically conceived as the result of a resource exchange between interest groups on the one hand and public officials on the other. To the extent that both actors stand to gain, organized interests are expected to be granted access to policy processes (Binderkrantz et al. 2015; Bouwen 2004; Dür and Mateo 2016). Interest groups value access to consultations as this is a crucial step towards influencing policies (Binderkrantz and Pedersen 2017), and bureaucrats value the expertise and legitimacy that groups may provide. Here,

we draw on this theoretical logic with a main focus on the incentives facing the Commission. With its unique powers to initiate and draft EU legislation as well as its discretion in choosing consultation instruments, we see the Commission as the key actor in shaping the consultation regime.

We contend that the Commission's consultation practice is, at least partly, driven by central logics of bureaucratic behaviour: concerns with securing and enhancing institutional power and bureaucratic autonomy. From a strategic perspective, the Commission can be expected to design consultation practices as a means to protect and increase its overall position through shaping its legitimacy and organizational reputation (Bunea 2018: 7). A focus on bureaucratic reputation highlights the diverse audiences that public agencies face in managing their organizational reputation. It also emphasizes how the balancing of different aspects of reputation may change over time and differ across agencies depending on the type of pressures facing the agency (Rimkutė 2019: 2-3). While originally coined in the US context, recent studies have applied the concept of bureaucratic reputation to analyse how EU agencies balance different dimensions of their reputation (Bunea 2018; Busuioc & Rimkutė 2019; Rimkutė 2019).

An agency's reputation is defined as a set of symbolic beliefs about the agency's capacity, history and mission that are embedded in multiple audiences (Carpenter 2010: 33). In this sense, reputation is a valuable political asset, which increases the autonomy and legitimacy of the agency. It can be used to build political support, to increase formal discretion, to protect the agency from political attack and to build a set of constituencies in the agency's environment. More specifically, according to Carpenter (2010), an agency reputation is composed of four dimensions. First, technical reputation encompasses the agency's scientific and analytical capacity. Second, performative reputation expresses the agency's capacity for achieving its goals. Third, moral reputation indicates the agency's ethical standards and ability to protect the interests of its

constituents. Finally, legal-procedural reputation relates to the justness of the agency's decision procedures. Consultation is useful if it protects the Commission's performative, moral, technical and/or legal-procedural reputation (Carpenter 2010: 33–70).

With respect to the technical reputation of the Commission, consultation with external interests may enhance the policy capacity of the Commission. The Commission operates in a complex environment while possessing limited in-house expertise, and external interests may thus provide the EC with crucial expertise (Van Ballaert 2017: 407). As argued by Bunea and Thomson (2015: 518), 'consultations can be viewed as large-scale brainstorming exercises that increase policy-makers analytical capacity and ability to tackle policy problems'. In addition, including organized interests can enhance the chances that proposals will be successful – the performative reputation of agencies – as consultation may mobilize support and provide valuable information about the preferences of involved actors, including the positions of legislative actors (Van Ballaert 2017: 407; Bunea and Thomson 2015: 521). Last, consultation may help legitimize Commission proposals and, thus, its moral and legal-procedural reputation.

From this perspective, consultation is part of a self-legitimization process (Bunea and Thomson 2015: 521) strengthening the overall reputation of the Commission and the legitimacy of specific proposals. Different consultation strategies are most closely related with different aspects of agency reputation. Concerns with the technical and performative reputation – or what Bunea (2018) terms output legitimacy – are most effectively pursued in consultations with key stakeholders. On the other hand, moral and legal-procedural reputation – or input legitimacy (Bunea 2018) – is closely related to broad consultation involving not only interest groups that are usually among the stakeholders of the involved agency, but also allowing for the expression of broad, public interests. As discussed above, attention to this aspect of Commission consultations have

generally increased and agencies therefore face a general pressure to focus on input legitimacy. We therefore: *expect the Commission to engage in consultation with a diverse range of external actors.*

While the Commission faces incentives to consult broadly, variation in the types of external actors consulted is likely to depend on the type of consultative instrument used as well as the nature of the policy proposed. It follows from the reputation perspective that concerns about different aspects of agency reputation can lead to different consultation practices. This line of reasoning is also reflected in Van Ballaert's (2017: 408-410), argument that different consultation instruments can be used depending on the balance between the goals of building capacity and legitimizing proposals. Notably, more open forms of consultation are well suited to enhance an agency's moral reputation by broad mobilization and information collection, while more closed types of consultations may be better at focused discussions with central stakeholders and mobilization of targeted support to enhance technical and performative reputation.

