Between a Rock and a Hard Place

Stakeholder Involvement as a Legitimation Strategy in European Union Agencies

Bastiaan Thomas Redert

Between a Rock and a Hard Place. Stakeholder Involvement as a Legitimation Strategy in European Union Agencies.

Cover design and layout by Birgit Vredenburg, persoonlijkproefschrift.nl
Image courtesy of: Bohdan Populov/Shutterstock.com

Printing: Ridderprint | www.ridderprint.nl

Universiteit Antwerpen

Faculteit Sociale Wetenschappen

Departement Politieke Wetenschappen

Between a Rock and a Hard Place

Stakeholder Involvement as a Legitimation Strategy in European Union Agencies

Proefschrift voorgelegd tot het behalen van de graad van Doctor in de sociale wetenschappen:

politieke wetenschappen aan de Universiteit Antwerpen te verdedigen door

Bastiaan Thomas Redert

Promotoren: Prof. dr. Peter Bursens

Prof. dr. Jan Beyers

Antwerpen, 2021

Members Doctoral Commission:

Prof. dr. Jarle Trondal – Universitetet i Agder

Prof. dr. Koen Verhoest – Universiteit Antwerpen

Members Doctoral Jury:

Prof. dr. Christel Koop – King's College London

Prof. dr. Dirk de Bièvre – Universiteit Antwerpen

This project has received funding from the European Union's Framework Programme for Research and Innovation Horizon 2020 under the Marie Skłodowska-Curie Grant Agreement No. 722581.

TABLE OF CONTENTS

List of Figures

List of Tables

PREFACE

Daar sta je dan… It was never my intention to start a PhD in the first place. Working on a 300-page document for three years and doing that all by yourself? That sounded like something that I might not enjoy doing for four years of my life. Yet, I still applied and got the position in Antwerp. And boy, was I wrong! Not only did I soon realise that I actually enjoy the intellectual challenge of writing a PhD, but I also realised that writing a PhD is not a solitary endeavor at all. On the contrary, during my time as a researcher I came to learn how important supervisors, colleagues and friends are. This preface is a small token of gratitude for the people that have supported, inspired, and cheered for me along the way.

Allereerst wil ik uiteraard graag mijn promotoren bedanken. Jan, bedankt dat je vertrouwen in me had en me hebt aangespoord om te solliciteren aan de UA. Zonder dat dringend advies had ik hier niet gestaan. Gedurende mijn doctoraat was jij degene die niet zomaar genoegen nam met mijn werk. Er was altijd verbetering mogelijk: Heb je al over deze hypothese nagedacht? Wat bedoel je met deze zin? Misschien kan je beter deze methode gebruiken? Dit soort vragen waren frustrerend, maar hebben me gestimuleerd om kritisch te reflecteren op mijn werk, en er altijd meer uit te halen. Dankjewel daarvoor! Peter Bursens, als er iemand in dit lijstje is die ik niet genoeg kan bedanken dan ben jij het. Gedurende deze vier jaar hebben we veel samengezeten, gediscussieerd en overlegd. Zeker de eerste paar maanden was ik nagenoeg elke week op je kantoor te vinden om een idee af te toetsen, een paper te bespreken, of mijn werk eens goed te laten bekritiseren. Je bent een fantastische mentor geweest voor me, en hebt me laten inzien hoe – en ik citeer – 'je het academische spel moet spelen'. Ik kan met zekerheid zeggen dat ik iedereen die een doctoraat schrijft een promotor als Peter toewens. Peter, bedankt, en ik hoop dat ik nog een tijd met je kan samenwerken.

Besides my supervisors, I would also like to thank the members of my doctoral jury for their contributions to this dissertation. First, I would like to thank Jarle Trondal for his critical and often theoretically challenging questions and remarks. Your feedback always reminded me to not lose track of the bigger picture. Christel Koop, thank you for being part of my jury and your excellent question. I hope we will work together in the future. Ik wil ook Dirk de Bièvre bedanken voor zijn bijdragen aan mijn proefschrift. Zijn betrokkenheid heeft mij en mijn werk altijd scherp gehouden. Daarnaast wil ik Koen Verhoest bedanken voor het voorzitten van de doctoraatscommissie en om mijn traject met een constructieve en kritische blik te volgen.

Natuurlijk wil ik ook al mijn UA-collega's bedanken voor hun feedback en voor alle gezelligheid in de vorm van lunches, koffiepauzes, borrels, feestjes, skireisjes, enzovoorts. Zij hebben deze vier jaar tot een onvergetelijk avontuur gemaakt. In het bijzonder noem ik Jolijn, Sharon, Bjorn, Tom en Sarah voor de vele discussies op het landschap, de borrels en de feestjes, en natuurlijk voor het vele lachen. Ook wil ik Sophie, Patrick, Rozemarijn en Željko bedanken voor hun steun en voor de hysterische Drag Race avonden (Shantay you stay!).

Of course, I cannot forget my other academic family: the PLATO family. What an adventure this has been! I remember us meeting for the first time in a hotel room in Oslo. From then on, I already knew that I was fortunate enough to work together with such an amazing group of people. Camille, Emilija, Gil, Ivana, Jan, Joris, Jose, Julien, Philipp, Tiffany, thank you all for your support, your constructive feedback and the amazing times we had during the PhD-schools. Special thanks to Claire, with who I co-authored one of the chapters in the dissertation. Working with you has been an amazing experience and I hope we will keep seeing each other in the future. Also special thanks to Elena. You are the Latina-sister I never knew I had. Thank you for always being there for me and making this journey unforgettable: *solo Dios puede juzgarnos*.

En dan is er natuurlijk ook nog een wereld buiten de universiteit. Allereerst wil ik de vrienden uit Schoonhoven bedanken. We zien elkaar niet zo heel veel meer, maar als we elkaar zien is het als vanouds. Jullie weten zelfs het slaperige Schoonhoven gezellig te maken, bedankt! Ook wil ik Artur bedanken. Zijn onvoorwaardelijke vriendschap heeft me zowel professioneel als persoonlijk enorm geholpen afgelopen jaren. Bedankt daarvoor!

De wereld buiten de universiteit is ook een gekke wereld: Vaslavjes, Combassies, Brammetjes, De Geur van Vis, een paar Glaadjes op zijn tijd, en natuurlijk de eindeloze avonden in de Bodytalk, Café Weerbericht of de Goedestraat. Lieve vriendinnen, lieve Dodri, ik wil jullie allemaal enorm bedanken voor de ongekende gezelligheid van afgelopen jaren. De ontspanning was soms hard nodig. Ik hou ontzettend veel van jullie en hoop dat we nog veel manie tegemoet gaan. Natuurlijk moet ik hier in het bijzonder Winanda bedanken. Ik kan met alles bij je terecht, en jouw vriendschap betekent ontzettend veel voor me. Dankjewel!

En dan nu het emotionele stuk. Lieve papa en mama, uiteraard heb ik het aan jullie te danken dat ik hier nu sta. Zonder jullie vertrouwen in mijn talenten en zonder jullie steun was het niet gelukt – dankjewel daarvoor. Annelot, zusje, we zeggen het niet genoeg tegen elkaar, maar ik ben ontzettend trots op je. Bedankt dat je mij altijd weer met beide benen op de grond zet. Papa, mama, Annelot, het is de afgelopen twee jaar niet makkelijk geweest en we hebben samen flink wat verliezen meegemaakt. Opa had hier heel graag bij willen zijn: een Dr. Redert in de familie – het is dan toch gelukt.

Tot slot, het leukste van een doctoraat schrijven, is een Eurovisie feestje organiseren voor je collega's, en daar de liefde van je leven tegen het lijf te lopen. Lieve Willem, jouw liefde, vertrouwen en steun hebben me door de laatste fasen van deze reis geloodst. Je hebt me getroost als het niet lukte, me gemotiveerd als ik vastzat, en me toegejuicht als het weer goed ging. De jaren met jou zijn de mooiste. Ik hou zoveel van je!

And now, as Mama Ru would say: Let the music play!

Bastiaan Redert (a.k.a. Combassie, PLATO Baby, Bae Maria)

CHAPTER 1

INTRODUCTION

The European Union (EU) is in a continuous battle to gain legitimacy vis-à-vis the Member States and their citizens. Although the predecessor of the EU, the European Community, gained legitimacy through its member states (Ipsen, 1972; Scharpf, 2009), various transfers of nation state powers to the European level corroded this indirect form of legitimacy (Horeth, 1999; also see Zürn, 1992), or as Schimmelfennig argues: 'The more power over issues of core state sovereignty and redistribution was transferred to the European level, the more the Community was in need of its own sources of direct popular support' (1996, p. 2). Indeed, the general lack of legitimacy of the EU has become a central concept within the study of the European Union. Many of them have denounced legitimacy troubles (Banchoff & Smith, 2005) or a legitimacy crisis (Longo & Murray, 2015).

Although legitimacy is a widely studied concept, scholarship does not agree on a single definition. In its simplest form, legitimacy pertains to how power may be exercised in ways that invoke acceptance by citizens (Longo & Murray, 2015, p. 7). However, legitimacy has also been understood as the acceptance of an institution (Bäckstrand, Khan, Kronsell, & Lövbrand, 2008, p. 38), as appropriate behaviour (March & Olsen, 2009), as a dual relationship of entitlement to control and compliance (Bernstein & Coleman, 2009, pp. 5–9), or as the rightful exercise of power (Gilley, 2009, p. 4). Some scholars also seem to equate legitimacy to democracy (also see Chapter 2). In this regard, scholars have addressed the lack of certain democratic features in the EU as sources for its lack of legitimacy, such as the lack of national parliamentary control (Andersen & Burns, 1996; Raunio, 1999), the lack of 'real' European elections (Hix & Marsh, 2005; Kousser, 2004; Mattila, 2003), the weak role of the European Parliament (Horeth, 1999; Katz, 2001; Lodge, 1994), and the lack of a European demos (Duchesne & Frognier, 1995; Scharpf, 2003). The various conceptualisations are used interchangeably in normative and empirical literature. Yet, scholars do not all describe the concept in the same way and therefore do not investigate the same feature when they examine an authority's legitimacy. To avoid conceptual confusions, this thesis reconceptualises legitimacy as an objective social relation emergent upon constitutive cultural rules and a subjective power relation between an authority and its constituency (see Chapter 2).

The lack of legitimacy is argued to be the result of inherent flaws in the institutional design of the EU. In traditional majoritarian polities, citizens express their (dis)satisfaction with policy decisions by voting for political parties which organise themselves around redistribution issues (Moravcsik, 2002). In turn, voters express their opinion on the functioning of the executive power and re-elect or punish the executive. However, the ability to influence the behaviour of the controlled *ex ante*, to sanction it *ex post* or both, is limited in the EU since citizens do not have the democratic instruments they have in national politics (Papadopoulos, 2007). In addition to these institutional flaws, the EU is perceived as behaving increasingly authoritatively and political parties have denounced the fact that "E.U. elites keep power from the people" (Dempsey, 2011). Due to this distance between the EU and its citizens, some scholars question the EU's legitimacy (Longo & Murray, 2015).

The ongoing debate on the EU's oft-alleged legitimacy problem or crisis is "crowded territory" (see for example the seminal work of Majone, 1998 and Moravcsik, 2002, 2008; but also more recent work of e.g. De Bruycker, 2020; Murdoch, Connolly, & Kassim, 2018; Stie, 2021). Although the alleged legitimacy crisis is the starting point of this dissertation, I do not aim to contribute to the discussion whether the EU indeed suffers from such a crisis. Instead, this dissertation focuses on crucial implications of these allegations: namely the EU's responses to its own *perceived* legitimacy crisis. This dissertation's starting point is thus not whether the EU actually suffers from a lack of legitimacy, but how the EU responded to its alleged legitimacy problems. In response to its supposed lack of legitimacy and critiques of being an illegitimate political power, the EU has tried to compensate for its flaws by reforming its institutions. Two of these responses lie at the core of this dissertation: the creation of regulatory agencies and the institutionalisation of stakeholder involvement in these agencies.

In short, EU agencies were established to enhance the EU's legitimacy by improving the EU's policy outputs. Although delegating regulatory tasks to agencies indeed contributed to effective policy outputs, it also caused a new problem on the input side of the policy process: EU policymaking became too technocratic and distant from European citizens. As a response and to compensate for these allegations, EU regulatory agencies are mandated to consult with societal stakeholders: actors that have an interest in a public policy and organise themselves to advocate or defend that interest (i.e. private firms, business associations, trade union, non-governmental organisations, labour organisations, research institutes, etc.).[1] To this end, EU agencies institutionalised the involvement of stakeholders, referring to the creation of formal consultation regimes in agencies' founding regulation, making stakeholder involvement a formal and mandatory part of agencies' policymaking efforts. As such, this dissertation focuses solely on the formal interactions between stakeholders and agencies, and thus excludes informal interactions such as bilateral meetings, e-mails and telephone contacts.

Formal stakeholder involvement has been argued to enhance the responsiveness of EU agencies and to increase their legitimacy. A diverse set of theoretical frameworks (e.g. responsive regulation, regulatory capitalism, horizontal accountability and agency governance) argues that stakeholder involvement provides essential information, ensures compliance and safeguards a credible reputation for agencies. In this view, institutionalised stakeholder involvement provides crucial input to policy processes and could legitimise regulatory policies.

However, stakeholder involvement is not without risks. It may threaten agencies' independence and lead to capture of the agency by stakeholder interests. As regulatory agencies operate in highly complex and often technical policy areas, such as pharmaceuticals, chemicals, food safety and finance, they struggle to build deep knowledge about problems and solutions in a particular sector (Carpenter & Moss, 2014). Stakeholders representing special interests (private firms, business associations, trade unions etc.) often possess such information. As a result, there is a risk that policymakers become too dependent on the expertise of a few stakeholders. This dependence may cause capture: policy outputs that systematically favour particular groups at the disadvantage of general interests (Carpenter & Moss, 2014). In other words, close stakeholder involvement may result in undue influence of particular stakeholders on regulatory policies, and thus pose a threat to agencies' legitimacy. These two views make that current scholarship is inconclusive of the effects of stakeholder involvement on EU legitimacy. It remains unclear whether the involvement of stakeholders indeed results in more responsive, accountable and effective policymaking, or whether it induces undue influence of powerful interests. In other words, stakeholder involvement can only have a legitimising potential as long as the risks of capture can be mitigated. In this regard, a more heterogeneous mix of stakeholders and the interests they represent would avoid undue influence of one type of interest (Flöthe & Rasmussen, 2019; Klüver, 2012; Lowery et al., 2015).

1 The terms 'stakeholders' and 'interest groups' are used interchangeably throughout this dissertation. Usage depends on the focus or preferences of journals.

Thus, the EU and its agencies might be stuck between a rock and a hard place. Not involving stakeholders induces allegations of technocratic and distant policymaking, while opening the door for stakeholders can only be legitimising when there is a balance in interest representation. Nonetheless, stakeholder involvement is now an important feature of European regulatory policymaking. Yet, it remains unknown whether stakeholder involvement as an institutional instrument indeed contributes to the EU's legitimacy. Therefore, the central research question within this dissertation is *'To what extent does stakeholder involvement foster or inhibit balanced interest representation in EU regulatory agencies?'*

This dissertation answers this question in two main ways. First, it theoretically challenges the idea that stakeholder involvement can directly contribute to more legitimacy. Rather, stakeholder involvement is a legitimation strategy that the EU uses to *claim* its legitimacy. Such a legitimation strategy is inherently different from legitimacy in itself and should thus be studied differently. To study legitimation strategies, scholars should assess whether the EU's claims live up to their expectations – whether the EU's claims indeed contribute to more legitimate institutions. The second pillar of this dissertation does exactly so. In four empirical chapters, it investigates to what extent stakeholder involvement in regulatory agencies does, in fact, foster or inhibit balanced interest representation. To this end, the empirical chapters focus on the European Supervisory Authorities (ESAs): three EU agencies that are mandated to draft and implement financial regulation (namely the European Banking Authority, the European Securities Markets Authority, and the European Insurances and Occupational Pensions Authority).

The remainder of this introductory chapter will first elaborate on the EU's responses to its perceived legitimacy crisis. It will discuss agencification, stakeholder involvement and agency capture in greater detail. Second, it contextualises the European Supervisory Authorities and presents them as a fitting case to investigate the effects of stakeholder involvement in EU agencies. Third, it elaborates on the collected data and the used methods.

After this first chapter, one theoretical chapter and four empirical chapters will provide insight in the central research question. The concluding chapter will discuss the main insights and contributions of this study and discuss their implications.

BETWEEN A ROCK...

One of the EU's responses to compensate for its lack of democratic input was to improve its policy outputs. The general idea is that the EU could maintain and increase its legitimacy by focusing on its policy outputs concerning Pareto-improving policies (Majone, 1993; Majone & Everson, 2001). To this end, the EU should only focus on removing national barriers in the free movement of goods, services, people and capital. It should do so in policy fields where Pareto-improving policies are evident, such as foreign trade, the movement of factors of production, the production of agricultural commodities, monetary policy and foreign aid (Majone, 1993; Moravcsik, 2002; Scharpf, 2003; Streit & Mussler, 1995). To improve its policy outputs in these policy areas, formal rulemaking powers were delegated to independent and non-majoritarian institutions, namely regulatory agencies.

In this dissertation non-majoritarian institutions refer to 'all those organisations which spend public money and fulfil a public function but exist with some degree of independence from elected politicians' (Curtin, 2005, p. 90). This independence refers to the fact that the agencies are neither elected by the people, nor directly managed by elected officials (Gilardi, 2004; Thatcher & Stone Sweet, 2002). To narrow down the scope of this dissertation further, I solely focus on non-majoritarian *agencies*, meaning 'EU level public authorities with a legal personality and a certain degree of organisational and financial autonomy that are created by acts of secondary legislation in order to perform clearly specified tasks' (European Commission, 2002b, p. 3). This definition distinguishes agencies from other independent bodies in the EU such as the European Central Bank or Interpol (Kelemen, 2005, p. 175). In turn, non-majoritarian agencies can roughly be divided into two categories: a) executive agencies that assist the Commission in administrative and managerial tasks on behalf of the Commission; and b) regulatory agencies that provide information, advise, and make regulatory decisions (Kelemen, 2005).

Delegating powers to regulatory agencies has a number of advantages. First, authorities delegate powers to preserve policy continuity against changing preferences of parliamentary majorities (Majone & Everson, 2001). In modern democracies, the winners of the electoral contest can exercise rulemaking power for a limited amount of time. Consequently, politicians will focus on realising policies in the short- and mid-term, instead of developing policies whose success will come after new elections (Majone, 1997). Moreover, subsequent legislatures cannot be bound by long-term policies, and can renege the commitments of the previous legislature. This makes that long-term policies as suggested or drafted by governments lack credibility. The common solution is to transfer or delegate policy-making powers to institutions independent from government (Majone, 1997; Majone & Everson, 2001). This delegation to independent agencies sends signals of regulatory stability to firms and consumers, and thus constitutes as a credible commitment to society (Dehousse, 1997; Majone, 1997; Rittberger & Wonka, 2011; Trondal & Jeppesen, 2008; Wonka & Rittberger, 2010). Also, because of their independency, agencies can operate quickly in areas where continuous fine-tuning of regulation or fast adaptation of regulation is necessary (Majone & Everson, 2001).

Second, experts working in these agencies possess specific knowledge in their field of functioning (i.e. medicine, banking, insurances, chemicals) which the Commission itself might lack (Christensen & Lægreid, 2006; Majone, 1997; Majone & Everson, 2001; Wonka & Rittberger, 2010). Furthermore, agencies provide a venue for exchanging and sharing expert information between regulator and society, which can be exploited in order to create regulation (Christensen & Lægreid, 2006; Coglianese, Zeckhauser, & Parson, 2004; Dehousse, 1997; Wonka & Rittberger, 2010). This is deemed essential in the light of the ever-increasing complexity of policymaking in both national and transnational contexts (Majone & Everson, 2001, p. 139).

The relative success of delegating tasks to these agencies is reflected in the massive expansion of these agencies in the EU. Although the proliferation of these agencies, better known as 'agencification', is an old phenomenon in national administrations in Western Europe (for a discussion see Pollitt, Talbot, Caulfield, & Smullen, 2004), the European 'agency fever' is more recent (Trondal & Jeppesen, 2008). In the past two decades, the Commission founded 45 agencies with the main goal to ensure effective, efficient, and credible policy outputs. However, agencification also caused a new problem.

Because of the transfer of new powers from the nation state to the European level, the EU quickly gained competences in salient policy areas concerning consumer protection, work safety and environmental protection. These are policy areas where national interests and political preferences tend to diverge, and where consensus is difficult or impossible to reach (Scharpf, 2003). Policy decisions in these areas tend not to be Pareto-improving. Instead, these issues have (re)distributing effects on society resulting in winners and losers of policies (Borrás, Koutalakis, & Wendler, 2007; Greenwood, 2007; Hix, 1998; Horeth, 1999; Papadopoulos, 2007; Scharpf, 2003). In traditional majoritarian polities, citizens could express their (dis)satisfaction with policy decisions by voting for political parties which organised themselves around (re)distribution issues (Moravcsik, 2002). In turn, voters could express their opinion on the functioning of the executive power and re-elect or punish the executive. The ability to influence *ex ante* the behaviour of the controlled, or to sanction it *ex post* (or both), is absent in the EU, as citizens cannot directly express their policy preferences via elections. This resulted in a political system in which the backstage and frontstage of politics is disjointed. The backstage of politics, or *'politique des problèmes'* is concerned with solving societal issues in an effective and responsive manner. The frontstage of politics, the *'politique d'opinion'* is the forum in which chosen representatives discuss policies based on preferences (Papadopoulos, 2007). This disjuncture makes that citizens' influence on policymaking is highly limited and hidden behind closed doors.

This disjuncture is exacerbated as the executive power of the EU is widely dispersed over 45 agencies (Scholten & Van Rijsbergen, 2014). Agencification leads to an increase in actors who are involved in the policy process without authorisation of citizens *ex ante*, and without being subject to democratic control *ex post* (Papadopoulos, 2007). In turn, this enlarges the gap between the *'politique des problèmes'* and *'politique d'opinion'*. Furthermore, because EU agencies are relatively autonomous and are independent, their accountability regimes tend to diverge from one another, which "hinders the clarity and comprehensibility of the system, if the word 'system' is appropriate here at all" (Scholten & Van Rijsbergen, 2014, p. 1253).

This limited democratic control of citizens and politicians on policymaking poses a challenge for regulatory agencies. What were

meant to be policy improvers, became non-accountable, technocratic, and above all, undemocratic bodies. Therefore, as stated before, the normative justifications of EU governance based on arguments of effectivity and efficacy are insufficient in order to evaluate the legitimation of EU regulatory policymaking. As a result, academics and policymakers alike introduced institutional reforms that would make EU policies more responsive to citizens' needs.

These reforms find their basis in the *'Cahiers* of the Forward Studies Unit' (De Schutter, Lebessis, & Paterson, 2001) (*Cahiers* hereafter): a volume of academic articles on European policymaking that served as the foundation of the (in)famous White Paper on Governance (2001). The White Paper translated the academic findings of the *Cahiers* into a working programme for the Commission to implement in the EU. Both the *Cahiers* and the White Paper promote a new type of policymaking. Policymaking should not solely be done by 'elites' but should occur in close cooperation with society itself (Armstrong, 2002; Chatzopoulou, 2015; Curtin, 1999b; Beate Kohler-Koch, 2007, 2010; Kröger, 2008). By involving societal actors, or stakeholders, the actors that are affected by a certain decision would be able to participate in making that decision (also see Agné, Dellmuth, & Tallberg, 2015; Dahl, 1990; Goodin, 2007; Näsström, 2011). To realise this, the *Cahiers* promotes the establishment of institutionalised interfaces between stakeholders and policymakers (Dehousse, 2001). More specifically, the EU should implement wide consultations across all forums of its policymaking processes (Bertrand & Michalski, 2001).

... AND A HARD PLACE

Theoretically, institutionalised stakeholder involvement has three main advantages for regulatory agencies. First, involving stakeholders acts as an indirect way of citizen representation (Borrás et al., 2007; Furlong & Kerwin, 2004; Skogstad, 2003). Stakeholders, and organised interests in particular, would fulfil the role of a linkage, or transmission belt of citizens' preferences towards institutions (Hansen, 1991). Due to this transmission belt function, EU governance would be more responsive to societal preferences in general (Chatzopoulou, 2015). Second, stakeholder involvement would bolster the agencies' accountability and transparency regimes. By including stakeholders in the policy-making process, the agencies commit themselves to uphold its own requirements concerning transparency. If an agency does not operate accordingly, stakeholders can address the ill functioning of an agency, and hold it accountable (Chatzopoulou, 2015). Third, from an output-perspective, stakeholder involvement would enhance the problem-solving quality of policies. Since different stakeholders would share and exchange information and deliberate on policies, the agencies would be able to create more effective policies. Furthermore, because stakeholders that are affected by a certain policy are involved in the decision-making process, these stakeholders would be more inclined to accept the policy outcome. This would facilitate the implementation of policies (Ottow, 2015; Verbruggen, 2013).

Thus, this institutionalised 'partnership' between EU agencies and stakeholders increases responsiveness, fairness and transparency of EU policymaking processes (Armstrong, 2002; Chatzopoulou, 2015; Gornitzka & Sverdrup, 2011; Kohler-Koch, 1994; Kohler-Koch & Quittkat, 2013). Hence, stakeholder involvement could function as the 'healing force' to 'agencified' EU governance and would increase legitimacy (Dehousse, 2001; Lebessis & Paterson, 2001).

However, involving stakeholders also has its risks. Regulatory agencies operate in highly complex and often technical policy areas, such as pharmaceuticals, chemicals, food safety and finance. To make effective regulatory policies, they need deep knowledge about problems and solutions of the particular sector they have to regulate (Coglianese et al., 2004). As business groups operate within the market, they possess such deep knowledge (Bouwen, 2002, 2004). As a result, there is a risk that policymakers become too dependent on the expertise of a few particular (business) groups (Coglianese et al., 2004; Tsingou, 2010; Kwak, 2014). This dependence – as well as interest alignment and group-thinking dynamics – may cause capture: policy outputs that systematically favour particular groups at the disadvantage of general interests (Carpenter & Moss, 2014; Kwak, 2014; Stigler, 1971). In other words, stakeholder involvement could be a potential source of bias in policymaking, thus threatening agencies' legitimacy (Braun, 2012b, 2013; Braun & Busuioc, 2020; Carpenter & Moss, 2014; Dal Bó, 2006; Stigler, 1971; Underhill & Zhang, 2008).

To mitigate the risks of agency capture, scholars have argued that policymakers should ensure a level playing field for different (types of)

stakeholders (see for example Lowery et al. 2015). More specifically, Hojnacki argues that "an obvious place to begin in levelling the playing field would be to add more groups that represent the under-represented" (Lowery et al., 2015, p. 1218). In this regard, a more heterogeneous mix of stakeholders and the interests they represent would constitute as a move in the right direction towards a less biased system (Flöthe & Rasmussen, 2019; Lowery et al., 2015). In other words, stakeholder involvement only has a legitimising potential as long as there is a balance in the different interests that are represented in its consultation instruments.

EU regulatory agencies are thus between a rock and a hard place when involving stakeholders in their policymaking processes. Too little involvement with stakeholders and they risk being perceived as technocratic and distant, while too much involvement opens the door for undue influence of special interests. Hence, at the same time, agencies need to balance their interest representation to avoid being captured. This dissertation positions itself at the juxtaposition of these two theoretical views on stakeholder involvement. It empirically analyses whether stakeholder involvement in regulatory agencies indeed fosters balanced interest representation or whether it induces bias; whether stakeholder involvement can be used as a legitimation strategy, or whether it poses a threat to the EU's legitimacy.

FINANCIAL REGULATION AS A CASE

To empirically analyse whether stakeholder involvement corresponds with biased or balanced interest representation, this dissertation presents a case study that focuses on the three European Supervisory Authorities. The selection of this case has been guided by two conditions: competences and institutionalised consultation regimes. First, there is considerable variation in EU agencies' competences – some have *de facto* rulemaking powers, while others merely have an informational or executive role (also see Kelemen, 2005). As this dissertation studies the role of stakeholders in regulatory policymaking, the agencies *in casu* should have a say in policymaking. Second, as this dissertation's aim is to analyse institutionalised stakeholder involvement, the agencies are required to have formal consultation regimes.

Taking these two conditions into consideration, this research focuses on the European Supervisory Authorities (ESAs): three EU agencies that are mandated to draft and implement financial regulation (i.e. the European Banking Authority, the European Securities Markets Authority, and the European Insurances and Occupational Pensions Authority). Financial regulation concerns the sets of rules that controls, supervises, and monitors the activities of banks, insurance companies, pension funds, financial markets, etc. The ESAs are the most powerful agencies in the EU (for a discussion see Busuioc, 2013; Scholten & Van Rijsbergen, 2014b). They have a crucial role within the creation and implementation of financial regulation Also, the ESAs have implemented a broad consultation regime including the organisation of public consultations and the establishment of advisory councils.

In addition, the ESAs have an inherent need to legitimise themselves and their regulatory policymaking efforts. Post-crisis literature has argued that the policy field of financial regulation is systematically biased in favour of the interests of the financial industry (Keller, 2018). In fact, regulatory capture has also been widely stated as one of the reasons for the global financial crisis of 2007-08 (Baxter, 2011; Kwak, 2014; Pagliari, 2012a). Financial regulators thus have an additional incentive to mitigate the risks of capture to maintain their status as an independent and legitimate regulator. In other words, due to the ESAs institutional position, their consultation regime, and their inherent need for legitimation, they are fitting cases in light of this research.

THE EUROPEAN SUPERVISORY AUTHORITIES IN CONTEXT

The European Supervisory Authorities (ESAs) are tasked with the creation and implementation of financial regulation. Although the creation of the agencies was a reaction to the global financial crisis, the agencies find their origin in the late 1990s. The European Commission realised that financial markets in Europe were fragmented, small and inefficient compared to those of their main counterpart, the United States. One of the main causes was that the implementation of reforms in financial regulation through national regulators who, "given their inherent risk aversion reinforced by their accountability to national policy makers, had a tendency to exploit any ambiguities in EU Directives in favour of national exchanges and constituencies" (European Shadow Financial Regulation Committee, 2001). Hence, the Commission made efforts to harmonise the national financial markets. To this end, it set up the 'Committee of the Wise Men on the Regulation of European

Securities Markets'. This Tolkienian-named group of industry leaders and academics aimed to develop policy proposals for making the regulatory process concerning financial markets more flexible, harmonised, and transparent. The Committee of the Wise Men published its findings in the so-called Lamfalussy Report, named after its chairman Baron Alexandre Lamfalussy. The report promotes a multi-level policymaking approach in which the Commission delegates implementing powers to committees of national experts.

In this Lamfalussy process, the European Commission, Council of Ministers and European Parliament would decide on legislation using the ordinary legislative procedure. Prior to implementation of the legislation, however, the Commission would request advice from a newly established committee: The Committee on European Securities Regulators (CESR). CESR's role was to advise the Commission on how the technical implementing measures could be best implemented in national legislation. To be able to advise the Commission, CESR needed to formally consult with market participants, end-users and consumers. Based on these formal consultations, the Commission would make a draft proposal, which, consequently, CESR had to accept by vote before the Commission can adopt the measure.

At first, this Lamfalussy process only concerned securities markets. However, the Committee of the Wise Men advised that this approach should be extended to the banking and insurance sector to establish convergent supervisory practices across the European Community. The Commission honoured this advice and created the Committee on European Banking Supervisors (CEBS) and the Committee of European Insurance and Occupational Pensions Supervisors (CEIOPS) (European Commission, 2003). Abovementioned Lamfalussy process was also applicable for the CEBS and CEIOPS with the main role to "advise the Commission, either at the Commission's request (…), or on the Committee's own initiative, in particular for the preparation of draft implementing measures" in the Committees' respective fields (Art. 2 Decision 2001/527/EC). This advice had to be based on input and feedback from market-participants, end-users and consumers, which had to be included at an early stage of the process. Also, the Committees could invite experts to their meetings to assist them in their operations.

The creation of Committees that could solely advise the Commission meant that Member States were able to "adopt a flexible act-or-explain mechanism rather than strict punishment strategies" (Hennessy, 2014, p. 157). The effects of this choice became painfully clear during the Great Recession, the financial crisis of 2007-08 in which the housing bubble in the United States caused the fall of large banks, which in turn affected international markets and European banks. Several European banks asked for government bailouts, and if governments did not have the funds to support over-indebted banks, they would decide to let the banks fail. However, by letting certain banks fail without accounting for negative cross-border externalities, national supervisors jeopardised other EU-banks and economies (Buckley & Howarth, 2010; Hennessy, 2014). Furthermore, since macro-prudential oversight was executed by different national authorities at different levels with no mechanism installed to ensure that risk warnings were translated into policy actions, the recession could soon infect European economies (Hennessy, 2014; Turner, 2009). Consequently, the costs of the crisis were charged on citizens as their taxes were used to bail-out banks or became victim of extensive austerity measures.

To address these failing and divergent financial supervision systems, the Commission requested advise from a high-level group chaired by Jacques de Larosière. The group had to identify the issues that paralysed supervision on the financial sector and had to propose solutions to solve the issues. This resulted in the De Larosière Report (2009) which promoted a twofold solution. The newly established European Systematic Risk Board (ESRB) directed by the European Central Bank would focus on macro-prudential oversight and the European System of Financial Supervisors would focus on micro-prudential oversight. Latter was established by elevating the Committees in the Lamfalussy process to three regulatory agencies: the European Supervisory Authorities (ESAs), changing the names of the Committees to the European Banking Authority (EBA), European Security and Markets Authority (ESMA) and European Insurances and Occupational Pensions Authority (EIOPA). Both the ESAs and the ESRB would exchange information about the micro- and macro-economy as to get insights in risks, vulnerabilities and possibly opportunities in the financial sector.

To adequately fulfil this role, the ESAs were granted binding regulatory powers. At first, these new powers only existed on paper and the

ESAs were practically toothless (Begg, 2009; Buckley & Howarth, 2010; Hennessy, 2014). Member States constantly denied the ESAs to instruct national authorities whether to bail out a bank or let it fail. Member States were too retained to let 'Brussels' decide what to do with fiscal funds, firmly holding to the idea that taxation policies should be a solely national endeavour. At the time, an EU-wide supervision system would be unthinkable. However, after the persevering debt-crisis, the increasing uncertainty about the survival of the EU (Hennessy, 2014) and an ideational shift among Member States (Buckley & Howarth, 2009), the soft law instrument was replaced by hard, centrally organised oversight in January 2011.

In general, the ESAs have three objectives. First, the Authorities must ensure the application of EU regulation in the individual Member States as to protect and ensure financial stability in the EU. Second, they must guarantee a level-playing field among market participants in the different Member States and prevent regulatory arbitrage in the internal market. Third, they ensure the sufficient protection of consumers. Each Authority tries to fulfil these objectives within its own branch. EBA focuses on the stability of financial institutions like national banks and other saving institutions, with a special focus on the protection of savers. ESMA, on the other hand, focuses on the stability of securities markets and aims to spot trends, risks and vulnerabilities that threaten investors and shareholders. Furthermore, the Authority is concerned with the direct supervision on Credit Rating Agencies and Trade Repositories. Lastly, EIOPA has a focus on the activities and stability of insurance and occupational pension companies with the aim to protect protection of policyholders, pension scheme members and beneficiaries.

As stated, the former advisory Committees were granted decision-making powers. From being solely advisory committees, focused on assisting the Commission with financial regulation, now the Authorities are deemed to prepare legislation themselves under the Delegated Acts provision (art. 290 TFEU) concerning European banks, securities markets and the insurance sector. More specifically, the Authorities can "draft regulatory technical standards, which do not involve policy choices" (Regulation (EU) No 1093/2010 & 1094/2010 & 1095/2010). These technical standards are legally binding and directly applicable in all Member States. Although the Commission monitors the technical standards, it cannot change the content of the draft regulatory technical standards without prior coordination with the Authority. Moreover, the European Commission faces multiple limitations to control the Authorities' activities, meaning that latter can operate independently without ongoing control of the Commission (Busuioc, 2009). Even the 'advisory' competences of the ESAs have far-reaching and binding consequences for the industry and Member States (for a discussion see Busuioc, 2013). The ESAs also have an enforcement role when Member States do not comply with Union law. The Authorities can investigate the alleged incorrect or insufficient application and write a recommendation on the appropriate legal action against the Member State, which the Commission must consider. Moreover, in emergency situations the ESAs can direct binding decisions on national authorities and individual financial institutions of the Member States (Busuioc, 2013).

As mentioned before, the Committees under the Lamfalussy process were obliged to use public consultations in their operations. After the reform, however, the Authorities' consultation regime is extended and institutionalises stakeholder involvement in two formal ways. First, at the early stage of decision-making the ESAs have to consult the industry, end-users and consumers in an open and transparent fashion (i.e. online public consultations). Second, each Authority is obliged to install an advisory council in which different types of stakeholders are permanently represented. These advisory councils should be consulted in a timely manner, and the ESAs have to consider the councils' opinions. EBA and ESMA have one advisory council and EIOPA has two councils: one council on insurances and one on pensions. The four councils each consist of 30 members. At least five members should be 'independent and high-ranking' academics, and ten members should represent financial institutions.[2] The remaining seats of the council should consist of representatives that represent "the diverse business models and sizes of financial institutions and businesses; small and medium-sized enterprises (SMEs); trade unions; academics; consumers; other retail users of those financial institutions; and representatives of relevant professional associations" (Regulation (EU) No 1093/2010 & 1094/2010 & 1095/2010). The Board of Supervisors appoints these members, considering "appropriate

2 In 2020, the formal rules concerning the composition of the advisory councils have been changed. Now, the councils should consist of exactly 4 academics. The seat that became available is added to the industry representatives.

geographical and gender balance and representation of stakeholders across the Union" (Regulation (EU) No 1093/2010 & 1094/2010 & 1095/2010).

This dissertation will empirically assess the ESAs institutionalised stakeholder involvement by focusing on these two consultation instruments. More specifically, it assesses how stakeholders use these formal consultation instruments and whether their participation changes over time. As the empirical chapters of this dissertation will show, the financial crisis and subsequent institutional and regulatory reforms are expected to change stakeholders' participation in the ESAs consultation instruments. In turn, this dissertation assesses whether the agencies still face the risks of agency capture due to biased interest representation, or whether its interest representation is more balanced than before the crisis.

DATA AND RESEARCH METHODS

To assess whether the consultation instruments indeed foster balanced interest representation, the analyses presented in this dissertation focus on the two main consultation instruments (i.e. public consultations and advisory councils). As mentioned, these two consultation instruments form the backbone of the ESAs consultation regimes. Both instruments are included in the founding regulation of the agencies, and thus form an inherent part of the ESAs consultation regime. Hence, by studying how stakeholders participate in these consultation instruments, one can determine whether institutionalised stakeholder involvement is balanced or biased and whether this changes over time. The analyses presented in this dissertation rely on two data sources: 1) the coding of stakeholders' responses to public consultations organised by the ESAs between 2004-2014 and 2) interviews with members of the advisory councils.

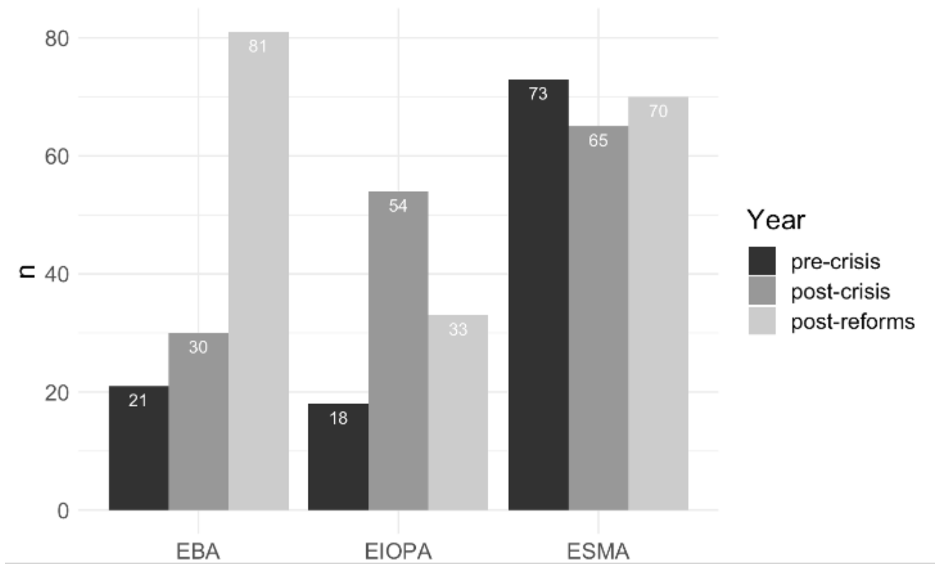
Stakeholders' Responses to Public Consultations

This first type of data consists of all responses of interest groups to public consultations organised by the ESAs and their predecessors from 2004 to 2014. During this period, the agencies organised 445 consultations.[3] In total, 11,217 responses from 1,735 unique interest groups have been collected. The dataset includes every response of interest groups to ESA consultations,

3 Excluding the 15 consultations that were jointly organised by the ESAs.

and is thus as comprehensive as it can be. The number of consultations, responses and unique groups presented here concern the complete dataset. The empirical chapters, however, might present different numbers. This is the result of missing values or can be explained by mergers of organisations (also see Appendix 2.2 for further explanation). Figure 1.1 shows the distribution of the organised consultations per agency per period (also see Appendix 2.1).

Figure 1.1: Distribution of organised consultations



To give insight in which (types of) groups participated in the public consultations, all unique stakeholders have been coded for several variables. Using the websites of the stakeholders, I collected information about the type of organisation, stakeholders' economic activities, number of members, staff size, date of foundation, and so forth. The coding was based on an adapted version of the INTEREURO codebook used by Beyers et al. (2014). This codebook has been used in a multitude of different recent projects concerning stakeholder activity in regulatory agencies (e.g. Arras & Beyers, 2020; Arras & Braun, 2018; Beyers & Arras, 2020; Braun, Albareda, Fraussen, & Müller, 2020; Fraussen, Albareda, & Braun, 2020). The codebook can be consulted in Appendix 1. If any information could not be coded based on the stakeholders' websites, other sources were used, such as LinkedIn, Bloomberg Business

profiles or via an archived version of their website. For 23 organisations (1.3 per cent) no information could be found. As this is a minimal proportion of the total dataset, I have no reason to assume that these missing stakeholders distort the analyses.

Interview Data

The second data source concerns interview data conducted with the members of the advisory councils of the ESAs. Prior to the interviews, a comprehensive interview guide was developed (also see Appendix 4.3). The guide consists of questions on members' perception of the council's role and their own, the used procedures during meetings, characterisation of discussions, members' expertise, and members' ability to contribute to discussions. All members had a seat in the 2018-2020 mandate period. If members served more than one term or served in more than one council, we always made explicit which mandate or council was being discussed. The interviews were conducted over a period of two months (February and March 2020). On average, the interviews lasted an hour, and took place in person, either via Skype or face-to-face.

The interviews were scheduled after having contacted the members by phone and/or e-mail. For academic members and members representing consumer interests this strategy worked well. For members representing firms or business associations, however, it proved more difficult to schedule interviews. For most of these business members, contact details were difficult, if not impossible, to obtain. As most of the business members in the advisory councils have high positions in their respective organisations, their contact details are not publicly available. Hence, contact had to me made via the respective secretaries of the business members. Moreover, due to their positions within the organisations, business members were often unable to schedule an interview within the available timeframe. Consequently, this is likely to affect the results of this study. In total, out of the 70 members of the advisory councils that have been contacted, thirteen agreed to have an interview (response rate of 18,5%). Three respondents were members of BSG, four of OPSG and six of IRSG. Four interviews were conducted with consumer representatives, two with members representing employees, employers and/or users of financial services, five with academics and two with business representatives (also see Appendix 4.1 for an overview).

Methods

The data have been analysed using different methodological approaches. First, the public consultation data has been analysed by comparing the density, diversity and volatility of the set of participating actors per organised consultations. Using descriptive analyses, Chapter 3 compares the set of participating stakeholders over the three time periods. Chapter 4 and 5 apply social network analysis to analyse the public consultation data. More specifically, the chapters treat consultations as 'events' that stakeholders can attend. In turn, it constructs affiliation networks in which stakeholders are linked with one another if they participated in the same consultation. Nine separate networks are constructed per agency per period. Chapter 4 uses these networks and compares them on a macro-level, based on key metrics within social network analysis. Chapter 5 zooms in on the positions of individual stakeholders. More specifically, it analyses what types of stakeholders (dis) appear from the networks and how their centrality in the network changes over time. These three different methodological approaches ensure that the dissertation can make a conclusive assessment of how participation of stakeholders in the public consultations changes over time.

Second, to analyse the interview data each interview has been recorded and transcribed by two student-assistants. The transcripts were subsequently checked by the author. The interviews were coded using *NVivo*. The coding was based on the central topics as presented in the interview guide (i.e. role perception, venue perception, conflict, lobbying behaviour). Each topic had a specific list of questions, which can be found in Appendix 4.3. We also asked members what they would change, and whether they thought the councils are an effective instrument to create balanced advice for the agencies. These qualitative data into the functioning of the advisory councils complement previous research which exclusively uses quantitative data.

Overview of Dissertation

As mentioned, this dissertation has two pillars that both address the main research question *'To what extent does stakeholder involvement foster or inhibit balanced interest representation in EU regulatory agencies?'* The first pillar, consisting of a theoretical chapter (Chapter 2), challenges the link built between stakeholder involvement, democracy and legitimacy. It argues that legitimacy is a social relationship and thus cannot be evaluated by only

comparing the EU's institutional design to some democratic ideal. Instead, Chapter 2 reconceptualises legitimacy as a social relation and argues that stakeholder involvement is a mere legitimation strategy. To evaluate such legitimation strategies, scholars should assess whether the EU's claims for more democracy do in fact translate into improved policies or institutional designs. Such research would take form of a critical assessment of the claims EU institutions make when justifying their use of power. In the case of stakeholder involvement, one would thus need to evaluate whether increased stakeholder involvement indeed leads to more balanced policymaking.

