

# Lobbying in the European Union: how do firms influence the European Commission decisions?

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## **Abstract**

The aim of this thesis project is to develop a thorough analysis of the mechanisms behind the production of European legislation and the influence that firms have on it. To this end I will draw on the Resource Based View (RBV) theory of the firm as well as on lobbying theories from political economy. Focusing on the European public consultation process we want to shed light on how the European Commission produces legislation proposals and how it decides when public consultations are necessary. Using the Transparency Register, a novel database on the European Public Consultations and natural language processing techniques we will analyze which firms influence European Commission decisions. Finally, we will look at the European Commission's willingness to change initiatives proposals according to the amount of information provided by stakeholders

## Introduction

One of the main contributions of political economy is that market regulation cannot be conceived as a unilateral decision-making process. If we want to make an accurate analysis of this phenomenon, we need to understand it as an exchange between two types of interdependent actors seeking to achieve their individual goals Bouwen (2002). Indeed, we need to understand that firms can implement corporate political strategies to influence decision-makers in order to obtain favorable regulations. Whether we are talking about an increase in regulated prices, the blocking of competitors or tax exemptions, we can see that successful implementation of such strategies can be very beneficial for firms. One of the most common strategies is lobbying which can be defined as any attempt by individuals or private interest groups to influence the decisions of government. Thus firms compete not only in the regular market, but also in the political arena to influence decision makers, thus creating a market advantage for those who succeed Baron (1999). That's why it's interesting to study the impact of lobbying on legislation, especially given its impact on the market and moreover on the well-being of the population; if legislation can be heavily influenced by private interests, does it still serve the interests of the population?

With this in mind the European Union seems to be an interesting environment in which to study this phenomenon especially given its policy-making process, which, according to Article 11 of the Treaty of the European Union requires an open and transparent dialogue with stakeholders. Indeed, the EU is a supranational organization that brings together 27 country members making it the largest economy in the world, and whose executive body (the European Commission) is tasked with issuing decisions that are coherent with the specificity of each of its members. This can be a very difficult task, requiring a great deal of information and expertise that the Commission do not possess in full, forcing it to look for it elsewhere. For this reason, before submitting any proposal to the European Parliament and the Council, or implementing a regulatory initiative, the European Commission must gather information from firms, industry associations, NGOs, citizens or any interested party on the activities that could be affected by the forthcoming initiative. To this end the Commission has established two types of stakeholder's consultation procedures:

- Publication of the draft of the forthcoming initiative and opening it for feedback from stakeholders for a period of 4 weeks.
- Organizing a public consultation in which in addition to publishing the draft initiative, the Commission publishes a public questionnaire to which any interested actor can reply and send additional comments in the form of position papers for a period of 12 weeks.

At the end of the consultation period, the Commission processes the information received and amends the original text with the information provided by stakeholders. As we can see, this consultation process gives stakeholders the opportunity to influence the Commission's decisions in order to achieve a more accommodating legislation.

The main research question of this PhD thesis project is to understand how lobbying influences legislation in the European Union. In order to do this, I will build a database as complete as possible of the texts from of European public consultations and use natural language processing techniques to analyze the content of large amounts of text, allowing a thorough analysis of the contributions made by

stakeholders and of how they influence the European legislation process. This thesis will be structured as follows:

## **Chapter 1: When are public consultations organized?**

According to the European Commission's Better Regulation Guidelines, a public consultation is mandatory for any initiative accompanied by an impact assessment, but they do not explain when impact assessments are required. It is therefore interesting to understand the mechanisms behind the organization of a public consultation. Especially in view of the increase in the cost of producing legislation that this procedure represents. If we consider the Commission as a rational actor, making a trade-off between minimizing the cost of legislation and obtaining the maximum amount of useful information in order to produce accurate legislation, one of the explanations could lie in the complexity of the upcoming initiative, which requires large amounts of information from stakeholders, which can only be obtained by issuing a public questionnaire. To test this hypothesis, I will examine the differences between initiatives where a public consultation is organized and for those where it is not. If this is the case, we should be able to see that initiatives where a public consultation is organized are more complex than the others.