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

Previous studies have found variation across EU agencies in reputation-cultivation strategies (Rimkutė 2019) and here we adopt a similar logic to argue that the characteristics of policy proposals may affect consultation strategies. Policy proposals differ with respect to their level of complexity, their societal effects and the distribution of costs and benefits between different

societal groups (Lowi 1972; Wilson 1980). These features affect both Commission incentives to consult and the mobilization of groups seeking access to consultations (Van Ballaert 2017; Rasmussen and Carroll 2014; Røed and Hansen 2018). As argued by Rasmussen and Carroll (2014: 447), it is particularly crucial that EU policies differ in the extent to which they incur costs and/or benefits to specific societal sectors as well as in the level of concentration of the costs associated with, for example, regulation.

The EU is particularly strong in business-related policy areas, where the main conflict is oftentimes between business interests on the one hand and civil society on the other (Dür et al. 2015; Rasmussen and Carroll 2014). Therefore, the most relevant line of distinction is between policies regulating specific business sectors, regulation of business in general and other types of policies. Regulatory policies often limit the discretion of certain actors and/or compel them to engage in various types of behaviour. While the directly concerned parties may thus face strong incentives to engage, large parts of the public are usually unconcerned. This is particularly prevalent when the costs are concentrated on a small number of industries (Rasmussen and Carroll 2014: 447). The external pressure for consultation may therefore vary across policy areas.

This aspect of policy can also affect the Commission's balancing of different types of legitimacy concerns. When targeting specific economic sectors, agencies may care primarily about their technical and performative reputation, which can be enhanced through focused consultation with targeted groups (Van Ballaert 2017: 408-410). Also, the more directly the Commission is targeting specific economic sectors, the more involvement of these sectors may simultaneously serve to enhance even the moral reputation of the Commission. On the other hand, when drafting policies of broader scope, concerns about including and representing broad societal interests – the moral and legal-procedural reputation – weigh in more heavily (see also discussion in Bunea 2018: 8-10). In consequence, agencies will be more likely to prioritize broad mobilization and information

gathering. In sum, we therefore expect the following: *Consultations in policy areas where specific business sectors are targeted are more biased towards business interests than consultations in other policy areas.*

Methods and data

To map the range of consultative instruments used by the Commission, we built a dataset on consultation by the Commission in all major policy proposals in the period 2011–2016. By the term “major proposal” we refer to proposals that are accompanied by impact assessment reports. According to the Commission’s internal guidelines, these reports are made for proposals that are “likely to have significant economic, environmental or social impacts” (Commission 2017: 15). The dataset includes 368 proposals and is based on coding of reported consultation practices in the Commission’s impact assessment reports.

Systematic impact assessment was launched by the Commission as part of the better regulation agenda that also led to the third generation consultation regime described above (Radaelli and Francesco 2007: 129–165; Radaelli and Meuwese 2010; Renda 2006). In the white paper ‘European Governance’, the Commission (2001: 30) introduced impact assessments as a tool to improve the quality of policy proposals. This ambition led to a set of guidelines that the individual Commission DGs were to follow in their preparation of important proposals (Commission 2002b). These original guidelines have been revised several times, most recently in 2017 (Commission 2017). The Commission produces an annual number of 50–100 impact assessment reports. Their length varies from around fifty to several hundred pages.

Important for our purposes, draft impact assessment reports are subjected to outside consultation, and the final version must include a detailed description of the responsible DG’s consultation strategy and the results obtained from it (Commission 2017: 14). Impact assessment

reports are normally structured in a semi-standardized fashion. A brief account of consultation is provided in the main text of the report in a section entitled ‘Consultation and expertise’, and one or more annexes then provide more details. The Commission’s 2012 impact assessment report on its proposal on simplifying the transfer of motor vehicle registrations across borders (Commission 2012) provides an example. In this 181-page report, the main text has a one-page explanation of the consultation of outside interests. The responsible DG briefly explains that it involved selected external experts by way of different surveys, conducted a public online consultation in the period March to May 2011 and, finally, organized a stakeholder conference on 21 June 2011. This brief description is then explained in more detail in a 22-page annex to the report. The annex first explains how the public online consultation was organized and analyses in considerable depth the 828 responses. Second, it explains how the ensuing stakeholder conference was organized, that it was attended by stakeholders from 22 member states and what issues were raised. Third, it accounts for how the surveys of experts were made and what they showed. Finally, it explains an additional initiative, not included in the main text of the report, namely, that it supplemented these consultation instruments with commissioning a study with a consultancy on citizens’ and businesses’ practical experience with transferring motor vehicles across borders.