The empirical pillar does exactly so. Using the consultation and interview data, the chapters all investigate to what extent interest representation in EU regulatory is balanced or biased towards a specific set of stakeholders. Table 1.1 (p. 34) summarises the methods and data used in the different chapters that form this dissertation.

Chapter 3 shows that stakeholders' participation in public consultations does not shift after the financial crisis and subsequent reforms. This is surprising since theories suggests that the financial crisis would induce participation of new stakeholders and make the ESAs interest representation more balanced. Instead, both the number of stakeholders and the diversity of the set of stakeholders on an aggregated level does not show the expected changes over time. Only the volatility of stakeholders shows such changes. Stakeholders that used to participate in a majority of the consultations before the crisis, do so less after the crisis and subsequent reforms.

Chapter 4 further investigates this finding by analysing the network of participating stakeholders. It investigates whether and how the network of stakeholders changes over time. The findings show that as lobbying networks expand, they become more balkanised and less interconnected. They demonstrate that external shocks stimulated the entrance of new interest groups, thus increasing the volatility. Moreover, the findings show that repeat players become less active in ESAs public consultations. This implies that the financial regulation policy network becomes less club-like after the crisis, allowing new groups to inform regulators about their policy preferences.

Next, chapter 5 investigates this finding further by analysing the positions of individual stakeholders in these policy networks. Whereas previous literature has focused on change and stability of policy networks on a macro-level, this chapter investigates which stakeholders become more important in the network, or (dis)appear from the network altogether. It argues that change in networks is layered: new layers are added upon an already existing system. Its findings show that even though new stakeholders are entering the network after the crisis and the reforms, they remain peripheral actors in the policy network. The established interests and financial sector actors in particular, however, remain central actors within the network and form a more interconnected core. The findings not only show that change in networks is layered, but they also demonstrate that the core of the network remain active in a more diverse and volatile environment.

The sixth chapter investigates the advisory councils of the ESAs. Current scholarship has mainly studied whether stakeholders' access to advisory councils is biased towards business interests. However, it remains unknown whether the advisory councils' functioning might also be biased. By examining how members perceive the councils, its meetings, and the discussions therein, this paper assesses whether the councils' functioning can contribute to more balanced interest representation. The findings show that although members favour reaching consensus over defending their own interests, deliberative consensus-seeking proves difficult due to asymmetries in resources. This raises questions about the effectiveness of advisory councils in ensuring balanced interest representation.

The final chapter summarises the findings of the different studies and discusses their scientific and societal implications. Furthermore, the chapter will discuss on the limitations of the research and suggests avenues for future research. Lastly, the chapter discusses a number of policy recommendations that follow from this dissertation's findings.

Table 1.1: Overview of chapters

Chapter	**Title**	**Author(s)**	**Instrument studied**	**Methods**	**Data**	**Journal**	**Status**
Chapter 2	Conflating Policy, Democracy and Legitimacy: An Illustration through Stakeholder Involvement	Claire Godet & Bastiaan Redert	-	-	-	Legitimacy Recovered? The Politics of Legitimation in the European Union *(edited volume)*	Accepted
Chapter 3	Stakeholder Mobilization in Financial Regulation: A Comparison of EU Regulatory Politics over Time	Bastiaan Redert	Public consultations	Descriptive analysis	10,930 responses of 1,746 stakeholders on ESA consultations (N=432)	Journal of Common Market Studies	Published
Chapter 4	From Clubs to Hubs: Analysing Lobbying Networks in EU Financial Regulation After Crisis	Bastiaan Redert	Public consultations	Social Network Analysis	11,217 responses of 1,735 stakeholders on ESA consultations (N=445)	Journal of Public Policy	Under review
Chapter 5	New Kids on the Block: Analysing the Changing Positions of Interest Groups in Networks After Shocks	Bastiaan Redert	Public consultations	Social Network Analysis	11,217 responses of 1,735 stakeholders on ESA consultations (N=445)	-	-
Chapter 6	Balanced in Access, Biased in Functioning? A Qualitative Perspective on Advisory Councils of EU Agencies	Bastiaan Redert & Peter Bursens	Advisory councils	Qualitative interviews	13 interviews with advisory council members of the ESAs	Journal of European Integration	Under review

CHAPTER 2

CONFLATING POLICY, DEMOCRACY AND LEGITIMACY

An Illustration Through Stakeholder Involvement

Authors: Claire Godet & Bastiaan Redert

To be published in 'Legitimacy Recovered? The Politics of Legitimation in the European Union.' Edited by Christopher Lord, Peter Bursens, Dirk De Bièvre and Ramses A. Wessel.

ABSTRACT

This chapter provides a theoretical discussion about the conceptual differences between legitimacy and democracy. Although current scholarship often conflates the two concepts, we argue that they are inherently different from one another. The aim of this chapter is twofold. First, it reconceptualises legitimacy to eliminate any confusion with democracy and its normative standards. Second, it illustrates the pitfalls of equating democracy to legitimacy by inspecting one particular instrument the EU has implemented to enhance its legitimacy: stakeholder involvement. Using this illustration, it proposes a research agenda for future research into legitimacy and legitimation strategies.

INTRODUCTION

The past couple of decades, scholarly work has devoted a lot of time and effort to the study of the legitimacy of the European Union (EU). Many of them have denounced legitimacy troubles (Banchoff & Smith, 2005) and, sometimes, even a legitimacy crisis (Longo & Murray, 2015). According to the scholars and policy advisers who reached these conclusions, the alienation is argued to be the result of inherent flaws in the institutional design of the EU. In traditional majoritarian polities, citizens express their (dis)satisfaction with policy decisions by voting for political parties which organise themselves around redistribution issues (Moravcsik, 2002). In turn, voters express their opinion on the functioning of the executive power and re-elect or punish the executive. However, the ability to influence the behaviour of the controlled *ex ante*, to sanction it *ex post* or both, is limited in the EU since citizens do not have the democratic instruments they have in national politics (Papadopoulos, 2007). In addition to these institutional flaws, the EU is perceived as behaving more and more authoritatively and political parties have been denouncing the fact that EU elites keep power from the people (Dempsey, 2011). The distance between the EU and its citizens have led some scholars to question the Union's legitimacy (Longo & Murray, 2015).

In order to address these issues, the EU has attempted, with the advice of scholars and practitioners, to improve its democratic features. It has notably reinforced the Parliament's prerogative, multiplied the instruments to involve citizens in the decision-making (such as the Citizens' Initiative, and new powers to the European Parliament) and attempted to correct structural shortcomings (such as the lack of coordination of economic policy). Nevertheless, despite its diverse attempts, the EU still struggles to ensure its legitimacy and it seems that the many instruments have not produced the expected results. This chapter argues that the EU's attempts have had limited results because they rest on a problematic conceptualisation of legitimacy.

Two concomitant issues cloud the conceptualisation of legitimacy and therefore the implementation of effective remedies. Firstly, legitimacy has been defined many times in academic literature to qualify different characteristics, behaviours or relationships. While the concept was born in the context of the nation state, it has also been used to describe non-state organisations, international organisations (Dellmuth & Tallberg, 2014; Dostie

& Paquin, 2014), or particular political systems such as the EU (Lord, 2013; Scharpf, 1999; Schmitter, 2011). Legitimacy has been understood as the acceptance of an institution (Bäckstrand et al., 2008, p. 38), as appropriate behaviour (March & Olsen, 2009), as a dual relationship of entitlement to control and compliance (Bernstein & Coleman, 2009, pp. 5–9), or as the rightful exercise of power (Gilley, 2009, p. 4). These conceptualisations are used interchangeably in normative and empirical literature as if they were a consensus on the definition and operationalisation of legitimacy. On closer look, however, it becomes clear that scholars do not all describe the concept in the same way and therefore do not investigate the same feature when they examine an authority's legitimacy.

And secondly, despite the patchwork of conceptualisations, it seems that academics and policy advisers agree on the necessity to develop EU's democratic features to enhance its legitimacy. This consensus does not clear the confusion since they tend to mobilise different variants of democracy (e.g. participative, representative, deliberative, etc.). Nevertheless, this quasi-equivalency of democracy and legitimacy shapes many of EU's instruments to foster its legitimacy. The aim of this chapter is twofold. First, it reconceptualises legitimacy to eliminate any confusion with democracy (or any other normative standards). Second, it illustrates the pitfalls of misconceptualising legitimacy by inspecting one particular instrument the EU has implemented to enhance its legitimacy: stakeholder involvement.

Indeed, a notorious strategy to foster legitimacy is to grant a greater role to civil society actors such as firms, business associations, non-governmental organisations and labour organisations. These civil society actors, or stakeholders, would function as a connective tissue between the European citizens and the distant European institutions. More specifically, the Commission proposes to consult interested parties through different instruments, such as Green and White Papers, Communications, advisory committees, management boards, business test panels and ad hoc consultations. All these institutional reforms would enhance responsiveness, accountability and effectiveness, and thus the legitimacy of EU policymaking. These reforms are the result of a discourse used by academics and policy advisers that promotes stakeholder involvement as a mean to represent citizens in policymaking and consequently increase legitimacy (Kohler-Koch, 2010). However, this strategy has fallen short of expectations.

Although this paper focuses on stakeholder involvement to illustrate the conflation between policy, democracy and legitimacy, the conflation can also occur in other instances such as the development of transparency requirements or sustainability standards. As such, we use the case of stakeholder involvement to discuss the conceptual and analytical difference between legitimacy and legitimation strategies. Hence, the arguments presented in this chapter are not necessarily limited to stakeholder involvement and can thus be extended to other practices.

Moreover, this chapter reconceptualises legitimacy and attempts to render the concept as generalisable as possible. Therefore, it does not focus on any particular constituency (e.g. citizens, stakeholders, etc.) or any determined channel of legitimation (e.g. media, parliamentary debates, etc.). While stakeholder involvement is a legitimation strategy designed to improve EU's legitimacy towards citizens, the shortcomings and reconceptualisation presented below could apply to any object (national state, international organisation, etc.) and any constituency (citizens, policymakers, member states, etc.).

The first section, after questioning the link between democracy and legitimacy, will reconceptualise legitimacy to emancipate it from any preconceived normative standards. The second section will provide an overview of normative theory on stakeholder involvement and legitimacy by discussing the various strands of literature linking the two concepts. The third section will discuss empirical research that critically assesses the relation between the two concepts and will provide arguments why it is problematic in political reality. We conclude this chapter with a number of suggestions how research could take into account a reconceptualised version of legitimacy in the future.

RECONCEPTUALISING LEGITIMACY TO BETTER UNDERSTAND LEGITIMATION STRATEGIES

In empirical literature, scholars often attempt to assess an institution's legitimacy either by comparing its behaviour or policies to criteria that they consider appropriate: democratic institutional design (Binder & Heupel, 2015), legality (Lenaerts & Desomer, 2002) or citizens' compliance (Steffek & Nanz, 2004) to name a few, or by assessing people's opinion or attitude

(Lindgren & Persson, 2010). Some of these studies, however, often fail to explicate the relationship between the standard under scrutiny and legitimacy and thus limit the conclusion's significance. When assessing the EU's legitimacy by comparing its behaviour, policies, or institutions to normative standards such as representativeness, accountability or efficiency for example, scholars employ – sometimes, implicitly – a democratic understanding of legitimacy. The assumption then is that an authority would be legitimate as long as it complies with democratic principles. Quite often, the line between democracy and legitimacy is so blurred that it seems that legitimacy could be equated to democracy. The underlying assumption here is that increasing the democratic features will increase an institution's legitimacy, which is problematic on several accounts.

First, democracy is a complex and multi-dimensional concept. Political theorists might agree on its importance to legitimise an institution (Beetham & Lord, 1998) but they apply very different conceptualisations of democracy. Some advocate for the EU to become a functioning deliberative democracy (Habermas, 2018); other insist on the necessity to improve representative democracy (Blockmans & Russack, 2019); while some other scholars focus on participatory democracy (Kohler-Koch & Quittkat, 2013). The multiple conceptualisations of democracy muddle the legitimacy question for two reasons. Theoretically, it is not clear whether the EU needs to improve all types of democracy or if it could focus on implementing one particular conceptualisation (and which one). And therefore, practically, the instruments and policies designed to increase legitimacy could result in a trade-off between different types of democracy (e.g. involving civil society in the decision-making process might improve participatory democracy whilst creating problems of representativeness).

Second, this chapter argues that democracy is an equivocal concept to apply in empirical analysis, although it is has been often used to assess legitimacy (Banchoff & Smith, 2005; Blockmans & Russack, 2019; Schmidt, 2013). The question of operationalisation is not solved by translating legitimacy into democratic principles. If one agrees that a legitimate authority should ensure the equal representation of citizens, it is quite arduous to decide how equality should be measured (for a discussion, see Goodin, 2007): what demos should be represented? Should only the relevant actors (e.g. those who are targeted by the policies or those who have the required expertise) be involved?

Should participation be voluntary or obligatory? Should the authority level the inequalities between citizens to ensure their equal representation or should it refrain from such intervention? These questions, that call for complex answers at the theoretical level, will influence what standards and corresponding indicators will be deemed relevant to assess an authority's legitimacy at the empirical level. Moreover, comparing the actual situation to ideal standards might be more complicated than expected, because citizens' perceptions can be ambiguous. It has been shown that citizens have trouble differentiating democratic and non-democratic institutional features even when they express support for democracy (Kruse & Welzel, 2017) and that, sometimes, democracy does not play a role in their evaluation of legitimacy at all (Dellmuth & Tallberg, 2014, pp. 470–471).

Additionally, defining legitimacy through normative standards, such as democracy, limits the concepts' scope of application. It is hardly reasonable to assume that democracy could be a universal standard of evaluation across time and space. Often, scholars forget that democracy, including its universal applicability, is a culturally embedded concept (Burgess, 2002, p. 473). The EU, however, could be hold to the democratic standards since it is one of the norms it ascribed to itself: democracy is one of the fundamental principles or values that regulates the EU (European Union, 2018). Yet, this argument *only* holds as long as democratic standards are deemed relevant by the EU's citizens. In fact, the claims of the EU to be democratic can only affect its legitimacy if its constituencies use these standards to evaluate the EU (see below). Assessing an authority's legitimacy only according to the standards it defines in its own treaties is not satisfactory, because this would mean that the most despotic authorities would be legitimate as long as they justify themselves through whatever standards they see fit. Comparing an authority to ideal standards opens the door to very interesting normative discussions, but they are seldom helpful to actually assess its legitimacy in particular constituencies.

Reconceptualising Legitimacy Independently from any Normative Standards

The confusing relationship between democracy (or normative standards in general) and legitimacy demonstrates the necessity to reconceptualise legitimacy in order to escape the normative bias. Democratic standards have little effect on EU's legitimacy because they rest on a normative understanding of legitimacy. Legitimacy, however, cannot be equated to democracy or any other normative concept.[4] Indeed, legitimacy is not an attribute that an authority gains or owns; nor is it a popular belief (Weber, 1922/1978) or a simple perception (Suchman, 1995, p. 574): legitimacy is a *social relationship* between an authority and its constituency. As such, legitimacy is first of all *relational*: "Legitimacy is and can only be the result of an interactive political process between rulers and subjects" (Gronau & Schmidtke, 2015, p. 539). Secondly, legitimacy is inherently *social*. This means that legitimacy must emerge in a group setting; it is not an individual concept. Moreover, legitimacy can only emerge in a society, in a community that shares common understandings. The attribution or claim of legitimacy is norm-based and the norms must be shared by the actors, both those who govern and those who are governed (Schmitter, 2001, p. 33). As any social relationship, legitimacy is never fully or forever achieved and it is subject to adjustments (Denitch, 1979, p. 110). It is therefore a *chimaera* to think that the criteria of legitimate power could be defined once and for all. Instead, legitimacy can be specified differently in different socio-political contexts (see Introduction). Moreover, as a social relation, legitimacy constitutes a structure that may be either subjective or objective in the ontological sense: "Although emergently material social relations are generated by cultural constitutive rules, those relations independently affect the ways in which situated actors think and act. In particular, the social relations generated by the constitutive rules may differentially benefit and empower certain actors, who thereby are motivated and enabled maintain or change the rules" (Porpora, 1993, p. 213). Legitimacy is therefore both an objective social relation emergent upon constitutive cultural rules and a subjective power relation between an authority and its constituency.

Consequently, the relationship can exist only if both parties recognise each other and the norms that justify the authority are valid as long as the constituency accepts them. Therefore, the fact that the EU attempts to

4 Discussions about legitimacy always encompass normative and empirical considerations and, in that sense, legitimacy is a "normatively dependent" (Forst, 2017, p. 139) concept. However, this chapter argues that the norms that are deemed relevant in a constituency cannot be predetermined or defined *a priori*. Therefore, equating, by default legitimacy to democracy or justice can lead to a conflation that would prevent to differentiate between the philosophically justified standards of legitimacy and the constituency's standards of evaluation.

develop its democratic features will affect its legitimacy if its constituency beforehand recognises democracy as a relevant standard of evaluation. Democracy should be analysed as shared social norms that could ground the EU's moral justifications rather than normative concepts that would automatically improve an authority's legitimacy; democracy is consequential only when the constituency deems them appropriate.

Furthermore, rules and actions that fit social norms might not be enough to increase legitimacy; the authority is still dependent upon dynamics of *legitimation*. To gain legitimacy, an authority should be justifiable on moral grounds *and* recognised as justified by its constituency. The legitimation processes "comprise both the bottom-up attribution of legitimacy by social constituencies and the top-down cultivation of legitimacy by rulers" (Gronau & Schmidtke, 2015, p. 539). They allow the problematisation of legitimacy: if legitimacy is the potentiality of justification on moral grounds, legitimation is the actual justification. Legitimacy comes into effect through legitimation processes.

When attempting to induce legitimacy from a constituency's attitude or opinion, scholars examine legitimation strategies. They do not 'measure' legitimacy as much as they observe how a constituency (citizens, member states, Eurocrats, etc.) attributes legitimacy to an authority or how an authority justifies itself. It is not possible to study legitimacy directly; we can only observe the strategies (discursive and non-discursive) that are used to legitimise or delegitimise an authority. "Legitimation strategies are goal-oriented activities employed to establish and maintain a reliable basis of diffuse support for a political regime by its social constituencies" (Gronau & Schmidtke, 2015, p. 540). The legitimacy relationship between an authority and a constituency exists whether people are aware of it or not – the same way a domination or dependency relationship can exist between individuals because they occupy certain social positions whether they are aware of it or not (Porpora, 2013, p. 27) – but we cannot observe this relationship. Instead, we can only infer it from the observable, more specifically legitimation strategies. Involving stakeholders is such a *legitimation strategy* whose success cannot be guaranteed. The next section draws on the example of stakeholder involvement and shows how a problematic understanding of legitimacy can lead to implementing legitimation strategies that fail to increase or harm the polity's legitimacy.

STAKEHOLDER INVOLVEMENT AS AN ATTEMPT TO INCREASE LEGITIMACY

Involving stakeholders in decision-making has been a popular strategy for promoting legitimacy. Stakeholder involvement is not the only instrument the EU has implemented to improve its democratic features and therefore its legitimacy. In the last decades, the EU has attempted to involve citizens more efficiently (such as the European Citizens' Initiative) and has aspired to correct structural deficiencies that could contribute to the generalised discontent among citizens (e.g. increased powers of the European Parliament; better economic policy coordination through the European Semester; anti-corruption measures; increased transparency standards). This chapter specifically focuses on the shortcomings of stakeholder involvement to illustrate how a problematic conceptualisation of legitimacy can translate into questionable instruments and limited results. The chapter's arguments, however, can be extended to other instruments, such as transparency requirements or sustainability standards.

Several theoretical arguments substantiate the assumption and argue that stakeholder involvement should ultimately foster legitimacy. Despite the disparate conceptualisations of democracy, many scholars seem to agree that legitimacy rests notably on the authority's ability to involve citizens (Fung, 2006), civil society (Greenwood, 2007) or the relevant stakeholders (Lindgren & Persson, 2010) in the policymaking process. More specifically, in the early 2000s the EU actively seeks advice to improve policymaking processes as to alleviate its perceived legitimacy problems. The Forward Studies Unit brought together a group of scholars to consider how the legitimacy of EU rulemaking could be improved by stakeholder involvement. Also, they made a number of recommendations to (re-)legitimise EU policymaking. Subsequently, the EU implemented some of the points of advice, which resulted in the White Paper on Governance (European Commission, 2001). Ever since the publication of the White Paper, which has been criticized repeatedly, the EU has increasingly involved stakeholders in policymaking processes in an attempt to reinforce or regain its legitimacy. This section presents three strands of literature that argue, on different bases, that stakeholder involvement should improve democracy and therefore legitimacy.

Involving Stakeholders to Enable the Best Mode of Governance

A first strand of literature argues for stakeholder involvement on the basis of the *intrinsic* value of democracy, and therefore stress its pre-eminence over other values or ideologies to justify a political power. It argues that democracy should be promoted because it is the best way, or even the only way, to really legitimise a political power. This argument can be made regardless of the normative lens adopted: representative, cosmopolitan, deliberative, republican and radical democracy theories all advocate for a greater involvement of citizens, their representatives and/or stakeholders because it would improve the political system. Whether the involvement of stakeholders improves deliberation and therefore creates more representative and effective cooperation (Bäckstrand, 2006) or facilitates the transformation of antagonisms into agonism (Deleixhe, 2016)[5], it seems that stakeholders foster democracy and therefore increase the system's legitimacy. This intrinsic value of democracy might be culturally embedded and not as universal as suggested (Burgess, 2002, p. 473). It must be noted, however, that it is an increasingly used argument by citizens themselves to contest national or international institutions. Citizens might not always explicitly demand for more democracy, but they couch their protests into democratic values such as representation, transparency or accountability because these are "better" values (Stevenson, 2016, p. 400).

Involving Stakeholders to Ensure the Most Efficient Mode of Governance

A second strand highlights the *instrumental* value of democracy, which states that democratic principles are more inclusive and able to reconcile different moral perspectives. Hence, these principles would be more prone to secure the largest support from citizens. In this regard, democracy is the most effective justification in order "to create a sense of normative obligation that helps to ensure the voluntary compliance with undesired rules or decisions of governing authority" (Scharpf, 2009, p. 173). As stated, different normative lenses distinctively describe the instrumental consequences of democracy. For example, it has been established that involving stakeholders enhances

5 This means that involving stakeholders does not necessarily helps soothing conflicts and achieving a consensus; but instead, it creates arenas where conflicts are accepted as part of the decision-making process and channelled positively (see for instance Mouffe, 2010).

participation in the decision-making process and increases popular legitimacy (Bernauer & Gampfer, 2013). The debate is more complex concerning representative democracy. Indeed, it is not clear how much stakeholder involvement increases the representation or representativeness of citizens and their interests. Since stakeholders defend ideas and interests, and seldom citizens themselves, it would be a mistake to consider that stakeholders embody political representation in the same way parliaments or governments represent the citizens at the national level (Trenz, 2017). Stakeholders might not ensure political representation as usually conceptualised in representative democracy theory, but they contribute to the pluralisation of debate. By representing diverse interests and perspectives, they enhance discursive representation by echoing multiple voices (Dryzek & Niemeyer, 2007; Keck, 2004), and ensure a new kind of representation – which is always partial and incomplete – freed from any electoral pressure and more adapted to a globalised world (Saward, 2009). Stakeholder involvement might not be a mechanism of political representation comparable to the one we know at that the national level, but it nevertheless improves the gathering and transmission of citizens' demands to the decision-makers. In that sense, it increases the chances that citizens will comply even if they disagree.

'The wisdom of the many' is another common argument in favour of stakeholder involvement and democratic legitimacy. Epistemic democracy theory has promoted the idea that "collective decisions will produce a more truthful outcome than an individual, however competent, can produce alone" (Stevenson, 2016, p. 402). Following that logic, involving more stakeholders should lead to better outcomes for all. Cosmopolitan democracy, on the other hand, argues that global governance should be strengthened by reinforcing democratic procedures: sustainable cooperation between States or international actors cannot be ensured through coercion and must therefore take roots in "multi-layered democracy" in which stakeholders embody citizens and their interests in representative or deliberative arenas (Held, 2010). Finally, some empirical studies argue that an authority's legitimacy increases with democracy when support for democracy is widespread among the population (Diamond, 2008). All these different versions of democracy highlight the fact that strengthening democratic features, by involving stakeholders for example, will consequently foster citizens' support for the system. Hence, democracy

is not only an ideal that ought to guide institutions, but also an efficient instrument to ensure citizens' compliance and cooperation.

Involving Stakeholders to Improve Input, Throughput and Output

The third strand of literature distinguishes three dimensions of democracy – input, throughput and output – and considers stakeholder involvement a good means to improve these three aspects. Inspired by democratic theories, Scharpf (1997, 1999, 2003) has built a popular differentiation between input and output legitimacy. Following Weber's definition of legitimacy he argues that "under modern (Western) conditions […] legitimacy has come to rest almost exclusively on trust in institutional arrangements that are thought to ensure that governing processes are generally responsive to the manifest preferences of the governed (input legitimacy, "government by the people") and/or that the policies adopted will generally represent effective solutions to common problems of the governed (output legitimacy, "government for the people") (Scharpf, 2003, p. 4). Input legitimacy refers to the participatory quality of the decision-making process and is ensured by the different elected institutions, while output legitimacy has to do with the problem-solving quality of legislation and policies (Scharpf 1999). Subsequently, Vivien Schmidt (2013) furthered that idea by adding a new category: throughput legitimacy. This category focuses on the quality of the governance processes: "The point here is that the quality of the interaction among actors engaged in the EU decision-making process – as opposed to the problem-solving ability of their products or the participatory genesis of their preferences – is also a matter for normative theorising. And how that interaction proceeds contributes toward, or against, their 'throughput' legitimacy" (Schmidt, 2013, pp. 5–6). These three categories have been discussed and improved multiple times and applied in countless empirical studies (e.g. Bäckstrand, 2006; Greenwood, 2007; Steffek, 2015), it has become so popular that the relevance or usefulness of the distinction are rarely contested (but see Gaus, 2010). Following that reasoning, stakeholder involvement foster democracy, and therefore legitimacy, in several ways. By participating in the policymaking process, they guarantee a more diverse representation of interests (Borrás, Koutalakis, & Wendler, 2007; Chatzopoulou, 2005; Furlong & Kerwin, 2004; Skogstad, 2003). They also ensure a form of control and accountability in the decision-making process (Bovens, 2007; Beate Kohler-Koch, 2010).

Finally, they assist in the creation of effective policies (Bouwen, 2002) and implementation (Garcia Martinez, Verbruggen, & Fearne, 2013; Ottow, 2015). All these arguments allow scholars who empirically evaluate the EU's legitimacy using the input-throughput-output distinction to consider stakeholders involvement as a way to increase legitimacy.

These three strands of literature (best mode of governance; most efficient mode of governance; and improving input, output and throughput legitimacy) link democracy to legitimacy in an almost linear fashion. The common assumption is that involving stakeholders should be an effective strategy to foster democracy and therefore to enhance legitimacy. Stakeholder involvement and legitimacy are associated for different reasons, but the three strands all seem to agree that in order to improve its legitimacy, an authority should try to involve stakeholders as much as possible. Whether they define legitimacy as a desirable outcome (Beetham, 1991) or a way to gain authoritativeness (Buchanan, 2002, p. 694), their argument is deeply rooted in democratic theories that state that an authority should pay attention to its citizens' representation in the decision-making process and deliver fair or just outcomes. At the European level, stakeholder involvement would be one of the possible strategies to represent citizens in the decision-making process. These theoretical assumptions have fed many policy papers and political recommendations (Borrás et al., 2007; Furlong & Kerwin, 2004; Skogstad, 2003), but the following section shows that involving stakeholders might not deliver the expected results.

STAKEHOLDER INVOLVEMENT AND LEGITIMACY: A DIFFICULT RELATION IN POLITICAL REALITY

Despite these theoretical arguments, empirical studies show that involving stakeholders might not be the panacea it was set up to be. If stakeholder involvement is supposed 1) to improve the EU's representation of citizens, 2) to help establish accountability mechanisms and 3) to help create effective policies, stakeholder involvement falls short of expectations. An increasing body of empirical work demonstrates that the assumptions concerning the relation between stakeholder involvement and legitimacy are flawed. In the following paragraphs, we will discuss some of the empirical work that shows why stakeholder involvement does not necessarily have a positive effect on, or could even harm, EU legitimacy.

Stakeholder Involvement and Representation

An essential part of the notion that stakeholder involvement could improve legitimacy of a political system, is that stakeholders would enhance democratic input. To compensate for the lack of direct democratic input of a 'European people', institutions actively involve stakeholders as an indirect way of citizen representation (Borrás et al., 2007; Furlong & Kerwin, 2004; Skogstad, 2003). Individuals would be able to express their policy concerns or preferences not only once every four or five years via elections, but also more frequently by organising themselves and seeking access to policymakers. stakeholders would fulfil the role of a linkage, or transmission belt of citizens' positions or preferences, towards policy to the institutions (Hansen, 1991; Steffek, Kissling, & Nanz, 2007). Due to this function, the responsiveness of EU governance to societal preferences in general would increase (Chatzopoulou, 2015). The transmission belt function of stakeholders is empirically problematic for three inter-related reasons: ambiguity in who can be considered as stakeholders; bias in European interest representation; and low representativeness of stakeholders.

First, there is an ambiguity in whom the EU considers to be stakeholders. For example, the White Paper on Governance (European Commission, 2001) does not specify what kind of stakeholders should be involved in policymaking for it to enhance legitimacy (Armstrong, 2002). This ambiguity is exacerbated by the varying definitions the Commission uses throughout its documents (Kohler-Koch, 2007). On the one hand, the Commission wants to promote a form of active citizenship, in which organised civil society specifically refers to associations representing the general interest (European Commission, 2002a). On the other hand, the Commission extended the definition of civil society in the follow-up process of the White Paper. It borrowed a rather liberal definition of civil society organisations as used by the Economic and Social Committee (1999), which states that any voluntary association is as good as any other. Using this definition, the Commission departed from a tradition that civil society should promote the common good and general political participation of citizens. Subsequently, the Commission created guidelines and standards for consultation to involve all organised interests, including specific interests such as business associations, professional associations and private firms. The varying definitions the Commission uses to describe civil society reflects scholarly debate. Traditionally, the determining factor in what can be regarded as civil society is the dichotomy between the public sphere of the state and the private sphere of the individual (Armstrong, 2002). What follows is that civil society is often defined as a residual category of non-state and non-governmental actors. As Dean (1999) suggests, there seems to be something taken-for-granted about civil society, implying no need to articulate its identity. This ambiguity often treats civil society as being synonymous with the activities of NGOs acting beyond the public sphere of EU institutions (Armstrong, 2002). Indeed, NGOs often claim to represent various parts of society (such as pensioners, patients, consumers, minorities etc.), and thus argue that they represent the general interest. However, the institutionalised instruments to involve stakeholders (such as public consultations, public hearings, advisory bodies, seats in managing boards, etc.) do not only attract NGOs. Rather, the ambiguity in Commission documents results in forums in which business interests such as private firms, business associations and trade unions tend to mobilise and influence policymakers. These business interests do not represent the general interest of citizens but specific economic sectors instead.

Second, as a result of this ambiguity, there is a problem of representation, namely the relative domination of business- and professional interests vis-à-vis the general interest groups in political reality. Several decades ago, Truman (1951) introduced the idea of latent interests: interests that exist in society but have not entered the political process. Latent interests are undetectable until conditions changed (due to 'disturbances' or 'social problems') and transformed them into realised interests which then would make efforts at collective organisation (Truman, 1951). However, as Olson (1965) points out, not all societal interests have equal opportunities to engage in collective action. Business interests find it rather easy to get organised as they represent economic interests consisting of a small group of actors. Diffuse interests, by contrast, typically find it very difficult to get organised, since they represent mainly interests of a large, diffuse group of actors. As such, diffuse interests suffer from severe collective action problems. Hence, specific business interests mobilise and organise themselves much easier than diffuse

interests. Moreover, due to the economic origin of the EU, business and professional associations have a long history of a forceful presence in Brussels (Mahoney, 2004; Wonka, Baumgartner, Mahoney, & Berkhout, 2010). In order to compensate this biased representation, the Commission supports weaker, general interests by providing funds and by designing consultation mechanisms that accommodate these weaker interests. Although the gap between strong and weak interests decreased, still sectoral and territorial cleavages exist, leading to gross overrepresentation of business interests and interests from central and North-Western European countries (Kohler-Koch, 2010). Indeed, representation does not necessarily equate to having influence in EU policymaking. Although there is ample research studying the influence of stakeholders, there seems to be no definitive answer what type of interest is more successful in their lobbying efforts (e.g. Dür, Bernhagen, & Marshall, 2015; Dür & Mateo, 2016). However, the bias in representation does weaken the theoretical argument that citizens would be represented by stakeholders.

Third, there also seems to be an issue with the representativeness of stakeholders. Even stakeholders that claim to represent the interests of citizens as a whole, or the interests of a specific constituency, seem to be (or to become) too distant from society itself in the context of the EU. In the multi-layered European interest representation, the members of European interest groups often are organisations which, in turn, represent lower-level organisations. Consequently, a consultation with members of an association is an interaction with other, highly aggregated groups. As a result, the idea that interest groups have shorter chains of delegation than say elected representatives does not match political reality (Kohler-Koch, 2010). Thus, since European interest groups hardly ever represent citizens directly (Trenz, 2017), they can be considered as part of a European elite. Moreover, since interest groups need to professionalise and grow in power to be able to influence policymaking, they become more elitist over time (Thiel, 2014). Studying NGOs in transnational contexts, Spini (2008, p. 150) observes in this regard that "following a pattern common to all transnational NGOs, former grassroots groups become tamed para-bureaucracies, or (…) part of an emerging polyglot euro-elite". This supports the argument that even groups representing the general interest lose connection with their members or constituencies and eventually become part of a policymaking elite.

As mentioned, the main rationale behind stakeholder involvement is that policymaking should not occur among elites but should be a shared effort between institutions and society. Abovementioned arguments, however, show that the relation between citizens, stakeholders and EU institutions is more troublesome than suggested. If stakeholders are not able to sufficiently act as a transmission belt of citizen interests due to ambiguity, biased representation, and flawed representativeness, it would prove difficult to enhance democratic inputs in policymaking via stakeholder involvement.

Stakeholder Involvement and Accountability

Besides the notion that stakeholder involvement can enhance representation and democratic inputs, various scholars argue that stakeholders contribute to increased accountability. Accountability refers to a relationship between an actor and a forum, in which the actor has an obligation to explain and justify his or her conduct, the forum can pose questions and pass judgement, and the actor may face consequences (Bovens, 2007, p. 450). It is argued that supranational governance, and more specifically the EU as a political system, enjoys little public accountability. Traditionally, international governance took the form of executive multilateralism: a state-centred, elitist, and technocratic form of governance (Steffek & Ferretti, 2009). As a result, it featured a lack of oversight by parliaments or other elected bodies, participation of citizens and, more generally, accountability regimes. There has been some erosion in the past couple of decades in the claim of normative statist theory that legitimacy can be established by agreement of states according to institutionalised rules (Papadopoulos, 2007). Instead, demands for multilateral organisations to become more accountable to stakeholders rather than to states proliferated (Keohane, 2006). In recent years, public participation of civil society, or stakeholders is promoted as a way to re-link citizens and internationalised policymaking (Armstrong, 2002; Chatzopoulou, 2015; Curtin, 1999a; Kröger, 2008). Stakeholders could form a bridge or connective tissue between citizens and internationalised policymakers. Part of this link is the relation of accountability as described by Bovens (2007). In his work, Bovens (2007) distinguishes multiple forms of accountability, such as political accountability, legal accountability, and social accountability. The latter brings stakeholders onto the fore (Bovens, 2007). Stakeholders are expected to establish a more direct and explicit accountability relation between public bodies on the one

hand, and clients, citizens and civil society, on the other hand (Bovens, 2007). More specific, the general argument is that stakeholders will have a positive impact on accountability of EU institutions when they can put pressure on the institutions to explain and justify its conduct, enable the forum (i.e. citizens) to pose relevant questions and pass judgement, and make sure that the institution faces consequences in the case of misconduct (Chatzopoulou, 2015; Kohler-Koch, 2010).

How would such a process look like in political reality? How can stakeholders contribute to accountability that would improve legitimacy of a political system? First and foremost, stakeholders would act as watchdogs. They monitor the conduct of an institution and can push institutions in disclosing their documents (Steffek & Ferretti, 2009). Consequently, using shaming and campaigning tactics, stakeholders can bring political decisions made by internationalised policymakers under public scrutiny (Scholte, 2004; Steffek & Ferretti, 2009). By organising public campaigns stakeholders can bring policy issues in the public sphere. Moreover, stakeholders push international organisations' standards for transparency (Scholte, 2004). Once policy practices are publicly visible, stakeholders would enhance accountability through watchdog and evaluation activities (Scholte, 2004). Also, stakeholders could indirectly punish decisionmakers by targeting their reputation and contest decisions where deemed necessary (Steffek & Ferretti, 2009).

However, as we have seen with the claim that stakeholder involvement could enhance democratic inputs, the relations between stakeholder involvement and accountability is problematic for a number of reasons. Indeed, by introducing instruments such as online consultations, the Commission ensured the principles of openness, transparency and inclusion: every legislation that is to be decided upon is made public, and all citizens and organisations are invited to give an opinion. Stakeholders are able to monitor the policymaking process and hold EU institutions accountable if standards are not met. However, there are clear limitations of such social accountability in EU governance.

First, crucial elements of an effective accountability relationship are absent: institutions are not obliged to respond to the shaming and campaigning of stakeholders; and institutions do not have to face hard consequences if they choose not to give explanations and justifications for their conduct (Kohler-

Koch, 2010). Moreover, stakeholders can hardly claim to have a legitimate mandate to exact accountability on EU institutions (Kohler-Koch, 2010).

Second, another fundamental issue at hand is that social accountability cannot replace democratic accountability, and thus cannot decrease the democratic deficit (Papadopoulos, 2007). Since social accountability becomes increasingly more important in multi-level modes of governance, there is a shift from "government *of* and *by* the people", to "governance *with some of* the people" (Schmidt, 2006, pp. 28-29; see also Papadopoulos, 2010). The forum of accountability shifts from the citizenry at large to multiple stakeholders which claim to represent segmented publics (Papadopoulos, 2010). This issue is further exacerbated by the lack of citizen representation by stakeholders, as discussed in the previous section, and the overall weak democratic credentials of stakeholders (for a discussion, see Tallberg & Uhlin, 2011). If stakeholders fail to represent citizens, they are unable to hold institutions accountable on behalf of citizens. Thus, ultimately, social accountability cannot replace democratic forms of government,[6] and cannot as such enhance legitimacy of the EU.

Third, stakeholders are highly socialised into the institutions they are supposed to hold accountable. Empirical research has shown that it proves difficult for stakeholders to be an effective watchdog. There seems to be a clear trade-off for stakeholders to be either watchdogs, or knowledgeable participants in deliberative settings (Steffek & Ferretti, 2009). The former role suffices stakeholders to make information public and expose procedures to public scrutiny, whereas the latter role requires a high degree of mutual trust and confidentiality which is jeopardised by public campaigning (Steffek & Ferretti, 2009). If trust between stakeholder and policymaker is harmed, the stakeholder risks exclusion from policymaking procedures and thus from having influence. Thus, it is not unimaginable that stakeholders will choose to keep close contacts with policymakers allowing them to have influence, instead of risking their access to policymakers by engaging in scrutiny activities.

6 It could even harm democracy in multi-level and network governance, for a discussion see: Papadopoulos, 2010.

Stakeholder Involvement and Effectiveness

Besides representation and accountability, stakeholder involvement is argued to enhance policy effectiveness. EU institutions would be inclined to closely interact with stakeholders, both public and private sector actors, to fulfil their institutional role. Although EU institutions have broad knowledge on policy issues, they lack detailed expert knowledge necessary in policymaking and informed decision-making: they are simply too distant from markets (Bouwen, 2002; Coglianese et al., 2004). Stakeholders, however, have such detailed expert knowledge on market technicalities, and information to meet industry innovations and trends, and take into account the potential impact on the regulated sector. Also, certain stakeholders such as associations and federations have encompassing information about the interests of all national, European, or sectoral actors in a particular market (e.g. the European Banking Federation, or Eurelectric) (Bouwen, 2002). Besides market information, stakeholders such as NGOs, consumer groups, and labour unions possess information on the negative externalities of economic activity, and can communicate political information about their constituencies' or members' preferences to policymakers (De Bruycker, 2016). All these sources of information are extremely important when making effective policies, and thus are vital for institutions (Arras & Braun, 2018; Bouwen, 2002). As Coglianese et al. (2004, p. 277) in the case of regulatory policymaking put it: 'information is the lifeblood of regulatory policy'.

Besides the provision of information, stakeholder involvement can contribute to effective policymaking in another manner. If stakeholders affected by a certain policy are involved in the decision-making process of the policy, these stakeholders would be more inclined to accept the policy outcome. For example, Martinez et al. (2013) and Ottow (2015) argue that involving stakeholders early on in the regulatory process and providing opportunities for their input ensures higher levels of ownership and compliance among stakeholders, which would lead to cost-reduction and effective implementation. Arras & Braun (2017), subsequently, show that EU agencies indeed involve stakeholders to assist implementation and compliance at a later stage.

Involving stakeholders, however, also has a clear pitfall for the effectiveness of policymaking. An increasing body of scholarly work on regulatory politics pays attention to so-called capture of (regulatory) policymaking. Capture theory argues that stakeholders with expert knowledge will be more involved than other stakeholders. Due to the institutions' dependency on technical information, institutions would favour stakeholders with an extensive knowledge about problems and solutions for issues in a particular sector (Bouwen, 2002, 2004; Carpenter & Moss, 2014; Coglianese et al., 2004). This technical information is mainly provided by regulated business interests, rather than interests that represent citizens or the common good. This induces a risk of 'closeness' between regulated business interests and the institution. Such a closeness implies extensive influence of interests on policymakers and could result in capture: the creation of policies systematically favouring business interests at the disadvantage of the general interest (Carpenter & Moss, 2014; Coglianese et al., 2004). When cases of agency capture come under the attention of the wider public, it directly harms the legitimacy of the agency or the EU as a whole, as shown in the aftermath of the financial crisis (for a discussion, see Baxter, 2011).

Although capture theory particularly focuses on regulatory politics due to agencies' extensive need for expert knowledge, it provides an additional argument why involving stakeholders in policymaking processes might not necessarily legitimise, or even delegitimise, the EU as a political system. Indeed, stakeholders can and should contribute to the policymaking process. However, capture poses a serious risk for legitimate policymaking and should therefore be taken into account when discussing the relation between stakeholder involvement and legitimacy.

These empirical examples show that stakeholder involvement does not necessarily lead to more responsiveness, accountability and effectiveness of EU policymaking. As such, it is hardly an effective instrument to enhance the EU's legitimacy. Indeed, two concomitant shortcomings lead to these results: first, there is a conflation between legitimacy and its normative standards (e.g. responsiveness, accountability, and effectiveness); and second, involving stakeholders does not produce the expected effects and fail to significantly improve these standards. As discussed, legitimacy is a social relation, which means that normative assumptions about the effectiveness of stakeholder involvement might not hold in empirical reality. Instead, improving

democratic features, such as implementing stakeholder involvement, will positively affect EU's legitimacy only as long as the targeted constituency deemed its effects desirable and recognises the feature and its effects as relevant evaluation standards.

CONCLUSION

Since the 1990s, the EU and its observers have been questioning its legitimacy. From an elite's project, the EU has little by little become a preoccupation for many citizens within and outside the European borders. Every few years, emblematic events, such as the Danish "no" to the Maastricht Treaty, the Greek protests against the EU, or more recently the Brexit-vote, vouch for the EU's prominence in citizens' daily life and demonstrate the impact of the EU on citizens and its sometimes-tense relationship with them. The EU's tendency to ignite or crystallise its citizens' discontent has often been considered a proof of its lack or crisis of legitimacy (Longo & Murray, 2015). In order to prevent or repair its legitimacy shortcomings, one strategy has been very popular for two decades: involving stakeholders in the policymaking process. Both academics and policy advisers seemed to agree that increasing stakeholder involvement would improve its democratic features and therefore its legitimacy.

This premise has been questioned often at the empirical level – does stakeholder involvement indeed increase democratic features? – and research shows that stakeholder involvement does not univocally hold promise. Indeed, it does not really solve the problems of representation, representativeness, accountability or effectiveness of the policymaking process. This paper challenges the premise at the theoretical level: the linear link built between stakeholder involvement, democracy and legitimacy necessitates further investigation in order to clarify both academic research and policy recommendations on the topic. The same observation could potentially be established for other legitimation policies the EU has attempted to develop, e.g. the increasing powers of the European Parliament or new transparency standards for regulatory agencies.

From a more fundamental perspective, legitimacy and democracy cannot be equated: improving democratic features is a legitimation strategy that will positively affect EU's legitimacy only as long as it is successful, i.e.

accepted and adopted by the targeted constituency. Multiplying democratic features has little effect if the constituency does not see or understand it. Moreover, legitimation strategies must respond to citizens' social norms, and in this case, it has been shown that citizens do not necessarily evaluate polities according to their perceived or real degree of democracy (Lenz & Viola, 2017). We therefore conclude that the premise that links stakeholder involvement and legitimacy is flawed both at the practical and theoretical level.

Thus, in order to assess if and how stakeholder involvement does indeed impact EU's legitimacy, academics should firstly pay closer attention to their conceptualisation and operationalisation of legitimacy. As a social relationship, legitimacy cannot be evaluated by simply comparing the EU's institutional design to a democratic ideal. In empirical research, it is difficult to argue that any institution that does correspond to these optimal standards fails the legitimacy test. Instead, the legitimacy relationship should be studied in both directions. On one hand, scholars can evaluate if the EU's claims for more democracy do in fact translate into improved policies or institutional designs. Such research would take form of a critical assessment, or rather reality-check, of the claims EU institutions make when justifying their use of power. Stakeholder involvement would be just one of these claims, and a multitude of claims could be studied (e.g. effectiveness claims, fairness claims, protecting human rights claims etc.). Instead of studying legitimacy itself, these studies would study the effectiveness (or credibility) of legitimation strategies. This would not only enrich scholarly understanding of the concept of legitimation but would also assist societal debate about the role of the EU, and European integration as a whole.