## **Chapter 2: Who influences the decisions of the European Commission?**

Using the public consultation database as well as data from the Transparency Register, I will continue H. Kluver's work on Lobbying as a collective enterprise: winners and losers of policy formulation in the European Union to analyze which stakeholders succeed in lobbying the Commission through European public consultations. In doing so, I will examine the number of participants in a subset of public consultations conducted by the most active Directorates General (DG's) in the organization of public consultations ; is this success determined by the individual characteristics of lobbies or is it the result of a collective lobbying effort? To this end, I intend to assess the text similarities between stakeholders' contributions, the draft initiatives and the final texts issued by the Commission, to see if there is a significant change between the proximity of stakeholders contribution's with the draft proposals and the final texts issued by the commission and, if so, which stakeholders contributions are the most aligned with the Commission final position. But also to analyze the differences between the contributions of different stakeholders to see if the success is the result of the provision of policy-relevant information or the result of a collective lobbying effort. This is where our work will differ from Kluver's in terms of the volume of the consultations that we will be analyzing, thanks to the developing techniques of NLP, as well as the fine-grained analysis of contributor characteristics that the use of the Transparency Register will allow. We expect collective lobbying to play a major role in influencing European legislation.

## Chapter 3 Does more information mean more influence on legislation?

Given that stakeholders can submit position papers to the Commission in addition to their response to the public consultation questionnaire, it would be interesting to analyse the incentives behind the production of such responses, taking into account the additional costs they represent for respondents. To this end, we would like to analyse who are the stakeholders who produce position papers, for which type of consultation they do so, and what is the difference between the information provided by stakeholders in these position papers and the options available in the multiple-choice public consultation questionnaires. This would allow us to see whether position papers are used by stakeholders to provide more information on the policy options included in the public questionnaire, or whether they are used to provide the Commission with new information on alternative policy options to those included in the questionnaire. If this is the case for a significant number of consultations, it would mean that the policy options presented by the Commission do not cover stakeholders' preferences and it would allow us to see whether this new information has an influence on the final proposal presented by the Commission to Parliament and Council.

The main contribution of this PhD project to the existent literature is to carry out a fine-grained analysis of the stakeholder consultation process in the European legislation by investigating whether all firms have the same probability of influencing the commission decisions? And if not, what are the mechanisms behind lobbying success and how does this influence the European legislative process.

## Literature Review

The influence of private interests on regulation is a long-studied topic in economic theory, going back to the seminal work of Olson in (1971), in which he explains the logic behind the formation of interest groups and how their actions are designed to redistribute rents from unorganised interests to organised groups by influencing decision-makers. According to his theory, small groups should be the most successful in collective action because small size allows for better coordination of the heterogeneous interests of group members and more efficient control of free riding behaviour. Here, regulation is conceived as a market designed and operated by industries to obtain accommodating legislation in exchange for political or financial power Stigler (1971). Legislators then have to make a trade-off between satisfying industry demands for regulation at the cost of losing votes, and enacting policies that favour voters in order to stay in power Peltzman (1976).

But influencing legislators is not only based on the exchange of political or financial resources, it can also be based on the exchange of information. Indeed, legislators will try to implement the policies that maximise their probability of being re-elected, but they do not know which policies will do this, so interest groups that have an information advantage on voters' preferences will try to persuade them that voters' interests are aligned with the lobbyists' policy preferences.

Economic theory frequently employs agency models to illustrate the influence of lobbying. These models posit that lobbies contribute to the regulator's decision-making process Grossman and Helpman (1994). However, Hall and Deardoff (2006) posit that lobbying must be conceptualised as a legislative subsidy. They argue that, based on the observation that American interest groups often lobby legislators that are already aligned with their preferences, we need to conceive lobbying not as

an attempt to change the opinion of opposing legislators but as a subsidy for legislators with common policy preferences in order to help them achieve their common goals. This thesis will focus on informational lobbying, defined by Baron (2013) as the strategic supply of politically relevant information to government representatives.