Impact assessment reports constitute a rich and detailed data source on the Commission’s use of consultation instruments in practice. Compared to alternative sources, such as the explanatory memoranda in COM documents, it provides much more detail. However, the validity, representativeness and limitations of the data should of course be carefully evaluated. First, one worry might be that the reports paint a too rosy picture of consultation because the responsible DG has an interest in demonstrating that it lives up to the official guidelines. This is a legitimate concern. However, having studied hundreds of reports, we are struck by the level of exact detail – dates, numbers and types of participants, responses given and issues raised. While over- or

underreporting of consultation cannot be completely ruled out, we feel confident that, on average, the reports paint a fairly accurate picture of consultation practices.

Second, the data are not representative of the Commission's general consultation practices, since they only cover proposals that are so important that they require impact assessment. In practice, the responsible DG decides in consultation with the Commission's Secretariat-General whether a given proposal is important in this sense. This does not mean that all proposals in our dataset are equally important, but variation is limited, which must be taken into account when the results are evaluated. Third, the data enable a mapping of who is involved in consultations, but not the extent to which consultations have an impact. The study is thus limited to mapping access to the decision arena, not influence, but since access is often a prerequisite for influence, mapping and analysing access is substantially important (Binderkrantz and Pedersen 2017).

The consultation practices described in the reports need to be coded to be amenable for analysis. After two coding meetings¹ with the authors, two coders have hand-coded our sample of impact assessment reports. To assess inter-coder reliability, the two coders both coded 38 randomly selected proposals (out of the 368 proposals). For the variables used in this paper, this resulted in an average Krippendorff's α of 0.68 (minimum $\alpha = 0.57$; maximum $\alpha = 0.83$), which indicates reasonable reliability (Krippendorff 2004).

With the above mentioned caveats in mind, we now turn to the map that we can provide of the Commission's consultation regime. Our prime focus is the three consultation instruments that constitute the core of the Commission's consultation regime and have been discussed in previous studies (Van Ballaert 2017). Based on pilot coding of impact assessment reports we have added additional categories including restricted online consultations among invited

¹ During the meetings the coders were introduced to the coding scheme and the structure and content of impact assessment reports.

constituents.² We also register whether the responsible DG in the Commission meets more informally with selected outside interests, whether EU agencies are consulted and whether academic experts or consultancy firms are involved. In sum, our coding scheme combines deductive coding based on existing literature and inductive coding based on pilot coding. The final scheme includes the following categories:

1. Open online consultations that are announced on the internet and that allow for answers by email or online questionnaires
2. Restricted online consultations among invited constituents
3. Stakeholder conferences that take the form of open meetings, seminars or workshops
4. Selected fora with restricted and pre-defined participation. This category includes formal settings with limited participation of privileged interests. They may take the form of expert groups, advisory committees, administrative networks, comitology committees and specialized policy forum.
5. DG meeting with selected external actors
6. Discussion with EU agency
7. Academic consultation or involvement of private consultancy firms.

In addition, the impact assessment reports allow a registration of the type of interests involved in consultations for consultation type 1–4.³ Here, we adopt a broad definition of interests encompassing both associations, individual business firms and citizens. To determine the extent to which different substantive interests are involved in consultations, we distinguish between trade

² When restricted online consultation is used invitations to take part in a survey are not fully open to all interested actors but restricted to a specific target audience. Restricted online consultation is usually preferred if a full open online consultation is not considered appropriate (e.g., because of the technical nature of the proposal). A similar distinction is made between open Stakeholder conferences and more restricted fora for which participation requires an invitation.

³ In addition to the types of consulted actors, the impact assessment reports also sometimes report the number of consulted actors. But this is not done systematically, so we do not include this information in our analyses.

unions, business groups or individual business firms, national or subnational public authorities (including associations of such) from the member states, citizen groups, individual citizens, and other actors.