On the other hand, scholars should analyse the citizens' assessment of legitimacy, the EU, and their perception of stakeholder involvement. As mentioned, scholars cannot affirm unilaterally that stakeholder involvement improves EU legitimacy, if they bypass the study of the public sphere, citizens or relevant constituencies. Thus, to truly understand the relationship between legitimacy and stakeholder involvement, scholars should analyse whether, and if yes to what degree, citizens evaluate the role of stakeholders in policymaking processes (see for example Beyers & Arras, 2020; Grimmelikhuijsen et al., 2021). Again, such research could be extended as to comprise other features or forms considering institutional design. From psychological research it

seems that citizens do in fact care about fair and transparent procedures in policymaking when justifying an authority (Hibbing & Theiss-Morse, 2008; Tyler, 2001). However, current scholarly work does not delve deeper in what citizens consider to be fair and transparent, and thus legitimate. Thus, studying the *de facto* perceptions of what citizens deem legitimate would enrich and substantiate our understanding of legitimacy. To date, stakeholder involvement seems not to have found a way to maintain, let alone improve, the legitimacy among its citizens. Although the institutionalisation of stakeholder involvement is intended to be a democratising instrument, we showed that this relation is problematic for multiple reasons. Therefore, the reconceptualisation of democracy and legitimacy is a crucial matter not only for academics but also for policy advisers and citizens.

CHAPTER 3

STAKEHOLDER MOBILISATION IN FINANCIAL REGULATION

A comparison of EU regulatory politics over time

Author: Bastiaan Redert

Published:
Redert, B. (2020). Stakeholder Mobilisation in Financial Regulation: A Comparison of EU Regulatory Politics over Time. JCMS: Journal of Common Market Studies, 58(6), 1433–1451. https://doi.org/10.1111/jcms.13046

ABSTRACT

Current scholarship is inconclusive whether stakeholder involvement in regulatory politics can be legitimising. This paper argues that stakeholder involvement can only be legitimising if bias in mobilisation is limited. Bias is limited when a heterogeneous set of stakeholders mobilises. This paper examines stakeholder mobilisation in public consultations concerning EU financial regulation. Due to the financial crisis and subsequent institutional reforms, stakeholders' perception on who is affected by regulation and the reach of the agencies' operations has changed. Subsequently, mobilisation is expected to be more heterogenous. The analysis is based on a novel dataset of stakeholder responses to public consultations of the ESAs before and after the financial crisis and reforms. The results show shifts in interest mobilisation, but these do not follow the research expectations. Therefore, the findings show that public consultations do not necessarily decrease bias. As such, consultations show important limits for legitimising EU regulatory policies.

INTRODUCTION

Over the past decades, the European Union (EU) delegated various executive tasks from institutions that are electorally accountable to the European public, to non-majoritarian agencies (Moravcsik, 2002; Scharpf, 2003). One of the rationales for this delegation process is that it may lead to more credible commitments and thus increase the effectiveness of the policy outputs. To compensate for this 'agencification', both policymakers and academics sought relief in the involvement of relevant stakeholders in the agencies' processes (De Schutter et al., 2001; European Commission, 2001).

The stakeholder-model argues that stakeholder involvement in public policymaking can contribute to legitimise regulatory governance (Agné, Dellmuth, & Tallberg, 2015; Bernauer & Gampfer, 2013; Chatzopoulou, 2015; Gornitzka & Sverdrup, 2011). One important aspect of stakeholder involvement concerns mobilisation bias, which can be defined as "a situation where two or more entities, different organisation types or organisations with conflicting policy positions, gain a significant different amount of attention" (De Bruycker & Beyers, 2015). Bias in interest mobilisation might be problematic for democratic legitimacy as it increases the probability of capture: policy outcomes that systematically favour special interests at the disadvantage of the general interest (Carpenter & Moss, 2014). One way to limit bias is the mobilisation of a more heterogeneous set of stakeholders (Klüver, 2012; Klüver, in Lowery et al., 2015). Hence, a systematic analysis of the heterogeneity of mobilised groups may tell us to which extent stakeholder mobilisation has a legitimising potential.

More specifically, this paper evaluates stakeholder involvement in the three most powerful EU agencies, the European Supervisory Authorities (ESAs). These agencies are concerned with financial regulation and micro-prudential oversight in the EU. Before the crisis, public consultations concerning financial regulation were characterised by low heterogeneity of mobilised groups (Chalmers, 2015; Quaglia, 2008; Pagliari & Young, 2015; Posner & Véron, 2010). In this period, it was thought that financial regulation only concerned the financial sector itself. However, the financial crisis of 2008-09 changed that perception, and it became painfully clear that also other groups are affected by (the absence of) sound financial regulation. This increase is further exacerbated by the delegation of new rulemaking and enforcement competences to the ESAs in the wake of the financial crisis. The expansion of agency competences makes agencies more relevant venues for the lobbying activities of different stakeholders, and thus spark additional mobilisation. As a result, I expect heterogeneity of the interest group community involved in financial regulatory policies to increase after the crisis and reforms.

Following this logic, this paper analyses the mobilisation patterns of stakeholders before and after the financial crisis and the subsequent reforms. This results in the following research question: *How have mobilisation patterns changed after the financial crisis and the subsequent institutional reforms?* My answer is based on a novel dataset of all public consultations organised by the ESAs between 2004-2014, containing 432 consultations, with 10,930 responses of 1,749 unique actors.

AGENCIFICATION, THE STAKEHOLDER-MODEL AND BIAS

The creation of non-majoritarian agencies finds its basis in the search for optimising policy outputs. However, it resulted in a system in which the backstage of politics, the problem-solving *politique des problèmes*, is disjointed from the frontstage of politics, the *politique d'opinion* in which elected representatives discuss policies based on diverging preferences (Papadopoulos, 2007, p. 475). This disjuncture decreases the control citizens exert on the executive branch of government. Moreover, it increases the number of stakeholders involved in the policy process without direct authorisation of citizens ex ante, and without being subject to democratic control ex post (Busuioc, 2009; Papadopoulous, 2007).

One way to cope with these drawbacks of regulatory governance was to formally involve societal stakeholders such as business groups, non-governmental organisations (NGOs), or labour organisations. The general idea is that policies should not solely be made by a technocratic elite but should be established in close cooperation with stakeholders that are embedded in society (Armstrong, 2002; Chatzopoulou, 2015; Kohler-Koch, 2007; Kröger, 2008). In the EU, this collaborative form of governance was institutionalised since the White Paper on Governance (European Commission, 2001). Consequently, stakeholder involvement has become a central concept in EU

politics and has extensive implications for the decision- and policy-making processes in the EU.

However, current theories are undetermined what these implications might be, and whether it can de facto improve legitimacy of EU regulatory governance. On the one hand, scholars argue that stakeholder involvement has legitimising qualities for regulatory politics. Generally, it is thought that the institutionalised 'partnership' between EU agencies and stakeholders (Armstrong, 2002; Chatzopoulou, 2015; Gornitzka & Sverdrup, 2015; Kohler-Koch, 2007, p. 4) increases responsiveness, fairness, and transparency of policy-making processes (for a discussion see: Bernauer & Gampfer, 2013; Chatzopoulou, 2015; Coglianese et al., 2004; Gornitzka & Sverdrup, 2011). Following the work of Agné, et al. (2015), I call this causal relationship between stakeholder involvement and legitimacy the stakeholder-model. Hereby I mean a 'simplified package of ontological assumptions, positive expectations, and normative principles that underpin alternative prescriptions of what would make world politics democratically legitimate' (Agné, et al., 2015, p. 2). In short, the first part of this model argues that institutions should be able to design policy-making processes to attract relevant stakeholders. The second part suggests that increased stakeholder mobilisation can produce democratic legitimacy (Agné et al., 2015).

However, an important aspect of democratic legitimacy is the mitigation of bias. Interest group scholars have written extensively about bias. In terms of policymaking scholars argue that political outcomes are biased towards a few powerful economic interests while less resourceful societal interests have more difficulties making their voices heard (Rasmussen & Carroll, 2014; Schattschneider, 1960; Schlozman, Verba, & Brady, 2012). As such, representational bias increases the probability of policy capture, namely policies that systematically favour special interests at the disadvantage of the general interest (Carpenter & Moss, 2013). If some societal interests constantly win, while others always lose, such bias may seriously undermine democratic legitimacy (Klüver, 2012; Lowery et al., 2015).

In an important collection of essays of Lowery et al. (2015), various scholars reflect on what can be understood as an unbiased interest group system. Marie Hojnacki, one the contributors, argues that an unbiased interest group system should provide a level playing field for affected stakeholders. A level playing field, an environment where bias is limited, is influenced by three factors: the number of different interest group types; the representativeness of the interest groups; and the group resources. In this regard, Hojnacki argues that "an obvious place to begin in levelling the playing field would be to add more groups that represent the under-represented" (Lowery et al., 2015, p. 1218). Although this sounds straightforward, we lack a normative yardstick that allows us to claim beforehand what an unbiased system would look like (De Bruycker & Beyers, 2015; Lowery et al., 2015; Lowery & Gray, 2004). Nevertheless, a more heterogeneous mix of interest group types would represent a move in the right direction towards a less biased system (Flöthe & Rasmussen, 2019; Lowery et al., 2015). Thus, to see if stakeholder involvement has a legitimising potential, one has to determine the heterogeneity of the politically active interest groups.

MOBILISATION BIAS IN REALITY: EU FINANCIAL REGULATION

Recent developments in the field of financial regulation and micro-prudential oversight present us a unique opportunity to assess a potential shift in bias. Such a shift is expected because the financial crisis and institutional reforms of EU regulatory agencies may have changed the stakeholder's perception on financial regulation as well as the openness of regulators to stakeholder involvement.

In the early 2000s the Commission installed three new agencies concerned with advising the Commission in the fields of banking, financial markets, and insurances and occupational pensions. One of their tasks was to organise public consultations on the content of implementing regulation previously debated by the European Parliament and the Ecofin Council (see Maggetti & Gilardi, 2011; Quaglia, 2008). The usual procedure is to post a document on the agency website and circulate it among relevant stakeholders inviting them to submit a position paper. These public consultations were characterised by low heterogeneity of interests: mainly regulated business interests seek influence on financial regulation (Chalmers, 2015; Pagliari & Young, 2015; Posner & Véron, 2010; Quaglia, 2008; Tsingou, 2010; Young, 2013). This is not surprising since this policy area is highly technical and complex. For these agencies to advise on complex policy issues, they need expertise knowledge and technical information. Such information can be supplied by stakeholders with an extensive knowledge about problems and

solutions for issues in this particular sector (Bouwen, 2002; Coglianese et al., 2004). Other interests (i.e. non-regulated business groups, non-business groups) lack this expertise knowledge, and therefore had a limited role within these public consultations.

In the pre-crisis period, financial regulators face serious allegations of capture, as the financial sector worked closely and informally with financial regulators (Tsingou, 2010, 2015; Young, 2013). This resulted in a permissive regulatory environment in which banks could continue their excessive risk-taking conduct (Baker, 2010, p. 647). The lack of strict micro-prudential oversight is considered to be one of the causes of the crisis (Baxter, 2011). Moreover, the financial crisis showed that the ill-functioning of the financial sector could have extensive and dramatic impacts on the real economy, and subsequently on consumers and taxpayers (Baxter, 2011). It is expected that the exogenous shock of the crisis changes the perception of which stakeholders are affected by financial regulation. In other words, not only the financial sector itself should be concerned with financial regulation, but also other stakeholders (such as NGOs, consumers, trade unions, research institutes) have a substantial interest in financial regulation. This change in perception is reflected in research studying the effects of issue salience on business dominance in financial regulation. Kastner (2014), for example, finds that the financial crisis created a momentum for non-business groups to influence financial regulation in the EU and US. In another article, Kastner (2017) claims that the crisis increases the salience of the Financial Transaction Tax, which subsequently constrains the lobbying power of business groups. Furthermore, studying stakeholder mobilisation on banking derivatives, Young and Pagliari (2014) find that non-regulated business groups mobilise more after the crisis due to increasing salience. Furthermore, some stakeholders might even challenge the role of the financial sector from a normative standpoint. An example of such a stakeholder is Better Finance, which challenges the financial sector's practices and conduct rather than specific regulations. Thus, following this logic, I should see changes in heterogeneity of mobilised stakeholders before and after the financial crisis of 2008-09.

Besides the crisis itself, also institutional reforms of the three agencies are expected to change the perception of who is affected by financial regulation. During the financial crisis it became painfully clear that the three agencies lacked the instruments for strict micro-prudential oversight deemed necessary to control the financial sector. Hence, the Commission decided to delegate the sole power to 'draft regulatory technical standards, which do not involve policy choices' (Regulation (EU) No. 1093/2010 & 1094/2010 & 1095/2010) to the ESAs in 2011. Technical standards are legally binding and directly applicable in all member states. Besides the sole power of initiative, the ESAs have considerable powers during emergency situations, and can operate quite independently from the Commission (for a discussion see: Busuioc, 2013). Due to this increase in powers, the agencies have a significant impact on the contents of financial regulation and on the stakeholders affected by these regulations.

Taking these two developments in consideration, it is expected that interest groups' views on who is affected by financial regulation change. Consequently, I expect this to lead to more heterogeneity in the set of mobilised interests. Indeed, following the reasoning of Lowery at al. (2015), the heterogeneity of the set of stakeholders should increase and not decrease to alleviate bias. If so, stakeholder involvement could have a legitimising potential.

Needless to say, there are numerous forms of mobilisation (e.g. informal contacts with officials, organising protests, media outreach, etc.). This research focuses on mobilisation in terms of participating in the public consultations organised by the agencies themselves. As mentioned, the statutory regulations of the three agencies explicitly state that the agencies should 'consult interested parties on regulatory or implementing technical standards, guidelines, and recommendations' (Regulation (EU) No. 1093/2010; 1094/2010; 1095/2010). Also, the agencies should provide stakeholders 'reasonable opportunity to comment on proposed measures' (Regulation (EU) No. 1093/2010; 1094/2010; 1095/2010). As is common in the EU, the consultation of interested parties is done via public on- and offline consultations. These consultations are easily accessible for all stakeholders as it is cheap and does not presuppose extensive previous contacts within the agency. Therefore, public consultations are considered as an effective instrument to involve a broad set of stakeholders in the policy-making process, and thus may improve the legitimacy of EU governance (Kohler-Koch, 2007; Kröger, 2008). The low mobilisation threshold makes that I can

safely assume that if I do not see shifts in the heterogeneity of mobilisation at consultations, bias remains unchanged.

RESEARCH EXPECTATIONS

In general, stakeholder mobilisation is expected to change due to two main shifts in the supply and demand of resources between agency and stakeholders. On the one hand, the shift in perception of who is affected by financial regulation (or the absence thereof) is translated in which stakeholders supply information to the agency. On the other hand, the agencies' demand for specific resources held by stakeholders changes due to the crisis and reforms. Following paragraphs will describe how the shifts in demand and supply affect mobilisation patterns.

First, one should know the density of mobilisation: the total number of stakeholders mobilising in public consultations (Chalmers, 2015; Hanegraaff, 2015). Indeed, density alone does not tell much about the heterogeneity of mobilised groups. However, combining density with diversity and volatility provides additional insights. For example, an increase in density could increase the chances to observe more diversity. Hence, including density in the analysis is meaningful. First, density is expected to increase due to an increase in salience (Quaglia, 2011). As the crisis is considered to be caused by self-regulation and limited oversight, regulators are prone to review financial regulation (Chalmers, 2015). Since re-regulation directly affects the financial industry, it is crucial for stakeholders in this sector to mobilise and to influence new regulations, more so than in the pre-crisis period (Chalmers, 2015; Pagliari & Young, 2014). Second, the reforms are expected to lead to an increase in density. As the agencies gained the initiative to draft binding regulatory standards, they have a more important role in the policy-making process. Whereas before the reforms the agencies could only advise the Commission, after the reforms they gained instruments to actually affect stakeholders. Now that the ESAs draft effective regulatory standards, they are in increasingly in need of information about the regulated sector (Arras & Braun, 2018; Coglianese et al., 2004). Such information can be supplied by stakeholders with an extensive knowledge about problems and solutions for issues in the financial sector (Bouwen, 2002; Coglianese et al., 2004). Thus, I can expect that:

Expectation 1: The density of mobilised stakeholders increases after the financial crisis and reforms.

Second, the diversity of mobilisation, meaning the heterogeneity of the set of mobilised stakeholders (Chalmers, 2015; Hanegraaff, 2015), is expected to increase over time. As mentioned, the financial crisis showed the importance of and revealed fatal flaws in financial regulation. The shock of the crisis is expected to attract the attention of non-business groups (i.e. NGOs, labour unions, consumer groups) that previously did not show a big interest in financial regulation (Kastner, 2014; 2017; Pagliari & Young, 2016). However, the crisis showed that large parts of society are affected by the risk-taking conduct of the financial sector. Therefore, I can expect these stakeholders to mobilise more after the financial crisis. The reforms also affect diversity. As the ESAs gained a new institutional position, they are incentivised to involve non-business groups. Agencies balance and exploit certain interests as to improve their reputation as regulators (Arras & Braun, 2018; Busuioc & Lodge, 2016). Following the assumptions of the stakeholder-model, a major way of gaining reputation is to involve a diverse set of interests in the policy-making process. Therefore, agencies are expected to reach out and involve other stakeholders than the financial industry alone to show that not only business actors provide input. Hence, it is expected that:

Expectation 2: The diversity of mobilised stakeholders in terms of group type increases after the reforms and financial crisis.

Besides group type, one can also assess diversity in terms of economic sector. Financial services can be considered as the glue that hold the economy together and as having direct effect on the daily business operations of other sectors. Hence, not only the financial services sector is prone to mobilise, also other, non-regulated interests will try to pull policies towards their preferred outcome. These non-regulated interests consist of businesses other than the financial sector itself, but also public interests such as NGOs. As mentioned, Pagliari and Young (2014) find a shift in mobilisation in the case of complex derivatives before and after the crisis. Whereas banks are highly prevalent in public consultations before, after the crisis a large portion of the mobilised interests were non-regulated stakeholders (e.g. small- and medium-

sized enterprises, agricultural business groups, and consumer groups). An explanation for this shift is that the 'victims' of the crisis realised that financial regulation affects their daily operations. Moreover, regulation might be used in order to constrain the risk-taking conduct of the 'causers' of the crisis: the financial services sector. As with previous research expectation, the ESAs are expected to attract a more diverse set of stakeholders as a means to gain legitimacy after the reforms. Therefore, I expect that:

Expectation 3: The diversity of mobilised stakeholders in terms of sector increases after the reforms and financial crisis.

Finally, I also assess a third type of heterogeneity. Previous measures were based on group characteristics; however, one can also assess diversity in the activity of groups. More specifically, there is diversity in the extent to which individual stakeholders can maintain their lobbying activities over a particular period (Anderson, Newmark, Gray, & Lowery, 2004; Hanegraaff, 2015). This is also known as volatility. When groups are continuously present in lobbying communities they are able to build stable relationships with policymakers and gain political experience (Anderson et al., 2004; Hanegraaff, 2015). Hence, volatility shows which stakeholders are likely to be insiders or partners of policymakers, and which stakeholders are outsiders, or tourists. These assets are important, if not essential, when trying to influence policy (Gray & Lowery, 1995). Since stakeholders need extensive resources to persist in their lobbying efforts, public consultations have a clear core-periphery structure: certain stakeholders manage to mobilise on every consultation whereas other stakeholders only mobilise once and then disappear (Anderson et al., 2004). Volatility also provides insight in the openness of policymakers vis-à-vis new interests (Berkhout & Lowery, 2011). More specifically, politicians and policymakers are likely to prefer information from actors with knowledge about previous political decisions. Also, these stakeholders might have proven themselves in the past, thus gaining a strong reputation which newcomers lack.

In the policy field of financial regulation, regulated business groups always have been 'partners' in the policy-making process (Mügge, 2006; Tsingou, 2010; Young, 2013). Over the years, these groups built a strong reputation and gained political experience (Tsingou, 2010, 2015; Young, 2013). However, as discussed above, the financial crisis is expected to highlight the extensive role of the financial sector in policymaking (Chalmers, 2015; Young, 2013), thus showing that these partners might have caused more harm than good. After all it were the partners which created high-risk financial products and proposed self-regulation during the years before the crisis (Baxter, 2011; Mügge, 2006; Young, 2013). Therefore, the reputation of the partners is harmed, and volatility changes. Whereas before the crisis consultations are dominated by a small group of partners, after the crisis agencies are expected to be more open and receptive towards new interests. Also the reforms are expected to increase volatility. Because agencies seek legitimacy as new regulators, they cannot permit themselves to solely interact with the partners. As mentioned, the role of the financial sector in regulatory policymaking is highlighted by the crisis, resulting in a deterioration of the financial sector's reputation (Chalmers, 2015; Young, 2013). Hence, the ESAs are expected to seek information from stakeholders other than the partners. Especially after the various allegations of capture, the agencies would be incentivised to not cooperate too closely with partners. Thus:

Expectation 4: The volatility of mobilised stakeholders increases after the financial crisis and reforms.

RESEARCH DESIGN AND OPERATIONALISATION

To measure mobilisation patterns, all public consultations of EBA, ESMA and EIOPA between 2004-2014 have been mapped using publicly available information of the agencies' websites.[7] This resulted in a dataset comprising 432 consultations, which differ substantially per agency: ESMA organises 222 consultations; EBA and EIOPA organise 133 and 105 consultations respectively.[8] The joint consultations organised by all three agencies have not been included in the analysis as the agencies organise these only from 2012.[9]

7 Some consultations of ESMA were not listed on the website and were retrieved from the agencies' archives. Twenty consultations were not archived and could therefore not be included in the analysis.
8 For a distribution per year, see Appendix 2.1.
9 In the ten-year period, the ESAs organised 15 joint consultations with 314 responses from interest groups.

The mapping of the 432 consultations resulted in a first dataset consisting of 10,930 responses of 1,746 stakeholders.[10] In this dataset all organisations have been coded for various variables, including type and sector. One coder coded all organisations using an adaptation of the INTEREURO-codebook as used by Beyers et al. (2014). All coding work was subsequently checked by the author. Most of the variables have been coded based on information found on the organisation's website. However, for organisations that ceased to exist in the ten-year period, information found on LinkedIn-pages or on business profiles on Bloomberg was used. For 23 organisations (1.3 percent) no information was found, these have been coded as 'unknown'.

Figure 2.1: Group type (frequency)

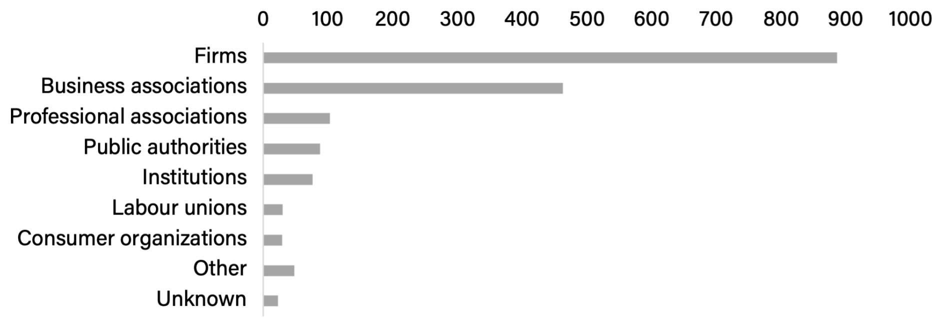


Figure 2.1 shows the distribution of the various group types across the unique actors (N=1,746). Most mobilised actors are either private firms or business associations. This reflects previous findings regarding the prominent position of business actors in public consultations (Mügge, 2006; Scholte, 2013). Furthermore, as various scholars already showed, the presence of non-business interests such as labour unions and consumer organisations is marginal within the field of financial regulation (Chalmers, 2015; Mügge, 2006; Pagliari & Young, 2015; Quaglia, 2008; Scholte, 2013). In this dataset these types each cover two percent of the total mobilised actors.

The coding of the sector variable is also based on information available via the organisation's website, LinkedIn or Bloomberg profiles. The categories used are based on a modification of the United Nations International Standard Industrial Classification of All Economic Activities (ISIC, rev.4).

10 This differs compared to Chalmers (2015), see Appendix 2.2 for an explanation.

The categories are based on the ISICs group-level (three digits), and the result of this classification can be found in Table 2.1.

Table 2.1: Sectoral Distribution

Sector	Activity	Freq.	%
A. Non-regulated sector		368	21.0
B. Regulated sector			
1. Financial service activities	1. Monetary intermediation	160	9.1
	2. Activities of holding companies	47	2.7
	3. Trusts, funds and similar financial entities	93	5.3
	4. Two or more activities	41	2.3
2. (Re)insurance and pension-funding	1. Insurance	129	7.4
	2. Re-insurance	23	1.3
	3. Pension funding	58	3.3
	4. Two or more activities	29	1.7
3. Auxiliary activities	1. Fund management activities	89	5.1
	2. Credit rating agencies	28	1.6
	3. Other activities auxiliary to financial services	310	17.7
	4. Other activities auxiliary to insurance activities	34	1.9
	5. Two or more activities	11	0.6
C. Other			
1. Government and regulatory organisations		69	3.9
2. Legal and accountancy		150	8.6
3. Other (e.g. press)		15	0.9
D. Non-business interests			
1. Consumers		25	1.4
2. Social welfare		14	0.8
3. Other		18	1.0
E. Unknown		38	2.2
Total		1749	100

Table 2.1 shows the sectoral distribution of individual stakeholders. First, there is a large group of actors (21 percent) that represent business interests but are not directly or primarily involved in financial service activities, such as Bosch or Eurelectric. Considering the technical nature of financial regulation, it is surprising that a fifth of all identified actors does not belong to the financial sector. It also shows that there is substantial variation in the

economic interests business groups represent. That said, the financial sector remains by far the most mobilised sector; 70 percent of all mobilised actors represent the financial sector. However, as Table 2.1 shows, there is also substantive variation of different actors within the financial sector.

Although Table 2.1 shows the overall actor distribution, it does not describe the development over the past ten years. Therefore, a second database was established with evidence on the individual responses during each consultation the three agencies organised. Subsequently, the density, diversity and volatility were measured at the consultation-level. While density simply refers to the total number of mobilised actors per consultation, diversity is more complex to measure. To measure diversity, I use the normalised Shannon's H entropy (see Boydstun et al., 2014). This index summarises the diversity of a population in which each member (i.e., stakeholder) belongs to a unique item (i.e., business group or insurances), while directly accounting for the number of items at play in a specific consultation. The index ranges from 0 to 1 and increases as the spread of attention across all items evens out (Boydstun, Bevan, & Thomas III, 2014). It thus allows meaningful comparison between the diversity before and after the crisis. Diversity based on group type was measured using three categories using the expectations as presented above, namely: business, non-business and 'other'.[11] For the measurement of sectoral diversity a more granular measure based on 17 categories as presented in Table 2.1 was used. Such an approach is consistent with similar empirical endeavours, and captures the wide diversity of groups occupied with financial services (Chalmers, 2015, 2017; Pagliari & Young, 2014).

The third variable to measure mobilisation patterns is volatility. I apply the measurement as used by Hanegraaff (2015) based on a categorisation of attendance rates of stakeholders and compare them across various group types over time. Such a measurement of volatility allows for comparing the attendance rates between the three different periods. All attendance rates of the individual stakeholders were aggregated at the consultation-level, as to compare volatility per consultation over the 10-year period, allowing a direct comparison between the density and diversity per consultation.[12]

11 The 'other' category consists of a small number of organisations that have both business actors and non-business actors as members or are networks of multiple interest groups.

12 For detailed categorisation and aggregation, see Appendix 2.3.

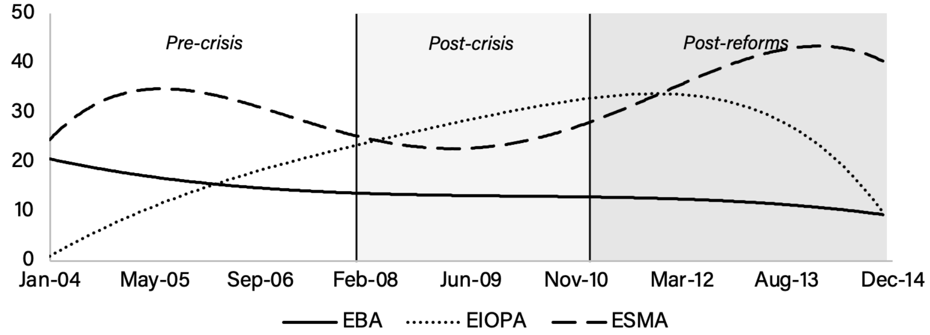
The analysis presented below compares density, diversity and volatility over three time periods: pre-crisis (2004-07), post-crisis (2008-10) and post-reforms (2011-14). The cut-off point between the post-crisis and post-reforms period is straightforward, as the reforms were introduced in January 2011. However, the chosen cut-off point that demarcates the financial crisis (January 2008) deserves an explanation. For the public eye the crisis became apparent after the bankruptcy of Lehmann Brothers in September 2008. However, quite a number of the consultations held in 2008 already discuss regulatory responses to this (emerging) crisis. For example, a consultation held by CESR (predecessor ESMA) in February 2008, discusses views on the sub-prime crisis in the United States and how the Commission intends to address shortcomings in the sub-prime market. CEIOPS (predecessor EIOPA) organises a consultation in May 2008 that discusses the measures that should be taken if the credit risks worsen. Likewise, in June 2008 CEBS (predecessor EBA) organises a consultation on its technical advice on liquidity risk management, which states that CEBS analysed the 2007-2008 crisis and had regular discussions about the crisis with a broad range of market participants. These examples prove that agency officials already were discussing (post-) crisis regulation from the beginning of 2008. Furthermore, previous work by Chalmers (2015) also uses 2008 as a cut-off point to measure the effects of crisis. This cut-off point has a significant effect in his models, and thus can be considered meaningful in this paper's longitudinal assessment.

DENSITY

The density of consultations changes across the three agencies over time (Figure 2.2). On the one hand, the density of consultations organised by EIOPA and ESMA both show an increase. The consultations of EIOPA become denser in the pre-crisis and post-crisis period. After the reforms of 2011, however, density decreases. ESMA shows a rapid increase of density after the crisis. Whereas in 2009, on average 23 stakeholders mobilise on ESMA consultations, this increases to an average of 44 in 2013. More remarkable is the trend of consultations of EBA. The number of mobilising actors decreases from an average of 19 to an average of 9 stakeholders per consultation. This result is in line with Chalmers (2015), who finds that exogenous shocks, such as crisis, diminish the number of mobilised stakeholders. However, it is

counterintuitive considering that the crisis and reforms should have attracted more stakeholders according to the stakeholder-model.

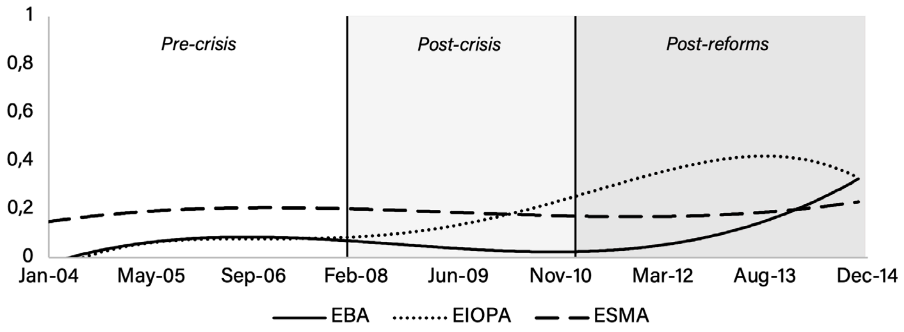
Figure 2.2: Density per agency (trendline)



DIVERSITY BY GROUP TYPE

As Figure 2.3 shows, the changes in diversity based on group type are substantive for the consultations of EBA. Whereas diversity is minimal or non-existent in the consultations organised before the reforms, there is a clear trend towards more diversity after 2011. In 2013 and 2014, in particular, one can see a substantial increase in the Shannon's H index. This partly supports the second expectation. However, it is not non-business that mobilises more. Indeed, a small number of new stakeholders that act as a countervailing force to the financial sector (i.e. BetterFinance and consumer organisations) mobilises more after the reforms. However, since there is a substantial decrease in density, one can conclude that business interests reduced their participation in consultations after the reforms instead.

Figure 2.3: Diversity (type) per agency (trendline)



The EIOPA consultations show a similar increase in diversity (Figure 2.3). In the pre-crisis period, the consultations mostly attract a small group of business associations and private firms. Again, this is reflected in the rather low density of the pre-crisis consultations. After the crisis and reforms, there is a substantial increase in diversity. In contrast with EBA, there is an increase in the number of non-business actors mobilising after the institutional reforms. Whereas these actors were completely absent in the years from 2004 to 2007, they become more active after the crisis and the reforms. This is remarkable given the low number of (national) consumer groups focusing on consumer protection in financial regulation. For such groups to suddenly mobilise more in the public consultations of EIOPA, shows that the crisis and reforms indeed resulted in increased salience of financial regulation.

As opposed to EBA and EIOPA, the ESMA consultations remain largely unchanged considering diversity in terms of group type (Figure 2.3). Although there is variation between consultations, there seems to be no clear shift in trend between the three periods.

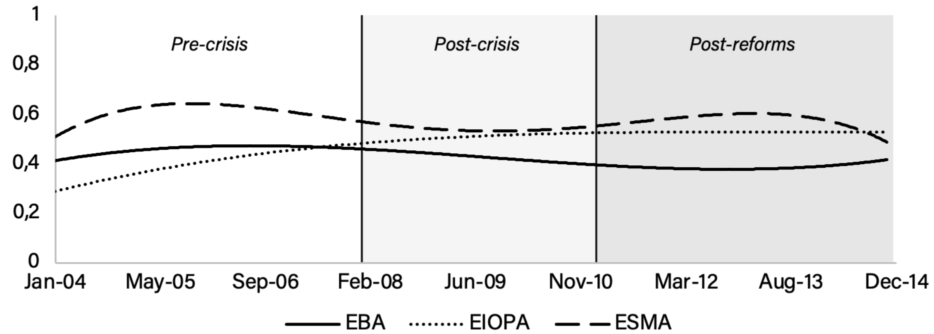
SECTORAL DIVERSITY

Considering the prevailing mobilisation of business and the wide array of sectors, it is essential to also measure sectoral diversity. In contrast to diversity based on group sector, sectoral diversity is higher on average. Although this is logical as there are more categories, it also proves the importance of sectoral diversity in stakeholder mobilisation. Using the Shannon's H index based on

sector per consultation for each agency, Figure 4 shows substantial differences between the agencies.

First, the consultations of EBA show an interesting trend. Whereas consultations are becoming more diverse between 2004 and 2006, they become less diverse after this period. Combining these findings with those on density and diversity based on group type, one can indeed conclude that the decrease in density and diversity can be explained by the withdrawal of certain business groups. This finding directly contradicts the expectations, as one would expect increases in mobilisation after the crisis instead. The decreasing sectoral diversity stabilises after the institutional reforms.

Figure 2.4: Diversity (sector) per agency (trendline)



The consultations of EIOPA show the importance of intra-business diversity. Whereas diversity based on group type remained minimal in the pre-crisis period (Figure 2.3), sectoral diversity increases over time (Figure 2.4). This shows that other types of business actors find their way to EIOPAs consultations. After the financial crisis, for instance, there is an increase in the mobilisation of law and accountancy firms, and after the institutional reforms also non-regulated stakeholders mobilise. These two waves of mobilisation of other economic sectors make the dominance of the insurance sector to decrease with 20 percentage points (from 70 percent before the crisis and reforms to 50 percent of mobilised actors). That said, although there is an increase in sectoral diversity, it does not follow from the crisis nor the reforms, as posed by the theoretical expectations.

The consultations of ESMA were more diverse compared to those of EBA and EIOPA in the pre-crisis period. Whereas the trend of the Shannon's

H index meanders between 0.50 and 0.64 for ESMA, the trend for EBA and EIOPA does not surpass 0.48 and 0.53 respectively (Figure 2.4). The trendline shows two shifts in sectoral diversity. Between 2004 and 2005, and between 2010 and 2013 consultations become more diverse. Latter follows the expectation that sectoral diversity increases after the reforms. The effect seems to be temporary, however, as the diversity decreases after 2013 again. Moreover, although there is an increase in diversity after the reforms, the consultations do not become as diverse as they were in the pre-crisis period. Again, these findings partially support the theoretical expectation, but any substantial shifts in mobilisation remain absent.

VOLATILITY

Regarding volatility, one can conclude that mobilisation on consultations has become more volatile for all ESAs (Table 2.2). For all three agencies, the proportion of partners decreases, and the proportion of regular and incidental stakeholders increases after the crisis and reforms.

In the early years of EBA, consultations attract the same set of stakeholders consisting of large banks (e.g. Deutsche Bank), national banking associations (e.g. *Fédération Bancaire Française*) and international business associations (e.g. European Banking Federation). These business groups mobilise in an almost continuous fashion, allowing them to constantly inform EBA about their policy views. In the pre-crisis period 47 percent of mobilised actors can be considered as partners (Table 2.2), meaning that these stakeholders mobilise in more than half of the consultations organised in that period. One sees that mobilisation at EBA becomes more volatile: whereas in the pre-crisis period 47 percent of actors are partners, after the crisis and reforms this decreases to respectively 36 and 17 percent. Instead of continuous mobilisation of a fixed set of actors, there is more variation in the mobilising stakeholders after the crisis and reforms, as reflected in the increase of incidental and regular actors.

Table 2.2: Volatility per agency per period

		Pre-crisis 2004-07	*Post-crisis 2008-10*	*Post-reforms 2011-14*
EBA	Tourist	20%	17%	12%
	Incidental	23%	22%	37%
	Regular	10%	25%	34%
	Partner	47%	36%	17%
ESMA	Tourist	10%	16%	12%
	Incidental	46%	56%	60%
	Regular	32%	18%	19%
	Partner	12%	10%	9%
EIOPA	Tourist	14%	4%	18%
	Incidental	14%	20%	45%
	Regular	34%	19%	27%
	Partner	38%	57%	10%

The volatility of ESMA consultations is the highest of the three agencies. Although there was less variation in density and diversity between the three periods, there is an increase in volatility of ESMAs consultations. After the crisis and the reforms there is more mobilisation of incidental actors and a decrease in the mobilisation of regular actors and partners. In other words, although there are no changes in density and diversity, there is an increase in the number of *different* stakeholders that mobilise.

The EIOPA consultations show a different trend. In the pre-crisis period, the consultations of EIOPA are dominated by repeat players: 38 percent of stakeholders are partners and 34 percent are regular stakeholders. Similar to EBA consultations, a core group of stakeholders mobilises almost continuously. This group consists of European insurance associations (e.g. Insurance Europe), national associations (e.g. Association of British Insurances) and private insurance companies (e.g. Munich RE). Contrary to EBA, however, the proportion of partners increases to 57 percent. Especially during the discussions on the Solvency II Directive in 2009, one sees a strong increase in partners. Some partners mobilise on every single consultation in the post-crisis period. This is surprising considering the increase in density as one would expect an increase in mobilisation of stakeholders other than the partners.

CONCLUSION AND DISCUSSION

The stakeholder-model argues that involving stakeholders in policymaking processes could be legitimising. In this paper, I focused on mobilisation bias. I argued that if certain stakeholders constantly win and others always lose, this would lead to a profound bias that may undermine democratic legitimacy (Flöthe & Rasmussen, 2019; Klüver, 2012). More heterogeneity in the mobilisation of stakeholders is one factor helping to prevent bias. Following this logic, I analysed whether the heterogeneity was affected by crisis and reforms in the field of EU financial regulation.

As discussed, the crisis was expected to increase the salience towards financial regulation, micro-prudential oversight and the role of the financial sector in regulatory policymaking. Due to the increased salience, stakeholder mobilisation should become denser, more diverse and more volatile after the crisis. Also, the recent reforms where the ESAs gain new competences and subsequently seek legitimacy as new regulators, would strengthen this effect. Taking this into consideration, one would expect shifts in stakeholder mobilisation. Overall, one could argue that there are changes between the pre-crisis, post-crisis and post-reforms period. However, shifts in density, diversity and volatility do not occur across all agencies as suggested.

First, density increases for ESMA and EIOPA, but for EBA I observed a decrease in stakeholder mobilisation. Second, diversity in terms of group type increases for EBA and EIOPA. Especially, the EBA consultations became more diverse over the ten-year period, but this can partially be explained by a withdrawal of business mobilisation and it is not due to a growing mobilisation of non-business interests. The EIOPA consultations show a rapid increase in diversity after the crisis and reforms. In contrast, the ESMA consultations do not show dramatic shifts in mobilisation patterns. Third, sectoral diversity shows only minor shifts after the crisis and reforms for ESMA and EIOPA; for EBA there is even a decrease of sectoral diversity. Finally, whereas density and diversity give mixed results, all three agencies become substantially more volatile over the ten-year period.

These differences between agencies, and the overall lack of substantial shifts in density and diversity have important implications for the stakeholder-model. The results make one sceptical whether stakeholder involvement decreases the bias of interest representation. If the reforms and the crisis did not translate in substantial shifts in mobilisation, it is questionable whether stakeholder involvement may contribute to legitimacy (but see Kastner, 2014; Young, 2012). Hence, future research is needed to further our understanding of the relationship between stakeholders and agencies in the field of financial regulation.

Besides, my results show that the consultations concerning financial regulation are more diverse than thought. True, the ESAs mainly attract financial business actors and the mobilisation of non-business interests like consumer groups and labour unions remains minimal. However, I demonstrated that there is clear intra-business diversity in consultations. Not only is there a substantial group of non-regulated business interests, but there is also considerable diversity within the financial sector (Table 2.1). Although some research analyses intra-business diversity in relation to regulatory governance (Chalmers, 2015; 2017; Pagliari & Young, 2014), future scholarly work should look more in detail beyond the business versus non-business dichotomy. This also touches upon one shortcoming in the research design, namely that I did not look at the policy positions of the mobilised stakeholders. Instead, I assumed that varying interest group types – such as business versus non-business interests – defend different policy views. It would be useful for future research, however, to analyses the position papers more closely in order to effectively measure policy positions.

Also, while comparing mobilisation for the three time periods, I treated all consultations in a similar way. Indeed, the studied consultations are similar to the extent that they all discuss EU financial regulations and are organised by three agencies. Nonetheless, some research shows that the type of regulation (e.g. detailed implementing standards, extensive regulatory packages, or broad working programs), but also other consultation characteristics influence stakeholder mobilisation. For example, Chalmers (2015) finds that the scope of a consultation concerning financial regulation has a significant effect on density and diversity, and that a preceding press release increases diversity. However, an analysis of consultations organised by a larger set of agencies by Beyers and Arras (2019) shows that consultation characteristics (such as complexity of the consultation text, content of the consultation) have only a limited effect on mobilisation. Hence, it might well be that some consultation characteristics, type of agency, or the nature of specific policies, have more explanatory power than the crisis and reforms. However, these other studies do not contradict my overarching conclusion, namely that public consultations do not necessarily decrease bias. Therefore, this instrument shows severe limits for legitimising EU regulatory policies.

Besides, volatility is an important feature of stakeholder mobilisation during public consultations. Whereas diversity and density differed for the three agencies, the volatility of the consultations increased for all ESAs. The scope of most scholarly work is limited to diversity, thus ignoring an important facet of mobilisation: namely the stakeholders' ability to remain present in the consultations and exerting their influence on a continuous basis. Adding volatility to the analysis provides a more nuanced understanding of stakeholder mobilisation. Since this research identified considerable variations in volatility across the ten-year period, it would be beneficial for future research to study how and under what conditions volatility changes.

CHAPTER 4

FROM CLUBS TO HUBS

Analysing Lobbying Networks in EU Financial Regulation After Crisis

Author: Bastiaan Redert

Under review at Journal of Public Policy

ABSTRACT

Policy networks fulfil an important role within policymaking. Networks of public and private actors provide information to policymakers and may halt or accommodate policy change. Generally, these networks exhibit stability, but at times they are transformed due to disruptive shocks. This paper analyses how and to what extent lobbying networks surrounding three EU financial regulatory agencies transform due to the impact of the global financial crisis. More specifically, the analysis assesses size, interconnectedness, balkanisation, and centrality after the financial crisis and the subsequent institutional and regulatory reforms. The findings show that as lobbying networks expand, they become more balkanised and less interconnected. They also demonstrate that shocks stimulate the entrance of new interest groups and make repeat players more selective in their lobbying efforts. This implies that the financial regulation policy network becomes less club-like after the crisis, allowing new groups to inform regulators about their policy preferences.

INTRODUCTION

The role of policy networks in policymaking is prevalent. Policy networks can be defined as subsystems of the political system concerning all constellations of interdependent actors with different capabilities and policy positions that provide solutions to policy problems (Scharpf, 1997; see also Carpenter, Esterling, & Lazer, 1998; Heinz, Laumann, Nelson, & Salisbury, 1993; Knoke, 1990; Laumann & Knoke, 1987). Generally, policy networks vary in terms of their stability, membership and their ability to halt or accommodate policy change (Baumgartner & Jones, 1991; Peterson, 1995). Policy networks can be 'policy communities': networks with stable relationships between actors, a restrictive membership, interdependences between actors and insulation from the general public (Judge, 1993; in Richardson, 2000). Policy communities are imperative in policymaking as they determine which issues to include and exclude from the policy agenda (Marsh & Smith, 2000; Rhodes, 1997). As a result, policy communities consisting of a few powerful (economic) interests – insulated from the influence of the general public or citizen interests – dictate and sustain existing policy agendas, thus largely ruling out drastic policy change (Baumgartner & Jones, 1991).