With regard to the firms' side, Hillman and Hitt (1999) categorise corporate political strategies into three decision levels. Firstly, firms must determine whether to adopt a relational approach, which involves active engagement in the political arena with the objective of influencing regulatory decisions before they are made, or a transactional approach, which entails implementing a defensive strategy only when a problem arises. Secondly, firms must decide whether to act individually or collectively. Finally, firms must select the strategy to pursue, which may include financial incentives, the provision of information, or constituency-building strategies.

At this stage different lobbying strategies can be adopted: there can be a confrontational strategy with firms trying to change legislation to better suit their objectives Baron and Diermeier(2007). Cooperation can exist between NGO's and firms to put in place a labelling strategy Bottega and De Freitas(2009), Brecard (2014) or information disclosure strategies Delmas et al(2019). Long and Lorinczi (2009) identify five distinct stages in which lobbies can influence the EU policy-making process. Their findings indicate that NGOs are more effective at influencing the decision-making process of the EC than firms. Conversely, Coen et al. (2020) suggest that firms tend to mobilize the most during the committee amendments and during the plenary vote.

Empirically speaking, there is a dearth of data on the act of lobbying itself and its potential consequences. While there are some papers that use Latent Semantic Indexing to study the role of political philanthropy in the political process, Bertrand et al. (2018, 2020) are notable exceptions. These studies allow the researchers to estimate the influence of firms in the US legislative process. Anger et al. (2015, 2016) investigate the impact of corporate lobbying in the EU on energy taxes using a principal-agent framework under the Emission Trading Scheme for German firms. Burghaus et al. (2019) employ the EU Transparency Register with a signalling game model to demonstrate that corporate lobbying exerts a positive influence on the distribution of free allowances in the EU Emission Trading Schemes for all member states. H. Kluver (2012) found that the quantity of information provided, the level of citizen support, and the economic power of lobbying groups have a positive impact on the capacity of interest groups to lobby the European Union. This suggests that the most effective approach to influencing the European Commission through public consultations is to act collectively.

## The Data

To conduct our analysis, I will build and use a comprehensive database on European consultations, which will allow us to understand how European decisions are made and how information provided by stakeholders influences these decisions. To do so this, I have collected the information available on the Have our Say website, resulting in a list of 979 online public consultations carried out by the European Commission between 2003 and 2023. To better understand the aim of this project and the difficulties encountered in gathering the information, we need to take a quick look at how the

public consultations are organized. First of all, the European Commission organizes public consultations for different types of initiatives (e.g. proposals for new regulations, proposals for new directives, proposals for Council regulations, evaluations, revisions, or fitness checks of existing legislation). To this end the Commission publishes a roadmap setting out the context of the initiative and a public questionnaire to gather the opinions and information from all the interested parties. After processing this information, the Commission is supposed to publish a “Communication to the Parliament and the Council” in which it amends the pre-existing roadmap by adding the relevant information provided by the stakeholders during the consultation period.

With this in mind I “have gathered all the information available on the “Have your Say” web portal which, is supposed to contain all the information on online consultations but in fact is missing an important part of it. A consultation can have several types of published documents but for our analysis we consider that a consultation is complete when we have the roadmap, the responses to the questionnaire and the “Communication to the Parliament and the Council”. So far, we have been able to collect:

- 535 roadmaps.
- 469 questionnaires for which we have the stakeholder’s responses.
- 343 “communication to the parliament and the council” documents.
- The position papers sent to the commission for 260 consultations.
- The summary reports of the stakeholders contributions of 425 public consultations

In addition, we were able to assign all the 979 consultations to the Directorate General responsible for them. This leaves us with a subset of 211 complete public consultations going from 2016 to 2023 but we are contacting the European Commission to obtain as much of the missing information that should be public as possible.

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