Finally, to investigate possible differences across policy areas, we have registered the issue of each proposal. This is operationalized as the first directory code mentioned in the proposal's file in the EU's legal database, EUR-Lex. Table 1 shows that our proposals are distributed across almost all policy areas. Not surprisingly, this also means that there is ample variation in which DG is responsible for consultation. No DG is thus responsible for more than 11 percent of proposals.

[TABLE 1 ABOUT HERE]

To test the expectation of differences in consultation across policy areas, we have classified each proposal depending on the degree to which it invokes concentrated costs or benefits on specific business sectors. For this, we have used the classification of the policies according to the EUR-Lex directory codes and re-coded policies into four categories: 1) Regulation of specific business sectors, 2) General regulation of business, 3) EU institutional matters and 4) General regulation. The exact recoding of directory codes can be found in the online appendix. In addition to these variables, the analysis includes controls for the policy scope⁴ of each proposal and for the legal nature⁵ of each proposal.

⁴ This variable indicates how many policy areas the proposal encompasses. It is measured as the number of EurVoc descriptors mentioned in the proposal's 'document information' page on EUR-Lex.

⁵ This variable indicates whether the proposal is a legislative (value=1) or a non-legislative act (value=0). A legislative act is decided by a legislative procedure and involves both the European Parliament and the Council (the codecision, consultation, or consent procedures), while a non-legislative act involves only the Council or is adopted by the Commission. Legislative acts are, on average, more politically sensitive than non-legislative acts.

Investigating the Commission's consultation of external interests

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

In addition to these types of consultation formats, where a range of different interest might participate, consultation with academics or private consultancies is also frequent. EU agencies are involved to a lesser extent.

These findings are evidence of a well-established consultation regime where no single type of consultation is uniformly used, but where most proposals involve at least 3–4 different types of consultation formats. It is particularly notable that some sort of online consultation is used in most proposals – only 25 percent of proposals did not involve either open or restricted online consultations.

[FIGURE 1 ABOUT HERE]

In sum, the Commission has developed a consultation regime that relies on a semi-standardized set of consultation formats. This is in line with our first expectation that the Commission engage in

widespread consultation as it prepares policy proposals. The overview in Figure 1 also provides a useful background for investigating whether the Commission's consultation practices avoid dominance by business interests.

A major official ambition of the Commission's consultation regime is to avoid, or reduce, bias in the interactions between the EU and interest groups. Since EU lobbying has traditionally been seen as dominated by business interests, the most pressing concern is whether consultation leads to increased involvement of other types of interests. This is not an easy question to evaluate because the evaluation standard is far from straight-forward. What does unbiased consultation look like? The literature has struggled with this question and provided different solutions. For example, Rasmussen and Carroll (2014) compare the distribution of consulted interests in online consultations to the distribution of interest groups registered in the EU's transparency register. This comparison reveals whether consultation is associated with more or less bias than the registered EU population of interest groups. While insightful, this evaluation standard suffers from the limitation that the degree of bias in the registered EU population of interest groups is unknown, so the comparison is relative, not absolute.

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

As noted above, the Commission's impact assessment reports allow us to map the types of interests involved in four of the consultation formats listed in Figure 1. Table 2 shows the distribution of involved actors in these consultation formats. Several interesting patterns emerge. First, across the four consultation formats, business interests and public authorities from the

member states stand out as the most commonly consulted. In 75–90 percent of the proposals involving open online consultations or stakeholder conferences, these types of actors are among the consulted. This fact seems to indicate that consultation is at least to some degree ‘business as usual’ with representatives of government at different levels and business interests being the most regular participants. Second, trade unions are far less consulted and involved in less than a quarter of any consultation format.

Third, it is also evident that business is not the sole representative of external interests. In online consultations, especially open online consultations, the presence of NGOs representing different kinds of citizen interests and individual citizens is noticeable, and NGOs are also participants in about half of the stakeholder conferences. Fourth and finally, the involvement of external actors varies across the different consultation formats. The highest level of diversity is found in open online consultations. As expected, there seems to be a link between the level of openness and publicity around a consultation format and the extent to which a diverse range of actors are involved. Put differently, business interests dominate to different degrees depending on consultation formats.

[TABLE 2 ABOUT HERE]

Another take on the question of evaluating bias is to look at policy types as consultation incentives and external pressure for consultation vary across policy types. To investigate this question we have recoded the policy areas listed in Table 1 into theoretical policy types that vary in the degree to which proposals have concentrated benefits and/or costs for (specific) business sectors. We start by looking at the distribution of consultation formats across policy types. A rather blatant form of bias would occur if, say, the Commission uses more exclusive types of consultation formats in areas that

are of particular concern to business interests. However, as Table 3 shows, consultation formats do not show much variation across policy types. In this sense, the Commission's consultation regime is stable across policy types.