However, stable policy communities can be disrupted by shocks (Baumgartner, Berry, Hojnacki, Leech, & Kimball, 2009; Baumgartner & Jones, 1993). Long-standing policy networks of well-established groups lose out to other groups who were previously not mobilised in relation to the policy community. Such newcomers may manage to construct a new 'image' of existing policy problems (Baumgartner & Jones, 1991; Heclo, 1978; for an overview: Richardson, 2000). As such, shocks can change the image of a certain policy field and may induce participation of interests not generally supportive of the already involved industry (Baumgartner & Jones, 1991, p. 1051), making the policymaking arena less cohesive, or 'club-like' (Heclo, 1978). As a result, policy communities transform to 'issue networks' that exhibit a lower level of stability and cohesiveness (Baumgartner & Jones, 1991; Heclo, 1978; Peterson, 1995). Consequently, policymaking in issue networks is less stable and more subject to rapid change as new interests bring different values, policy frames, demands and modes of behaviour to the negotiating table (Richardson, 2000). In other words, shocks can transform tight networks (i.e. clubs) into unstable networks characterised with alternating memberships of and relationships between interest groups (i.e. hubs).

Although we know that shocks can disrupt and transform networks, it remains largely unknown *how and to what extent* policy networks are disrupted. Building on existing studies on change and stability in networks, this paper seeks to answer the following question: 'How and to what extent are policy networks affected by shocks?' To answer this question, this paper uses the global financial crisis as a case of a shock that is likely to disrupt the policy network concerning financial regulation. The analysis is based on interest groups' lobbying activities in one specific venue, namely the public consultations organised by the European Supervisory Authorities (ESAs). Using interest groups' responses (n=11,370) on consultations (n=432) spanning from 2004-2014, I constructed a lobbying network, which maps the interrelations between all interest groups participating in public consultations. This lobbying network acts as an empirical tool to assess changes in the 'cloud' of interest groups surrounding the ESAs. Comparing the pre-crisis networks with those after the crisis and after the reforms, I find that as networks increase in size, they become less interconnected and more balkanised. This implies that the once stable and tight networks are disrupted and become less club-like after the crisis.

STABILITY AND CHANGE IN FINANCIAL REGULATION

The field of financial regulation is known to have a cohesive policy community, which has experienced a major shock. Both US and European pre-crisis literature argue that the networks surrounding financial regulation were close policy communities of financial sector interests, which lobbied in a unified and cohesive manner (Baker, 2010; Baxter, 2011; Mügge, 2006; Tsingou, 2010, 2015; Young, 2013). This cosiness between regulators and private interests results from the regulators' struggles to keep up with financial instruments and methods. As a consequence, they turned to private actors to advise them on financial regulation. In turn, the financial sector used their expertise in managing complex financial regulation in order to command authority over public regulators (Tsingou, 2015). As a result, private actors gained substantial leverage in their dealings with regulators which led to interdependencies between the two (Newman & Posner, 2011; Tsingou, 2015). Due to these interdependencies, closely cooperating networks of interest groups and policymakers were formed (Christopoulos & Quaglia, 2009; Mügge, 2006; Quaglia, 2008; Tsingou, 2015; Young, 2013).

Recent post-crisis literature shows a more nuanced image of actors involved in financial lobbying. On the one hand, the financial sector is still prevalent in the lobbying community after the financial crisis (Lall, 2012; Pagliari & Young, 2015; Quaglia, 2008; Woll, 2013), and macro-level longitudinal studies show that there is a surprising stability in financial lobbying after the crisis (Chalmers, 2015; Redert, 2020). On the other hand, post-crisis studies have shown that financial industry lobbying is characterised by a greater plurality of actors than previously expected, including NGOs and consumer protection groups (Kastner, 2014), labour unions and civil society groups (Kirsch & Mayer, 2013), non-regulated business actors (Pagliari & Young, 2014), and a wide variety of types of financial industry actors (Chalmers, 2015, 2017; Redert, 2020).

Instead of a cohesive community, post-crisis studies paint a picture of a lobbying network consisting of a wide array of interest groups with different policy preferences. Comparing these studies, the financial crisis is indeed a disruptive event which has transformed an once club-like network structure into a more pluralised, diversified policy network – or as argued by LaPira, Thomas and Baumgartner:

> *"Policy fields that are relatively obscure can be radically transformed by such things as the Enron scandal and the subsequent congressional activity on the Sarbanes-Oxley Act, and we might expect continued expansion in this area after the 2008 and 2009 events surrounding financial bailouts and the practices of the banking industry" (2009, pp. 13–14).*

The effect of the global financial crisis on policy networks is also clearly reflected by empirical evidence showing an increase of volatility in the participation of interest groups in public consultations concerning financial regulation (Redert, 2020). Whereas before the crisis a few interest groups continuously participate in public consultations, after the crisis and subsequent reforms new interest groups participate in the consultations. This clearly reflects that once stable lobbying networks become increasingly volatile after the financial crisis. In sum, it makes financial regulation a fitting policy field to assess stability and change in networks after a shock.

But why is the crisis likely to transform these networks? I make a distinction between short- and long-term effects of the financial crisis on the policy network of financial regulation. In the short-term, the global financial crisis highlighted the failure of micro-prudential oversight by financial regulators. Consequently, the crisis changed the image of how economic governance actually functions and put policy networks in financial regulation closer to the forefront (Young, 2013). In this regard, Chalmers (2015) argues that the crisis highlighted the extensive role and influence of the financial sector in policymaking. The crisis showed that the interdependencies between industry and policymakers might have resulted in policy outputs that systematically favour business interests at the disadvantage of the general interest (Baker, 2010; Baxter, 2011; Mügge, 2006; Tsingou, 2010, 2015; Young, 2013). More specifically, the financial sector created high-risk financial products and proposed self-regulation during the years before the crisis (Baxter, 2011; Quaglia, 2008; Tsingou, 2010). Due to the alleged capture of financial regulators, the notion that the making of financial regulation should be a joint effort between regulatee and regulator changes drastically.

Besides the changing image of how financial regulation should be created, I also expect that institutional and regulatory reforms affect lobbying networks in the long-term. In the EU, three European agencies (the European Supervisory Authorities) are occupied with micro-prudential oversight. During the financial crisis it became painfully clear that these agencies lacked the instruments for strict micro-prudential oversight deemed necessary to control and supervise the financial sector. Hence, the Commission decided to delegate the sole power to draft regulatory technical standards to the ESAs in 2011. These reforms are expected to disrupt networks in two ways and as such exacerbate the effect of the crisis on a long term. First, the reforms make the agencies a crucial venue for interest groups to make their voice heard. Whereas the agencies first had a mere advisory role, they now gained rulemaking competences which makes them an imperative cog in the decision-making process. Second, not only did the agencies get more competences, but they were also tasked with redesigning the financial regulatory framework in the EU in the wake of the crisis. The agencies are tasked with drafting new

and extensive European regulation and strict financial oversight in the form of regulatory packages (i.e. Solvency II, MiFID II, Single Rulebook for banking). As such, it is expected that these reforms also induce participation of new interest groups formerly absent or less active in this policy field.

ASSESSING CHANGE IN LOBBYING NETWORKS

As discussed, the financial crisis is likely to disrupt and transform the policy network of EU financial regulation. However, how can one assess stability and change in policy networks? This research empirically focuses on one specific form of network, namely a lobbying network surrounding the public consultations of the ESAs. With lobbying network, I refer to the networks based on actors (i.e. interest groups, firms, business associations, research institutes, etc.) that partake in a certain political activity, such as co-signing policy briefs (Box-Steffensmeier & Christenson, 2014, 2015; LaPira et al., 2009; LaPira, Thomas, & Baumgartner, 2014) or participation in public consultations (Ackland & Halpin, 2019; Chalmers & Young, 2020). Such a network can be used as a proxy to visualise and measure to what extent the underlying policy network structures change over time. For example, Ackland and Halpin (2019) construct networks based on interest group participation in consultations to assess stability and change in the Scottish policy map. Following their work, this research uses lobbying networks to assess stability and change in the policy field of financial regulation. More specifically, it compares the lobbying networks' size, interconnectedness, balkanisation and its core-periphery structure over time.

First, the transformation from cohesive and club-like policy communities to less cohesive issue networks implies the participation of new additional interest groups (Richardson, 2000). In the case of financial regulation, case-studies by Kastner (2014, 2017), and Kirsch and Mayer (2013) showed that labour unions and civil society groups increasingly participated in the policy field after the financial crisis. As rulemaking powers are delegated to the ESAs, the agencies also become a more relevant venue for a wider range of interest groups in the long term. This is expected to induce participation of additional groups that have an interest in financial regulation. Hence, more groups will lobby the agencies, for example through participating in consultations. Thus:

H1: The lobbying network increases in size after the financial crisis.

Second, as new interest groups enter the arena, the once tight network becomes more instable. More specifically, I expect that the interconnectedness of the networks will decrease. Of course, the extent to which interest groups are connected with one another in a network is an important indicator for stability. Before the crisis, public consultations were dominated by a small network of interest groups (Mügge, 2006; Tsingou, 2015). As a result, the lobbying network is tight and involatile as few new groups enter the arena. Furthermore, the groups that participate in the consultations do so on a regular basis, thus forming a tightly knit network. Recent research (Redert, 2020) has shown that volatility increases after the crisis and reforms due to participation of new interest groups, and repeat players becoming less active over time. Hence, the crisis is expected to disrupt the existing network of closely cooperating groups, thus decreasing the interconnectedness of the network. In other words:

H2: The interconnectedness of lobbying networks decreases after the financial crisis.

A third concept used to determine the stability of lobbying networks is the level of balkanisation of the network. Balkanisation can be conceptualised as the extent to which subsystems of a network are more or less partitioned off from one another (Ackland & Halpin, 2019). As the lobbying network expands, groups seek out discrete and well-partitioned policy niches (Browne, 1990; Laumann & Knoke, 1987). Consequently, a balkanised policy map is composed of well-partitioned subsystems that are loosely connected with each other. Studying a wide range of Scottish policy fields, Ackland & Halpin (2019) find that as networks expand, they do not become more balkanised. Instead, expanding policy networks are characterised by overlap and linkages between subsystems, where most interest groups are involved in a wide range of policy areas and a diverse set of issues (Ackland & Halpin, 2019; also see Baumgartner & Leech, 1998). Of course, the Scottish policy networks did not experience shocks: the networks expanded, but there was no increased participation of interest groups with alternative views, preferences and policy positions to those of the well-established groups. The financial crisis, on the contrary, did change the image of financial regulation and is thus expected

to induce the participation of such groups. For example, Pagliari & Young (2014) showed that the financial crisis increased mobilisation of non-financial business groups active in the real economy, such as agricultural businesses. These non-financial business groups were the victim of the excessive risk-taking conduct of the financial sector as they suffered from the economic recession that followed the crisis. As such, these groups are likely to participate in consultations regulating the financial sector or specific markets such as commodities (for a discussion, see Pagliari & Young, 2014). This finding is supported by empirical evidence that those groups active in financial regulation largely cluster together based on their policy preferences on certain issues (Chalmers & Young, 2020). Thus, the crisis is expected to increase partitioning in the lobbying network: clustering those groups that have an interest in similar consultations. Also, I expect this effect to be exacerbated in the long term. As the ESAs become a more important venue due to their new institutional position, they attract more interest group activity. As the network transforms from a small, club-like structure to a broader, more pluralised network, balkanisation is expected to increase: clustering those groups that have an interest in the same consultations. Hence, I expect that:

H3: The lobbying network becomes more balkanised after the financial crisis.

A fourth concept that helps determining change in networks is the core-periphery structure of the lobbying network. Generally, lobbying networks are characterised by some core-periphery structure in which many nodes (whether interest groups, individuals, countries etc.) revolve more or less closely around a single core (also see: Grote, Lang, & Schneider, 2008). In this research, the core consists of actors that continuously and repeatedly lobby regulators by participating in public consultations. These are mainly financial sector actors with extensive expertise and knowledge, which used to 'assist' regulators in their rulemaking efforts. After the crisis, however, the credibility of these actors as trustworthy partners deteriorates (Baker, 2010; Baxter, 2011). Hence, it is expected that the position of these core groups is affected. Indeed, it would be illogical to suppose that the core disappears after the crisis and reforms. Groups that are in the core (i.e. international associations, large private enterprises), simply have too much at stake at the EU regulators for them to be less active in regulatory policymaking. A more credible hypothesis, however, would be that the core still exists but that, on average, core actors become less centralised.

Centrality is key in network analysis as it shows the importance of actors in a network (see Faust, 1994; Faust & Wasserman, 1992; Freeman, 1978; Friedkin, 1991; Knoke & Burt, 1983; Wasserman & Faust, 1994). Central actors in a lobbying network repeatedly target and share their views on different issues with the agency. Peripheral actors, on the contrary, are those actors that participate less often or in a limited number of issues. Central groups link together subdomains within a policy domain and in doing so presumably ensure that policy conversations are shared and linked across the domain (Ackland & Halpin, 2019). Indeed, as the network increases in size and more interest groups participate in consultations, the relative centrality of the core groups decreases. Moreover, following the empirical findings of Kastner (2014, 2017), Kirsch and Mayer (2013) and Pagliari and Young (2015), I expect that, as the system expands, the number of core and highly central interest group decreases. Consequently, the network has a less pronounced core-periphery structure, thus:

H4: On average individual interest groups become less central in the lobbying network after the financial crisis.

DATA AND METHODS

A lobbying network based on participation in public consultations is a specific kind of network: namely a network of groups affiliated with the same 'event'. Such a network is not a *social* network as participating in a public consultation does not necessarily mean that the actors share information, debate policies, or interact otherwise. As such, this affiliation network differs from networks based on *amicus curiae* briefs (Box-Steffensmeier & Christenson, 2014, 2015) or Lobby Disclosure Act reports (LaPira et al., 2014) where the networks are mostly based on information-sharing between interest groups. Instead, the network presented is based on co-occurrences, where two groups are linked if they participate in the same consultation (also see Ackland & Halpin, 2019; Chalmers & Young, 2020). If groups participate in the same consultation, it could be that the groups cooperated or colluded via a joint response or even a coalition, however, this is not directly observable using consultation

data (but see James, Pagliari, & Young, 2020). However, if some interest groups continuously participate in the same consultations one could say that these groups are affiliated through the sharing of an interest in a similar topic. Moreover, groups that are strongly affiliated via a common interest may form a core within the network. For example, a group with broad interests such as the European Banking Federation is more likely to repeatedly participate in consultations on banking regulation, while an individual bank is likely to be more selective in its participation. This results in a clear core-periphery structure with a small cohesive set of groups which participate in many events and more diffuse set that specialises in a small set of events. I expect this structure to change over time. In other words, I use networks constructed from consultation data in order to map the 'cloud' of interest groups surrounding EU agencies to the end of assessing network stability.

This article uses a dataset of all responses of interest groups to public consultations organised by the ESAs from 2004-2014 (also see Redert, 2020). During this period, the agencies organised 445 consultations. In total, 11,217 responses from 1,735 unique interest groups have been collected. The dataset includes each and every response of interest groups to ESA consultations, and that it is as comprehensive as it can be. Based on this evidence two networks were constructed: a group-consultation network and a group network. The starting point is the group-consultation network. In this two-mode network, the nodes are both groups and consultations, where a connection or edge is formed when group *i* participated in consultation *j*. To illustrate such a network, Figure 3.1 shows a subnetwork extracted from the overall two-mode network.

In Figure 3.1, the three black nodes represent three consultations, and the grey nodes represent interest groups that participated in those consultations. For the sake of visualisation, three distinct consultations have been selected: one on Credit Assessment of financial institutions such as banks, one on Financial Reporting, and one on Commodities. We clearly see that several groups mobilise on one of the consultations, which creates three distinct clusters. However, the clusters are not fully separated from one another. Nodes *a10316* (British Bankers Association) and *a10698* (European Banking Federation) participated in two consultations. This means that these two interest groups have a stake in both consultations. We also see that one consultation (*03_018_20070615b*) is isolated from the other two.

This is not a coincidence: the isolated consultation concerns commodities. The groups participating in this consultation are mainly (associations of) electricity producers (such as RWE Group, Eurelectric, and the *Zentralverband Elektrotechnik- und Elektronikindustrie*). Logically, these groups are less likely to participate in consultations concerning other financial regulations, and thus remain isolated. In other words, these interest groups are more specialised, whereas the British Bankers Association and the European Banking Federation are more likely to be generalists with interests in multiple issues.

If one seeks to analyse how groups are connected (i.e. participate in the same consultation), one can transform the two-mode network into a one-mode network. In such a network, the nodes are individual interest groups, and the edges are consultations. Figure 3.2 illustrates the one-mode projection of the two-mode network presented above. In this network, one again sees that those groups participating in the same consultation are connected. Again, the groups participating in the consultation on electricity trading are isolated from the other groups. Also, one sees that nodes *a10316* and *a10698* are connecting two clusters of interest groups as these nodes participated in two consultations. For example, the European Banking Federation (a10698) connects the Investment Association (a11059) to the European Association of Public Banks (a10692). As such, these interconnecting nodes are important actors in the network.

Figure 3.1: Extracted subnetwork of group-consultation network EBA (2004-2007)

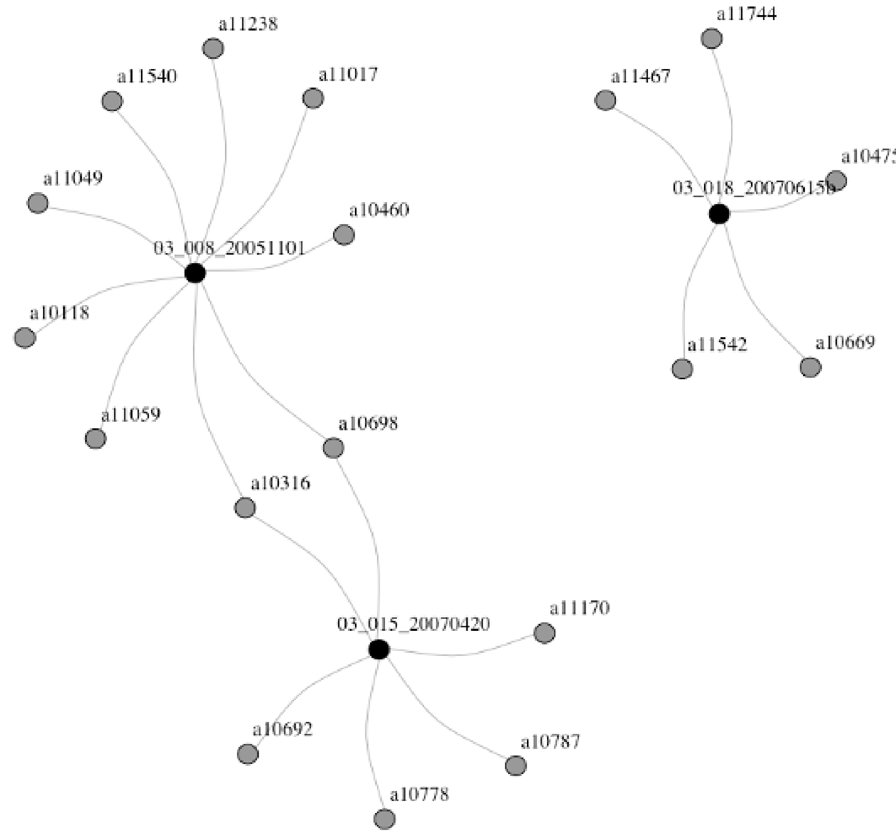
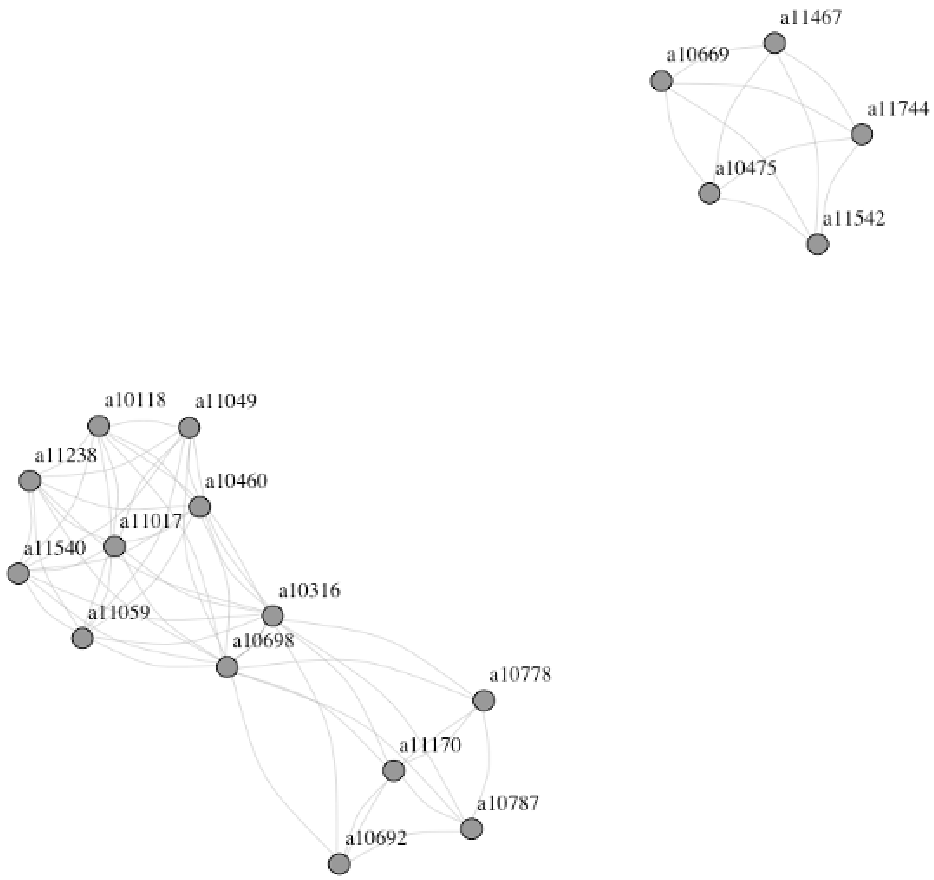


Figure 3.2: Extracted subnetwork of interest group network EBA (2004-2007)



Measuring Size, Interconnectedness, Balkanisation and Centrality

Appendix 3.1 shows the graphs of the constructed lobbying networks for EBA, EIOPA and ESMA for each period. These graphs provide a first insight in how the lobbying networks change after the crisis and reforms. First, the networks become bigger and more complex over time. This is especially visible for the lobbying networks of EIOPA: whereas before the crisis a relatively small network of interest groups is active in EIOPAs consultations, the network becomes visibly bigger with more connections between nodes after the crisis. Second, one can also observe subsystems within the networks. As seen in the example above, small node sets are partially separated from the main network. Likewise, a core-periphery structure can be identified in the lobbying networks: each network has a small set of nodes that is well-connected, while other nodes are visible in the network's periphery. Although these visualisations are helpful in understanding how the networks *visibly* transform, they do not measure how size (H1), interconnectedness (H2), balkanisation (H3) and core-periphery structure (H4) change over time. Hence, I turn to the operationalisation of these concepts.

First, size (H1) refers to the number of groups in the network and the number of ties between interest groups. Second, to measure interconnectedness (H2) of the network I use network density. Density is a relatively simple measurement that divides the number of edges (i.e. two groups participate in the same consultation) by the number of possible edges in the graph. In substantive terms, one could consider density as the connectedness of the entire network of interest groups (Box-Steffensmeier & Christenson, 2014). In the case of consultation data, density measures to what extent the total set of actors repeatedly participated in the same consultations over time. In other words, when high density reflects the situation where a lot of interest groups participate in the same consultations, whereas low density means that interest groups participated to a lower extent. Third, to measure balkanisation (H3), I use modularity, which assesses the division and strength of clusters of actors and indicates the proportion of edges within clusters (Newman, 2006). A common way to identify clusters in networks is the Walktrap algorithm of Pons and Lataby (2005). The Walktrap algorithm outperforms other algorithms on a number of key metrics (identifying both large and small networks, sensitivity to the total number of elements, or nodes, under consideration, etc.), and is thus a robust way of detecting communities in the networks. The algorithm performs random walks in the network and measures the probability whether the walk stays within the same cluster or leads outside a given cluster. The closer the modularity value is to 0, the more the linking occurs *between* clusters than *within* clusters, whereas a modularity score of 1 means that there is a perfect divide between clusters, and thus that there are no inter-cluster linkages. Clusters do not necessarily refer to interaction between actors, as the networks are based on co-attendance. Instead, one should see clusters as sets of interest groups that participated in a particular set of consultations. For example, the set of interest groups participating in the consultation on commodity trading in Figure 3.2, form a clear cluster: a group of stakeholders that participate in similar consultation(s).

4

This commodity cluster is separated from the other stakeholders, and as such forms its own subsystem within the network. As we expect more of these subsystems and increased balkanisation (H3), one would expect modularity to increase after the crisis and reforms.

To assess the fourth hypothesis, I measure centrality. This measure provides an average value of the centrality of all interest groups in the network. Centrality is considered a crucial metric to determine an individual node's position in the network. As such, it differs from the indicators used in H1-H3 as these are network-level metrics. Centrality gives an indication of the most important and the unimportant actors in a network (Brandes, Kenis, & Wagner, 2003, for an overview see Wasserman & Faust, 1994). Freeman (1979) proposed general measures of centrality to try and capture the extent to which a network consists of a highly central actor surrounded by peripheral actors. These centrality scores can be computed using different metrics (Freeman, 1979; Wasserman & Faust, 1994). Recent research by Ackland & Halpin (2019) applies betweenness centrality which assesses how important a node is by measuring the extent to which a node plays a "bridging" or brokerage role. Groups with high betweenness centrality link together sets of groups that otherwise would be separated from one another (i.e. not engage in consultations together).

However, I argue that eigenvector centrality (or eigencentrality) is more helpful in the case of public consultations. As the networks presented here are based on co-attendances it is empirically impossible to determine whether actors effectively shared information or other resources. If a certain actor connects sets of groups that might otherwise be disconnected from one another, that simply means that this one actor participated in a particular consultation together with other actors. This would be different in, let say, friendship networks or board membership. Hence, the brokerage role as described by Ackland and Halpin (2019) might exist but affiliation networks constructed from consultation data limits us to assess whether interest groups indeed broker information to one another. Instead, in the case of public consultations it is more important who your neighbours are and how well those are connected. In other words, it matters which interest groups mobilised on similar consultations. Eigenvector gets at this property by showing the importance of each interest group relative to the connectedness of its neighbours (Box-Steffensmeier & Christenson, 2015; Faust & Wasserman, 1992).

Eigencentrality ranges from 1 (most central actor in the network) to 0 (interest group that participated on one consultation where no other interest groups participated). In the case of consultation data, this means that those groups with a high eigencentrality participate in consultations that also attracted other well-connected interest groups. Logically, a set of nodes with high eigencentrality scores can be considered a core: interest groups that repeatedly participate in consultations. Following H4, we would thus expect that the average centrality of interest groups decreases after the crisis and the reforms.

Besides the average centrality scores, I also report the Gini-coefficient for eigencentrality. When comparing the distribution of centrality across networks with different sizes and mean degrees, the Gini coefficient is more meaningful than merely assessing average centrality scores (Badham, 2013). The Gini coefficient provides an insight in the differences between interest groups and determines whether central interest groups become more centralised over time. The Gini-coefficient ranges from 0 (perfect equality in distribution) to 1 (perfect inequality). Equality refers to the situation where all interest groups participated in all consultations, and thus are all equally connected with one another: there is no core and no periphery. Inequality refers to the situation where some interest groups are more well-connected than others, meaning that those well-connected groups participate more frequently in consultation where also other well-connected groups participated in (thus forming a core). Consequently, the higher the Gini coefficient, the more variation there is in the centrality of individual groups and the more distinct the core-periphery structure is. Following H4, we would thus expect that the Gini coefficient would decrease after the crisis and reforms, creating a more level-playing field for more interest groups. If the Gini coefficient decreases but the average eigencentrality increases or vice versa, it means that interest groups become better (or less) connected with one another (i.e. more participation in the same consultations) but that the core groups become more (less) centralised thus creating a more (less) equal playing field.

FINDINGS

Table 3.1 provides an overview of the measurements as discussed above and lists them per agency per time period. For every measurement, I compare the pre-crisis networks with those of the post-crisis and post-reforms. Consequently, one can assess how and to what extent the policy network of financial regulation transforms in the short- and long-term.

To assess the change in size of the network (H1), I consider the total number of actors in the network and the number of edges between actors before and after the crisis. In general, all three lobbying networks increase in size, either in the short- or long-term. This increase is also clearly visualised in Appendix 2.1. One sees that most networks expand: more interest groups participate in the ESA's consultations, and do so more frequently (thus increasing the connections between the different nodes). The expanding networks reflect the notion that shocks disrupt networks and induce a wider participation of interested stakeholders (Baumgartner & Jones, 1991; Richardson, 2000).

Following the literature, I expect that as the networks expand, the interconnectedness of actors within the network decreases (H2). Measuring network density for each of the agencies and time periods, I find that density decreases for both EBA and EIOPA. These findings reflect the reasoning that the pre-crisis network consisting of a limited number of stakeholders can be disrupted by the growing participation of new interest groups (Heclo, 1978). These results show that although more interest groups participate in the consultations, they do so on a more selective basis. Instead of participating in every single consultation, groups strategically choose which consultation is worth their time and resources. As a result, groups become less interconnected with one another. The interconnections in ESMA's lobbying network remain more or less the same (a slight increase in density of 0.03). Although this contradicts Hypothesis 2, it should be seen in the light of an already low interconnectedness of ESMA's pre-crisis network. Logically, networks have a minimal interconnectedness – if none of the nodes were connected there would be no network; there are always groups that participate in at least one consultation. The lower the interconnection of a network, the lower the potential to further decrease network density. As a result, the potential for EBA's and EIOPA's networks to become less interconnected is, because of their higher density in the pre-crisis period, greater than for ESMA's networks.

Next, we turn to balkanisation of the lobbying networks measured by modularity (H3). First, one sees variation in the number of clusters that the Walktrap-algorithm identified in the lobbying networks. In all three lobbying networks, the number of clusters increase after the financial crisis. The number of clusters in EBA's lobbying network also further increases after the institutional and policy reforms. Besides the number of clusters, Table 3.1 also reports the networks' modularity. In all three networks, modularity increases over time. Particularly interesting is the increase in modularity after the reforms: it seems that not the crisis, but rather the reforms increase modularity of the network. This can be explained by the introduction of new regulation. The newly introduced regulatory packages (e.g. Solvency II, MiFID II, Single Rulebook for banking) consist of smaller sub-issues which are being discussed in separate consultations. Hence, these results show that interest groups cluster around a set of consultations concerned with one of the sub-issues, rather than participating in every organised consultation. This clustering also reflects the networks' transformation from one tightly knit 'club' to a more pluralised set of subnetworks revolving around different sub-issues (Heclo, 1978; Richardson, 2000).

Turning to Hypothesis 4, I focus on the changes in the interest groups' centrality. Table 3.2 reports the average eigenvector centrality scores and the Gini-coefficient for each of the constructed networks. Looking at the average centrality scores, one notices that the average interest group in EBA's and EIOPA's network becomes less centralised over time, reflecting that the network is less club-like on average. In EIOPA's network, this finding is substantiated by the decreasing Gini coefficients, reflecting that inequality between actors decreases. For EBA's network, however, the inequality between interest groups' centrality increases. This means that a large set of interest groups is in the periphery and a small number of groups forms a highly connected core. On the contrary, the average centrality of interest groups in ESMA's network remains largely stable. However, the slight decrease of Gini coefficients suggests that the lobbying network becomes a more level-playing field. Although these results show that the core-periphery structure is disrupted after the crisis, there is profound variation between the agencies. This variation suggests that the impact of the crisis affects interest group participation in public consultations in different ways. A reason for this variation between agencies lies within the policy subfields the respective agencies are operating in. For example, EIOPAs consultations are concerned with issues (pensions) that are essential for both business groups (e.g. pension funds, pension investors) and for non-business groups (e.g. pensioners). Contrarily, ESMAs consultations are mainly concerned with regulating financial markets, and hence are likely to mainly attract business actors (e.g. private investors, financial markets, hedge funds, quoted companies). Consequently, ESMAs network is less likely to be disrupted by new interest groups with alternative views on policy as consultations will largely remain focused on issues important for business actors. Hence, ESMAs network may be more resilient to shocks, such as the financial crisis. This shows that varying policies in different fields might moderate the impact of shocks on networks.

Table 3.1: Network-level properties per agency per period

		Pre-crisis	Post-crisis	Post-reforms
EBA	*Size*	119	119	252
	No. of edges	1940	1696	4702
	Density	0.276	0.242	0.149
	*No. of clusters**	7 (1)	9 (1)	16 (2)
	Modularity	0.169	0.168	0.177
EIOPA	*Size*	67	163	371
	No. of edges	1256	5231	19280
	Density	0.568	0.396	0.281
	No. of clusters	8	5	8
	Modularity	0.127	0.071	0.269
ESMA	*Size*	520	481	789
	No. of edges	24378	15629	66567
	Density	0.181	0.135	0.214
	*No. of clusters**	9	12 (1)	8 (1)
	Modularity	0.118	0.193	0.197

** Clusters consisting of a single actor in parentheses.*

Table 3.2: Eigencentrality per agency per period

		Min	Max	Average	SD	Gini
EBA	*Pre-crisis*	0.001	1.000	0.165	0.221	0.546
	Post-crisis	0.005	1.000	0.151	0.211	0.561
	Post-reforms	0.001	1.000	0.085	0.163	0.664
EIOPA	*Pre-crisis*	0.000	1.000	0.345	0.332	0.506
	Post-crisis	0.006	1.000	0.196	0.271	0.656
	Post-reforms	0.003	1.000	0.172	0.150	0.444
ESMA	*Pre-crisis*	0.003	1.000	0.100	0.170	0.686
	Post-crisis	0.001	1.000	0.084	0.136	0.623
	Post-reforms	0.000	1.000	0.106	0.143	0.576

Table 3.3 summarises the findings, where a (+) indicates whether the hypothesised increase or decrease occurred in the short- or long-term. Comparing the pre-crisis networks' size, interconnectedness, balkanisation and centrality with that of the networks after the crisis and reforms, one sees that as the networks increase in size (H1) they all become more balkanised (H3). This shows that the crisis and subsequent regulatory reforms indeed attract (repeated) participation of new interest groups which disrupts the once stable network. The growing balkanisation reflects that interest groups are more selective in participating in consultations. Rather than participating in every consultation an agency organises, interest groups participate in a set of consultations concerning a certain sub-issue. Furthermore, the once highly connected networks of EBA and EIOPA become less interconnected after the crisis. In other words, whereas before the crisis a select number of groups continuously participate in consultations, after the crisis new groups enter the arena and repeat players are more selective in which consultations to participate. This does not apply for ESMA's network, which interconnectedness was already weak in the pre-crisis period. Logically, a more cohesive network is more likely to be affected by shocks than already loosely connected issue networks. This shows that a shock in a network at t_1 is likely to be moderated by the characteristics of the network at t_0.

Also the findings concerning centrality of individual actors (H4) point into different directions. On the one hand, it seems that the average interest group becomes less centralised over time, as shown by EBA and EIOPA. On the contrary, groups participating in ESMA's consultations become more centralised on average. These findings are even further complicated by the variation in the (in)equality between interest groups. EIOPA's and ESMA's networks become more equal, meaning that the networks have a less distinctive core-periphery structure over time. This does not apply to EBA's network, however, which becomes more unequal, and thus has a more distinctive core. One can therefore conclude that although actors' centrality in the network is affected by the financial crisis, the effects differ for the different networks. These mixed results largely resemble results reported by Ackland & Halpin (2019) who found that an increase of absolute numbers corresponds with a decreasing relative percentage of central players over time. As centrality concerns the position of individual interest groups, an explanation for these mixed results could be that different types of interest groups become more or less central over time. In fact, it could be that shocks affect different types of groups in different ways, explaining why both analyses did not find unambiguous evidence.

Table 3.3: Overview of Results

		EBA	EIOPA	ESMA
H1	**Size (increase)**	+	+	+ *
H2	**Interconnectedness (decrease)**	+	+	
H3	**Balkanisation (increase)**	+	+ *	+
H4	**Average centrality (decrease)**	+ (less equal)	+ (more equal)	0 (more equal)

** Increase or decrease occurs only in the long-term after the institutional and regulatory reforms.*

CONCLUSION

There is a general consensus within current scholarship that policy networks are characterised by stability in membership and organisation, only to be disrupted by shocks (Baumgartner et al., 2009; Baumgartner & Jones, 1993). Shocks can transform tightly knit policy communities into less stable issue networks consisting of a changing membership (Baumgartner & Jones, 1991; Heclo, 1978; Richardson, 2000). Although we know that shocks can transform policy networks, it remains largely unknown how and to what extent these networks change. This research provides a systematic analysis of how a shock, namely the global financial crisis and subsequent policy reforms, affects policy

networks. It does so by empirically focusing on lobbying networks based on interest group' participation in public consultations organised by three EU regulatory agencies. Constructing networks out of these data, the paper provides an insight in how the 'cloud' of interest groups surrounding the ESAs transforms. More specifically, the analysis assesses whether the networks transform in terms of size, interconnectedness, balkanisation and centrality.

First, the findings show that although the crisis might not have drastically changed diversity of participating interest groups (see Chalmers, 2015; Redert, 2020), it did shape the structure of underlying lobbying networks. In this regard, the findings confirm theoretical notions of how shocks can change the image of a certain policy field and induce participation of new interest groups. Consequently, the once stable and club-like networks are disrupted and transform into networks with alternating membership (Baumgartner et al., 2009; Baumgartner & Jones, 1991, 1993; Heclo, 1978). More specifically, the findings suggest that the networks surrounding EU financial regulation become less club-like. They demonstrate that the networks not only become bigger, but also more balkanised and, in the case of EBA and EIOPA, less interconnected. This demonstrates that shocks stimulate the entrance of new interest groups and made repeat players more selective in their lobbying efforts.

These findings have important implications for the policy field of financial regulation as disrupted networks may result in with policy changes. As discussed, tight policy communities consisting of a few powerful (economic) interests can dictate and sustain existing policy agendas (Baumgartner & Jones, 1991). This was likely to be the case for financial regulation before the crisis, where the financial sector successfully lobbied for self-regulation and permissive regulatory supervision. The new interest groups entering the arena are likely to bring different values, policy frames and demands to the negotiating table, which may result in drastic policy change (Richardson, 2000). Thus, the mobilisation of new interest groups could counter the financial sector's lobby for self-regulation by supplying different policy demands to the ESAs. Ultimately, this could constrain or even prevent regulatory capture of EU agencies by the financial sector.

Second, the findings suggest that even though networks are disrupted there is variation in how the networks transform. The results suggest that both network characteristics and policy field characteristics are likely to moderate the effect of shocks on networks. This raises an important implication for our current understanding of stability and change in networks. Now that we know how and to what extent networks are disrupted after exogenous shocks, follow-up research should study under what conditions networks transform and what factors moderate this effect.

Of course, the networks studied in this research focus on a mere portion of interest group activity, namely participation in consultations concerning one specific policy field. The lobbying networks based on consultation data provide an observable estimation of how the bigger policy networks transform. However, these data are also limited as interest group activity could easily have shifted from public consultations to less visible lobbying efforts, such as informal contacts with regulators. Anecdotal evidence stemming from interviews with interest group representatives (Redert & Bursens, frth.; also see Chapter 6) indicates that regulators and financial sector groups are still collaborating and regularly sharing ideas via informal ways. Of course, these informal networks might paint a different picture than a network constructed on the basis of consultation data.

Moreover, the analysis conducted for this paper did not identify which actors become more or less central. Although the observations suggest that the networks become less club-like, the analysis presented here did not find unambiguous evidence that core players became less central after the crisis and the reforms. However, it is highly likely that the shock of the financial crisis affects (types of) groups differently, thus affecting their centrality in the network. One might expect, for example, that NGOs such as BetterFinance or FinanceWatch will become more central actors over time, while financial sector groups, such as national banking associations, will occupy a less central position in the future network. Hence, follow-up research should examine to what extent and why the positions of individual interest groups in the network change after shocks.

CHAPTER 5

NEW KIDS ON THE BLOCK

Analysing the Changing Positions of Interest Groups
in Networks After Shocks

Author: Bastiaan Redert

ABSTRACT

Policy networks are an imperative part of modern policymaking as they mediate policy change. Policy networks tend to be stable, only to be disrupted by exogenous shocks. Shocks may induce the entrance of new actors in the network, which are likely to challenge the status quo. Although previous scholarly work has established why these networks are disrupted, it has refrained from analysing how change in networks looks like. This paper fills this gap by analysing how the positions of individual actors change due to the impact of the global financial crisis. More specifically, it studies what types of groups appear and disappear, and which groups take in more and less central positions in the networks. The findings show that as new groups enter the networks, the established groups in the networks become more central and more interconnected with one another, thus forming a stronger core.

INTRODUCTION

Policy networks have an important role within policymaking as they mediate, and often minimise, the extent and speed of policy change (Marsh & Smith, 2000). Policy networks can be defined as subsystems of the political system, which concern all constellations of interdependent actors with different capabilities and policy positions that provide solutions to policy problems (Adam & Kriesi, 2007; Carpenter et al., 1998; Heinz et al., 1993; Knoke, 1990; Laumann & Knoke, 1987; Scharpf, 1997). Generally, policy networks can be placed on a continuum with two network variants at opposite ends. Policy communities have stable memberships, are relatively insular and are marked by strong resource dependencies which bind actors together (Baumgartner et al., 2009; Baumgartner & Jones, 1993; Jones & Baumgartner, 2005; Lindblom, 2017). Issue networks, on the contrary, have unstable memberships, are relatively permeable, and feature actors who are highly self-reliant (Heclo, 1978; Peterson, 1995; Richardson, 2000).

These network variants differ in the way they mediate the extent and speed of policy change. Policy communities are associated with stable, routine policymaking, and are characterised by a large degree of consensus on the policy agenda (Marsh & Smith, 2000; Richardson, 2000). More specifically, policy communities determine the 'boundaries of acceptable policy' and thus ensure stability in policymaking (Marsh & Smith, 2000). In contrast, loose networks (e.g. issue networks) are characterised by a lower level of stability (Baumgartner & Jones, 1991; Heclo, 1978; Peterson, 1995). They emerge when a policy field is in flux and when new actors enter the policy field (Adam & Kriesi, 2007). These *new kids on the block* challenge the status quo and are open to innovative policies. Consequently, policymaking in loose networks is less stable and more subject to rapid policy change as new actors bring different values, policy frames, demands and modes of behaviour to the negotiating table (Richardson, 2000).

Policy networks are not static. Instead, policy communities may be disrupted by exogenous shocks and may result in volatility in interest systems (Baumgartner et al., 2009; Baumgartner & Jones, 1993; Richardson, 2000). More specifically, shocks may induce participation of interests not generally supportive of the already involved interests (Baumgartner & Jones, 1991, p. 1051). These new actors challenge the status quo and the policy community, thus making the policymaking arena less cohesive (Heclo, 1978). As a result, long-standing policy communities consisting of well-established groups lose out to other groups who previously did not participate in the policy community. In other words, stable and cohesive policy communities may open up, becoming less club-like and exhibiting a lower level of stability and cohesiveness (Baumgartner & Jones, 1991; Heclo, 1978; Peterson, 1995).

Besides investigating what causes these policy networks to change from club-like structures of established actors to fluid networks of both old and new actors in the policy field, scholarship has also empirically assessed how and to what extent policy networks transform on a macro-level (Ackland & Halpin, 2019; Box-Steffensmeier & Christenson, 2014, 2015; Marsh & Smith, 2000; also see Chapter 4). Focusing on the number and diversity of participating actors and how these actors relate to one another in the network, these studies carefully set out whether and how policy networks transform over time. Although these studies have shown that networks indeed change due to exogenous shocks, they overlook an important facet, namely the changing position of individual actors in policy networks (but see Corbo et al. 2015).

The position of an actor in a policy network largely determines whether they will be able to push for policy change. For example, if new interest groups enter the network, but only take in peripheral positions in the network chances are slim that they will be able to influence policy agendas, let alone bring about policy change (see LaPira, Thomas, & Baumgartner, 2014). At the other side of the coin, if the position of established interests is not disturbed by the new entering groups (i.e. they keep their position in the core of the network), they can still push to maintain the status quo. In other words, the positions of individual groups in the network matter when studying policy change. Yet, current literature has overlooked analysing the positions of individual actors in changing networks. As such, it remains largely known which groups (dis)appear from the networks, and more fundamental, which individual actors become more or less central in a changing network. Therefore, this paper will seek an answer to following research question: 'How do exogenous shocks affect the position of individual actors in policy networks?'

To answer these questions, I first present a theoretical framework that conceptualises micro-level change and stability in networks. Using this

framework, I empirically assess the micro-level changes of the policy network concerned with EU financial regulation. The empirical test is based on a dataset that maps interest groups' responses on consultations of the European Supervisory Authorities (ESAs) spanning from 2002 to 2014.

STABILITY AND CHANGE IN POLICY NETWORKS

Previous scholarly work has established that policy networks tend to be rather stable over time, only to be disrupted by occasional shocks. For example, studying the interest system of individual lobbyists across multiple policy fields in the US, LaPira et al. (2009) find that the social network between lobbyists is rather stable. In another work, LaPira et al. (2014) find that the Washington network of lobbyists has a fundamental and stable core-periphery structure. Similarly, in the case of Scottish policymaking, Ackland & Halpin (2019) find an overall stability in the interest group network and find that the proportion of central players in the network remains largely the same over time. Moreover, there is ample empirical research on how and to what extent policy networks transform on a macro-level (e.g. Ackland & Halpin, 2019; Box-Steffensmeier & Christenson, 2014; Smith, 2000; also see Chapter 4). These studies carefully set out whether and how overall policy networks transform over time. For example, Box-Steffensmeier & Christenson (2014) find that networks of co-signing interest groups become less dense, less centralised, and less interconnected over time. Likewise, Ackland & Halpin (2019) studying the Scottish policy map, find that networks of interest groups participating in public consultations increases in size and becomes more interconnected.

Besides focusing on the overall networks, Ackland & Halpin also closely analyse the positions of the most central actors in the network. They find that the most central actors in the network remain to be so over time, showing stability in the core of the network. However, they also find that the relation between the core and periphery of the network fluctuates over time. More specifically, the centrality of the most central actors compared to the centrality of the rest of the network in- and decreases over the studied periods.