[TABLE 3 ABOUT HERE]

We then look at variation in diversity of consulted actors across policy types, irrespective of consultation format. The results are presented in Table 4. They indicate that external pressure and area-specific consultation incentives also matter for consultation. Business groups and trade unions are consulted more frequently in the two policy types that deal with business regulation, whereas NGOs are consulted more frequently in proposals dealing with general regulation. In contrast, public authorities from the member states are more evenly consulted across types of policies.

[TABLE 4 ABOUT HERE]

In other words, consultation patterns seem to reflect both supply and demand factors as expected based on the resource-exchange model. There is therefore a need to include both types of factors in an analysis of potential bias in consultation. We do this in a more formal test in Table 5, which reports the findings from a series of logistic regression analyses. They investigate how the likelihood that various types of actors are consulted depends on consultation format. The analyses include four independent variables: consultation formats, the policy types discussed above, policy scope (cf. footnote 3) and the legal nature of the proposal (cf. footnote 4). The dependent variable in these analyses is a dichotomous measure that takes the value of one if the actor type is consulted on the individual proposals, and zero if not.

The most interesting question from our perspective is whether the consultation formats affect the likelihood that the various actor types are consulted once the policy type is controlled for. Some noteworthy patterns emerge. First, with the exception of trade unions, it is evident that open online consultations increase the likelihood that all actor types are consulted. This finding supports the studies that find that online consultations are an effective way of reaching out to a broad variety of actors (Bunea 2017; Quittkat and Kotzian 2011; Quittkat 2011).

The findings for the policy types also reveal interesting patterns. In line with the descriptive analyses, proposals that deal with regulation of business increase the likelihood that business groups are consulted. In contrast, NGOs are more likely to be consulted on proposals that deal with general regulation. These findings support previous studies of the relationship between policy characteristics and consultation (Van Ballaert 2017; Røed and Hansen 2018). But since our analyses rest on consultation patterns across the entire policy spectrum, we have been able to study the link between policy types and consultation more firmly.

The findings for policy scope indicate that business organizations and NGOs are more likely to be consulted on proposals that encompass several policy areas. Finally, the finding for the legal nature of the proposal indicates that business organizations are more likely to be consulted on proposals for legislative acts.

[TABLE 5 ABOUT HERE]

Conclusion and discussion

Lobbying in the EU has been studied intensively. Our study adds to a small, but growing, literature that changes the perspective from lobbying to consultation. This means studying the relationship between the EU institutions and interest groups from the EU institutions' side of the table. The

starting point for this literature is that the EU institutions are not passive receivers of input from organized interests. On the contrary, they have interests in influencing the interaction and spend considerable energy on doing so. We focus on the Commission and study the consultation regime that has carefully been created over the past decades. The core components of this regime are three consultation formats: online consultations, stakeholder conferences and more exclusive and restricted consultation fora such as expert groups and advisory committees.

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

A second ambition was to contribute to the study of the impact of the Commission's structuring of interactions with interest groups. An official ambition from the Commission's side is to avoid bias, that is, reliance on input from a particular type of actor, especially business interests. The question is whether the Commission's decision of which consultation format to use matters for which interests are involved. More specifically, can the Commission avoid dominance by business interests by a careful design of consultation format? Our analyses show that some consultation formats, especially open online consultations, are associated with the involvement of a broader range of interests than other consultation formats, e.g. stakeholder conferences.

If there is a link between consultation format and diversity in consultation, a relevant question is whether this link is really used by the Commission to reduce bias. The reputation perspective adopted in this paper would caution against such a conclusion. In this perspective, the primary aim of consultation is to increase reputation and legitimacy, while any reduction of bias would be a by-product. Reducing bias will often occur, because in many instances reputation-driven consultation will lead to consultation of a diverse range of actors. But not always. As our results indicate, in areas where the Commission primarily cares about its technical or performative reputation, reducing bias is likely to be sacrificed for more focused consultation with carefully targeted groups. For example, when the Commission consults on policies targeting specific business sectors, it is more likely to consult with business interests. There is therefore reason to be sceptical about how far the Commission will take its official bias-reducing ambitions.

Our findings raise a number of questions for future research. First, the reputation perspective would not only be sceptical how serious the Commission is about reducing bias, but also about how much influence consultation brings. If the primary aim of consultation is to increase reputation and legitimacy, it may be only loosely coupled to the actual formulation of proposals and amount to little more than window-dressing. Based on the reputation perspective one might also expect a sort of hierarchy among the Commission's various consultation formats. Open online consultations may serve the Commission's moral and legal-procedural reputation, but may have little impact on the actual drafting of proposals, while more restricted consultation forums, e.g. expert groups, may have real importance because they serve the Commission's technical and performative reputation. On the other hand, there is some evidence to suggest that open online consultations may actually have some impact. In our empirical work we have encountered several instances where the Commission in impact assessment reports have gone to great lengths and employed sophisticated

methods (e.g., supervised machine learning) to deal effectively with the sometimes overwhelming input received from open online consultations.

Second, the limitations of our data should be kept in mind. There are three issues here to improve upon. First, while our data allow a mapping of the relationship between consultation formats and the involvement of external interests, they cannot conclusively determine whether this relationship is causal. This requires other data and methods, such as experiments or process-tracing analyses. Second, our data only allow a mapping of the types of consulted actors, not their number. It may make a difference whether, say, only a few or several hundred NGOs are consulted, but our data cannot distinguish between these situations. Finally, like other studies we have struggled with the concept of bias in consultation practices. We have provided a new empirical approach to this question, but certainly not the last word. Bias is not only a difficult empirical concept, it has also a normative side. It is widely acknowledged that intensely affected actors should have some privileged influence in the political decision process. But how much?

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Tables and Figures

Table 1. Proposals according to policy areas

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

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

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

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

Table 3. Proposals according to policy types and consultation formats (percentages)

	Regulation of specific business sectors	General regulation of business	EU institutional matters	General regulation	Total
Restricted online consultation	10,4	4,7	4,2	8,3	8,2
Open online consultation	85,8	83,7	100,0	78,7	84,0
Stakeholder conference	61,3	53,5	54,2	59,3	58,7
DG meeting	64,2	62,8	62,5	65,7	64,4
N	106	43	24	108	281

Note: N denotes the number of proposals under the different policy types.

Table 4. Proposals according to actors involved and policy types (percentages)

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

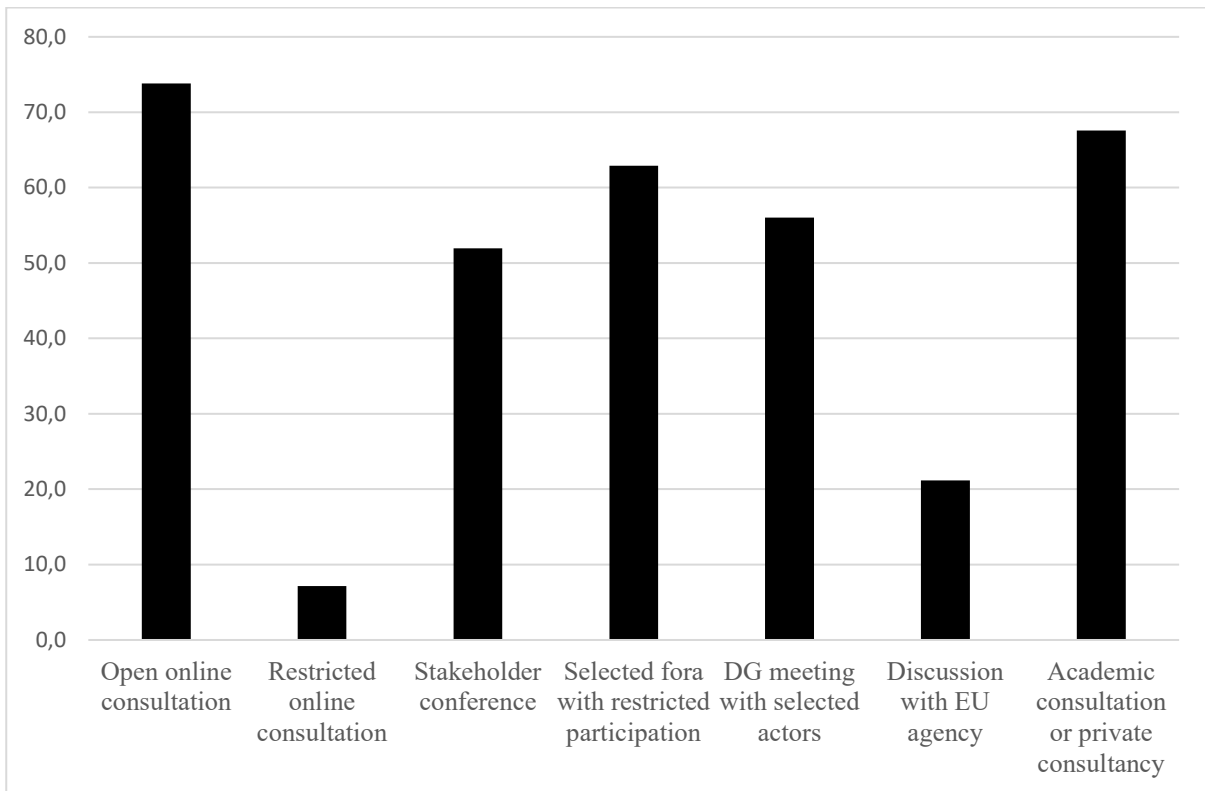
Note: N denotes the number of proposals under the different policy types.