These mixed findings form the basis of my conceptualisation of change in policy networks, and more specifically, changing positions of individual interest groups in these networks. Change in networks is not a matter of tabula rasa transformations. For example, it is highly unlikely that the most central actors within a policy network completely disappear from the network altogether or become drastically less central. Instead, as new actors enter the policy network, the position of the *old bulls* as central actors might be affected. Change in networks thus means that new layers are added upon an already existing system. It is not that established interests disappear, but that the environment becomes more diverse: old actors disappear, new actors emerge and the centrality of some actors in- or decreases.

SHOCKS IN FINANCIAL REGULATION

But how does such change look like in empirical reality? To be able to answer this question, one must focus on a policy field that is known to have been disrupted by a shock. LaPira et al. argue that *"[p]olicy fields that are relatively obscure can be radically transformed by such things as the Enron scandal and the subsequent congressional activity on the Sarbanes-Oxley Act, and we might expect continued expansion in this area after the 2008 and 2009 events surrounding financial bailouts and the practices of the banking industry"* (2009, pp. 13–14). Indeed, financial regulation is a prime example of a cohesive policy community that has experienced a major shock. Both US and European pre-crisis literature argue that the networks surrounding financial regulation were close policy communities of financial sector interests, which lobbied in a unified and cohesive manner (Baker, 2010; Baxter, 2011; Mügge, 2006; Tsingou, 2010, 2015; Young, 2013). This cosiness between regulators and private interests results from the regulators' struggles to keep up with financial instruments and methods. Consequently, they turned to private actors to advise them on financial regulation. Due to this interdependency of regulator and regulatees, closely cooperating networks of interest groups and policymakers were formed (Christopoulos & Quaglia, 2009; Mügge, 2006; Quaglia, 2008; Tsingou, 2015; Young, 2013).

The global financial crisis, however, changed the image of how economic governance actually functions and put policy networks in financial regulation closer to the forefront (Young, 2013). In this regard, Chalmers (2015) argues that the crisis highlighted the extensive role of the financial sector in policymaking. It showed that the close ties between the financial

industry and policymakers caused a permissive regulatory environment in which the former could continue its excessive risk-taking conduct (Baxter, 2011; Quaglia, 2008; Tsingou, 2010). Hence, the networks surrounding EU financial regulation are highly likely to be disrupted after the crisis.

Besides the crisis itself, also subsequent reforms are expected to affect the policy network in the long term. In the EU, three European agencies (the European Supervisory Authorities, or ESAs) are occupied with micro-prudential oversight of the financial sector. During the financial crisis it became painfully clear that these agencies lacked the instruments for strict micro-prudential oversight deemed necessary to control and supervise the financial sector. Hence, the Commission delegated the sole power to draft regulatory technical standards to the ESAs in 2011. These reforms are expected to disrupt networks in two ways and as such exacerbate the effect of the crisis on a long term. First, the reforms make the agencies a crucial venue for interest groups to make their voice heard. Whereas the agencies first had a mere advisory role, they now gained rulemaking powers which makes them an imperative cog in the decision-making process. Second, not only did the agencies get more competences, but they were also tasked with redesigning the financial regulatory framework in the EU in the wake of the crisis. The agencies are tasked with drafting extensive European regulation in the form of regulatory packages (i.e. Solvency II, MiFID II, Single Rulebook for banking). As these packages have far-reaching effects on the financial industry, this may spark the interests of groups that were less active or absent in the policy network.

Recent empirical evidence demonstrates that the cohesive policy community surrounding financial regulation was disrupted after the crisis (also see Chapter 4). Whereas before the crisis a few interest groups continuously participate in public consultations, after the crisis and subsequent reforms new interest groups participate in consultations. Indeed, qualitative case-studies by Kastner (2014, 2017), and Kirsch and Mayer (2013) show that the financial crisis induced the participation of consumer interests, labour unions and civil society groups. Likewise, studying networks of airline companies, Corbo et al. (2015) find the exogenous shock of the September 11 terrorist attacks induce mobilisation of peripheral actors which try to improve their position in networks. However, the question is whether these new actors are able to disrupt the position of established interests in the financial regulation network.

Hence, this study will investigate whether the *new kids on the block* are also able to disrupt the policy network of the ESAs after the financial crisis. More specifically, I expect that the position of individual actors changes in two main ways. First, I expect that actors appear or disappear from the network after the crisis. Second, I expect changes in the centrality of different actors in the network. Following sections will discuss the hypotheses in greater detail.

NEWCOMERS AND THE OLD BULLS

First, I expect that the network changes in terms of the different actors that appear and disappear in the policy network. Shocks may push a certain policy field into flux and may induce participation of interests generally not supportive of the already involved industry (Baumgartner & Jones, 1991, p. 1051). Applying this to financial regulation, there is a general discussion whether consumer groups would be able to act as a countervailing force against the established actors in the policy network, i.e. the financial sector. In this regard, Scholte (2013) argues that non-business groups only have a marginal role within financial regulatory policymaking. Instead, predominantly financial sector actors try to exert influence on financial regulation. Yet, Kastner (2014, 2017) and Kirsch and Mayer (2013) showed that the financial crisis indeed sparked non-business interests in financial regulation. Whereas these groups had limited interests in financial regulation before, the crisis highlighted the importance of consumer protection and protection for taxpayers' finances within financial regulation. Hence, I put the results of these qualitative studies to the test and expect that:

H1: Consumer groups, labour unions and NGOs appear relatively more in the network after the financial crisis.

Not only these non-business interests are expected to have an increased interest in financial regulation after the crisis. Pagliari & Young (2014) showed that the financial crisis increased mobilisation of non-financial business groups active in the real economy. Non-financial business groups

consist of all business interests that operate in economic sectors other than the financial sector, such as agriculture, manufacturing, or non-financial services. These groups were the victim of the excessive risk-taking conduct of the financial sector as they suffered from the economic recession that followed the crisis. As such, these groups are also likely to be newcomers in the network with an interest in regulating the financial sector or specific markets such as commodities (for a discussion, see Pagliari & Young, 2014). Hence:

H2: Non-regulated business groups appear relatively more in the network after the financial crisis.

Contrary to these newcomers, the established interests, or *old bulls*, are likely to disappear after the crisis. Rather than to say that these actors cease to exist altogether, these actors are highly likely to change their strategic choices. As argued by Young (2013, p. 474), "financial industry groups are composed of highly intelligent, politically savvy professionals engaging in an environment in which strategic choices matter a great deal". Consequently, refocusing the advocacy strategy does not mean that the financial sector refrains from influencing regulation, but rather that it does so in a more strategic way after the crisis (Young, 2013). Following this logic, I expect that individual firms will refrain from participating in the consultations under their own name but will participate under the flag of an association instead. As the crisis highlights the role of the financial sector in the regulatory process (Chalmers, 2015) and allegations of agency capture are raised (Baker, 2010; Baxter, 2011), it is expected that individual firms such as Deutsche Bank or HSBC make the strategic choice to not put their own name at risk. Instead, they are more likely to build a coalition with other interest groups in form of an association such as the European Banking Federation. Instead of taking a stand themselves, financial business actors try to exert influence on regulation under this coalition of likeminded actors. Following this logic, I propose two hypotheses:

H3a: Private financial firms are likely to disappear relatively more from the network after the financial crisis.

H3b: Regulated business associations (either domestic, European, or global) are likely to appear relatively more after the crisis.

CHANGING CENTRALITY

Abovementioned hypotheses look at change in networks in a rather dichotomous manner. However, the disrupting effect of the crisis on groups' participation in public consultations are likely to change the internal structure of the network too. As shown in previous work (see Chapter 4), the position of individual actors in the network changes after the crisis. In turn, this affects the core-periphery structure of the ESAs' networks: EIOPAs and ESMAs networks have a less distinctive core while EBA has a more distinctive core after the crisis. These mixed results show that shocks in networks affect different types of groups in different ways. Following this logic, I expect that some (types) of actors become less and some become more central over time. Which actors become more or less central over time, follow the same theoretical expectations as sketched for abovementioned hypotheses. Hence, I expect the following:

H4: Consumer groups, labour unions and NGOs become more central in the network after the financial crisis.

H5: Non-regulated business groups become more central in the network after the financial crisis.

H6a: Private financial firms become less central in the network from the network after the financial crisis.

H6b: Regulated business associations become more central in the network after the crisis.

Lastly, I present an alternative hypothesis that argues that the financial sector does not become less central after the crisis and reforms. After 2011, the ESAs are tasked with drafting and implementing financial regulation in the form of regulatory packages (i.e. Rulebook on Banking, MiFID and Solvency II). As these regulatory packages have a direct effect on the financial sector's operations, the financial sector is highly likely to want to influence

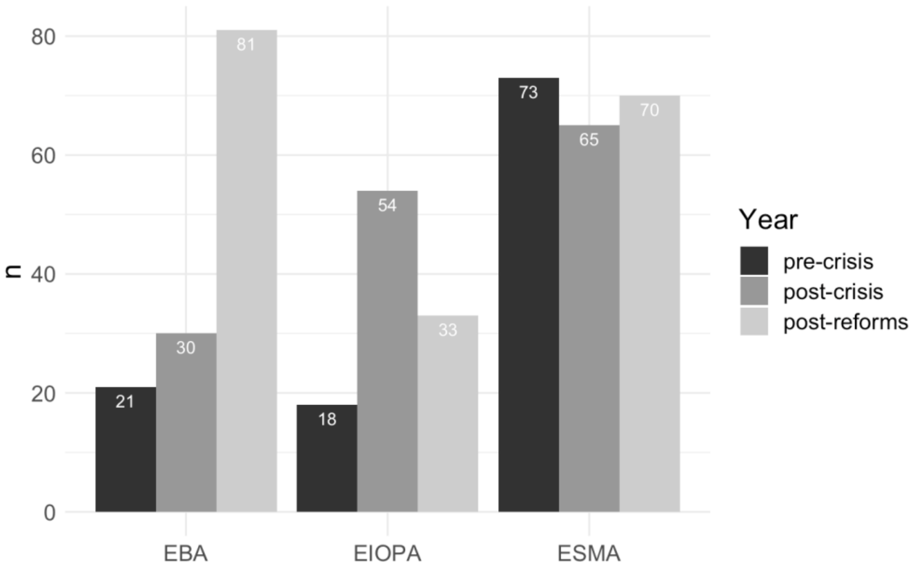
or even halt the implementation of these packages. Thus, although one might expect that the financial sector changes its strategy (as discussed above), it is equally plausible that the sector does not refrain itself from participating in consultations. The stakes of these regulatory reforms are simply too high for the financial sector to participate less in public consultations (and thus become less central) in the networks. Hence, I expect that:

H7: Financial sector actors will become more central in the network after the financial crisis.

DATA

This paper focuses on the network of actors participating in public consultations of the ESAs. Other research has used similar data to construct networks of interest groups (e.g. Ackland & Halpin, 2019; Chalmers & Young, 2020, also see Chapter 4). These networks are based on actors' real political activity, such as co-signing policy briefs (Box-Steffensmeier & Christenson, 2014, 2015; LaPira et al., 2009, 2014) or participation in public consultations (Ackland & Halpin, 2019; Chalmers & Young, 2020). A lobbying network based on participation in public consultations is a specific kind of network: namely a network of groups affiliated with the same 'event'. Such a network is not a *social* network as participating in a public consultation does not necessarily mean that the actors share information, debate policies, or interact otherwise. As such, this affiliation network differs from networks based on amicus curiae briefs (Box-Steffensmeier & Christenson, 2014, 2015) or Lobby Disclosure Act reports (LaPira et al., 2014) where the networks are based on actual information-sharing between interest groups. Instead, the presented network is based on co-occurrences, where two groups are linked if they participate in the same consultation (also see Ackland & Halpin, 2019; Chalmers & Young, 2020). If groups participate in the same consultation, they might have cooperated via a joint response or a coalition, however, this is not directly observable based on the collected data. Nonetheless, if a set of interest groups continuously participate in the same consultations one could say that these groups are affiliated through the sharing of an interest in a similar topic.

Figure 4.1: Distribution of organised consultations per agency per period



To construct the networks, this research utilises a dataset of all responses of interest groups to public consultations organised by the ESAs from 2004-2014 (also see Redert, 2020). During this period, the agencies organised 445 consultations.[13] As discussed above, not only the financial crisis itself but also the subsequent reforms are likely to affect the participation of interest groups in consultations of the ESAs. Hence, to be able to compare the networks over time, the 10-year timeframe has been divided in three distinct periods: pre-crisis (2004-2007), post-crisis (2008-2010) and post-reforms (2011-2014). Figure 4.1 shows the distribution of these consultations per agency per period. The spike of consultations of EBA in the post-reforms period and EIOPA in the post-crisis period can be explained by the preparatory work for regulatory packages. In 2013, EBA organised 39 consultations on the Capital Requirements Directive IV. In 2009 EIOPA organised 46 consultations on the Solvency II Directive. Logically, the more consultations an agency organises the more interest groups could potentially enter the networks. Hence, this should be considered when comparing the different networks.

Over the analysed period, a total of 1,735 unique interest groups wrote 11,217 responses to these consultations. The dataset includes all responses of

13 Excluding the 15 consultations that were jointly organised by the ESAs.

interest groups to ESA consultations, and is thus as comprehensive as it can be. Based on this data, one can construct a network where the nodes are groups, and the edges are consultations (for more information see Chapter 4). Figure 4.2 shows a subnetwork extracted from the overall network.

Using this network, we can determine which groups are the central nodes within the networks. More specifically, the nodes that are most interconnected with one another are the most central actors in the network and form a core. In the example of Figure 4.1, one sees that nodes *a10316* and *a10698* are connecting two clusters of interest groups as these nodes participated in two consultations. For example, the European Banking Federation (*a10698*) connects the Investment Association (*a11059*) to the European Association of Public Banks (*a10692*). The nodes that are excluded from the rest of the network (e.g. *a11542*) are only linked to each other, as these interest groups only participated in one consultation. As such, these groups take in a peripheral position in the network.

Figure 4.2: Extracted subnetwork of interest group network EBA (2004-2007)

MEASURING MICROLEVEL CHANGE

Logically, one can construct these networks for each of the three periods, and subsequently compare these networks over time using the financial crisis as a demarcation point. Whereas previous work (Redert, frth.; Chapter 4) focused on macrolevel changes of the entire network, this paper will focus on microlevel change: the changing positions of individual nodes within the network. To this end, it uses two related yet different dependent variables.
First, this paper will focus on the appearing newcomers and the disappearing *old bulls*. This dependent variable is a simple dichotomous measure. Actors disappear when they were active in the ESAs' consultations in one period but were not active in consultations in a consecutive period. Actors appear when they were not active before the crisis but become active in consecutive periods. Of course, interest groups that are active in all three periods neither appear nor disappear. There might be situations where an actor is present in the pre-crisis period, disappears in the post-crisis period, but appears again in the post-reforms period. In these cases, the actors are both coded as an appearing and disappearing actor. For illustrations of this variable, please see Table 4.1 below. The data excludes actors that participated in only one public consultation over the studied period (the 'tourists', also see Chapter 3). Following the logic above, these groups would be simultaneously appearing and disappearing, and would thus distort the analysis.

Table 4.1: Examples of (dis)appearing variable

	Period 1	Period 2	Period 3	Outcome
European Banking Federation	1	1	1	Stable: not (dis)appearing
Association of Dutch Brokers	0	1	1	Appearing
International Petroleum Exchange	0	1	0	Appearing and disappearing
Banco Santander	1	0	1	Disappearing and appearing

Note: present = 1; not present = 0

Second, the paper measures the changes in the importance of the actors that are active in the networks. In this regard, actors' centrality is crucial to determine an individual node's position in the network. Centrality gives an

indication of the core players and the peripheral actors in a network (Brandes, Kenis, & Wagner, 2003, for an overview see Wasserman & Faust, 1994). To determine the importance of actors in a consultation network, this research uses eigenvector centrality (or eigencentrality). Eigencentrality measures the importance of each interest group relative to the connectedness of its neighbours (Box-Steffensmeier & Christenson, 2015; Faust & Wasserman, 1992). It thus determines an actor's importance by comparing how well connected (and thus how central) its neighbours are.
Eigencentrality ranges from 1 (most central actor in the network) to 0 (interest group that participated on one consultation where no other interest groups participated). In the case of consultation data, this means that those groups with a high eigencentrality participate in consultations that also attracted other well-connected interest groups. Logically, a set of nodes with high eigencentrality scores can be considered a core: interest groups that repeatedly participate in the same consultations. Subsequently, and in a similar fashion as the first dependent variable, I will measure actors' changing importance by taking the difference between an actor's eigencentrality in each of the three periods.

To assess which type of interest groups (dis)appear and become more or less central, all actors that participated in the ESAs consultations have been coded for various variables, including group type, (economic) sector, and level of mobilisation (i.e. private firms, business associations). One coder coded all organisations using an adaptation of the INTEREURO-codebook used by Beyers et al. (2014). All coding was subsequently checked by the author. Most of the variables have been coded based on information found on the organisations' websites, LinkedIn pages or Bloomberg Business profiles. For 23 organisations (1.3 per cent) no information was found and thus have been omitted from the analysis. To code the economic sector of the actors, I used categories based on a modification of the UN International Standard Industrial Classification of All Economic Activities (ISIC, revision 4) three-digits group levels. For more information on the distribution of these categories, please see Redert (2020).

APPEARING NEWCOMERS AND DISAPPEARING OLD BULLS

The first part of the analysis focuses on the newly entering actors in the networks. To recall, newcomers are those actors that were not active in one period but did become active in a consecutive period. Moreover, as to only capture those interests that become active for a longer period of time, the actors that participated in the consultations just once (n = 1085) have been removed from the analysis. The following analyses are based on the remaining 650 actors.

Table 4.2: Appearance of newcomers in the network by group type

		Business n = 653	*Consumers, trade unions, NGOs n = 35*	*Other n = 62*
Post-crisis	*EBA*	33	2	1
	ESMA	81	3	11
	EIOPA	69	2	5
Post-reforms	*EBA*	49	2	5
	ESMA	173	16	17
	EIOPA	91	16	10

Table 4.2 presents the number of actors that become active per agency per period.[14] It shows that most of the newcomers are business actors. This is not surprising of course, as the ESAs discuss highly technical topics that concern financial markets. Turning to hypothesis 1, Table 4.2 shows that consumer groups, trade unions and NGOs do not become active right after the financial crisis. After the reforms, however, a considerable number of consumer groups, trade unions and NGOs enter the network. In the post-reforms period, 34 out of 35 consumer groups, trade unions and NGOs become active in the consultations of the ESAs. This shows that not the crisis itself, but subsequent reforms induce the participation of new actors. Nonetheless, one should not overestimate the effect of the reforms on the participation of non-business actors in the networks. Only 4,6% of all the newcomers in the network (N = 755) represents non-business interests. This corresponds with the size of the overall population which find that around 4-5% of interest groups participating in consultations concerning financial regulation are non-business interests (see Pagliari & Young, 2015; Redert, 2020). In other words, non-business groups do not appear more often than other types of interests. Studies mapping the interest system in other EU venues find that around 20% of the total population of interest groups are non-business interests (see Rasmussen & Carroll, 2014; Wonka, Baumgartner, Mahoney, & Berkhout, 2010). Hence, one can conclude that the participation of new non-business interests is considerably minimal in the consultations of the ESAs.

14 Note that one actor could (dis)appear in the networks of multiple agencies in one period. Hence, summing the numbers in the tables exceeds the 650 unique actors as discussed above.

Table 4.3: Appearance of business groups in the network by sector

		Non-financial sector business n = 142	*Banking n =161*	*Insurance n = 113*	*Auxiliary n = 207*	*Other n = 99*
Post-crisis	*EBA*	7	15	3	6	4
	EIOPA	5	5	40	11	14
	ESMA	21	18	3	40	9
Post-reforms	*EBA*	2	30	2	16	4
	EIOPA	23	13	46	12	13
	ESMA	51	41	8	61	33

Next, I turn to the appearance of groups based on different economic sectors, namely: specific economic sectors, namely non-financial economic activities, banking and monetary intermediation, insurance and pensions, auxiliary financial activities and other (Table 4.3). As mentioned, Hypothesis 2 argued that non-financial actors would appear more in the network after the crisis. The findings presented in Table 4.3 partially support hypothesis 2. First, the non-financial business actors mainly appear in the networks of ESMA after the crisis and the reforms, and in those of EIOPA after the reforms. Non-financial business actors appear much less in the networks of EBA, where respectively 7 and 2 new non-financial business actors appear after the crisis and the reforms (even though EBA organised 81 consultations after the reforms). However, one has to critically review these non-financial business newcomers against the newcomers of the financial industry itself. Compared to the financial sector, non-financial business interests do not appear relatively more over time. The findings thus suggest that though new actors enter the network, these actors are still mainly financial industry actors.

Table 4.4: (Dis)appearance of financial sector actors

		Disappearing		*Appearing*	
		Private n = 346	*Association n = 307*	*Private n = 346*	*Association n = 307*
Post-crisis	*EBA*	14	10	16	17
	EIOPA	8	4	39	30
	ESMA	54	48	57	24
Post-reforms	*EBA*	9	8	32	17
	EIOPA	37	15	40	51
	ESMA	39	11	85	88

Hypotheses 3a and 3b zoom in on these financial industry actors. Both hypotheses argue that the financial sector will try to exert influence on the ESAs via associations instead of participating themselves after the crisis. In other words, one would expect appearing associations and disappearing private firms in the agencies' networks. Based on the findings presented in Table 4.4, there is no convincing evidence that the financial sector changes its coalition behaviour when participating in consultations of the ESAs. What the results show instead is that private firms and associations are both appearing and disappearing in a highly volatile network. There is a considerable turnover of financial sector actors in the agencies' networks. This is especially the case for ESMA, where respectively 81 actors appear, and 102 actors disappear after the crisis; and 173 actors appear, and 50 financial sector actors disappear after the reforms. For EBA and EIOPA the numbers are less extreme. Yet, it shows how volatile these policy networks actually are.

BECOMING MORE OR LESS CENTRAL

Although the (dis)appearance of actors in the policy networks of the ESAs indeed shows that the networks are volatile over time, change in networks is not a tabula rasa change. Instead, change in networks can be defined as adding new layers on an already existing system. Hence, the second part of the analysis will focus on the actors that remained active in the networks.

As discussed above, eigencentrality is a helpful metric to assess this change in the ESAs networks. To be able to determine the changing positions

of the actors in the network, I compute the difference of the eigencentrality scores as follows:

$$\Delta\ eigencentrality = eigencentrality_{period\ 1} - eigencentrality_{period\ 2}$$

Figure 4.3: Distribution eigencentrality per agency per period

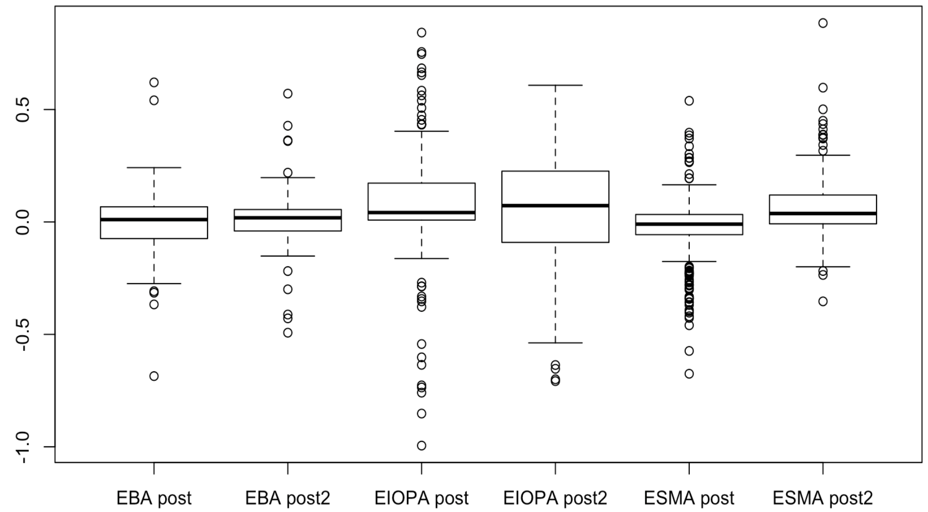


Figure 4.3 summarises the Δeigencentrality per period per agency. The boxplots show that whereas most actors become slightly less or more central in the networks over time, the centrality of a small number of actors plummets or propels more drastically after the crisis and reforms. Also, one notices that generally actors tend to become more central after the reforms. These results show that most of the actors that are continuously present in the networks remain relatively stable in their lobbying efforts. Thus, although there is a lot of volatility of (dis)appearing actors, the actors that remain active in the network keep their positions in the network. Based on Δeigencentrality scores of each actor, one can determine which actors became less central (Δeigencentrality < 0) and which became more central (Δeigencentrality > 0). This allows for a similar analysis as for the (dis)appearing actors as shown above.

Hypothesis 4 argued that consumer groups, labour unions and NGOs become more central after the financial crisis. However, the findings presented in Table 4.5 do not suggest that specifically these actors become more central

5

after the crisis and reforms. Only in the networks of EIOPA and ESMA after the reforms, these groups become drastically more central relative to business groups. This does not mean, however, that business groups become less central after the reforms. In fact, most actors in the networks become more central over time across the three group types. With the exception of ESMA after the crisis, most actors take in a more central position in the network. This shows that the networks become more interconnected over time (also see Chapter 4). Further, and similar to previous analyses, these findings show that the crisis and reforms disrupt the networks for all involved actors.

Besides, a particular type of actor does become drastically more important after the reforms, namely the ESAs Stakeholder Groups. The Stakeholder Groups are four advisory councils of the ESAs founded in 2011. They consist of members representing the financial sector, consumers, pensioners and academics. Although these councils can write reports directly to the agency, they also frequently participate in the ESAs public consultations. Contrary to other newcomers, they are able to enter the core of the policy network. For example, the Stakeholder Group of EBA has the second highest Δeigencentrality score (after Deutsche Bank), and the Occupational Pensions Stakeholder Group has the third highest Δeigencentrality score after the reforms (after Aon Hewitt and the Financial Reporting Council). This shows that the ESAs Stakeholder Groups participate not only considerable amount of consultations, but they also participate in those consultations where other core-actors participate in.

Table 4.5: Actors becoming more or less central by group type

		Business n = 651		***Consumers, trade unions, NGOs n = 35***		***Other n = 62***	
		less	*more*	*less*	*more*	*less*	*more*
Post-crisis	*EBA*	48	52	0	2	1	1
	EIOPA	25	82	1	2	1	5
	ESMA	184	148	6	7	21	21
Post-reforms	*EBA*	50	74	0	4	1	5
	EIOPA	75	111	1	17	4	12
	ESMA	108	294	7	17	14	28

Turning to Hypothesis 5, the results in Table 4.6 (p. 138) non-financial sector actors do not become more central within the network as suggested. These actors' centrality increases only in the networks of EIOPA and ESMA after the reforms. For the post-crisis period and for EBA, non-financial sector actors do not become more central in the networks. Looking at the other economic sectors, one notices that most banking sector actors generally become less central after the crisis. This changes after the reforms, when in all three agencies banking actors take in a more central position. Even in ESMA and EIOPA – agencies that do not draft banking regulation – these actors generally become more central after the reforms. This shows that although the banking sector might have stepped down its participation in public consultations after the crisis, it became more active when the EU introduced regulation on financial services. This also applies, to some extent, to the insurance and the auxiliary financial services sector. After the reforms of the ESAs, actors of the insurance sector tend to be more central in the networks of EIOPA, and actors representing auxiliary financial services tend to be more central in ESMAs networks.

These findings have important implications. Considering that the interconnectedness of the networks increases (also see Chapter 4), one can conclude that the groups the core of these networks solidifies after the reforms. As new groups enter the arena, the *old bulls* become more central and more interconnected with one another, thus forming a stronger core. To illustrate, out of the 90 actors that became more central after the crisis, only three groups do not (fully) represent the financial industry (namely both the Stakeholder Groups of EBA and EIOPA, and the Financial Reporting Council). These findings thus corroborate with hypothesis 7 which argues that financial sector actors become more central actors after the reforms.

Assessing the centrality of private firms and associations, I come to a similar finding (hypotheses 6a and 6b). As the hypotheses argue, one would expect that private firms become less central while associations representing the financial sector would become more central in the networks. Yet, the findings show that associations indeed become more central actors in the policy network, but this does not come at the cost of the lobbying efforts of private firms (also see Table 4.7, p. 138). Instead, and related to hypothesis 7, the findings suggest that the entire financial sector becomes more central within the policy networks of the ESAs.

To illustrate, most private firms do not become less central in the networks after the crisis. A prime example of this is Deutsche Bank. Although this private bank was positioned in the periphery before the crisis, after the crisis it participated in almost all organised consultations. As such, Deutsche Bank has become one of the most central actors in both EBAs and ESMAs policy networks. Yet, at the same time, national banking associations, such as the British Banking Association, *Fédération Bancaire Française* and the Swedish Bankers' Association, also became increasingly central over time. This also applies to the networks of EIOPA, where both private firms and associations become more central over the studied period. Not only are most private firms becoming more central after the crisis, but also associations such as the French and German national insurance associations become increasingly central over time.

Table 4.6: Business actors becoming more or less central by sector

		Non-financial sector n = 142		***Banking n =161***		***Insurance n = 112***		***Auxiliary n = 207***		***Other n = 99***	
		less	*more*	*less*	*more*	*less*	*more*	*less*	*more*	*less*	*more*
Post-crisis	*EBA*	2	7	37	30	0	3	9	9	0	0
	EIOPA	1	6	5	7	18	46	1	12	1	17
	ESMA	36	30	50	46	7	7	73	64	39	21
Post-reforms	*EBA*	6	4	28	50	3	2	8	20	6	4
	EIOPA	3	26	7	15	44	59	12	12	14	17
	ESMA	25	73	35	86	5	10	41	110	15	46

Table 4.7: Financial sector actors becoming more or less central

		Private n = 346		***Associations n = 305***	
		less	*more*	*less*	*more*
Post-crisis	*EBA*	30	28	18	24
	EIOPA	9	36	16	46
	ESMA	100	56	82	92
Post-reforms	*EBA*	33	31	17	43
	EIOPA	27	65	48	46
	ESMA	42	155	66	139

DISCUSSION

Policy networks are not static: they can be disrupted by exogenous shocks. Although scholarship has sufficiently theorised why shocks might affect networks (Baumgartner et al., 2009; Baumgartner & Jones, 1991, 1993; Heclo, 1978; Richardson, 2000), it has refrained from analysing how change in networks actually looks like. Recent research, however, has studied how policy networks change on a macro-level and showed that networks change in terms of their interconnectedness, balkanisation, and centrality (Ackland & Halpin, 2019; Redert, frth.; also see Chapter 4). Furthermore, interest group ecology studies have shown that the field of financial regulation is volatile over time (Redert, 2020; also see Chapter 3). Especially in the case of actors' centrality, these studies find mixed results suggesting that change in networks has different effects for different (types of) actors. This is the starting point of this paper, which assesses the micro-level change of policy networks. More specifically, it assesses how different types of actors are affected by exogenous shocks. Using the policy networks of regulatory agencies within financial regulation as a case, this paper assessed which actors appeared and disappeared over time. Besides, it also assessed which actors became more or less central in the networks. The results are based on a dataset compiling all interest group responses to the consultations of the ESAs. Constructing networks from these data for the three agencies across three time periods, allowed for a comparison between the networks over time. Based on the analyses, I present three main findings.

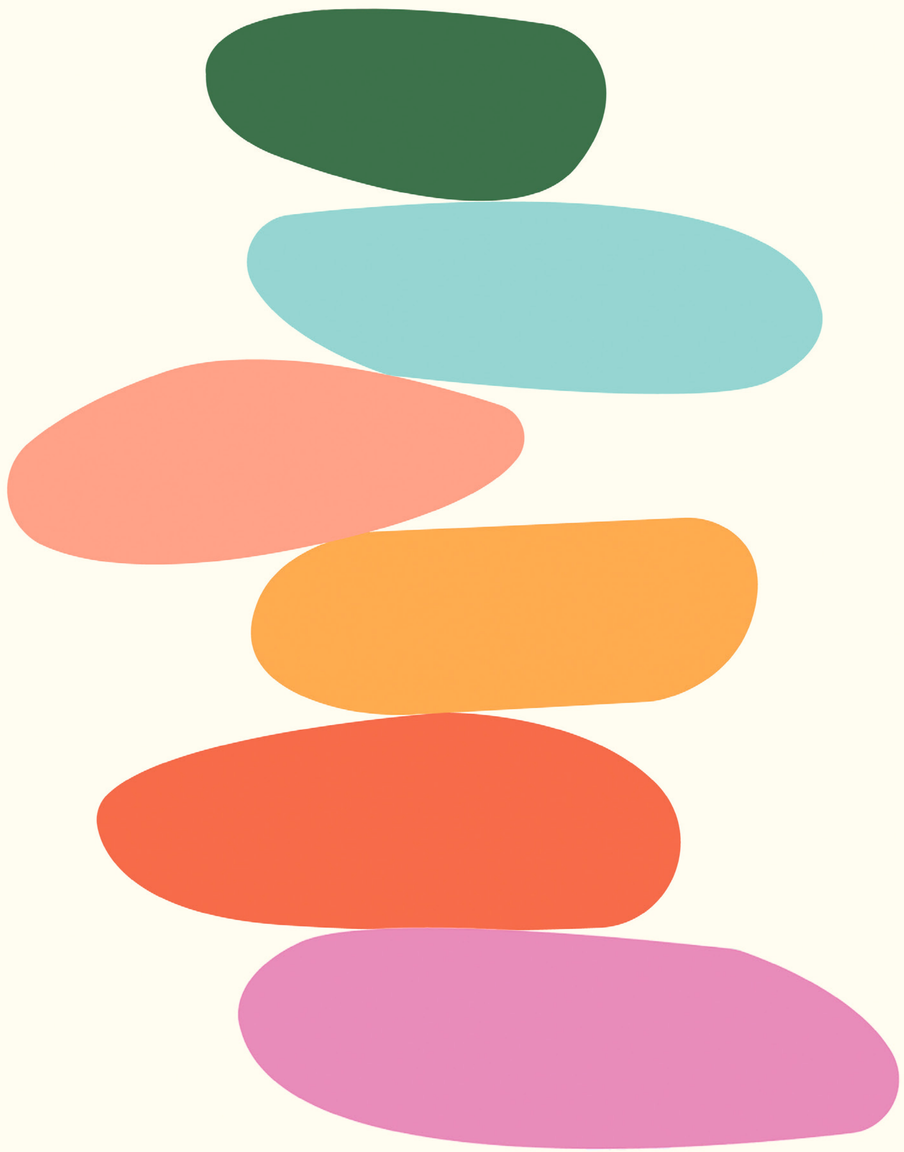
First, the study investigated the *new kids on the block*: the appearance of new groups in the network. The findings suggest that not the crisis itself, but the subsequent reforms induce the participation of new groups. More specifically, after the reforms there is an increase of interest groups that may act as a countervailing force against the financial sector, such as consumer groups, trade unions and NGOs. Nonetheless, the number of newcomers representing consumers, labour unions or NGOs remains limited vis-à-vis newcomers of the financial sector itself. This finding is an important nuance to existing qualitative studies investigating the role of these actors after the crisis (Kastner, 2014; 2017; Kirsch and Mayer, 2013). Contrary to what these studies suggest, this paper's findings show that although non-business interests do enter the network after crisis and reforms, their role within the network remains limited.

Second, although newcomers are entering the network, this does not mean that they take in a central position in the network. A central question among scholars studying interest group involvement in financial regulation is whether non-business interests can act as a countervailing force against powerful economic interests. Scholte (2013, p. 130), for example, argues that these groups "play a fairly marginal role in the politics of commercial finance, thereby largely surrendering the advocacy field to industry lobbies and establishment think tanks". Kastner (2017), on the other hand, argues that NGOs and consumer groups are, in fact, able to make a powerful fist against the financial industry in some crucial policy dossiers. This paper's findings add to this discussion. They indeed show that non-business interests enter the arena after the reforms, but that they are more likely to take in a peripheral position in the networks. This stands in stark contrast with Corbo et al. (2015), who find that shocks induces mobilisation of peripheral actors that aim to improve their position in the network. It is not illogical that non-business interests are less active in the studied policy networks. In general, non-business groups have less (financial) resources than business groups, limiting their abilities to participate in all organised consultations. Hence, non-business interests are more selective in their lobbying efforts, thus affecting their position in the networks. Besides, the findings show that the financial sector itself does not disappear from the networks, nor does it become less central. Especially after the reforms, financial sector actors become more central and more interconnected with one another, thus forming a stronger core. Thus, although in some cases consumer groups might act as a countervailing force, in the overall networks of the ESAs they seem to take in a peripheral role vis-à-vis a highly connected core of powerful interests.

Third, and more fundamental, the findings corroborate the idea that change in networks is layered. As argued, changes in networks are not tabula rasa transformations. Instead, new layers are added upon an already existing system. The *old bulls* do not simply disappear. Rather, their environment becomes more diverse. The findings indeed suggest that the ESAs networks change in such a manner. For example, as consumer groups enter the networks after the reforms, financial sector actors remain active in the policy networks.

Similarly, although business associations take in a more central position in the networks of the ESAs, private firms do not necessarily become less central. As a result, the findings suggest that the networks do not become less club-like, as argued in the literature (Heclo, 1978; Richardson, 2000). Rather, the established groups remain active in a more diverse and volatile environment.

This paper focused on the question on how the position of (types of) interest groups was affected by shocks. Yet, it remains unknown under what conditions interest groups become more central in the networks, and what factors moderate this effect. Future research should therefore investigate what factors causally contribute to an actor's position in policy networks. Future research should also investigate whether variables on other levels affect the centrality of actors. For example, an important determinant for the structure of the network – and thus also the position of individual groups therein – are the characteristics of the consultations themselves. In this regard, this research showed that business actors become more central in the period after the reforms when the agencies implement regulatory packages. Hence, one might expect that changes in networks are moderated by the types of policy issues the agencies discuss in a certain period. Future research should delve deeper in the multi-levelled nature of the data and extend our knowledge of how policy networks change over time due to crisis.



CHAPTER 6

BALANCED IN ACCESS, BIASED IN FUNCTIONING?

A Qualitative Perspective on Advisory Councils of EU Agencies

Authors: Bastiaan Redert & Peter Bursens

Under review at Journal of European Integration

ABSTRACT

European Union (EU) agencies are known to have a high risk of capture by regulated business interests. To limit this risk, agencies try to involve a heterogenous set of stakeholders. One way of doing so, is to install advisory councils (ACs): permanent bodies with a fixed number of stakeholders selected by the agency. Current scholarship has mainly studied whether stakeholders' access to ACs is biased towards business interests. However, it remains unknown whether the ACs functioning is biased too. By examining how members perceive the councils, its meetings and the discussions therein, this paper investigates whether the councils' functioning can contribute to more balanced interest representation. The findings show that although members are willing to favour consensus over defending their own interests, deliberative consensus-seeking proves difficult due to asymmetries in resources. Consequently, this raises questions about the effectiveness of ACs in ensuring balanced interest representation.

INTRODUCTION

Interest group lobbying in financial regulation is an increasingly studied area within interest group research. One of the reasons is that regulators were alleged to be – and might still be – captured by the financial sector (Baker, 2010; Baxter, 2011; Tsingou, 2010, 2015; Young, 2013). Before the financial crisis, the 'cosy' relationship between regulators and industry allowed the latter to lobby the former extensively (Christopoulos & Quaglia, 2009; Quaglia, 2008; Tsingou, 2008, 2015; Young, 2013). Also after the crisis, the financial sector remains a predominant lobbying power (Pagliari & Young, 2015; Woll, 2013). Furthermore, empirical studies mapping the responses to public consultations of regulatory agencies find a low heterogeneity of interests: mainly regulated business interests seek influence on financial regulation (Chalmers, 2015; Pagliari & Young, 2015; Quaglia, 2008; Redert, 2020). This low heterogeneity raises questions about bias, i.e. the systematic favouring towards some powerful stakeholders whereas others are largely ignored (Klüver, 2012).

A major way of limiting bias is to ensure involvement of a more heterogeneous set of stakeholders (Klüver, 2012; Hojnacki, in Lowery et al., 2015). One way to realise this is to install consultation instruments such as advisory councils (ACs) (Arras & Braun, 2018; Beyers & Arras, 2019). These are permanent bodies within the agency, in which a limited number of stakeholders hold a seat for a longer period of time (Binderkrantz, 2012; Fraussen, Beyers, & Donas, 2015; Gornitzka & Sverdrup, 2015; Rasmussen & Gross, 2015). Agencies themselves select the stakeholders. They may use this discretion to balance interest representation and as such counterbalance the structural predominance of regulated business interests (Arras & Braun, 2018; Beyers & Arras, 2019).

However, it could well be that, while the councils are relatively diverse in terms of composition, the processes within the ACs might still very much dominated by business interests. Therefore, this paper proposes a qualitative approach to understand what happens within the ACs by answering the following research question: 'Does the functioning of ACs in EU agencies contribute to a more balanced interest representation?' At this moment, there is no literature on the internal functioning of ACs. Therefore, we combine the extensive scholarship analysing AC membership with theoretical insights from literature on committees and expert groups of the European Commission. Combining these literatures, we propose a framework assessing stakeholders' behaviour and capabilities. We apply this framework to the ACs of the EU financial regulators: the European Supervisory Authorities (ESAs). Based on thirteen in-depth interviews with council members, we show that the councils' functioning is largely favouring business interests over consumer interests. Although the councils attempt to find a reasoned consensus among their members, consumer groups cannot always contribute due to a general lack of insider-information, financial and organisational resources. Our findings show that although members are willing to seek consensus, asymmetries in members' capabilities prevent them from effectively doing so. As a result, the ACs' functioning tends, despite the diverse composition of the ACs, to be biased in favour of regulated business interests.

ADVISORY COUNCILS AS A MEANS TO LIMIT BIAS

Stakeholder involvement has become an important aspect of EU agencies' governance structures (Ayres & Braithwaite, 1992; Grabosky, 2013). As agencies are non-majoritarian bodies with far-reaching regulatory competences, engagements with stakeholders are useful to fulfil informational needs, ensure compliance and safeguard a credible reputation (Borrás, Koutalakis, & Wendler, 2007; Braun, 2012a; Busuioc & Lodge, 2016; Coglianese, Zeckhauser, & Parson, 2004; Furlong & Kerwin, 2004).

However, close involvement of stakeholders may threaten agencies' autonomy and may cause regulatory capture: policy outputs that systematically favour business interests at the potential disadvantage of general interests (Carpenter & Moss, 2013; Stigler, 1971). Agencies are sensitive to such capture due to their constant need for expert information. Such information can be supplied by stakeholders with an extensive knowledge about problems and solutions for issues in a particular sector (Bouwen, 2002; Coglianese et al., 2004). Considering the agencies' dependency on this expertise, there is a risk of 'closeness' between stakeholders (in particular regulated business interests which possess such expertise) and the agency (Baxter, 2011; Coglianese et al., 2004; Tsingou, 2010).

Agencies are aware of the risk of capture and, due to concerns about their reputation as independent regulators, try to limit bias in outputs by

including a diverse set of interests in their ACs (Arras & Braun, 2018; Beyers & Arras, 2019). ACs of EU agencies have an important advisory role, as they advise the respective agency on binding regulations, guidelines and recommendations on a regular basis. Some councils can even advise an agency to control member states' efforts to implement EU regulation. For example, the ACs of the ESAs can request the agency to investigate an alleged breach or non-application of EU law. As the councils can only advise and thus have no decision-making power themselves, the agencies must report how the advice was implemented, and if not, why it was not implemented. In other words, the agencies must listen to the ACs and take into account their advice, which grants the ACs considerable power in EU regulatory governance.

As agencies themselves have the discretion to select stakeholders, they can use ACs to balance interests and, in doing so, prevent excessive dependence on one type of stakeholder (Beyers & Arras, 2019). Arras & Braun (2017) find that agencies indeed use ACs to enhance their reputation by balancing interests, indicating an awareness of the risks associated with biased representation. More specifically, agency officials interviewed by Arras & Braun (2017: 12) argued that ACs indeed offer a more balanced opinion on issues compared to the input they received through public consultations. Because biased access may result in biased output, most studies on consultative bodies in the EU have focused on the issue of access. Studying both open and closed consultation instruments, Beyers & Arras (2019) find that although regulated business groups dominate closed consultation instruments in absolute numbers, compared to their relative participation in public consultations, non-business interests have a higher chance of access to ACs. Other authors find a strong bias towards business interests in consultative bodies that operate directly under the auspices of the European Commission (Chalmers, 2013; Gornitzka & Sverdrup, 2011, 2015; Rasmussen & Gross, 2015; Vikberg, 2019). Overall, advantages in terms of expertise and (financial) resources result in more access for business interests compared to non-business interests.

Although these studies have extensively increased our understanding of access to consultative bodies, they merely tell one part of the story. Vivien Schmidt wrote that '[t]he normative criteria for democratic legitimacy, in sum, consist of institutional and constructive throughput processes as well as of input participation and output policy' (2013, p. 19). Similarly, we argue that bias is a multidimensional concept and not restricted to access to and output of the ACs. It also concerns how ACs function in practice. Although the composition of ACs might look diverse and balanced in terms of the type of stakeholders that are involved, the way stakeholders interact with each other and how ACs function might be biased in favour of a particular interest. As input, throughput and output are interlinked, literature on consultative bodies often assumes that bias or balance on one dimension indeed leads to bias or balance on another dimension. For example, when access is biased towards business interests, it is likely that the councils' functioning will largely be dominated by business interests, which probably results in policies catering to business interests. However, other scenario's may also be true: access to ACs can be balanced due to reserved seats for non-business interests, but the discussions in the councils may still be dominated by business interests; or non-business interests can still be ignored. This paper challenges the idea that diversified membership in ACs will automatically legitimise regulatory policymaking by agencies. Hence, we propose to extend our current understanding of bias in ACs of EU agencies by focusing on an overlooked dimension in current literature, namely the throughputs or functioning of ACs.