Table 5. Logistic regression analyses of the consultation of actor types

	Trade unions	Business organizations	National or subnational authorities	NGOs
<i>Consultation format:</i>				
Restricted online consultation	.70	.17	-.02	.09
Open online consultation	.43	2.05***	2.17***	2.19***
Stakeholder conference	.30	.46	.54	-.21
DG meeting	.03	-2.30***	.47	.06
<i>Policy type:</i>				
Regulation of specific business sectors	.14	2.58***	-.09	-.97***
General regulation of business	.17	1.29**	-.97	-1.28***
EU institutional matters	-.81	-.84	-1.23	-1.93***
General regulation	(ref.cat.)	(ref.cat.)	(ref.cat.)	(ref.cat.)
Policy scope	.04	.20*	.00	.14*
Legal nature of proposal	.25	1.56**	.75	-.27
Constant	-2.37**	1.42*	-.20	-.43
Pseudo-R ²	.02	.34	.14	.14
N	280	280	280	280

*p<0.1; **p<0.05; ***p<0.01.

Figure 1. Proposals according to consultation formats (percentages)



Online Appendix:

Table A1: From EUR-Lex directory codes to four policy types

Policy type	EUR-Lex directory code	Policy area	No. of proposals	Focus in proposals
Regulation of specific business sectors Highly concentrated costs/benefits on business sectors	03	Agriculture	14 (2)	Regulation of animal health and market organization
	04	Fisheries	13 (1)	Common fisheries policy
	07	Transport policy	27 (1)	Inland transport and air transport
	12 (not 12.10)	Energy	5 (0)	Nuclear energy
	06	Right of establishment and freedom to provide services	29 (8)	Focus on sectoral application
	13.20 + 13.30	Industrial policy and internal market	28 (3)	Specific sectors
General regulation of business Concentrated costs/benefits on business generally	02	Customs union and free movement of goods	7 (0)	Regulation and procedures for custom issues
	08	Competition policy	1 (0)	Restrictive practices
	09	Taxation	13 (4)	Direct and indirect taxation
	13.10 + 13.40 + 13.60	Industrial policy and internal market	14 (1)	General regulation
	17	Law relating to undertakings	14 (3)	Company law and intellectual property rights
	01	General, financial and institutional matters	17 (0)	EU Governance

EU institutional matters	10	Economic and monetary politics and free movement of capital	5 (0)	Economic policy
Less direct impact on interest groups	14	Regional policy and coordination of structural instruments	3 (1)	Regional development fund
	18	Common foreign and security policy	1 (1)	
	20	People's Europe	2 (0)	European citizenship
General regulation	05	Freedom of movement for workers and social policy	17 (1)	Movement of workers and social policy
Broad benefits/costs	11	External relations	14 (2)	Development aid
	12.10	Energy	9 (0)	Utilization of energy
	15	Environment, consumers and health production	37 (4)	Environment and consumers
	16	Science, information, education and culture	7 (0)	Science, education, culture
	19	Area of freedom, security and justice	39 (6)	Border control and police

Note: Numbers in parantheses in column 4 (No. of proposals) show how many proposals from the policy area were included in our reliability subsample (N=38).