STUDYING BIAS IN THROUGHPUTS: BEHAVIOUR AND CAPABILITY

Throughputs refer to the space between the political input and the policy output (Schmidt, 2013, p. 5) and focus on policy-making processes and interactions of all actors engaged in governance, in our case the internal functioning of ACs. This approach is conceptually rooted in Vivien Schmidt's notion of discursive institutionalism. In broad terms, discursive institutionalism argues that institutions are both given and contingent. Given because institutions are the context in which individuals interact with one another; and contingent because institutions are – at the same time – constructs shaped, transformed and created by individuals (Schmidt, 2008). Therefore, institutions are "internal to the actors, serving both as structures that constrain actors and as constructs created and changed by those actors" (Schmidt, 2008, p. 314). In the case of ACs, the councils' design constrains how its members can interact with one another (e.g. working procedures, informal rules). In turn, members' interaction shapes how the councils function and

whether they are able to ensure a more balanced interest representation, and thus potentially legitimise regulatory policies. We therefore argue that the quality of interest representation is largely shaped by how the ACs' members make sense of the councils, and how they interact with one another. In the following paragraphs, we develop a theoretical framework to assess whether the functioning of ACs is biased. We argue that bias in the ACs' functioning can be determined based on the interaction between council members in combination with the capability of these members.

First, it matters greatly how members of a council behave and how they interact with other stakeholders. In this regard, we distinguish two interaction modes based on communicative exchanges between actors in political settings: bargaining and arguing (Beyers, 2008; Elster, 1986; Holzinger, 2004). Bargaining reflects communication between actors based on resources to be exchanged in order to gain a particular benefit, such as a favourable policy outcome (Beyers, 2008). It is characterised by a 'logic of the market' and primarily directed at exchanging information about (policy) preferences, making promises and threats (Elster, 1986). Bargaining also includes exchanges of information on policy positions and technical information, such as detailed information about market technicalities, internal procedures, industry data, information about the effects of policy (Beyers, 2008). When actors bargain, they mainly focus on the benefits and costs a certain policy outcome has for their own interest. Arguing, on the contrary, reflects communication between actors based on ideas, the nature of these ideas and arguments (Beyers, 2008). When arguing, actors use arguments to persuade and convince others to adjust their (normative) beliefs and preferences (Risse, 2000), following a 'logic of the forum' (Elster, 1986). It is less about costs and benefits, but rather about ideational outcomes (such as factual beliefs and preferences about how a policy should look like). The goal of arguing is not to attain one's fixed preferences, but to seek a reasoned consensus. Furthermore, actors' interests, preferences, and the perceptions of the situation are not fixed, but subject to discursive challenges (Risse, 2000).

As Holzinger (2004) and Beyers (2008) already noted, bargaining and arguing are difficult to separate empirically. They usually appear together: arguing can complement bargaining and vice versa. Therefore, it is not our goal to see in which specific cases stakeholders operate in one of these two interaction modes. Instead, we use these two general modes of interaction to determine how members perceive their own and others' behaviour in the ACs.

Interaction by itself is not enough to establish whether the functioning of ACs is biased. For example, an advisory council might be balanced when a diverse set of stakeholders is equally able to bargain for policy outcomes. Alternatively, a council might still be biased if only a few powerful members reach a reasoned consensus by arguing. Hence, we argue that one also needs to assess the *capabilities* of stakeholders to contribute to the ACs. Indeed, capability *in tandem with* interaction modes can help to explain unequal opportunities, power and bias (Beyers, 2008, p. 1198). Capabilities refer to the ability of individual members to contribute meaningfully to the meetings and the discussions of ACs.

Based on these two axes, we propose two contrasting hypotheses. On the one hand, the functioning of ACs can be balanced if members are equally able to contribute to the meetings where arguing is the main interaction mode (H1). In this situation, the ACs seek a reasoned consensus by arguing among a wide range of members. On the other hand, however, ACs can be biased venues when a select number of resourceful stakeholders bargain for policies that serve their own interest (H2). In this situation, the ACs serve as a market where stakeholders exchange information with decision-makers in return for influence or favourable policies. The hypotheses reflect ideal types that act as yardsticks to empirically observe and assess the councils' functioning.

First, we hypothesise that ACs are what they are *supposed* to be: a deliberative forum in which a diverse set of stakeholders is involved in an open dialogue, seeking a consensus among a wide range of different views and leading to a widely supported advice for the agency. This hypothesis follows from the motivation for installing ACs in the first place. In this regard, Arras & Braun (2017) conducted interviews with agency officials from 19 EU agencies, including those of the ESAs. They report that 13 of the 19 interviewees state that the advisory councils provide "organisational capacity" and assist in finding an early consensus among a diverse set of societal stakeholders. This early consensus helps to implement policies at a later stage of the policy-making process. Of course, reaching a consensus can only be achieved by having an ideational exchange between council members discussing their policy preferences and persuade and convince others to adjust

their (normative) beliefs and preferences. In other words, one of the ways to reach a consensus is that members interact by arguing.

Also, as the agencies seek an early consensus, they also explicitly mandate the advisory councils to draft and adopt common opinions. Article 7 of the Rules of Procedure of the ESAs' advisory councils (see: European Banking Authority, 2015; European Insurance and Occupational Pensions Authority, 2020; European Securities and Markets Authority, 2020) state that: "As far as possible, the Group shall adopt its decisions, opinions or reports by consensus". Moreover, "(i)n cases of dissent, minority opinions shall be presented in the opinion submitted to the Authority". These clauses prove that the ACs are both *expected* and *mandated* to find a consensus among its members, and if that cannot be found, minority positions can be adopted. Again, consensus can be reached if members are willing to adjust their initial policy preferences by means of an ideational exchange with other members. Besides, the Rules of Procedure of the ESAs stipulate that "members shall serve in a personal capacity" (Article 1). This highlights the agencies' intention attempting to create an 'impartial' advisory body with 'independent' experts deliberating policies rather than a venue where representatives of societal groups can exchange information for influence.

Second, we propose an alternative hypothesis as ACs may be venues where a select number of resourceful stakeholders bargain for policies that serve their own interest, thus increasing biased interest representation. The literature discussing access to ACs points to membership being largely biased towards business interests (Chalmers, 2013; Fraussen et al., 2015; Gornitzka & Sverdrup, 2011, 2015; Rasmussen & Gross, 2015; Vikberg, 2019). These studies paint a picture of ACs as imperative venues where powerful interests – be they national or sectoral – bargain to get influence on (regulatory) policies. As such, ACs are less likely to be a deliberative setting of open dialogue, but rather resemble markets where stakeholders bargain for influence, and where the eventual output is the result of conflicts between various interests. Consequently, opinions will gravitate towards the most dominant and powerful actors, potentially disregarding the interests of smaller, less powerful actors.

Regardless of the arguing or bargaining mode, the capacity to provide input stems from resources, such as technical information (Beyers, 2008). Such resources differ between stakeholders, which creates asymmetries between the members of ACs. As mentioned, agencies have a constant need for expert information due to the highly complex regulatory environments they operate in. Such technical information can be supplied by regulated business interests with an extensive knowledge about problems and solutions for issues in a particular sector (Bouwen, 2002; Coglianese et al., 2004). We expect that not all members are equally equipped to contribute to the councils' meetings due to information asymmetries (also see Bernhagen & Bräuninger, 2005; Van Winden, 1999). Non-business interests have less expert knowledge and often possess only more general information (Bouwen, 2002). Due to this information asymmetry between stakeholders, it is likely that regulated business interests have a competitive advantage over non-business groups. If only regulated business groups can contribute to the meetings and its discussions, the ACs functioning may be constituted as biased.

OPERATIONALISATION

To analyse whether the functioning of ACs is balanced (H1) or biased (H2), we analyse interaction and capability. These two factors determine *in tandem* whether AC functioning is biased. Table 5.1 presents five factors that matter when assessing the functioning of the ACs and that have guided the qualitative interviews.

Table 5.1: Operationalisation of interaction and capabilities

	H1: balanced functioning	**H2: biased functioning**
Interaction	*Main mode: arguing*	*Main mode: bargaining*
1. Venue perception	Forum with a common goal	Markets without a common goal
2. Role perception	Representing own organisation, but willing to adjust preferences	Representing own organisation, but with fixed preferences
3. Discussions	Consensual and focused on reaching a common position	Conflictual and focused on the advocating own interests
Capability	*Stakeholders are equally capable*	*Asymmetry between stakeholders' capabilities*
4. Expertise	All members have sufficient expertise to participate in the meetings	Only a few members have sufficient expertise to participate
5. Contribution	All members are equally able to contribute to the agenda, meetings and decision-making of ACs	Some members can contribute more easily to the ACs

First, it matters greatly how council members themselves perceive the role of the ACs. What do members see as the main role of the councils? On the one hand, members might see the councils as the deliberative forums they were designed to be. If so, we expect members to perceive the councils as venues that ensure open dialogue with a common goal, namely making advice based on a reasoned consensus. Alternatively, members may perceive the councils primarily as a venue where they can bargain to favour their own interests. In this case, we expect members to see ACs as markets where (informational) resources can be exchanged for influence. The venues' *raison d'être* is not to create a reasoned consensus based on different views, but to assist resource-exchanges between stakeholders and policymakers. In this case, we expect to observe that members perceive the ACs as venues to advocate the interests of the constituency they represent (e.g. Chalmers, 2013, Vikberg, 2019, Gornitzka & Sverdrup, 2011).

Besides venue perception, we also see the perception of their own and their fellow members' role as a crucial indicator. First and foremost, members are expected to perceive themselves as representatives of their own organisation or constituency. As this does not tell us much about bias or balance *per se*, we again turn to the distinction between arguing and bargaining: how do members act upon their role as representatives of their organisation? When arguing is the main interaction mode, we expect members to represent their organisations' opinion, but also to be able and willing to adjust their interests and beliefs based on arguments raised during discussions. In other words, their interests are not fixed, but subject to reasoning. In addition, members perceive their reputation as based on their ability to contribute to the common purpose. On the contrary, members might also see their role as representatives in a strict sense, perceiving themselves as sole promoters of their organisation's interests. In this case, members have fixed preferences and are not willing to adjust their initial interests to serve a common goal.

Besides venue and role perception, we also expect that the interaction modes affect the councils' discussions. If arguing is the main interaction mode, we expect discussions to be consensual. Members exchange their positions and attempt to reconcile contradicting policy preferences. On the contrary, if bargaining is the main interaction mode, discussions are expected to be highly conflictual: members explicitly express their preferences in terms of their organisation's interests and convey political information (e.g. on the constituency they represent) during the meetings. Also, as the meetings consist of members with different opinions, we might expect that the goal of the meetings is to 'take a picture' of the various stances and viewpoints, rather than to find a consensus among stakeholders.

The second axis focuses on two dimensions of individual members' capabilities: expertise and contribution to the councils' functioning. First, expertise is a central concept when discussing stakeholder involvement in EU agencies, as the policy areas they operate in are highly technical. Whether the members of the ACs have the necessary expertise and technical knowledge to adequately provide their opinion matters greatly to determine whether the functioning of the councils is biased. On the one hand, we expect that members, be they business or consumer representatives, do have sufficient expertise to operate in the councils. As agency officials themselves can select which individuals take a seat in the councils, we expect that they appoint individuals who have a certain level of expertise. Also, as the members are representatives from organisations with a pre-established interest in financial regulation, they will have expertise to form an opinion on this matter. On the other hand, however, it is likely that there is profound variation between members. In a wide range of issues, such as financial reporting or internal risk models, business representatives have a considerable advantage over other council members. Even when business representatives lack the individual expertise to form an opinion on a certain issue, they still have the (financial) resources to acquire that expertise (e.g. by establishing an internal work team, hiring external experts, or conducting own research). Less resourceful members, such as national consumer groups or NGOs, do not have this possibility and are expected to depend mostly on their personal capacities. Without sufficient expertise, members have fewer capabilities to voice preferences or well-founded opinions for certain policies.

Finally, as the contribution of individual members can still differ even when they have equally sufficient expertise, we also analyse whether members perceive that they can contribute meaningfully to the meetings. If all members perceive that they are equally able to raise issues on the agenda, to participate in the discussions and have an equal share in the decision-making, the functioning of the councils is balanced. On the contrary, if – due to asymmetries in financial and organisational resources – agenda-setting, discussions and decision-making are dominated by members representing business interests, there is risk for biased throughput.

DATA AND METHOD

Our empirical approach focuses on the three European Supervisory Authorities (ESAs): the European Banking Authority (EBA), the European Insurances and Occupational Pensions Authority (EIOPA) and the European Securities Markets Authority (ESMA). In the aftermath of the global financial crisis, these agencies were delegated the sole power to draft regulatory technical standards: legally binding regulation that is directly applicable in all member states. Besides the sole power of initiative, the ESAs have considerable powers during emergency situations, and can operate quite independently from the Commission (for a discussion see: Busuioc, 2013). Hence, the ESAs have a significant impact on the content of financial regulation and on the stakeholders affected by these regulations. As a result, ESAs not only seek technical expertise, but also legitimation as new regulators. This makes stakeholder involvement an imperative instrument for the ESAs and thus a fitting case in light of this research (also see Redert, 2020; and Chapter 1).

The ESAs have four ACs in total: The Banking Stakeholder Group (BSG), the Insurances and Reinsurances Stakeholder Group (IRSG), the Occupational Pensions Stakeholder Group (OPSG), and the Securities Markets Stakeholder Group (SMSG). Each AC has 30 members and is legally bound to reserve five seats for independent academics. The other members are selected based on balanced proportions of financial market participants, employees' representatives as well as consumers, users of financial services and representatives of small and medium enterprises. The agency remunerates non-business members' travel and accommodation costs. Besides affiliation, members are selected based on expertise, nationality and gender. Mandates last for 2.5 years and members can take up a maximum of two consecutive mandates. The agencies are obliged to consult the ACs on actions concerning regulatory technical standards and implementing technical standards, and on guidelines and recommendations.

As we are interested in how members perceive the ACs and their functioning, we use data from interviews with council members.[15] First, four exploratory semi-structured interviews with members were conducted. Based on these, we developed a comprehensive interview guide consisting of questions on members' perception of the council's role and their own, the used procedures during meetings, characterisation of discussions, members' expertise, and members' ability to contribute to discussions. In total, we conducted thirteen in-depth interviews with members of the ACs (see Appendix 4.1 for an overview). All members had a seat in the 2018-2020 mandate period. If members served more than one term or served in more than one council, we always made explicit which one was being discussed. The interviews were conducted over a period of two months (February and March 2020). Interviews lasted an hour on average, and took place in person, either via Skype or face-to-face. Three respondents were members of BSG, four of OPSG and six of IRSG. Four interviews were conducted with consumer representatives, two with members representing employees, employers and/or users of financial services, five with academics and two with business representatives.

We argue that this limited and non-representative sample does not impair the validity of our results. First, it is not our aim to explain potential variation between agencies or between councils, nor do we aim to extrapolate our findings to other agencies or institutional venues. Instead, we aim to provide a first empirical endeavour in trying to understand these councils through the perceptions of its members. Moreover, we found a point of saturation in our interviews. We conducted our interviews with non-business representatives before those with business representatives and were thus able to check the perceptions of the former. We found that the answers to our questions showed little variation between business and non-business representatives. In fact, business representatives often agreed with non-business representatives about issues such as the role of the councils, variation in contribution and asymmetries in expertise, thus proving the point of saturation.[16]

15 Attempts have been made to acquire participatory data to assess the functioning of the ACs. We repeatedly tried to get the permission to attend meetings via the agencies themselves or via the chairs of the ESAs' councils. However, access has been denied based on confidentiality.

16 See Appendix 4.2 for a discussion on social desirability of respondents' answers.

Recordings of the interviews have been transcribed by two assistants and subsequently coded by the authors using NVivo. Following the concepts presented in Table 5.1, the interviews were conducted following a guide consisting of topics such as 'role perception', 'venue perception', 'conflict', 'lobbying behaviour', etc. Each topic had a specific list of questions, which can be found in Appendix 4.3. We also asked members what they would change, and whether they thought the ACs are an effective instrument to create balanced advice for the agencies.

INTERACTION: WILLINGNESS TO COMPROMISE, BUT INTERESTS PREVAIL

The first section of the results is focused on how the members perceive the ACs, their role as representatives, and the discussions in the ACs. First, the perception of the ACs role is rather uniform among the members: most members (12/13) report that the councils' main task is to bring different stakeholders together with the goal to advise the agency. However, members have different perceptions on how the advice should be formed. Some members (4/13) report that the advice should be balanced and should result from a compromise between the various members. Others (7/13), however, see the councils as societal 'antennas': the agencies ask the councils to give input on specific issues and the members are expected to share their views. Rather than finding a compromise, these members argue that the advice should reflect a wide array of views and opinions and present those to the agency.

Second, and contrary to what the Rules of Procedure (Article 1) stipulate, council members see themselves first and foremost as representatives, either of their specific organisation or of a constituency, such as savers, national or European consumers, employees or employers. The interviews show that members cannot fully decouple their professional role as representative when acting as council members. One respondent reported: 'The members of Stakeholder Groups are considered to represent only themselves and not the institutions they [work for]. It was a very ideal approach. If not, naïve' (INT1402201). Another (INT130320) mentioned that he was aware he should participate in the councils in his own capacity, but that he realised that his representative role always took over during the meetings. Only a minority of members (3/13) report that they mainly are seated at the table in their personal capacity. These members perceive themselves as individual experts endowed with specific expertise resulting from their professional background, which helps them to actively seek a compromise. Overall, these findings stress that ACs are venues where representatives – rather than (individual) experts as set out in the Rules of Procedure – meet and discuss policy.

Although members perceive themselves as representatives, they indicate that they attempt to seek a compromise between different views and opinions. Members report that they value the wide array of opinions and views presented during the discussions. They repeatedly mentioned vivid and lively discussions among members. Respondents (5/13) also stated that the goal of the discussions is to share insights, opinions and views rather than to make statements about their own preferences. In some cases, respondents explicitly mentioned that they changed their opinions due to the discussion in the ACs. This shows that members' preferences are not fixed, but subject to differing views and opinions expressed in an open dialogue.

In contrast with members representing a constituency or organisation, academic members have a different role in the meetings. Instead of representing a specific constituency or organisation, academic members perceive themselves as independent experts that provide neutral and objective information (5/5). They not only feed the discussions with independent research, but sometimes also contradict information presented by the other members. This helps to ensure a balance in the council's discussions and to find a basis for compromise.

Third, respondents are quite univocal with respect to the discussions in the ACs. Most members (11/13) report that the discussions are primarily focused on reaching a consensus or compromise between the members' different views. Discussions serve to convince one another and to come up with a common position. One member described it as follows:

'We are not taking part in the debate to make a statement (…) Normally, we are really trying to reach a common decision or to reach a global advice, a common opinion, a shared point of view. It's very rich, I think' (INT030320).

Another member described the discussions as follows:

It's an open discussion that you have together with other representatives, from other constituencies, consumer organisations, employees of banks. So, it's more like [exchanging views] than really positioning my constituency I would say. That would be the main difference. You need to, of course, compromise your views a bit more because of the other people around the table (INT130320).

Although finding consensus is seen as the main goal of the discussions, it is quite hard to achieve this. Respondents mentioned that the councils always seek consensus, that conflict is kept to a minimum and that the discussions are very collegial and based on mutual respect among members. However, as the interviews continued, the respondents kept describing situations in which they could not agree with one another, and in which it was impossible to reach a consensus (9/13). This illustrates that defending one's interests still predominates during the discussions. Indeed, almost all members (11/13) mention that they themselves or their fellow members defend their interest during the meetings. Six members also explicitly stated that they or fellow members actively lobby for influence during the meetings. Some members would like to see such lobbying activities limited during the meetings, but others see it as a logical consequence of the councils' composition. Conflict among interests does not necessarily pose a problem. In conflictual cases, the councils use so-called 'minority opinions' in their advisory reports: paragraphs that reflect the view of a small group of stakeholders that do not agree with the other stakeholders. The reports include phrases such as 'on the one hand', 'on the other hand', 'some members think', or 'a few members believe otherwise'. The possibility for members to opt for a minority position prevents deadlocks and ensures that all can express their opinion.

These findings show that members mainly interact by arguing instead of bargaining. Members are willing to adjust their initial preferences with the goal to find consensus, as other scholarship has identified in similar settings (e.g. Tsingou, 2015). However, this does not mean that they do not seek to influence the output of the AC. As members primarily perceive themselves as representatives of their own organisation, they still try to defend their organisations' interests, thus making it difficult to find consensus. Consequently, members are involved in a delicate balancing act: they are incentivised to defend their organisations' interests but are mandated to find a compromise with fellow members. It reflects the tension between bargaining (i.e. presenting policymakers one's own interests) and arguing (i.e. deliberating policy preferences and finding consensus) as suggested by our hypotheses. Due to this tension, the ACs often have to resort to 'taking a picture' of the various (contradicting) viewpoints, rather than being able to reconcile them.

CAPABILITY: ASYMMETRIES IN RESOURCES

Turning to capabilities, members explicitly described the discussions as technical and/or based on expertise (10/13). They report that many of the issues on the table deal with specific regulations rather than with broader topics, such as long-term strategy plans of the ESAs or more general discussions about macrolevel developments or with the general role of banking, pensions and insurances in modern societies. Although the members have a background in economics, law or consumer protection, they reported that they sometimes lack the necessary expertise to participate in the discussions. In this regard, there seems to be an agreement that all members have the appropriate credentials as experts in the field of financial regulation, but that the discussions often require 'insider-information' that is only available to the regulated business and the agency itself. One member argued that: *'Nowadays, the more technical the issues get, the more the discussion is one-sidedly held between [the agency] and business representatives'* (INT200220). The lack in expertise becomes apparent during the meetings: members report that there is a level of amateurism at the side of the consumers (INT200220; INT1702202), or that consumer representatives resort to personal opinions with anti-business sentiment rather than factual information (INT130320).

The insufficient expertise results not only from the lack of insider-information, but also from the ACs' selection procedure concerning its membership. One member described the procedure as a sudoku puzzle: not only has the agency to match expertise and affiliation (i.e. business, employees, consumers, academics), it must also seek a balance in nationality and gender. These criteria sometimes result in trade-offs between competence and nationality or between competence and gender (INT100220). Moreover, all members report variation in their contribution to the councils due to the differences in expertise. Some argue that this depends on the topic: most members can contribute to discussions on broader issues, but not on specific technical discussions. One respondent even mentioned that some members seldomly or never express their opinion during their two-year mandate (INT200220). Variation in participation also occurs in setting the agenda and drafting the advisory reports. ACs appoint a working group for each issue: a subgroup that discusses and drafts a first version of the report that will later be discussed in a plenary meeting. Members themselves can choose whether to participate in a working group. However, participation requires a considerable amount of time and effort. As members do not receive financial compensation for participating in working groups, especially non-business groups have to be selective. Business representatives often take the lead in drafting the reports of the ACs, while the other members have to 'choose their battles'. As a result, business representatives are the most active, while the others around the table are more reactive (INT130320; INT120320; INT200220).

Besides the lack of technical expertise, members (9/13) also mention insufficient financial resources as a hurdle to contribute to the meetings. Although non-business members receive a compensation for accommodation and travel costs for the plenary meetings, they are not compensated for informal meetings, such as roundtables, working groups and presentations. As a result, they sometimes have the idea that they miss out on relevant discussions. Moreover, non-business members repeatedly mentioned that they lack the financial resources to conduct their own research or to collect their own data and therefore must resort to more ideological, and therefore less powerful arguments (INT130320; INT140220).

Likewise, members (8/13) identify considerable variation in terms of staff and organisational support. As mentioned above, preparing the meetings, contributing to working groups and getting acquainted with the issues at hand all require time and effort. Academic and consumer representatives often lack support from their organisations while business representatives can rely on legal teams to prepare meetings and to help draft advices. As a result, members without a back office need to 'work harder to keep up and need to be more selective in the issues they want to contribute to' (INT100220). These findings confirm the insights from other work that resources largely determine stakeholders' impact on policy outputs (Bouwen, 2002; Coglianese et al., 2004). As these resources are distributed unequally among members of ACs, also the chances of participation are skewed. Our empirical data also corroborate Beyers' claim that the way interest groups interact with each cannot be separated from the capabilities they dispose of (2008).

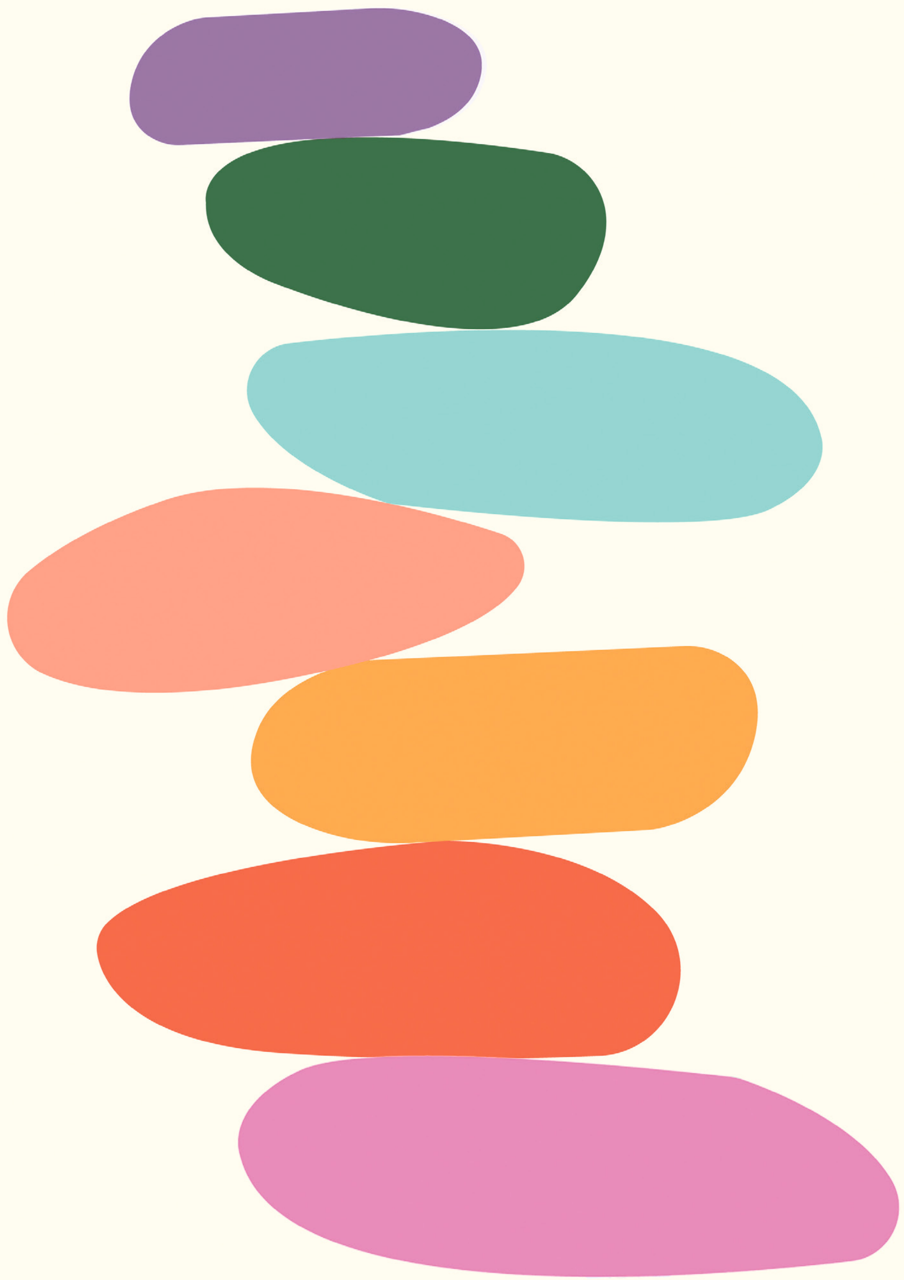
DISCUSSION AND CONCLUSION: ARGUING STAKEHOLDERS, BUT UNEQUAL RESOURCES

A common way to limit bias in EU agencies is to involve a diverse set of interests in policymaking processes. An important instrument to achieve this are permanent ACs. Extant literature has mainly focused on whether access to ACs is biased but left us ignorant on the councils' functioning and its contribution to balanced policymaking. Using empirical work on other deliberative settings, we designed a framework that analyses the functioning of ACs by assessing the dimensions of behaviour and capability. The former focuses on how individual stakeholders behave and interact in ACs, while the latter looks at the stakeholders' ability to actively participate in the councils.

In terms of stakeholders' interaction with their fellow members our findings largely point towards arguing as the main interaction mode. Members do not merely bargain for policies that serve their own interest but actively seek consensus by sharing views and opinions. They are aware that the agencies expect them to reach consensus and they realize that they might have to adjust their policy preferences to do so. Members are motivated to deliberate and are willing to put the common good above their own private interests. However, despite this initial motivation, consensus is often hard to establish due to the delicate balancing act (defending one's own interests *vis-à-vis* finding consensus) AC members are involved in. Instead, ACs 'take a picture' of the various policy preferences at the table instead of presenting a consensus. In addition, our findings show that there is a profound asymmetry in the level of expertise between members. Consumer representatives do not only lack sufficient expertise to contribute to the meetings, but they also experience structural disadvantages in terms of financial and organisational resources, preventing them from effectively contributing to the functioning of the ACs.

These results raise questions about the councils' effectiveness in ensuring balanced interest representation. Although members have the motivation to argue and to find a consensus, the variation in capabilities prevents them from doing so. If consumer groups are structurally overshadowed by the regulated business in the meetings, they cannot be the countervailing force that they are supposed to be. This challenges the assumption that diversified composition of ACs can lead to more balanced policymaking by EU agencies. It also raises serious doubts whether installing ACs can increase agencies' legitimacy. As one respondent mentioned: *'There is this danger that a so-called independent Stakeholder Group, that is clearly dominated by the industry, can legitimise certain policies'* (INT200220). Domination by business interests cannot be solved by merely providing access for non-business actors. Instead, respondents argue that agencies should make efforts to decrease the structural disadvantages that some members face in order to increase the likelihood of balanced opinions, and ultimately ensure that the agencies will be legitimate policymakers.

This study creates new avenues for research. As members indicated that their contribution is largely dependent on the issue or topic at hand, future research should analyse which type of issues result in the involvement of a more diverse set of interests in the ACs. Also, the question remains whether ACs can effectively influence policies. During our interviews, members state that ACs are important but not essential venues to be active in. And while agencies always respond to recommendations, it remains unknown how these are translated into regulatory policies. Hence, a more systematic analysis of what ACs produce in relation to their membership and functioning is necessary to assess how input and throughput affect eventual outputs of EU agencies.



CHAPTER 7

CONCLUSION

> *"I remember the saying: 'When we have to regulate the banking sector, we will not ask the bankers for advice'. Well, it is actually exactly what happens within the agency."*
>
> – Consumer representative (INT1702202)

EU regulatory agencies might be stuck between a rock and a hard place when involving stakeholders. On the one hand, principals expect agencies to involve stakeholders. In this way, delegating authorities – Member States, the European Commission, and the European Parliament – seek to avoid that EU regulatory agencies are perceived as unresponsive, technocratic, or undemocratic. On the other hand, when involving stakeholders, agencies are also expected to strike a balance between different stakeholder interests as to mitigate the risk of being captured. Both the risk of being (perceived as) technocratic and the risk of capture, threaten the legitimacy of these agencies and their policies. As such, the agencies are incentivised to involve a diverse set of stakeholders in their policymaking efforts.

To this end, EU agencies have different consultation instruments at their disposal (also see Arras & Braun, 2018). There has been considerable scholarly attention on the use of these instruments (Arras & Braun, 2018; Borrás et al., 2007; Pérez Durán, 2018). More recent studies have gone further and analysed stakeholders' participation in formal consultation procedures (Arras & Beyers, 2020; Beyers & Arras, 2019; Binderkrantz, Christiansen, & Pedersen, 2020; Chalmers, 2015; Fraussen et al., 2020). Yet, it remains inconclusive whether institutionalised stakeholder involvement lives up to its expectations. To what extent does stakeholder involvement in EU agencies indeed foster balanced interest representation? And can stakeholder involvement contribute to the legitimacy of EU regulatory agencies?

This dissertation set out to answer these questions. Its answer is based on two main pillars. First, Chapter 2 of this dissertation argues that normative concepts, such as democracy, are of limited use for the legitimacy of a political power. Using stakeholder involvement as an illustration, it argues that one cannot simply compare the EU's institutional design to a predefined democratic ideal. Instead, one must treat legitimacy as a social relation between an authority and its constituency. This means that legitimacy can only be assessed by observing the perceptions of what the constituency deems legitimate. At the same time, however, scholars should evaluate if the

EU's claims for more democracy do in fact translate into improved policies or institutional designs. Such research would take form of a critical assessment, or reality-check, of legitimation strategies: the claims EU institutions make when justifying their use of power.

The other chapters of this dissertation did exactly so. In four empirical chapters, it investigated whether the institutionalised stakeholder involvement could indeed lead to more balanced policymaking. This second pillar is based on a case study focusing on the policy field of European financial regulation. Up to the late 2000s, policy communities consisting of powerful interests representing the financial sector occupied this policy field. In this period, there was a certain cosiness between policymakers and the financial industry. In fact, both US and EU scholars argue that the policy field was captured by these interests (Baker, 2010; Baxter, 2011; Kwak, 2014; Mügge, 2006; Tsingou, 2010, 2015; Young, 2013). In the wake of the global financial crisis, however, this cosiness between regulator and regulatee was increasingly scrutinised. A general conclusion is that the powerful role and influence of the financial sector on policymaking had resulted in a permissive regulatory environment, in which the financial industry could continue its excessive risk-taking conduct. Due to the shock of the crisis rippling the policy field, it would be logical to expect changes in the way different stakeholders exert influence on financial regulation. Those stakeholders that were accused of being too close to policymakers might become less active in their lobbying efforts, while those groups that want to reform the financial system (e.g. non-financial business groups, consumer groups, labour unions, NGOs) increase their lobbying efforts.

Furthermore, the crisis highlighted that the European Union lacked strict oversight on the financial sector. As European banks asked for bailouts and financial markets crashed, it became painfully clear that the European institutions lacked the instruments to control and monitor the conduct of the financial sector. Hence, in the wake of the crisis, the European Commission delegated rulemaking powers to three regulatory agencies: the European Supervisory Authorities. Whereas the predecessors of these agencies first merely advised the Commission in its policymaking efforts, after the financial crisis they gained the power to draft and implement binding regulation. More specifically, the agencies are tasked with drafting new and extensive European regulation and strict financial oversight in the form of regulatory packages (i.e. Solvency II, MiFID II, Single Rulebook for banking). Both the institutional and regulatory reforms are also expected to affect the activity of stakeholders. As the agencies become a powerful and imperative cog in the policymaking process, they also become an important lobbying venue for stakeholders that seek to influence financial regulation. Especially now that the agencies are drafting and implementing binding regulation, it is crucial for stakeholders to try to influence the agencies. Consequently, one would expect shifts in the lobbying efforts of different stakeholders.

To assess these shifts, the dissertation focused its analysis on the formal consultation instruments. It analysed to what extent there were shifts in the participation of stakeholders in public consultations before and after the crisis. To this end, this dissertation used different methodological approaches. Chapter 3 analysed the density, diversity, and volatility of the population of stakeholders active in the ESAs' public consultations. By comparing the set of stakeholders after the crisis and reforms, Chapter 3 showed that both the density and diversity of the set of stakeholders remains relatively stable. Only the volatility of participating stakeholders shows the expected shifts. This means that although the aggregated population of participating stakeholders does not change over time, there are some changes in the participation of individual stakeholders. Chapter 4 and 5 delved deeper into this particular finding. Using social network analysis, both chapters assessed whether and how the network of stakeholders transformed after the financial crisis and reforms. To this end, Chapter 4 focused on the networks' macrolevel changes, meaning the extent to which the structure of the networks changes over time. It showed that the crisis and reforms stimulated the entrance of new interest groups in the networks and that repeat players became more selective in their lobbying efforts. The question that follows from these results is whether the newcomers in the network are able to disrupt the established interests in the network. Chapter 5 focuses on this question by assessing the microlevel changes in the network. More specifically, it analyses to what extent different types of stakeholders appear or disappear from the networks, and which stakeholders become more or less central in the networks. The findings demonstrate that although new stakeholders enter the network, these newcomers remain peripheral actors. The financial sector itself, however, becomes more central and more interconnected, thus forming a stronger core. In other words, the established interests close ranks as new stakeholders enter

the networks by increasing their lobbying efforts in the public consultations of the ESAs.

Besides the public consultations, the dissertation also investigates another formal consultation instrument, namely the ESAs advisory councils. Whereas the agencies used public consultations both before and after the crisis, the advisory councils were established as the agencies gained their rulemaking competences in 2011. Chapter 6 investigated whether and to what extent this relatively new consultation instrument contributes to a more balanced interest representation at the ESAs. Based on interview data, it finds that despite their diverse composition, the advisory councils are not able to ensure balanced interest representation. Whereas the advisory councils are expected to advise the ESAs in a consensual manner, asymmetries in the capabilities of council members prevent them from effectively doing so. As a result, the advisory councils tend to be biased in favour of financial sector actors. The findings thus challenge the assumption that diversified composition of advisory councils can lead to more balanced policymaking by EU agencies.

ASKING THE BANKERS FOR ADVICE

What do these findings actually tell us about stakeholder involvement in the ESAs? To answer this question, one has to go back to the situation before the crisis. As mentioned, up to the late 2000s, financial regulators were captured by the industry they were supposed to regulate. As policymakers themselves lacked the expert-knowledge to regulate the financial sector, they sought inputs from the financial sector itself. This resulted in a situation where the financial sector itself was able to influence policymakers to opt for loose oversight, self-regulation, and a permissive regulatory space. In other words, financial regulators asked the opinion of bankers when drafting banking regulation. The financial sector, in turn, successfully lobbied for self-regulation and thus stalled strict micro-prudential oversight (Mügge, 2006). This dissertation investigated whether the ESAs still mainly get inputs from the financial sector, or whether also different stakeholders are able to advise the financial regulators.

The findings of this dissertation paint a rather grim outlook. First, looking at the public consultations, one sees that not much has changed after the financial crisis and institutional reforms in terms of which stakeholders attempt to lobby the agencies. The public consultations of the ESAs are still crowded by financial sector interests. Although case studies found that non-business interests mobilised after the financial crisis (Kastner, 2014, 2017; Kirsch & Mayer, 2013), this is a mere drop in the ocean when looking at the total population of interest groups. Only a small portion of the participating stakeholders are non-business groups. The findings show that as new interests enter the arena, the diversity of the set of participating stakeholders remains largely the same over time. Also, the new interests do not become central actors over time. Instead, they have a peripheral role in the policy networks thus showing that non-business interests still play a marginal role within the policy field of financial regulation (also see Scholte, 2013).

This does not mean, however, that the networks are completely static. Chapter 4 illustrated that as the networks become bigger in size, they also become more balkanised and less interconnected on a macrolevel. This indeed shows that some of these policy networks are disrupted over time. The question that remains, however, is whether the core of the network is affected too; whether the established interests that are known to have captured regulators before the financial crisis decrease their lobbying efforts. In this regard, Chapter 4 finds that stakeholders' centrality scores become more equal after the crisis. This implies that the core-periphery structure of the network becomes less distinct. At first sight, this looks promising. The core of the network, consisting of established interests (i.e. the financial sector) seems to disintegrate as new groups enter the arena. However, the results presented in Chapter 5 paint a different picture. It is not the established interests that become less active, but rather the financial sector actors in the periphery that become more central and thus move towards to core. The findings show that mainly the established interests (namely financial sector actors) become more central within the policy network over time. In other words, financial sector actors that used to be peripheral actors now move to the core of the network, thus making the core-periphery structure less distinct.

These findings highlight that business interests, and the interest of the financial sector in particular, remains the most prevalent in the policy network. This is not illogical of course. Financial regulation has vast consequences for the daily operations of the financial sector, and strict regulation could potentially harm the sector's revenues. To avoid, delay, hamper or change such

regulation, the financial sector thus exerts influence on regulators, especially when those regulators introduce extensive regulatory packages. Not only does the financial sector have a vast interest in lobbying financial regulation, but they also have the means to do so (also see Pagliari, 2012). They not only have the financial resources to establish internal work teams, hire external experts, or to conduct their own research, the financial sector also has the expert knowledge that is necessary to give inputs in policymaking processes. Hence, it is not surprising to find that the financial sector still is a powerful and active player within this policy field. Moreover, compared to other regulatory policy fields such as food safety, medicine, or fisheries, the policy field of financial regulation is relatively insulated from public scrutiny. Although most European citizens will agree that the financial system should protect consumers to a certain extent, financial regulation encompasses much more technical policy issues as well. A majority of these technical issues are only indirectly affecting European consumers and is thus not a priority for most European citizens. As mentioned by a consumer representative (INT200220):

"I can see that there is little or no interest in this stage of European legislation. (…) this is also the problem with consumer organisations, they don't really want to finance the actions that will affect consumers in two, three, four, five years. Instead, they got money for present activities, but not for future activities".

Indeed, due to their limited resources, consumer groups need to prioritise the policy issues they will focus on. As financial regulation often has only indirect effects on European consumers, consumer groups are likely to prioritise other policy issues instead. This resource-dependency also explains why non-business groups seem to lag behind in the interest systems of the ESAs.

What is surprising, however, is that even a newly established consultation instrument – that was supposed to compensate for the prevalence of the financial sector – is also dominated by financial sector actors. As mentioned, the advisory councils of the ESAs were established to compensate for biases in the public consultations. The councils with their diversified composition would advise the agency based on a consensual report of all members. The findings of this dissertation show, however, that such a consensus is hard to achieve in the councils. Instead, the councils 'take a picture' of the various stances around the table and presents those to the agency. In addition, non-business members seem to struggle to contribute to the council meetings in a meaningful way. Similar to the lack of participation in public consultations, non-business interests face difficulties to contribute to the meetings due to their lack of expert-knowledge and resources. As the discussions in the advisory councils often concern technicalities about financial regulation, these groups are less able to make their voice heard. Again, the members that represent the financial sector do have the expert-knowledge to contribute to the discussions. In this regard, even though the advisory councils should ensure balanced interest representation, also in this venue non-business interests are overshadowed by the financial sector. Thus, even in the venues where consumer groups could give their inputs they fail to do so.

These findings provide sufficient proof to argue that the interest representation in the policy field of EU financial regulation is not less biased than before the financial crisis. Both before and after the crisis, the financial sector remains a powerful player, while potential groups that could theoretically challenge the financial sectors' interests lack the resources to actually form a countervailing force. Both in public consultations and in advisory councils, non-business actors are unable to contribute in a meaningful way and thus remain mere peripheral actors in this policy field. To reiterate the consumer representative cited above, EU regulators still ask the bankers for their opinion when making regulation. Even after a global financial crisis that plummeted the world economy and was, albeit partially, caused by the financial sectors' lobbying efforts regulators still mainly are exposed to inputs of the industry they are supposed to regulate.

STAKEHOLDER INVOLVEMENT AS LEGITIMATION STRATEGY?

What do these findings tell us about stakeholder involvement as a legitimation strategy? The introduction of this dissertation elaborated on the EU's perceived legitimacy crisis. It argued that it does not matter for the scope of this dissertation whether there is an actual legitimacy crisis or not. What does matter are the EU's' responses to its perceived lack of legitimacy. The EU has reformed its institutions in multiple ways as an attempt to (re-)legitimise itself. Two of these reforms, agencification and institutionalised stakeholder involvement, are the starting point of this dissertation.

To reiterate, the delegation of powers to regulatory agencies were expected to improve policy outputs. However, by delegating powers to these non-majoritarian agencies that were insulated from electoral scrutiny, policymaking by EU agencies was deemed technocratic and undemocratic (Papadopoulos, 2007). To compensate for this flaw, the EU introduced stakeholder involvement. By including societal stakeholders in formal policymaking processes and enabling them to provide input, both national and transnational regulatory agencies would be able to respond to societal pressures, were held accountable for their actions, and would also lead to more effective policy outputs (Armstrong, 2002; Bernauer & Gampfer, 2013; Chatzopoulou, 2015; Coglianese et al., 2004; Gornitzka & Sverdrup, 2011, 2015; Beate Kohler-Koch, 2007, p. 4; Verbruggen, 2013). However, stakeholder involvement also comes with its own set of complications. As EU agencies need to regulate highly technical policy fields, they have an inherent need for expert knowledge. This expert knowledge can be provided by the sector that is to be regulated: the stakeholders representing business interests. Due to the interdependencies between regulator and regulatee, there is a risk for agency capture (Braun, 2012b, 2013; Braun & Busuioc, 2020; Carpenter & Moss, 2014; Dal Bó, 2006; Stigler, 1971; Underhill & Zhang, 2008). In other words, EU agencies might thus be stuck between a rock and a hard place.

The findings presented in this dissertation highlight that stakeholder involvement indeed is a hard place for EU agencies. More specifically, the ESAs face a profound overrepresentation of (or bias towards) business interests in both the public consultations and advisory councils. The overrepresentation of one type of interest means that an agency predominantly receives inputs from a minor part of society. In turn, this could lead to a situation where policy always favours business interests to the potential disadvantage of the general interest, as was the case before the financial crisis. If some societal interests constantly win, while others always lose, such bias may seriously undermine democratic legitimacy (Klüver, 2012; Lowery et al., 2015).

The case study presented in this dissertation shows that even though the policy field of financial regulation experienced a major shock, the interests that participate and give their inputs in policymaking processes remain largely the same. The diversity of the set of stakeholders does not change over time and though the networks transform over time, the core of the network solidifies. Moreover, new interests might enter the policy networks, but only to position themselves in the periphery of the policy network. As discussed in Chapter 5 and 6, new interests may bring about policy change (Richardson, 2000). However, if new interest groups enter the network, but only take in peripheral positions in the network chances are slim that they will be able to influence policy agendas, let alone bring about policy change (see LaPira, Thomas, & Baumgartner, 2009, 2014). This is exacerbated by the fact that the venues that could function as a forum where different types of interests deliberate on regulatory policy – the advisory councils – are also biased in favour of business interests.

These findings imply that policy change in the field of financial regulation resulting from new interests entering the field is highly unlikely. Instead, the established interests will be able to maintain their grip on policymakers and might be able to delay, hamper or mediate policy change in the policy field of financial regulation. This makes that the idea of stakeholder involvement as a means to increase EU agencies' responsiveness to societal pressures is flawed. The findings show that an important condition for avoiding biased outputs, namely a balanced representation of different types of interests (also see Hojnacki, in Lowery et al., 2015), is not met. As such, the findings directly challenge the idea that stakeholder involvement would automatically lead to more responsive policymaking. In the particular case studied in this dissertation, one could even argue that stakeholder involvement inhibits the ESAs to be responsive.

Besides the threat bias poses for EU agencies' responsiveness, it also poses a threat to the effectiveness of its policy outputs. By involving stakeholders in their policymaking processes, agencies could use stakeholders' inputs to draft better informed and evidence-based policies. The findings of this dissertation question this theoretical ideal. They show the regulated interests, i.e. the financial sector, predominantly provides its inputs in the policymaking processes of the ESAs. One could question whether this information, and ultimately the adopted policies, favour the regulated business at the cost of the general interest (see also discussion below). What is certain, however, is that this biased interest representation increases the risk for agency capture, and thus threatens the legitimacy of the ESAs and their policies.
Both the threat to agencies' societal responsiveness and its policies' effectiveness make that one has to be critical about stakeholder involvement as a legitimation strategy. From a theoretical perspective, stakeholder involvement is presented

as a *panacea* to illegitimate policymaking. Having a closer look at empirical reality, however, this dissertation shows that involving stakeholders might do more harm than good. Consequently, one has to conclude that the claim that institutionalised stakeholder involvement automatically enhances legitimacy is flawed. In fact, biased interest representation and agency capture might even harm the legitimacy of EU agencies.

LIMITATIONS AND AVENUES FOR FUTURE RESEARCH

As is inherent to science, choices had to be made concerning the presented research. Following paragraphs discuss the limitations of the choices made, and how future research may assist in overcoming these limitations.

First, this dissertation bases its conclusions on the findings within one policy field, thus limiting generalisability of its findings. Nonetheless, concerns regarding the undue influence of special interests are not unique to financial policymaking, and regulators in other policy fields face similar risks concerning capture, such as energy, aviation, food safety (Fink & Ruffing, 2020; Joosen, 2020; Pagliari, 2012b; Rimkutė, 2020). Based on this research, I cannot determine whether interest representation in other policy fields is also biased. However, the findings of this research do raise questions about stakeholder involvement in other policy fields. As discussed in the Introduction, the policy field of financial regulation was known to be captured by special interests before the financial crisis. The ESAs would therefore have an additional need to legitimise themselves by diversifying their interest representation. As the findings show, interest representation in EU financial regulation is still biased towards business groups. Hence, the question that remains unanswered is how the findings of this dissertation relate to broader EU regulatory policymaking: do other agencies face similar difficulties? In this regard, previous research has established how agency capture might occur and what factors might contribute to agency capture (e.g. Carpenter & Moss, 2014; Dal Bó, 2006). It remains relatively unknown, however, whether EU regulators are de facto captured by special interests. Future research should therefore compare the unique case of financial regulation with other policy fields, and study to what extent the policy field mediates regulatory capture.

A second limitation to this dissertation is its focus on the inputs of stakeholders on the policymaking processes of EU agencies. Similar to other studies (e.g. Arras & Beyers, 2020; Beyers & Arras, 2019; Binderkrantz, Christiansen, & Pedersen, 2020; Chalmers, 2015; Fraussen, Albareda, & Braun, 2020; Pagliari & Young, 2015) it focused on which stakeholders provide their inputs and through what (formal) instruments they aim to do so. Analysing these inputs allowed to assess whether interest representation in the ESAs was still biased towards business interests, and thus fitted the research question. Nonetheless, scholarship is yet to develop an integrated and comprehensive understanding of the role of stakeholders in EU agencies' policymaking processes. More specifically, the current literature has refrained from addressing how agencies themselves actually use the information provided by stakeholders. As such, it ignores agencies' throughputs, acting as if agencies simply copy and aggregate the received inputs and spit out regulation. By ignoring throughputs, scholarship does not know how stakeholders' inputs are translated into policy outputs (also see Schmidt, 2013). Second, most literature makes rather coarse assumptions about the outputs of EU agencies. Specifically, it presumes that imbalanced inputs will automatically lead to imbalanced policy outputs and thus agency capture. Yet, no one has analysed the outputs of the regulatory agencies in a systematic fashion. Such an analysis is crucial for determining whether stakeholders are able to influence policies through institutionalised stakeholder involvement, and whether it induces the creation of policy outputs in favour of some special interest. Therefore, I – and with me several other scholars (Arras & Braun, 2018; Binderkrantz et al., 2020; Busuioc & Jevnaker, 2020; Fraussen et al., 2020) – recommend future research to study the through- and outputs of stakeholder involvement.

Third, and repeatedly mentioned in the chapters, an important limitation of this study is its sole focus on (types of) stakeholders. In the empirical studies, I hypothesised that certain group types and economic sectors would change their participation after the crisis and subsequent reforms. Although these hypotheses are crucial to understand whether the interest representation at the ESAs is balanced or biased, stakeholder participation also depends on other factors. As discussed above, the financial resources of a particular stakeholder are likely to determine stakeholders' lobbying efforts. Moreover, also factors on other levels of analysis are likely to play a role. For example, both Chapter 3 and Chapter 5 argue that the scope of the

organised consultation is likely to affect the participation of different types of stakeholders. Future research should include such variables to gain a more comprehensive understanding of what factors determine the participation of stakeholders in formal consultation instruments of EU agencies.

A fourth limitation of this dissertation relates to Chapter 6 specifically. Using qualitative interview data stemming from 13 in-depth interviews, this study provided a first empirical investigation into the functioning of the advisory councils of EU agencies. Doing so, the study has shown that qualitative research in advisory councils is useful in order to understand the function and role of these bodies in policymaking processes. The findings, as also summarised above, suggest that a diversified composition of the council members is not enough to ensure that the councils' functioning is not biased towards business interests. Although these findings are relevant in the case of the ESAs, they are based on a rather limited number of interviews. Therefore, the findings would merit further research to the functioning of advisory councils in EU agencies. To truly understand whether advisory councils can ensure balanced interest representation in EU regulatory policymaking, future research should investigate whether councils in other agencies experience the same challenges in terms of their functioning. In this regard, this dissertation demonstrated that qualitative research has an important added value which complements quantitative studies into the advisory councils. As such, it showed that combining different empirical approaches thus furthers scholarship to understand the internal functioning of agencies' advisory councils.

Fifth, this dissertation focused on stakeholders' use of formal consultation instruments as implemented by EU agencies. As also mentioned in the Introduction, participation in formal consultations is just one way for stakeholders can influence EU agencies' policymaking processes. Although public consultations or advisory councils are two of the main formal instruments used by the ESAs and agencies in general, stakeholders are also able to exert influence via informal channels, such as contacting policymakers via telephone or e-mail, scheduling meetings with policymakers, or organising events. Now that this dissertation and other scholarly work (see for example Arras & Beyers, 2020; Arras & Braun, 2018; Beyers & Arras, 2020; Fraussen et al., 2020) has established how stakeholders use formal channels, future research should also include informal channels in its analyses. This would further our understanding of stakeholders' lobbying efforts in EU regulatory policymaking.

CONTRIBUTIONS

Despite these limitations, this dissertation contributes to current scholarship in three main ways. First of all, this dissertation highlights the importance of distinguishing legitimacy from legitimation. Whereas legitimacy is a social relationship between an authority and its constituents, legitimation concerns the claims an authority makes to justify its political power. The justification can be based upon different attributes: one of which is stakeholder involvement. In this regard, political authorities justify their political power by claiming that they institutionalised the involvement of stakeholders in their decision-making and policymaking processes. If the constituents accept and adopt this justification, the legitimation strategy positively affects the authority's legitimacy. By distinguishing legitimacy from legitimation, I challenge the idea that stakeholder involvement would directly increase an authority's legitimacy. Scholarship often disentangles the two distinct concepts of legitimacy and legitimation when assessing stakeholder involvement (see for example Agné, Dellmuth, & Tallberg, 2015; Braun & Busuioc, 2020; Busuioc & Jevnaker, 2020). It claims to study legitimacy when actually it is studying a legitimation strategy – a specific claim of an authority to justify its political power. As suggested in Chapter 2, to assess an authority's legitimacy one has to observe whether and to what extent citizens accept the political power of an authority. This is rarely the case for empirical studies on stakeholder involvement (but see Beyers & Arras, 2020; Grimmelikhuijsen et al., 2021). The distinction between legitimacy and legitimation strategies, and how each of these concepts can be studied, is a crucial contribution and important nuance to current scholarship which should be considered in future research.

A second contribution follows from this dissertations' use of different methodologies. It has shown that network analysis is a viable method to analyse the 'cloud' of stakeholders surrounding agencies' consultations. Moreover, network analysis offers a wide range of methodological approaches that would further scholarships' current understanding of how stakeholders' lobbying activities look like, how those transform over time, and whether exogenous shocks affect the networks. Besides social network analysis, this dissertation also showed that qualitative research is a valuable tool in studying stakeholder involvement. Yet, scholarship mainly applies quantitative methods to assess the diversity of the set of participating stakeholders. However, as this dissertation has demonstrated, applying quantitative methods alone scholarship limits scholars to establish a truly comprehensive understanding of how stakeholder involvement functions. Hence, this dissertation recommends future research to pursue the triangulation of quantitative and qualitative methods in the study to stakeholder involvement.

Besides these theoretical and methodological contributions, this dissertation contributes to discussions regarding the effects of stakeholder involvement in policymaking. The four empirical chapters each assessed the EU's claim to be legitimate due to its institutionalised stakeholder involvement. The general conclusion of these chapters is that this justification of political power is flawed. The dissertation demonstrated that stakeholder involvement is not the *panacea* it was expected to be. Not only does it not enhance EU agencies' responsiveness, but it also poses a threat to the effectiveness of their policy outputs. The findings show that stakeholder involvement opens the door for undue influence of business interests and might result in agency capture. As such, stakeholder involvement comes with its own set of complications which may have serious implications for agencies' policy outcomes.

It is not all doom and gloom, however. Whereas the public consultations are mainly dominated by the industry, thus opening the door to capture, the ESAs possess a valuable instrument to compensate for this imbalance: the advisory councils. While interviewing stakeholder representatives for the research as described in Chapter 6, respondents argued that stakeholder involvement is still an imperative and welcomed instrument in EU agencies. The representatives stressed that both the public consultations and the advisory councils are important venues to help shape financial regulation in the EU. In particular, they stressed the potential of the advisory councils as venues where different interests could share information and work together to create more responsive and effective policies. Moreover, as demonstrated in Chapter 5, the advisory councils have become a highly central actor within the policy network as they often participate in the agencies' public consultations. This highlights that the advisory councils of the ESAs are a promising instrument to ensure more balanced policymaking. To realise the advisory councils' full potential, the ESAs should consider a number of reforms as to compensate for the dominant business interests. These considerations form the backbone of this dissertations' policy recommendations.

POLICY RECOMMENDATIONS

First, respondents stressed that consumer representatives face difficulties in contributing to the advisory councils. As the discussions are highly technical, they suffice detailed expert knowledge about financial regulation which consumer representatives often lack. To ensure that consumer representatives can contribute to the meetings, they should thus be assisted when providing inputs to the councils. For example, the agency could organise pre-meetings in which it briefs consumer representatives on the topics on the agenda of the advisory councils. Of course, such a solution could be extended to the public consultations. In its consultation calls, agencies could explain to consumer groups what the implications are of the proposed regulation. In other words, agencies should take consumer groups by the hand and explain them why they should care and invest resources to a particular policy dossier.

Second, consumer groups are often overshadowed by business representatives in the advisory councils. As mentioned in Chapter 6, some consumer representatives do not even speak a word during their mandate. The findings of this dissertation showed that this is the result of the lack of informational and financial resources of consumer representatives. The European Commission already tried to strengthen the position of consumer groups by subsidising various consumer groups (such as BetterFinance and FinanceWatch). However, the findings show that these groups are not able to become central actors within the policy networks of the ESAs (see Chapter 5). Hence, just providing consumer groups with more (financial) resources, might not sufficiently overcome the difficulties consumer interests face. Instead of providing more subsidies, the ESAs should consider different 'models' in which the advisory councils could be organised. In the interviews, respondents addressed the Financial Services Consumer Panel of the financial regulator of the United Kingdom as a prime example of a promising model for the councils. The Financial Services Consumer Panel solely consists of consumer representatives and advises the agency on issues that are relevant for consumers. The Panel also has its own research budget and can thus initiate

independent research into certain policy proposals. In such a model, consumer representatives do not have to 'battle' business representatives which tend to be more knowledgeable in financial regulation. Moreover, consumer interests will be involved in issues that are actually relevant for consumers, thus making sure that consumers do not have to pick their battles themselves. Hence, it would ensure that consumer groups have an actual input in the agencies' policymaking processes. Moreover, although such a 'consumer-only' advisory council would exclude business representatives to have a seat at the table, their inputs would still be provided through the public consultations, as demonstrated in Chapter 2 and 5.

Third, and related to above, multiple respondents suggested that the advisory councils would merit from having an own research budget. Respondents mentioned that during the advisory councils' meetings, business representatives often substantiate their viewpoints with scientific evidence. The ability to conduct one's own research is a crucial way to convince other council members and the agency itself. As research is a timely and costly endeavour, consumer groups are less able to conduct their own research. Consequently, they have to rely on research conducted by the financial industry. Providing the advisory councils with their own research budgets would enable them to conduct independent research that all members can use to substantiate their arguments. In turn, this would (partially) alleviate business dominance in these councils.

These three points are realistic recommendations to use the advisory councils as they were intended: independent advising bodies that provide the agencies a consensual opinion on policy proposals. This is not to say that the advisory councils can fully compensate for the bias in the interest representation at the ESAs. However, to reiterate Hojnacki: 'an obvious place to begin in levelling the playing field would be to add more groups that represent the under-represented' (in Lowery et al., 2015, p. 1218). This dissertation adds to this idea by arguing that policymakers should not only include a diverse set of stakeholders in their policymaking processes, but that they should also provide them with the right tools to assist them in providing relevant inputs. Only then can stakeholder involvement be used as an effective legitimation strategy. Until that time, however, EU agencies that involve stakeholders in their policymaking processes remain stuck between a rock and a hard place.

SUMMARIES, APPENDICES AND REFERENCES

SUMMARY

The European Union and its regulatory agencies are stuck between a rock and a hard place when involving societal stakeholders. On the one hand, agencies are expected to involve stakeholders to avoid allegations of being technocratic and distant policymaking. On the other hand, however, opening the door for stakeholders induces the risk for agency capture. Yet, it remains unknown whether stakeholder involvement as an institutional instrument indeed contributes to the agencies' legitimacy. Therefore, the central research question of this dissertation is *'To what extent does stakeholder involvement foster or inhibit balanced interest representation in EU regulatory agencies?'*

This dissertation's answer is based on two pillars. First, a theoretical pillar challenges the link built between stakeholder involvement, democracy and legitimacy. It argues that legitimacy is a social relationship and thus cannot be evaluated by simply comparing the EU's institutional design to a democratic ideal. It reconceptualises legitimacy as a social relation and argues that stakeholder involvement is a mere legitimation strategy. To evaluate a legitimation strategy, scholars should assess whether the EU's claims to be more democratic do in fact translate into improved policies or institutional designs.

The second pillar, consisting of four empirical chapters, does exactly so, and focuses on the formal consultation instruments of the European Supervisory Authorities (ESAs): three regulatory agencies operating in the policy field of financial regulation. Each of the empirical chapters assesses the participation of stakeholders in formal consultation procedures, i.e. public consultations and advisory councils. To this end, it collected all stakeholders' responses to public consultations organised by the ESAs from 2004-2014. Moreover, to analyse the advisory councils, qualitative interviews were conducted with the members of these councils.

Based on these data, this dissertation shows that both the public consultations and the advisory councils are dominated by business interests. Participation in the public consultations remains largely stable over time, and although new stakeholders enter the arena, they remain peripheral actors. Also in the advisory councils, non-business interests such as consumer groups face difficulties in contributing to the meetings, allowing business interests to influence the councils.

These findings place a critical note to the idea that stakeholder involvement would automatically foster legitimate policymaking. Instead, stakeholder involvement is a legitimation strategy which the EU uses to legitimate their policymaking efforts. Investigating stakeholder involvement in three agencies, this dissertation shows that involving stakeholders might do more harm than good. The results show that it does not overcome, and sometimes even induces, biased interest representation. This implies that stakeholder involvement as an instrument to improve agencies' legitimacy is flawed and should be considered with care.

SAMENVATTING

De Europese Unie en haar regelgevende agentschappen bevinden zich in een benarde situatie als het gaat om het betrekken van maatschappelijke stakeholders. Enerzijds moeten de agentschappen stakeholders betrekken om niet technocratisch en ondemocratisch geacht te worden. Anderzijds kunnen agentschappen beïnvloed worden door deze stakeholders, en riskeren ze zo economische belangen te bevoordelen bij het maken van beleid. Tot nu toe blijft het onbekend of het betrekken van stakeholders als institutioneel instrument inderdaad kan bijdragen aan de legitimiteit van EU-agentschappen. Daarom is de centrale onderzoeksvraag in dit proefschrift *'In hoeverre bevordert of remt het betrekken van stakeholders een evenwichtige belangenvertegenwoordiging in regelgevende agentschappen van de EU?'*

Het antwoord van dit proefschrift is gebaseerd op twee pijlers. De eerste pijler betwist de theoretische link die is gelegd tussen het betrekken van stakeholders, democratie en legitimiteit. Het proefschrift stelt dat legitimiteit een sociale relatie is en daarom niet kan worden beoordeeld door het institutionele ontwerp van de EU te vergelijken met een democratisch ideaal. Het beschouwt legitimiteit als een sociale relatie en stelt dat de betrokkenheid van stakeholders louter een legitimatiestrategie is. Om zo'n legitimatiestrategie te evalueren, moet men beoordelen of de claims van de EU zich daadwerkelijk vertalen in verbeterd beleid.

De tweede pijler, bestaande uit vier empirische hoofdstukken, evalueert deze legitimatiestrategie. Deze pijler richt zich op de formele consultatie-instrumenten van de European Supervisory Authorities (ESA's): drie regelgevende agentschappen die actief zijn op het gebied van financiële regulering. De empirische hoofdstukken analyseren de deelname van stakeholders aan twee formele consultatie-instrumenten, namelijk openbare consultaties en adviesraden. Om deze instrumenten te analyseren, gebruikt dit proefschrift de data van alle reacties van stakeholders op de openbare consultaties van de ESA's die zijn georganiseerd tussen 2004-2014. Voor de analyse van de adviesraden, zijn er kwalitatieve interviews afgenomen met de leden van deze raden.

Op basis van deze data laat dit proefschrift zien dat beide consultatie-instrumenten gedomineerd worden door economische belangen. De deelname aan de openbare consultaties blijft grotendeels stabiel in de loop van de tijd, en hoewel nieuwe stakeholders de beleidsnetwerken betreden, blijven zij perifere actoren. Ook in de adviesraden hebben niet-economische belangen zoals consumentengroepen moeite om bij te dragen, waardoor het economische belangen vrij staat om de raden te beïnvloeden.

Deze bevindingen plaatsen een kritische noot bij het idee dat het betrekken van stakeholders automatisch beleidsprocessen zou legitimeren. Het betrekken van stakeholders is slechts een legitimatiestrategie die de EU gebruikt om haar beleid te legitimeren. Echter, zoals dit proefschrift laat zien, kan het betrekken van stakeholders meer kwaad dan goed doen. De resultaten tonen aan dat het kan leiden tot een scheve belangenvertegenwoordiging in het voordeel van economische belangen. Dit impliceert dat het betrekken van stakeholders niet automatisch leidt tot het verbeteren van de legitimiteit van agentschappen. Daarom moet men zorgvuldig overwegen of het betrekken van stakeholders in beleidsprocessen wenselijk is of niet.

APPENDIX 1: WEBSITE CODING OF INTEREST GROUPS

1. IDENTIFICATION VARIABLES

The first variables relate to basic identification variables for the organisation and the coder in case. These have already been coded but do check them for mistakes.

1. **NameAG: Name of the agency [No check needed]**

This is the name of the agency that organised a specific consultation. This is already filled in.

1. **ConsultationCode: Unique code for each consultation [No check needed]**
2. **Year: year of consultation [No check needed]**
3. **NameCons: Name of consultation [No check needed]**
4. **NameActor: Name of interest group**

This is the name of the interest group that mobilised on the specific consultation. You will notice that some interest groups are listed more than once in the database. This means that a specific interest group mobilised on more than one consultation. For most of the database, the names of the organisations are correct. However, for a small part the names are abbreviated, incorrect, or listed under two names.

- Abbreviated: The Bankers and Securities Dealers Association of Iceland is listed as BSDAI. Please replace the abbreviation with the full name. Sometimes only an abbreviation is available (e.g. BNP Paribas; CECA; or BEUC). These abbreviations can remain in the dataset. Please note in the comments if you have remaining questions.

- **Incorrect:** Although most errors have been removed, there might be cases in which the name of the organisation is incorrect. Please fill in the correct name.

- **Listed under two names:** Sometimes the same interest group is listed under two different names (e.g. *Financial Services Agency Japan* & *Japanese Financial Services Agency*). Look in the dataset which name is more common and change one of the names.

1. ORGANISATIONAL VARIABLES

The variables in this section are all related to the organisation. These characteristics and activities of interest groups help to explain their ability to mobilise and thus help us to analyse mobilisation patterns. It is important to stress that in case of doubt you always ask for instructions. It is better to ask questions too often than too less.

1. Org. Structure: Organisational structure

This variable describes the structure of an organisation in terms of type of membership. You can make a distinction between several types of organisations. The types are divided between mayor categories and in some case a selection of sub-categories.

You can choose between three mayor categories which include several sub-categories. The mayor categories consists of first line membership organisations, which have a direct membership; second line membership organisations which have membership organisations as their members, and; organisations without members. The subcategories are listed below.
TIP: Almost all information can be found in the about section. Also, you might check the members section to see which types of members the organisation has.
TIP: The most common organisational structures have been printed in bold below. You will find that these are rather common in this specific dataset.

The options are:

First line membership organisations

10. Membership companies: This is an organisation that has business companies as members. For instance the American Association of Car Manufacturers.
20. Membership individuals: This is an organisation that has individuals as members. Most NGOs and trade unions fall in this category. There are five different types of organisations with individual as members:
    21. Individuals as professionals like doctors, teachers, lawyers, etc. E.g. The Belgian English Language Teachers Association
    22. Individuals as employees e.g. trade unions like ACV – Algemeen Christelijk Vakverbond
    23. Individuals as persons - 'identity groups': ethnic groups, elderly groups, patient organisations – Groups usually only recruit within these specific constituencies. E.g. the Hispanic Association of Women
    24. Individuals as citizen (not work/identity related) e.g. cause groups like Greenpeace, consumer organisations, …
    25. Individuals – leisure (sport, arts, music, literature), for instance sports associations like the Dutch Rowing Federation
30. Membership public authorities: this is an organisation that has public authorities as members, i.e. authorities that are part of the political system. These are cities, provinces, mayors, etc. Not included are organisations that are part of the bureaucracy such as hospitals, police forces, or schools. These are called institutions. E.g. EUROCITIES
40. Membership institutions: this is an organisation that has non-profit institutions as members. Institutions are public or semi-public organisations without members such as hospitals, schools, universities, etcetera. E.g. European University Association, Nederlandse Vereniging van Ziekenhuizen

Second line membership organisations

50. Association of membership companies: this is an umbrella organisation whose members are organisations with companies as members. E.g. the International Association of Car Manufacturers, which has the associations of car manufacturers of several countries as its members.

Another example are the Brewers of Europe, whose members are the national brewers' organisations from every EU country e.g. the Belgian Brewers for Belgium.

60. Association of membership individuals: this is an umbrella organisation of organisations whose members are individuals. For instance the International Trade Union Association which includes most trade unions of the world. Note that a network or coalition is not included in this category as this is not a formal organisation and there is no hierarchy between the organisations that are connected. For networks of interest groups we have a distinct category (see below).
    61. Individuals as professionals like doctors, teachers, lawyers,… E.g. European Lawyers Association
    62. Individuals as employees e.g. European Trade Union Confederation
    63. Individuals as persons - 'identity groups': ethnic groups, elderly groups, patient organisations – Groups usually only recruit within these specific constituencies. E.g. European Disability Forum
    64. Individuals as citizen (not work/identity related) e.g. European Environmental Bureau
    65. Individuals – leisure (sport, arts, music, literature), for instance sports associations like International Rowing Federation
70. Association of membership public authorities: this is an umbrella organisation of organisations whose members are public authorities. For instance the International Association of Cities.
80. Association of membership institutions: this is an umbrella organisation of organisations whose members are institutions. For instance the International Hospital Federation.
81. Network of interest groups: This is a network or coalition of interest groups. This is a group of interest groups that cooperate, but there is no (formal) hierarchy within the network. Within this database there are so-called Stakeholder Groups, these must be coded as networks.

No membership organisations

90. Lobby firm: this is a firm that specialises in lobbying (often described as 'public affairs'). A lobby firm has several clients (usually companies) who

pay the firm to represent their interests. A lobby firm does not defend an interest of its own. E.g. Hill and Knowlton

91. Companies. Organisation which aims to gain a profit. Lobby firms are not included. E.g. Deutsche Bank
92. Research organisation/think tank. The primary function of this organisation is to do research. Think-tanks are also included in this category. E.g. CEPS – Centre for European Policy Studies
93. Institutions: this is a non-profit organisation that does not have members. This includes hospitals, universities, etcetera. These are mainly organisations in the public sector or the semi-public sector.
94. Public authority. Authorities that are part of the political system. These are cities, provinces, regions, ministries, regulatory agencies, and Central Banks etc. Not included are organisations that are part of the bureaucracy such as hospitals, police forces, or schools. These are called institutions.
95. Foundation. Organisations that are funded by one or a few persons. Key is that they do not depend on members for financial survival, although often people can also contribute to these organisations. In this case code the organisation as both a foundation and a membership contributor organisation. E.g. the Bill and Melinda Gates Foundation.
96. Other non-membership organisation that are not included in the above. Make a note of the actual organisational type in the comment box.
97. If the organisation can be coded in more than 1 organisational structures. For instance, an organisation that has companies, individuals, institutions and public authorities as members.
98. Sponsored NGOs. NGOs that are funded by non-individuals (e.g. companies, public authorities, other NGOs).

2. No. Members: Number of members

If an interest group has members (as coded above), give the number of members that this organisation has. Note that in the case of second-line membership organisations you fill in the amount of membership associations and not the amount of members these later organisations represent. For instance, the members of The International Car Manufacturing Association are Car Manufacturing *Associations* of different countries as members. In this case you thus fill in the amount of Car Manufacturing *Associations* and not the total amount of car manufactures they represent. E.g. a European

umbrella organisation often has +-28 members, i.e. a national organisation from every member state.

TIP: A rule of thumb is that when individuals or organisations pay a contribution fee (or something alike) they are included as members. If no fee is paid (for instance affiliated organisations) they are not regarded as members.

3. Level of mobilisation

This variable focuses on the geographical area in which the interest organisation is spending its resources. In other words, on what level of governance does the organisation represent its interest. For example, the European Federation of Public Banks focuses on European interest representation, whereas the International Capital Markets Association focuses on interest representation on a global level.

- **Su**b-national: Choose this option when the organisation represents interests on the subnational level. For instance, Quebec or Flanders.
- National: Choose this option when the organisation represents interests on the level of the nation state. For instance, Germany or the United States.
- Regional: Choose this option when the organisation represents interests on a specific region, e.g. Europe, South America or the Middle East.
- Global: Choose this option when the organisation represents interests on a intercontinental/global level.
- Unknown: Choose this option if you cannot find any information regarding the level of mobilisation of the interest organisation.

2. GUILD INFORMATION

1. Economic sector 1 (ISIC)

This variable is concerned with the economic activities of the specific group. Here, two distinctions have to be made. First whether an interest group is part of the financial sector or not (e.g. the European Federation of Banks is, but the Association for Car Manufacturers is not [0]). If the interest group is part of the financial sector, please choose from the codes for corresponding economic activities below. The name of the organisation is leading here, but you will sometimes need to verify the information on the website of the organisation. When in doubt, please ask questions.

0. Non-financial sector (e.g. Association of Car Manufacturers; or Rolls Royce)
10. Financial service activities, except insurance and pension funding
    11. Monetary intermediation (= banks)
    12. Activities of holding companies (= asset managers; equity managers; holding)
    13. Trusts, funds, and similar financial entities (= investment funds; pooling of securities)
20. Insurance, re-insurance and pension funding activities
    21. Insurance (= life; travel; health; etc. insurance)
    22. Re-insurance (= reinsurance; risk management)
    23. Pension funding (= pensions; retirement)
30. Activities auxiliary to financial service and insurance activities
    31. Fund management activities (management of pension funds; mutual funds; investment funds)
    32. Credit Rating agencies (e.g. PSR Rating Germany)
    33. Other activities auxiliary to financial service (= dinancial markets; brokerage; advisors)
    34. Other activities auxiliary insurance activities (= risk evaluation; actuaries)
40. Other
    41. Government, Regulatory and enforcement organisations (= financial services authorities)
    42. Legal and accountancy; law firms, accountancy firms, consultancies (e.g. KPMG; Linklaters LLP)
    43. Other (e.g. Press)

2. Non-economic sector

For every organisation whose activities cannot be related to an economic sector, either financial or non-financial, please choose a non-economic sector from below.

10 Foreign Affairs
  11 – Development
  12 – Relief and disaster
  13 – Foreign Trade
  14 – Security and Defense
20 Social Welfare
  21 – General social security (unemployment, pensions, but not health)
  22 – Health care
  23 – Poverty reduction
30 Rights: an organisation that advocates human rights both nationally and internationally
  31 - Indigenous, ethnic, linguistic rights: an organisation that represents native ethnic and linguistic minorities (such as Frisians)
  32 - Gender: represents women's rights and lesbians, gays, bisexuals and transgenders
  33 – Religious
  34 - Democracy / Civil Society
  35 - Migrant: an organisation that represents migrants, including asylum seekers and migrants groups
  36 – Youth
  37 – Crime, Law and Order
60 Consumers
  61- Food safety (biotechnology, GMO's,…)
70 Environment/animals: environmental protection, including animal welfare, environment, nature conservation;
  71 - Renewable Energy
  72 - Nuclear Energy
  73 - Nature conservation
  74 – Animals
  75 – Pollution
  76 - Other environment
80 Sustainable development
90 Multiple Fields of Interest (in case of more than 2)
91 Other/unclear

3. OTHER

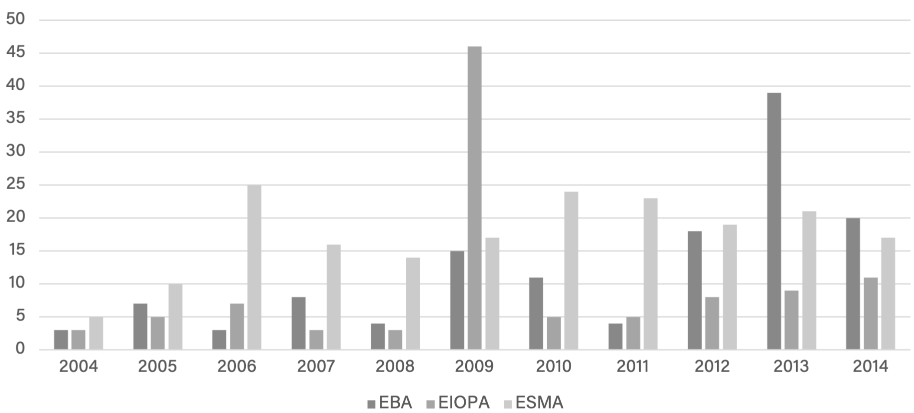
1. Comments

This section of the database does not relate to the actual content of the analysis. Please note questions, remarks, doubts or other things you would like to address in this box.

APPENDIX 2: STAKEHOLDER MOBILISATION IN FINANCIAL REGULATION

Appendix 2.1: Distribution of consultations

Figure A1: Distribution of consultations (2004-2014) per agency per year



Notes: Figure A1 shows the distribution of consultations over the studied period. There is quite some variation in the number of organised consultations, which can be explained by the preparatory work for regulatory packages. For example, in 2009 EIOPA consulted stakeholders 46 times on the Solvency II Directive, a package of implementing and technical measures ensuring financial solvency of insurance and pension funds. In 2013, EBA consults stakeholders 39 times on the Capital Requirements Directive IV: a comprehensive package on the capital adequacy of European banks, stress testing, and market liquidity risk, and can be regarded as the response to the banks' risk-taking conduct causing the 2008 financial crisis. The consultations

of ESMA do not show such spikes. However, ESMA organises the most consultations of the three agencies.

Appendix 2.2: Coding of Unique Stakeholders

These N's differ from Chalmers (2015) who identified 2,395 unique actors for ESMA consultations alone. This difference can be explained due to a different assumption on what can be deemed as a unique actor. Whereas Chalmers chose to code different arms of the same organisation (e.g. Citibank Investment Banking and Citibank Retail Banking) as unique actors, I merged these arms into one unique actor (i.e. Citibank), resulting in a lower N. Merging these actors is logical if one considers what interest these groups represent. Both the investment arm and the retail banking arm represent Citibank's interests. If, in a hypothetical situation, these groups would mobilise on the same consultation, chances are slim that these two different arms would represent opposing policy views. Since this research focuses on representation of interests, rather than solely economic activity, it would be incorrect to see both arms of the same bank as representing different interests.

Appendix 2.3: Measuring Volatility Based on Categories

This research uses an adaptation of the volatility measurement as used by Hanegraaff (2015). The measurement is based on the attendance rates of individual stakeholders, meaning the number of times a stakeholder mobilised divided by the total number of consultations per agency per period. Whereas Hanegraaff uses three categories, this research will use four categories allowing to determine shifts in mobilisation in a more detailed way. The four categories consist of: 'tourists', which mobilise on one single consultation; 'incidental actors', which mobilise less than 25 per cent of all consultations; 'regular actors', which mobilise more than 25 per cent, but less than 50 per cent of all consultation; and 'partners', which mobilise more than 50 per cent of all consultations.

In a first step, the number of times a specific group mobilised was counted. This has been done per agency for the three periods separately. The Austrian Federal Economic Chamber (AFEC), for example, mobilised 15 times in EBA consultations before the crisis; 13 times after the crisis; and 37 times after the reforms. Although these frequencies are interesting, they do not tell much about the ability of groups to mobilise relatively often or not.

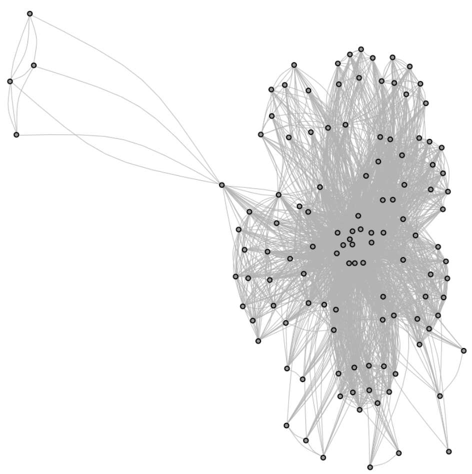
Hence, the number of times a group mobilised has been divided by the total number of consultations in each period. This results in meaningful attendance rates which can be used to compare organisations. The attendance rates have been measured per period per organisation: one before the crisis, one after the crisis and one after the reforms. For example, the AFEC had an attendance rate of 71 per cent before the crisis; 43 per cent after the crisis; and 46 per cent after the reforms. Using the categorisation, one can conclude that AFEC could be considered a partner in the pre-crisis period, but an incidental actor in the post-crisis and post-reform periods. This reflects a shift in mobilisation of AFEC across the ten-year period. Subsequently, I did this for all mobilised actors and aggregated these categories on consultation-level, as mentioned in the article.

APPENDIX 3: FROM CLUBS TO HUBS

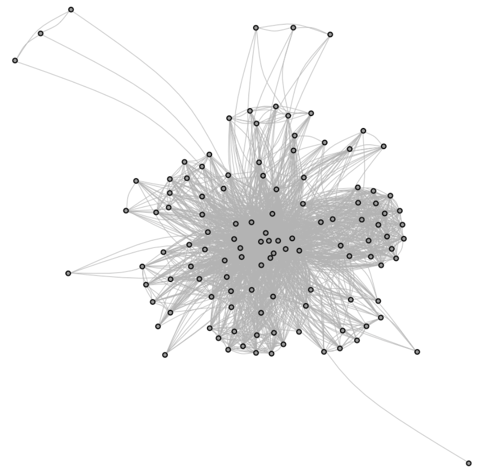
Appendix 3.1: Network Graphs per Agency per Time Period

Figure A2-10: Network graphs per agency per time period

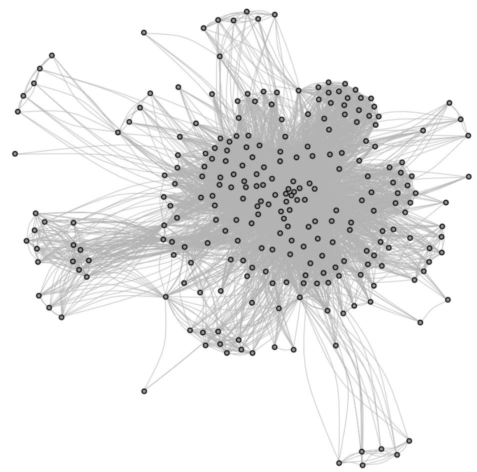
Lobbying Network EBA (2004-2007)



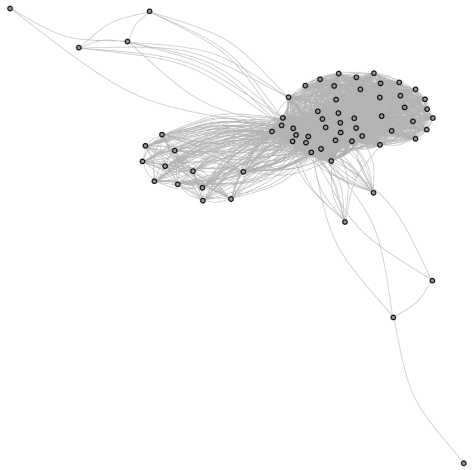
Lobbying Network EBA (2008-2010)



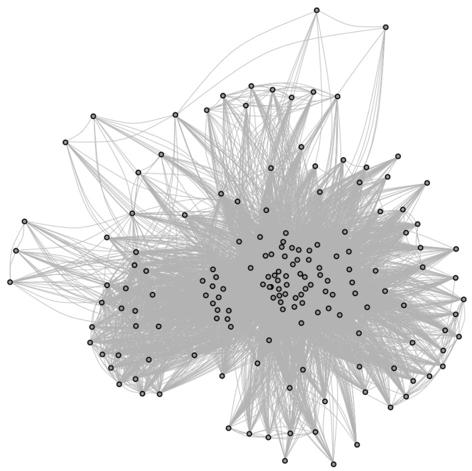
Lobbying Network EBA (2011-2014)



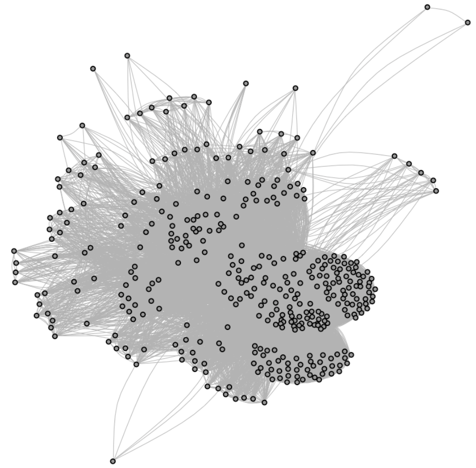
Lobbying Network EIOPA (2004-2007)



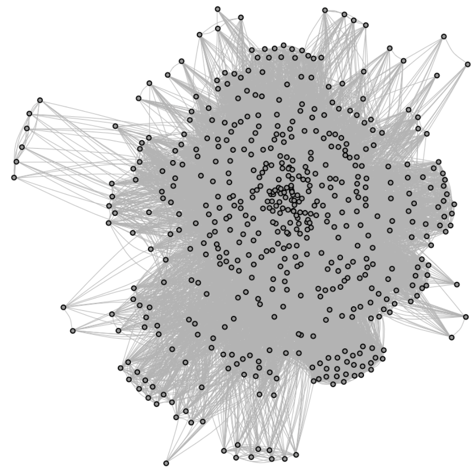
Lobbying Network EIOPA (2008-2010)



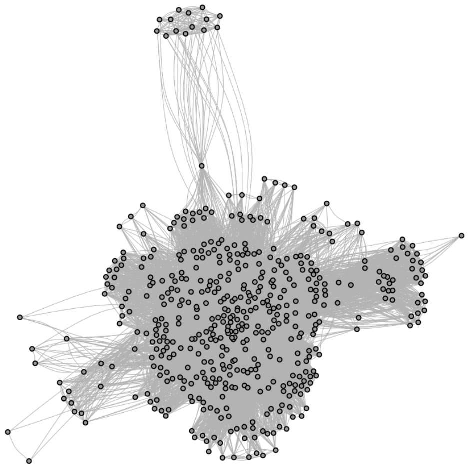
Lobbying Network EIOPA (2011-2014)



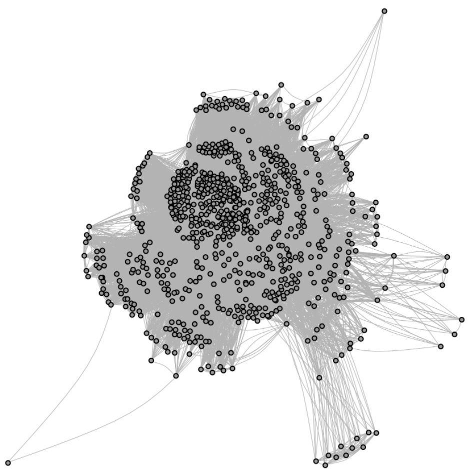
Lobbying Network ESMA (2004-2007)



Lobbying Network ESMA (2008-2010)



Lobbying Network ESMA (2011-2014)



APPENDIX 4: BALANCED IN ACCESS, BIASED IN FUNCTIONING?

Appendix 4.1: Overview of Respondents

Table A1: Overview of respondents

ID	Date	Duration	Location	Affiliation
INT100220	10-02-2020	00:56:16	Skype	Academic
INT120320	12-03-2020	00:58:55	Skype	Consumers
INT260320	26-03-2020	00:58:14	Skype	Consumers
INT030320	03-03-2020	01:10:23	Skype	Industry
INT240220	24-02-2020	00:54:08	Skype	Consumers
INT200220	20-02-2020	01:03:13	Skype	Consumers
INT1702201	17-02-2020	00:50:17	Skype	Academic
INT1402202	14-02-2020	00:52:03	Skype	Consumers
INT1702202	17-02-2020	01:17:40	Brussels	Consumers
INT1402201	14-02-2020	00:59:33	Skype	Academic
INT050320	05-03-2020	01:07:04	Skype	Academic
INT130320	13-03-2020	00:56:20	Skype	Industry
INT280220	28-02-2020	00:55:33	Skype	Academic

Note: For the sake of the respondents' anonymity, choice has been made to not include identifiable information, such as membership to one of the advisory councils, stakeholders' organisation or position, in this overview.

Appendix 4.2: Social Desirability

As similar with other expert interviews, we need to address the possibility respondents giving socially desirable responses to sensitive questions. Indeed, when asking members about their level of expertise or their contribution to the meetings, they might over- or under-estimate their role in the bodies (also see Beyers et al. 2014). We limited this by asking more sensitive questions towards the end of the interview as to use the established trust relationship between interviewer and interviewee. Also, when discussing sensitive topics, we asked multiple questions that tease out a fair estimation of the interviewee. For example, when asking about their expertise, we not only asked whether they felt they had sufficient expertise, but also whether they thought other members had more expertise, and whether they would reckon it useful and necessary to have equal expertise. Besides, we do believe respondents gave us answers that match their actual considerations and behaviour. Most members were surprisingly honest and direct about their level of expertise or contribution to the meetings. Some respondents even admitted that their role is rather limited in the ACs (INT170220; 1402201), and that they do not wish to serve a second mandate (INT170220). This gives us reason to expect that we sufficiently created a safe and trusting environment during the interviews, thus limiting socially desirable responses.

APPENDIX 4.3: INTERVIEW GUIDE

0. Procedural questions

0.1 Recordings?

0.2 Participant Information Sheet and Informed Consent Form

0.3 Introduction research

1. Background stakeholder representative

1.1 What is your role at your organisation?

1.2 How long are you active as a member of the Stakeholder Group?

1.3 How were you selected to be a member of the Stakeholder Group? Do you know why you were selected?

- *Asked by agency*
- *Asked by other member*
- *Asked by chairman of Stakeholder Group*

1.4 In what other ways is your organisation involved in the work of the agency? Does your organisation participate in public consultations? Do you or one of your colleagues have informal contacts with agency officials?

- *How often do you have informal contacts?*
- *What are the differences between involvement via public consultations and via Stakeholder Groups?*

1.5 *Optional*: If you are member of multiple Stakeholder Groups, would you say that these Stakeholder Groups are comparable to one another? Are there differences between the Groups?

2. Functioning of Stakeholder Groups

2.1 What do you think is the primary task or function of the Stakeholder Group in the agency? Could you give an example of this primary task?

2.2 What other tasks of the Stakeholder Group are relevant for the agency?

2.3 Are there different types of meetings? Are there different types of issues on the agenda?

2.4 How would you characterise a typical meeting of the Stakeholder Groups? What are the followed procedures during a meeting? Could you describe what a typical meeting looks like?

- *Are you meeting other members before or after the meeting?*

2.5 How does the Stakeholder Group decide what topics to discuss? Do you follow the agenda and working programs of the agency? Is it possible to initiate reports or opinions as a member?

- *Are some members more prone to initiate reports than others?*

2.6 Are you as a member able to (co-)decide on the agenda of the Stakeholder Group? Could you give an example where you introduced a topic on the agenda? Are other members able to (co-)determine the agenda?

2.7 What are some of the outputs of the Stakeholder Group?

2.8 I noticed in the minutes of the Stakeholder Groups that there are agency officials attending the meetings. What is their role during the meetings?

- *Does their presence affect the tone/content of the discussions?*

3. Discussions in the Stakeholder Groups

3.1 How would you characterise the discussions in the Stakeholder Groups? Could you describe a typical discussion of the Stakeholder Groups?

- *Examples: driven by expertise/driven by interests; a select number of members drive the discussions; which member stake the lead; importance of reputation/expertise/impartiality; conflictual/consensual; differences between junior/senior members.*

3.2 Different stakeholders with different interests often have different positions on certain issues which can sometimes lead to conflict. Can you give an example of a conflictual issue on which members had different positions?

3.3 How does the Stakeholder Group deal with interests that conflict each other? Are there ways to hold minority positions into account?

3.4 In general, how easy or how difficult is it for the members to establish a common position on issues discussed within the body? Are difficulties rather exceptional or unexceptional?

3.5 How are decisions made within the Stakeholder Group? Does the agency have a role in these decisions?

3.6 Following from what we have discussed, do you think the Stakeholder Group is a useful instrument for the agency to consult stakeholders? Does the Stakeholder Group function as it should? What could be improved?

4. Your role as a member of a Stakeholder Group

4.1 What do you see as your primary task as a member of the Stakeholder Group? Could you give an example?

4.2 What other role(s) do you have as a member of a Stakeholder Group?

4.3 How does your role differ from other members of the Stakeholder Group?

4.4 How do you use your expertise during the discussions? Could you give an example?

- Technical/Scientific expertise
- Expertise about own organisation
- Expertise about your constituency

4.5 How do you compare your level of expertise to that of other members?

- Technical/Scientific expertise
- Expertise about own organisation
- Expertise about your constituency

4.6 Would you say that your expertise is sufficient to helpfully contribute to discussions in the Stakeholder Group?

4.7 Are all members able to contribute meaningfully to the discussions of the Stakeholder Group? Which members are able to and which ones are less able to?

4.8 What are the benefits of being a member of a Stakeholder Group? How do those benefits help you or your organisation?

- *Examples: extra venue/channel for policy influence; privileged access to policymakers; exposure of organisation at agency; credibility/reputation-building; expanding own network; informed first about plans agency; insight-sharing between members.*

5. Contribution to policy outcomes

5.1 Do you think the Stakeholder Groups contribute to regulatory policies of the agencies? In what way?

5.2 Do you think that you as member are able to contribute to regulatory policies of the agencies? In what way?

5.3 Do you think that being a member of a Stakeholder Group enhances your chances for influencing regulatory policies?

5.4 If we consider lobbying as 'trying to influence policy / regulation', how exposed are Stakeholders Group to lobbying by its members? Could you give an example of lobbying behavior?

5.5 Which members try to influence most, or most frequently?

5.6 One of the reasons the agency installed the Stakeholder Groups is to ensure a more balanced opinion on regulatory policies. Do you think the Stakeholder Group is an effective instrument to realise this? Why?

6. Concluding questions

6.1 Is there anything you would like to share regarding the Stakeholder Group that we have not discussed in the interview?

6.2 Would you be willing to share contact details of other members who did not yet participate in this research?

REFERENCES

Ackland, R., & Halpin, D. R. (2019). Change or stability in the structure of interest group networks? Evidence from Scottish Public Policy Consultations. *Journal of Public Policy*, *39*(2), 267–294.

Adam, S., & Kriesi, H. (2007). The Network Approach. In P. A. Sabatier (Ed.), *Theories of the Policy Process* (Vol. 2, pp. 189–220). Boulder, CO: Westview Press.

Agné, H., Dellmuth, L. M., & Tallberg, J. (2015). Does stakeholder involvement foster democratic legitimacy in international organizations? An empirical assessment of a normative theory. *Review of International Organizations*, *10*(4), 465–488.

Andersen, S., & Burns, T. R. (1996). The European Union and the erosion of parliamentary democracy: a study of post-parliamentary governance.

Anderson, J., Newmark, A., Gray, V., & Lowery, D. (2004). Mayflies and old bulls: Organization persistence in state interest communities. *State Politics & Policy Quarterly*, *4*(2), 140–160.

Armstrong, K. A. (2002). Rediscovering Civil Society: The European Union and the White Paper on Governance. *European Law Journal*, *8*(1), 102–132.

Arras, S., & Beyers, J. (2020). Access to European Union Agencies: Usual Suspects or Balanced Interest Representation in Open and Closed Consultations? *JCMS: Journal of Common Market Studies*, *58*(4), 836–855.

Arras, S., & Braun, C. (2018). Stakeholders wanted! Why and how European Union agencies involve non-state stakeholders. *Journal of European Public Policy*, 1–19.

Ayres, I., & Braithwaite, J. (1992). *Responsive regulation: Transcending the deregulation debate*. Oxford University Press.

Bäckstrand, K. (2006). Multi-stakeholder partnerships for sustainable development: rethinking legitimacy, accountability and effectiveness. *European Environment*, *16*(5), 290–306.

Bäckstrand, K., Khan, J., Kronsell, A., & Lövbrand, E. (2008). *Environmental Politics and Deliberative Democracy, Examining the Promise of New Modes of Governance*. Cheltenham: Edward Elgar.

Badham, J. M. (2013). Commentary: Measuring the shape of degree distributions. *Network Science*, *1*(2), 213–225.

Baker, A. (2010). Restraining regulatory capture? Anglo-America, crisis politics and trajectories of change in global financial governance. *International Affairs*, *86*(3), 647–663.

Banchoff, T., & Smith, M. (2005). *Legitimacy and the European Union: the contested polity*. Routledge.

Baumgartner, F. R., Berry, J. M., Hojnacki, M., Leech, B. L., & Kimball, D. C. (2009). *Lobbying and policy change: Who wins, who loses, and why*. University of Chicago Press.

Baumgartner, F. R., & Jones, B. D. (1991). Agenda Dynamics and Policy Subsystems. *The Journal of Politics*, *53*(4), 1044–1074.

Baumgartner, F. R., & Jones, B. D. (1993). *Agendas and instability in American politics*. University of Chicago Press.

Baumgartner, F. R., & Leech, B. L. (1998). *Basic interests: The importance of groups in politics and in political science*. Princeton University Press.

Baxter, L. G. (2011). Capture in financial regulation: Can we channel it toward the common good. *Cornell Journal of Law and Public Policy*, *21*, 175.

Beetham, D. (1991). *The Legitimation of Power*. London, England: Macmillan.

Beetham, D., & Lord, C. (1998). *Legitimacy and the EU*. London & New York: Routledge.

Begg, I. (2009). Regulation and supervision of financial intermediaries in the EU: The aftermath of the financial crisis. *JCMS: Journal of Common Market Studies*, *47*(5), 1107–1128.

Berkhout, J., & Lowery, D. (2011). Short-term volatility in the EU interest community. *Journal of European Public Policy*, *18*(1), 1–16.

Bernauer, T., & Gampfer, R. (2013). Effects of civil society involvement on popular legitimacy of global environmental governance. *Global Environmental Change*, *23*(2), 439–449.

Bernhagen, P., & Bräuninger, T. (2005). Structural Power and Public Policy: A Signaling Model of Business Lobbying in Democratic Capitalism. *Political Studies*, *53*(1), 43–64.

Bernstein, S., & Coleman, W. D. (2009). *Unsettled Legitimacy*. New York, NY: University of British Columbia Press.

Bertrand, G., & Michalski, A. (2001). Governance in a larger and more diverse European Union: lessons from scenarios Europe 2010. In O. De Schutter, N. Lebessis, & J. Paterson (Eds.), *Governance in the European Union.'Cahiers' of the Forward Studies Unit* (pp. 241–256). Office for Official Publications of the European Communities.

Beyers, J. (2008). Policy Issues, Organisational Format and the Political Strategies of Interest Organisations. *West European Politics*, *31*(6), 1188–1211.

Beyers, J., & Arras, S. (2019). Who feeds information to regulators? Stakeholder diversity in European Union regulatory agency consultations. *Journal of Public Policy*, 1–26.

Beyers, J., & Arras, S. (2020). Stakeholder consultations and the legitimacy of regulatory decision-making: A survey experiment in Belgium. *Regulation & Governance*.

Beyers, J., Bonafont, L. C., Dür, A., Eising, R., Fink-Hafner, D., Lowery, D., … Naurin, D. (2014). The INTEREURO project: Logic and structure. *Interest Groups & Advocacy*, *3*(2), 126–140.

Beyers, J., Braun, C., Marshall, D., & De Bruycker, I. (2014). Let's talk! On the practice and method of interviewing policy experts. *Interest Groups & Advocacy*, *3*(2), 174–187.

Binder, M., & Heupel, M. (2015). The Legitimacy of the UN Security Council: Evidence from Recent General Assembly Debates. *International Studies Quarterly*, *59*, 238–250.

Binderkrantz, A. S. (2012). Interest groups in the media: Bias and diversity over time. *European Journal of Political Research*, *51*(1), 117–139.

Binderkrantz, A. S., Christiansen, P. M., & Pedersen, H. H. (2020). Mapping interest group access to politics: a presentation of the INTERARENA research project. *Interest Groups & Advocacy*, *9*(3), 290–301.

Blockmans, S., & Russack, S. (2019). *Representative Democracy in the EU: Recovering Legitimacy*. London: Rowman and Littlefield International.

Borrás, S., Koutalakis, C., & Wendler, F. (2007). European Agencies and Input Legitimacy: EFSA, EMeA and EPO in the Post-Delegation Phase. *Journal of European Integration*, *29*(5), 583–600.

Bouwen, P. (2002). Corporate lobbying in the European Union: the logic of access. *Journal of European Public Policy*, *9*(3), 365–390.

Bouwen, P. (2004). Exchanging access goods for access: A comparative study of business lobbying in the European Union institutions. *European Journal of Political Research*, *43*(3), 337–369.

Bovens, M. (2007). Analysing and assessing accountability: A conceptual framework. *European Law Journal*, *13*(4), 447–468.

Box-Steffensmeier, J. M., & Christenson, D. P. (2014). The evolution and formation of amicus curiae networks. *Social Networks*, *36*, 82–96.

Box-Steffensmeier, J. M., & Christenson, D. P. (2015). Comparing membership interest group networks across space and time, size, issue and industry. *Network Science*, *3*(1), 78–97.

Boydstun, A. E., Bevan, S., & Thomas III, H. F. (2014). The importance of attention diversity and how to measure it. *Policy Studies Journal*, *42*(2), 173–196.

Brandes, U., Kenis, P., & Wagner, D. (2003). Communicating centrality in policy network drawings. *IEEE Transactions on Visualization and Computer Graphics*, *9*(2), 241–253.

Braun, C. (2012a). The captive or the broker? Explaining public agency–interest group interactions. *Governance*, *25*(2), 291–314.

Braun, C. (2012b). The Driving Forces of Stability: Exploring the Nature of Long-Term Bureaucracy–Interest Group Interactions. *Administration & Society*, *45*(7), 809–836.

Braun, C. (2013). The driving forces of stability: Exploring the nature of long-term bureaucracy–interest group interactions. *Administration & Society*, *45*(7), 809–836.

Braun, C., Albareda, A., Fraussen, B., & Müller, M. (2020). Bandwagons and Quiet corners in regulatory governance. On regulation-specific and institutional drivers of stakeholder engagement. *International Review of Public Policy*, *2*(2: 2).

Braun, C., & Busuioc, M. (2020). Stakeholder engagement as a conduit for regulatory legitimacy? *Journal of European Public Policy*.

Browne, W. P. (1990). Organized interests and their issue niches: A search for pluralism in a policy domain. *The Journal of Politics*, *52*(2), 477–509.

Buchanan, A. (2002). Political Legitimacy and Democracy. *Ethics*, *112*(4), 689–719.

Buckley, J., & Howarth, D. (2010). Internal market: gesture politics? Explaining the EU's response to the financial crisis. *Journal of Common Market Studies*, *48*(1), 119–141.

Burgess, J. P. (2002). What's so European about the European Union? Legitimacy between Institution and Identity. *European Journal of Social Theory*, *5*(4), 467–481.

Busuioc, M. (2009). Accountability, control and independence: the case of European agencies. *European Law Journal*, *15*(5), 599–615.

Busuioc, M. (2013). Rule-Making by the European Financial Supervisory Authorities: Walking a Tight Rope. *European Law Journal*, *19*(1), 111–125.

Busuioc, M., & Jevnaker, T. (2020). EU agencies' stakeholder bodies: vehicles of enhanced control, legitimacy or bias? *Journal of European Public Policy*, 1–21.

Busuioc, M., & Lodge, M. (2016). The reputational basis of public accountability. *Governance*, *29*(2), 247–263.

Carpenter, D. P., Esterling, K. M., & Lazer, D. M. J. (1998). The strength of weak ties in lobbying networks: Evidence from health-care politics in the United States. *Journal of Theoretical Politics*, *10*(4), 417–444.

Carpenter, D. P., & Moss, D. A. (2014). *Preventing regulatory capture: Special interest influence and how to limit it*. Cambridge University Press.

Chalmers, A. W. (2013). Trading information for access: informational lobbying strategies and interest group access to the European Union. *Journal of European Public Policy*, *20*(1), 39–58.

Chalmers, A. W. (2015). Financial industry mobilisation and securities markets regulation in Europe. *European Journal of Political Research*, *54*(3), 482–501.

Chalmers, A. W. (2017). When Banks Lobby: The Effects of Organizational Characteristics and Banking Regulations on International Bank Lobbying. *Business and Politics*, *19*(1), 107–134.

Chalmers, A. W., & Young, K. L. (2020). Network effects in the formation of the financial industry's regulatory preferences in the European Union. *Business and Politics*, *22*(1), 52–84.

Chatzopoulou, S. (2015). Unpacking the Mechanisms of the EU 'Throughput' Governance Legitimacy: The Case of EFSA. *European Politics and Society*, *16*(2), 159–177.

Christensen, T., & Lægreid, P. (2006). Agencification and regulatory reforms. *Autonomy and Regulation. Coping with Agencies in the Modern State*, 8–49.

Christopoulos, D., & Quaglia, L. (2009). Network constraints in EU banking regulation: The capital requirements directive. *Journal of Public Policy*, *29*(2), 179–200.

Coglianese, C., Zeckhauser, R., & Parson, E. (2004). Seeking truth for power: informational strategy and regulatory policymaking. *Minnesota Law Review*, *89*, 277.

Corbo, L., Corrado, R., & Ferriani, S. (2015). A New Order of Things: Network Mechanisms of Field Evolution in the Aftermath of an Exogenous Shock. *Organization Studies*, *37*(3), 323–348.

Curtin, D. (1999a). "Civil Society" and the European Union: Opening Spaces for Deliberative Democracy? *Collected Courses of the Academy of European Law*, 7(1), 185–280.

Curtin, D. (1999b). Transparency and political participation in EU governance: A role for civil society? *Journal for Cultural Research*, *3*(4), 445–471.

Curtin, D. (2005). Delegation to EU Non-Majoritarian Agencies and Emerging Practices of Public Accountability. In D. Gerardin, N. Petit, & R. Muñoz (Eds.), *Regulation through agencies in the EU, a new paradigm of European Governance?* (pp. 88–119). Edward Elgar.

Dahl, R. A. (1990). *After The Revolution?: Authority in a good society*. Yale University Press.

Dal Bó, E. (2006). Regulatory capture: A review. *Oxford Review of Economic Policy*, *22*(2), 203–225.

De Bruycker, I. (2016). Pressure and Expertise: Explaining the Information Supply of Interest Groups in EU Legislative Lobbying. *Journal of Common Market Studies*, *54*(3), 599–616.

De Bruycker, I. (2020). Democratically deficient, yet responsive? How politicization facilitates responsiveness in the European Union. *Journal of European Public Policy*, *27*(6), 834–852.

De Bruycker, I., & Beyers, J. (2015). Balanced or Biased? Interest Groups and Legislative Lobbying in the European News Media. *Political Communication*, *32*(3), 453–474.

De Schutter, O., Lebessis, N., & Paterson, J. (2001). *"Cahiers" of the Forward Studies Unit: Governance in the European Union*. (O. De Schutter, N. Lebessis, & J. Paterson, Eds.). Office for Official Publications of the European Communities.

Dean, M. (1999). *Governmentality: Power and rule in modern society*. London: Sage Publications.

Dehousse, R. (1997). Regulation by networks in the European Community: the role of European agencies. *Journal of European Public Policy*, *4*(2), 246–261.

Dehousse, R. (2001). European governance in search of legitimacy: the need for a process-based approach. In O. De Schutter, N. Lebessis, & J. Paterson (Eds.), *"Cahiers" of the Forward Studies Unit: Governance in the European Union* (pp. 169–187). Office for Official Publications of the European Communities.

Deleixhe, M. (2016). Conflicts in common(s)? Radical democracy and the governance of the commons. *Thesis Eleven*, *144*(1), 59–79.

Dellmuth, L. M., & Tallberg, J. (2014). The social legitimacy of international organisations: Interest representation, institutional performance, and confidence extrapolation in the United Nations. *Review of International Studies*, *41*(3), 451–475.

Dempsey, J. (2011). EU Elites Keep Power From the People. *The New York Times*. Retrieved from http://www.nytimes.com/2011/08/23/world/europe/23iht-letter23.html

Denitch, B. D. (1979). *Legitimation of Regimes: International Frameworks for Analysis*. Beverly Hills, CA: Sage.

Diamond, L. J. (2008). *The Spirit of Democracy*. New York, NY: Henry Holten.

Dostie, C., & Paquin, S. (2014). L'insoutenable légitimité du FMI. *Revue Interventions Economiques*, *49*, 1–17.

Dryzek, J. S., & Niemeyer, S. (2007). *Discursive representation. Paper presented at the annual meeting for the American Political Science Association*. Chicago.

Duchesne, S., & Frognier, A.-P. (1995). Is there a European identity? *Public Opinion and Internationalized Governance*, *2*, 193–226.

Dür, A., Bernhagen, P., & Marshall, D. (2015). Interest group success in the European Union: When (and why) does business lose? *Comparative Political Studies*, *48*(8), 951–983.

Dür, A., & Mateo, G. (2016). *Insiders versus outsiders: Interest group politics in multilevel Europe*. Oxford University Press.

Economic and Social Committee. (1999). *Opinion on "The role and contribution of civil society organisations in the building of Europe" (OJ C329)*. Brussels.

Elster, J. (1986). The Market and the Forum: Three Varieties of Democratic Theory. In J. Elster & A. Hylland (Eds.), *Foundations of Social Choice Theory* (pp. 103–132). Cambridge: Cambridge University Press.

European Banking Authority. Rules of Procedure of the Banking Stakeholder Group (2015). Retrieved from https://eba.europa.eu/sites/default/documents/files/documents/10180/17417/68861555-e7b6-44aa-a537-f03a7c27d6b2/BSG-Rules-of-Procedure.pdf

European Commission. (2001). *European Governance: A White Paper. COM (2001) 428 final*. Brussels.

European Commission. (2002a). *'Report from the Commission on European Governance' COM (202) 705 final: 24*. Brussels.

European Commission. (2002b). The Operating Framework for the European Regulatory Agencies. *COM(2002) 718 Final*.

European Commission. (2003). *2004/5/EC: Commission Decision of 5 November 2003 establishing the Committee of European Banking Supervisors*. Brussels.

European Insurance and Occupational Pensions Authority. Rules of Procedure of the Insurance and Reinsurance Stakeholder Group of the European Insurance and Occupational Pensions Authority (2020). Retrieved from https://www.eiopa.europa.eu/sites/default/files/publications/administrative/eiopa-insurance-reinsurance-stakeholder-group-rules-procedure.pdf

European Securities and Markets Authority. Rules of Procedure of the European Securities and Markets Stakeholder Group (2020). Retrieved from https://www.esma.europa.eu/sites/default/files/library/esma22-106-2371_smsg_rules_of_procedure_2020.pdf

European Shadow Financial Regulation Committee. (2001). *The Regulation of European Securities Markets: The Lamfalussy Report*.

European Union. (2018). Goals and values of the EU. Retrieved February 19, 2019, from https://europa.eu/european-union/about-eu/eu-in-brief_en

Faust, K. (1994). Centrality in affiliation networks. *Social Networks*, *19*(2), 157–191.

Faust, K., & Wasserman, S. (1992). Centrality and prestige: A review and synthesis. *Journal of Quantitative Anthropology*, *4*(1), 23–78.

Fink, S., & Ruffing, E. (2020). Stakeholder consultations as reputation-building: a comparison of ACER and the German Federal Network Agency. *Journal of European Public Policy*, *27*(11), 1657–1676.

Flöthe, L., & Rasmussen, A. (2019). Public voices in the heavenly chorus? Group type bias and opinion representation. *Journal of European Public Policy*, *26*(6), 824–842.

Forst, R. (2017). *Normativity and power: Analyzing social orders of justification*. Oxford University Press.

Fraussen, B., Albareda, A., & Braun, C. (2020). Conceptualizing consultation approaches: identifying combinations of consultation tools and analyzing their implications for stakeholder diversity. *Policy Sciences*, 1–21.

Fraussen, B., Beyers, J., & Donas, T. (2015). The expanding core and varying degrees of insiderness: Institutionalised interest group access to advisory councils. *Political Studies*, *63*(3), 569–588.

Freeman, L. C. (1979). Centrality in Social Networks: Conceptual Clarification. *Social Networks*, *1*(3), 215–239.

Friedkin, N. E. (1991). Theoretical foundations for centrality measures. *American Journal of Sociology*, *96*(6), 1478–1504.

Fung, A. (2006). Varieties of Participation in Complex Governance. *Public Administration Review* , *66*(1), 66–75.

Furlong, S. R., & Kerwin, C. M. (2004). Interest Group Participation in Rule Making: A Decade of Change. *Journal of Public Administration Research and Theory*, *15*(3), 353–370.

Garcia Martinez, M., Verbruggen, P., & Fearne, A. (2013). Risk-based approaches to food safety regulation: what role for co-regulation? *Journal of Risk Research*, *16*(9), 1101–1121.

Gaus, D. (2010). *Two kinds of democratic legitimacy for the EU? Input- and output-oriented legitimacy as a case of conceptual misformation. Manuscript: ARENA/University of Oslo.*

Gilardi, F. (2004). Institutional change in regulatory policies: regulation through independent agencies and the three new institutionalisms. In J. Jordana & D. Levi-Faur (Eds.), *The Politics of Regulation. Institutions and Regulatory Reforms for the Age of Governance* (pp. 67–90).

Gilley, B. (2009). *The Right to Rule. How States Win and Lose Legitimacy* . New York, NY: Columbia University Press.

Goodin, R. E. (2007). Enfranchising all affected interests, and its alternatives. *Philosophy & Public Affairs*, *35*(1), 40–68.

Gornitzka, Å., & Sverdrup, U. (2011). Access of experts: Information and EU decision-making. *West European Politics*, *34*(1), 48–70.

Gornitzka, Å., & Sverdrup, U. (2015). Societal inclusion in expert venues: participation of interest groups and business in the European Commission expert groups. *Politics and Governance*, *3*(1).

Grabosky, P. (2013). Beyond Responsive Regulation: The expanding role of non-state actors in the regulatory process. *Regulation & Governance*, *7*(1), 114–123.

Greenwood, J. (2007). Organized civil society and democratic legitimacy in the European Union. *British Journal of Political Science*, *37*(2), 333–357.

Grimmelikhuijsen, S., Herkes, F., Leistikow, I., Verkroost, J., de Vries, F., & Zijlstra, W. G. (2021). Can decision transparency increase citizen trust in regulatory agencies? Evidence from a representative survey experiment. *Regulation & Governance*, *15*(1), 17–31.

Gronau, J., & Schmidtke, H. (2015). The quest for legitimacy in world politics – international institutions' legitimation strategies. *Review of International Studies*, *42*(3), 535–557.

Grote, J., Lang, A., & Schneider, V. (2008). *Organized business interests in changing environments: The complexity of adaptation*. Springer.

Hanegraaff, M. (2015). Transnational advocacy over time: business and NGO mobilization at UN climate summits. *Global Environmental Politics*, *15*(1), 83–104.

Hansen, J. M. (1991). *Gaining access: Congress and the farm lobby, 1919-1981.* University of Chicago Press.

Heclo, H. (1978). Issue Networks and the Executive Establishment. In A. King (Ed.), *The New American Political System* (Vol. 413, pp. 46–57). Washington DC: American Enterprise Institute.

Heinz, J. P., Laumann, E. O., Nelson, R. L., & Salisbury, R. H. (1993). *The hollow core: Private interests in national policy making*. Harvard University Press.

Held, D. (2010). Reframing Global Governance. In G. W. Brown & D. Held (Eds.), *The Cosmopolitanism Reader* (pp. 293–311). Malden, MA: Polity Press.

Hennessy, A. (2014). Redesigning financial supervision in the European Union (2009–2013). *Journal of European Public Policy*, *21*(2), 151–168.

Hibbing, J. R., & Theiss-Morse, E. (2008). Voice, validation, and legitimacy. *Cooperation: The Political Psychology of Effective Human Interaction*, 123–142.

Hix, S. (1998). The study of the European Union II: the 'new governance'agenda and its rival. *Journal of European Public Policy*, *5*(1), 38–65.

Hix, S., & Marsh, M. (2005). Understanding European Parliament Elections: Punishment or Protest. In *9th Biennial EUSA Conference, Austin, TX* (Vol. 31).

Holzinger, K. (2004). Bargaining through arguing: an empirical analysis based on speech act theory. *Political Communication, 21*(2), 195–222.

Horeth, M. (1999). No way out for the beast? The unsolved legitimacy problem of European governance. *Journal of European Public Policy*, *6*(2), 249–268.

Ipsen, H. P. (1972). Europäisches Gemeinschaftsrecht. *Tübingen: Mohr.*

James, S., Pagliari, S., & Young, K. L. (2020). The internationalization of European financial networks: a quantitative text analysis of EU consultation responses. *Review of International Political Economy*, 1–28.

Jones, B. D., & Baumgartner, F. R. (2005). *The politics of attention: How government prioritizes problems*. University of Chicago Press.

Joosen, R. (2020). The tip of the iceberg – interest group behaviour in rule drafting and consultations during EU agency rulemaking. *Journal of European Public Policy*, *27*(11), 1677–1697.

Kastner, L. (2014). 'Much ado about nothing?' Transnational civil society, consumer protection and financial regulatory reform. *Review of International Political Economy*, *21*(6), 1313–1345.

Kastner, L. (2017). Tracing policy influence of diffuse interests: the post-crisis consumer finance protection politics in the US. *Journal of Civil Society*, *13*(2), 130–148.

Katz, R. S. (2001). Models of democracy: elite attitudes and the democratic deficit in the European Union. *European Union Politics*, *2*(1), 53–79.

Keck, M. E. (2004). Governance regimes and the politics of discursive representation . In A. Uhlin & N. Piper (Eds.), *Transnational activism in Asia: Problems of power and democracy* (pp. 43–60). London: Routledge.

Kelemen, R. D. (2005). The politics of Eurocracy: building a new European state? *The State of the European Union*, *7*, 173–189.

Keller, E. (2018). Noisy business politics: lobbying strategies and business influence after the financial crisis. *Journal of European Public Policy*, *25*(3), 287–306.

Keohane, R. O. (2006). *The contingent legitimacy of multilateralism. GARNET Working Paper: No: 09/06.*

Kirsch, L., & Mayer, R. N. (2013). *Financial Justice: The People's Campaign to Stop Lender Abuse: The People's Campaign to Stop Lender Abuse*. Praeger.

Klüver, H. (2012). Biasing Politics? Interest Group Participation in EU Policy-Making. *West European Politics*, *35*(5), 1114–1133.

Knoke, D. (1990). Networks of political action: Toward theory construction. *Social Forces*, *68*(4), 1041–1063.

Knoke, D., & Burt, R. S. (1983). Prominence. *Applied Network Analysis*, 195–222.

Kohler-Koch, Beate. (1994). Changing Patterns of Interest Intermediation in the European Union. *Government and Opposition*, *29*(2), 166–180.

Kohler-Koch, Beate. (2007). The organization of interests and democracy in the European Union. In B. Kohler-Koch & B. Rittberger (Eds.), *Debating the democratic legitimacy of the European Union* (pp. 255–271). Rowman & Littlefield.

Kohler-Koch, Beate. (2010). Civil society and EU democracy: 'astroturf' representation? *Journal of European Public Policy*, *17*(1), 100–116.

Kohler-Koch, Beate, & Quittkat, C. (2013). *De-mystification of participatory democracy: EU-governance and civil society*. Oxford: Oxford University Press.

Kousser, T. (2004). Retrospective voting and strategic behavior in European Parliament elections. *Electoral Studies*, *23*(1), 1–21.

Kröger, S. (2008). Nothing but consultation: The place of organised civil society in EU policy-making across policies. *European Governance Papers (EUROGOV), No. C-08-0.*

Kruse, S., & Welzel, C. (2017). The Legitimacy Puzzle: Why So Many People Confuse the Absence of Democracy with Its Presence. *World Values Research*, *9*(2), 1–30.

Kwak, J. (2014). Cultural capture and the financial crisis. *Preventing Regulatory Capture: Special Interest Influence and How to Limit It*, *71*, 79–81.

Lall, R. (2012). From failure to failure: The politics of international banking regulation. *Review of International Political Economy*, *19*(4), 609–638.

LaPira, T. M., Thomas, H. F., & Baumgartner, F. R. (2009). The structure and stability of lobbying networks in washington. In *annual meeting of the Midwest Political Science Association*. Citeseer.

LaPira, T. M., Thomas, H. F., & Baumgartner, F. R. (2014). The two worlds of lobbying: Washington lobbyists in the core and on the periphery. *Interest Groups & Advocacy*, *3*(3), 219–245.

Laumann, E. O., & Knoke, D. (1987). *The organizational state: Social choice in national policy domains*. Univ of Wisconsin Press.

Lebessis, N., & Paterson, J. (2001). Developing New Modes of Governance. In O. De Schutter, N. Lebessis, & J. Paterson (Eds.), *"Cahiers" of the Forward Studies Unit: Governance in the European Union* (pp. 259–293). Office for Official Publications of the European Communities.

Lenaerts, K., & Desomer, M. (2002). New Models of Constitution. Making Europe: The Quest for Legitimacy. *Common Market Law Review*, *39*(6), 1217–1253.

Lenz, T., & Viola, L. A. (2017). Legitimacy and institutional change in international organisations: a cognitive approach. *Review of International Studies*, *43*(5), 939–961.

Lindblom, C. E. (2017). The science of "muddling through." *Foundations of the Planning Enterprise: Critical Essays in Planning Theory: Volume 1*, *19*(2), 337–355.

Lindgren, K.-O., & Persson, T. (2010). Input and output legitimacy: synergy or trade-off? Empirical evidence from an EU survey. *Journal of European Public Policy*, *17*(4), 449–467.

Lodge, J. (1994). The European Parliament and the authority-democracy crises. *The Annals of the American Academy of Political and Social Science*, *531*(1), 69–83.

Longo, M., & Murray, P. (2015). *Europe's legitimacy crisis: From causes to solutions*. Springer.

Lord, C. (2013). The democratic legitimacy of codecision. *Journal of European Public Policy*, *20*(7), 1056–1073.

Lowery, D., Baumgartner, F. R., Berkhout, J., Berry, J. M., Halpin, D., Hojnacki, M., …

Schlozman, K. L. (2015). Images of an unbiased interest system. *Journal of European Public Policy*, *22*(8), 1212–1231.

Lowery, D., & Gray, V. (2004). Bias in the heavenly chorus: Interests in society and before government. *Journal of Theoretical Politics*, *16*(1), 5–29.

Mahoney, C. (2004). The Power of Institutions: State and Interest Group Activity in the European Union. *European Union Politics*, *5*(4), 441–466.

Majone, G. (1993). The European Community between social policy and social regulation. *Journal of Common Market Studies*, *31*(2), 153–170.

Majone, G. (1997). The new European agencies: regulation by information. *Journal of European Public Policy*, *4*(2), 262–275.

Majone, G. (1998). Europe's 'democratic deficit': The question of standards. *European Law Journal*, *4*(1), 5–28.

Majone, G., & Everson, M. (2001). Institutional reform: independent agencies, oversight, coordination and procedural control. In O. De Schutter, N. Lebessis, & J. Paterson (Eds.), *"Cahiers" of the Forward Studies Unit: Governance in the European Union* (pp. 129–168). Office for Official Publications of the European Communities.

March, J. G., & Olsen, J. P. (2009). *The Logic of Appropriatenss. Working Papers* (Vol. 04/09). Oslo: ARENA, Centre fo European Studies.

Marsh, D., & Smith, M. (2000). Understanding policy networks: towards a dialectical approach. *Political Studies*, *48*(1), 4–21.

Mattila, M. (2003). Why bother? Determinants of turnout in the European elections. *Electoral Studies*, *22*(3), 449–468.

Moravcsik, A. (2002). Reassessing legitimacy in the European Union. *Journal of Common Market Studies*, *40*(4), 603–624.

Moravcsik, A. (2008). The myth of Europe's' democratic deficit'. *Intereconomics*, *43*(6), 331–340.

Mouffe, C. (2010). Politique et agonisme. *Rue Descartes*, (1), 18–24.

Mügge, D. (2006). Reordering the marketplace: competition politics in European finance. *JCMS: Journal of Common Market Studies*, *44*(5), 991–1022.

Murdoch, Z., Connolly, S., & Kassim, H. (2018). Administrative legitimacy and the democratic deficit of the European Union. *Journal of European Public Policy*, *25*(3), 389–408.

Näsström, S. (2011). The challenge of the all-affected principle. *Political Studies*, *59*(1), 116–134.

Newman, A. L., & Posner, E. (2011). International interdependence and regulatory power: Authority, mobility, and markets. *European Journal of International Relations*, *17*(4), 589–610.

Newman, M. E. J. (2006). Modularity and community structure in networks. *Proceedings of the National Academy of Sciences*, *103*(23), 8577–8582.

Olson, M. (1965). *Logic of Collective Action: Public Goods and the Theory of Groups*. Harvard University Press.

Ottow, A. (2015). *Market and competition authorities: good agency principles*. Oxford University Press: Oxford.

Pagliari, S. (2012a). How can we mitigate capture in financial regulation? In S. Pagliari (Ed.), *Making Good Financial Regulation: Towards a Policy Response to Regulatory Capture* (pp. 1–50). International Centre for Financial Regulation.

Pagliari, S. (2012b). *Making good financial regulation: Towards a policy response to regulatory capture*. Grosvenor House Publishing.

Pagliari, S., & Young, K. L. (2014). Leveraged interests: Financial industry power and the role of private sector coalitions. *Review of International Political Economy*, *21*(3), 575–610.

Pagliari, S., & Young, K. L. (2015). The interest ecology of financial regulation: interest group plurality in the design of financial regulatory policies. *Socio-Economic Review*, *14*(2), 309–337.

Papadopoulos, Y. (2007). Problems of democratic accountability in network and multilevel governance. *European Law Journal*, *13*(4), 469–486.

Papadopoulos, Y. (2010). Accountability and Multi-level Governance: More Accountability, Less Democracy? *West European Politics*, *33*(5), 1030–1049.

Pérez Durán, I. (2018). Interest group representation in the formal design of European Union agencies. *Regulation & Governance*, *12*(2), 238–262.

Peterson, J. (1995). Policy networks and European Union policy making: a reply to Kassim. *West European Politics*, *18*(2), 389–407.

Pollitt, C., Talbot, C., Caulfield, J., & Smullen, A. (2004). *Agencies: How governments do things through semi-autonomous organizations*. Springer.

Pons, P., & Latapy, M. (2005). Computing communities in large networks using random walks. In *International symposium on computer and information sciences* (pp. 284–293). Springer.

Porpora, D. V. (1993). Cultural Rules and Material Relations. *Sociological Theory*, *11*(2), 212–229.

Porpora, D. V. (2013). Morphogenesis and Social Change. In *Social Morphogenesis* (pp. 25–37). Cham: Spring.

Posner, E., & Véron, N. (2010). The EU and financial regulation: power without purpose? *Journal of European Public Policy*, *17*(3), 400–415.

Quaglia, L. (2008). Financial sector committee governance in the European Union. *European Integration*, *30*(4), 563–578.

Quaglia, L. (2011). The 'Old' and 'New' Political Economy of Hedge Fund Regulation in the European Union. *West European Politics*, *34*(4), 665–682.

Rasmussen, A., & Carroll, B. J. (2014). Determinants of upper-class dominance in the heavenly chorus: Lessons from European Union online consultations. *British Journal of Political Science*, *44*(2), 445–459.

Rasmussen, A., & Gross, V. (2015). Biased access? Exploring selection to advisory committees. *European Political Science Review*, *7*(3), 343–372.

Raunio, T. (1999). Always one step behind? National legislatures and the European Union. *Government and Opposition*, *34*(2), 180–202.

Redert, B. (frth.). *From Clubs to Hubs: Analysing Lobbying Networks in EU Financial Regulation After Crisis*.

Redert, B. (2020). Stakeholder Mobilization in Financial Regulation: A Comparison of EU Regulatory Politics over Time. *JCMS: Journal of Common Market Studies*, *58*(6), 1433–1451.

Redert, B., & Bursens, P. (frth.). *Balanced in Access, Biased in Functioning? A Qualitative Perspective on Advisory Councils of EU Agencies*.

Rhodes, R. A. W. (1997). *Understanding governance: Policy networks, governance, reflexivity and accountability*. Open University.

Richardson, J. (2000). Government, interest groups and policy change. *Political Studies*, *48*(5), 1006–1025.

Rimkutė, D. (2020). Strategic silence or regulatory talk? Regulatory agency responses to public allegations amidst the glyphosate controversy. *Journal of European Public Policy*, *27*(11), 1636–1656.

Risse, T. (2000). "Let's argue!": communicative action in world politics. *International Organization*, *54*(1), 1–39.

Rittberger, B., & Wonka, A. (2011). Introduction: agency governance in the European Union. *Journal of European Public Policy*, *18*(6), 780–789.

Saward, M. (2009). Authorisation and authenticity: Representation and the unelected. *The Journal of Political Philosophy*, *17*(1), 1–22.

Scharpf, F. W. (1997). *Games Real Actors Play. Actor-Centered Instsitutionalism in Policy Research*. Boulder, CO: Westview.

Scharpf, F. W. (1999). *Governing in Europe: Effective and democratic?* Oxford University Press.

Scharpf, F. W. (2003). Problem-solving Effectiveness and Democratic Accountability in the EU. *MPIfG Working Paper, No. 03/1*.

Scharpf, F. W. (2009). Legitimacy in the multilevel European polity. *European Political Science Review*, *1*(02).

Schattschneider, E. E. (1960). *The semisovereign people: A realist's view of democracy in America*. Wadsworth Publishing Company.

Schimmelfennig, F. (1996). *Legitimate rule in the European Union*. Center for German and European Studies, University of California at Berkeley.

Schlozman, K. L., Verba, S., & Brady, H. E. (2012). *The unheavenly chorus: Unequal political voice and the broken promise of American democracy*. Princeton University Press.

Schmidt, V. A. (2006). *Democracy in Europe: The EU and national polities*. Oxford University Press.

Schmidt, V. A. (2008). Discursive Institutionalism: The Explanatory Power of Ideas and Discourse. *Annual Review of Political Science*, *11*(1), 303–326.

Schmidt, V. A. (2013). Democracy and legitimacy in the European Union revisited: Input, output and 'throughput.' *Political Studies*, *61*(1), 2–22.

Schmitter, P. C. (2001). *What is there to legitimize in the European Union... and how might this be accomplished? Reihe Politikwissenschaft* (Vol. 75). Vienna.

Schmitter, P. C. (2011). Diagnosing and Designing Democracy in Europe. In S. Alonso, J. Keane, & W. Merkel (Eds.), *The Future of Representative Democracy* (pp. 191–211). Cambridge: Cambridge University Press.

Scholte, J. A. (2004). Civil Society and Democratically Accountable Global Governance. *Government and Opposition*, *39*(2), 211–233.

Scholte, J. A. (2013). Civil society and financial markets: what is not happening and why. *Journal of Civil Society*, *9*(2), 129–147.

Scholten, M., & Van Rijsbergen, M. (2014a). Limits of Agencification in the European Union. *German Law Journal*, *15*, 1223.

Scholten, M., & Van Rijsbergen, M. (2014b). The ESMA-short selling case: Erecting a new delegation doctrine in the EU upon the Meroni-Romano remnants. *Legal Issues of Economic Integration*, *41*(4), 389–405.

Skogstad, G. (2003). Legitimacy and/or policy effectiveness?: network governance and GMO regulation in the European Union. *Journal of European Public Policy*, *10*(3), 321–338.

Spini, D. (2008). The double face of civil society. In S. Lucarelli & F. Cerutti (Eds.), *The search for a European identity: values, policies and legitimacy of the European Union* (pp. 142–156). New York: Routledge.

Steffek, J. (2015). The output legitimacy of international organizations and the global public interest. *International Theory*, *7*(02), 263–293.

Steffek, J., & Ferretti, M. P. (2009). Accountability or "Good Decisions"? The Competing Goals of Civil Society Participation in International Governance. *Global Society*, *23*(1), 37–57.

Steffek, J., Kissling, C., & Nanz, P. (2007). *Civil society participation in European and global governance: A cure for the democratic deficit?* Springer.

Steffek, J., & Nanz, P. (2004). Global Governance, Participation and the Public Sphere. *Government and Opposition*, *39*(2), 314–335.

Stevenson, H. (2016). The Wisdom of the Many in Global Governance: An Epistemic-Democratic Defense of Diversity and Inclusion. *International Studies Quarterly*, *60*(3), 400–412.

Stie, A. E. (2021). Crises and the EU's Response: Increasing the Democratic Deficit? In *The Palgrave Handbook of EU Crises* (pp. 725–738). Springer.

Stigler, G. J. (1971). The Theory of Economic Regulation. *The Bell Journal of Economics and Management Science*, *2*(1), 3–21.

Streit, M. E., & Mussler, W. (1995). The Economic Constitution of the European Community: From 'Rome' to 'Maastricht.' *European Law Journal*, *1*(1), 5–30.

Suchman, M. C. (1995). Managing Legitimacy: Strategic and Institutional Approaches. *The Academy of Management Review*, *20*(3), 571–610.

Tallberg, J., & Uhlin, A. (2011). Civil society and global democracy: an assessment. In D. Archibugi, M. Koenig-Archibugi, & R. Marchetti (Eds.), *Global Democracy: Normative and Empirical Perspectives* (pp. 210–232). Cambridge University Press.

Thatcher, M., & Stone Sweet, A. (2002). Theory and practice of delegation to non-majoritarian institutions. *West European Politics*, *25*(1), 1–22.

The High Level Group on Financial Regulation. (2009). *De Larosière Report*.

Thiel, M. (2014). European Civil Society and the EU Fundamental Rights Agency: Creating Legitimacy through Civil Society Inclusion? *Journal of European Integration*, *36*(5), 435–451.

Trenz, H.-J. (2017). European civil society: Between participation, representation and discourse. *Policy and Society*, *28*(1), 35–46.

Trondal, J., & Jeppesen, L. (2008). Images of Agency Governance in the European Union. *West European Politics*, *31*(3), 417–441.

Truman, D. B. (1951). The governmental process: Public interests and public opinion. *Alfred A. Knopf: New York*.

Tsingou, E. (2008). Transnational private governance and the Basel process: banking regulation and supervision, private interests and Basel II. In *Transnational private governance and its limits* (pp. 84–94). Routledge.

Tsingou, E. (2010). Regulatory reactions to the global credit crisis: analyzing a policy community under stress. In *Global finance in crisis* (pp. 35–50). Routledge.

Tsingou, E. (2015). Club governance and the making of global financial rules. *Review of International Political Economy*, *22*(2), 225–256.

Turner, A. (2009). *The Turner Review: A regulatory response to the global banking crisis* (Vol. 7). Financial Services Authority London.

Tyler, T. R. (2001). *The psychology of public dissatisfaction with government. What Is it about Government that Americans Dislike?* Cambridge University Press.

Underhill, G. R. D., & Zhang, X. (2008). Setting the rules: private power, political underpinnings, and legitimacy in global monetary and financial governance. *International Affairs*, *84*(3), 535–554.

Van Winden, F. (1999). On the economic theory of interest groups: Towards a group frame of reference in political economics. *Public Choice*, *100*(1–2), 1–29.

Verbruggen, P. (2013). Gorillas in the closet? Public and private actors in the enforcement of transnational private regulation. *Regulation & Governance*, *7*(4), 512–532.

Vikberg, C. (2019). Explaining interest group access to the European Commission's expert groups. *European Union Politics*, 312–332.

Wasserman, S., & Faust, K. (1994). *Social network analysis: Methods and applications* (Vol. 8). Cambridge University Press.

Weber, M. (1922). *Economy and Society. An Outline of Interpretive Sociology*. Berkeley, Los Angeles and London: Univeristy of California Press.

Woll, C. (2013). Lobbying under pressure: the effect of salience on European Union hedge fund regulation. *Journal of Common Market Studies*, *51*(3), 555–572.

Wonka, A., Baumgartner, F. R., Mahoney, C., & Berkhout, J. (2010). Measuring the size and scope of the EU interest group population. *European Union Politics*, *11*(3), 463–476.

Wonka, A., & Rittberger, B. (2010). Credibility, Complexity and Uncertainty: Explaining the Institutional Independence of 29 EU Agencies. *West European Politics*, *33*(4), 730–752.

Young, K. L. (2012). Transnational regulatory capture? An empirical examination of the transnational lobbying of the Basel Committee on Banking Supervision. *Review of International Political Economy*, *19*(4), 663–688.

Young, K. L. (2013). Financial industry groups' adaptation to the post-crisis regulatory environment: Changing approaches to the policy cycle. *Regulation & Governance*, *7*(4), 460–480.

Zürn, M. (1992). Jenseits der Staatlichkeit: über die Folgen der ungleichzeitigen Denationalisierung. *Leviathan*, *20*(4), 490–513.