

Consultation with Interest Groups and Legislative Decision Making in the European Union

Anne Rasmussen and Dimiter Toshkov¹²

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¹ Institute of Public Administration, Leiden University. Corresponding addresses: Wassenaarseweg 51, 2300 RB, Leiden, the Netherlands; rasmussena@fsw.leidenuniv.nl; dtoshkov@fsw.leidenuniv.nl

² Both authors contributed equally to this article.

Abstract

Consultation with interest groups plays an important role in the preparation of legislation in the European Union (EU). Despite the proliferation and diversity of methods for consultation used, however, we know little about the impact of consultations on legislative outcomes. Adapting a theoretical framework developed by Gray and Lowery (1995) we derive expectations about the effect of interest group involvement on legislative duration for the case of the EU. In order to explore these conjectures we use 1) data on all co-decision proposals submitted to the EP in the period 2004-09 which tracks and classifies the types of consultations conducted for each act, and 2) a smaller dataset tracking the density and diversity of actors involved in recent online consultations. Using direct regression and matching techniques we find that the involvement of interest groups during the preparatory phase increases overall legislative duration. Open and inclusive consultations are not, however, different in terms of legislative speed from restricted consultations. In addition, the density of the interest group system is not related to duration, according to the analysis of the second dataset. But we find some evidence that the bigger the diversity between the type of actors involved in the online consultations, the longer the legislative process. In sum, we conclude that consultation with interest groups does not have the purported beneficial effects for the duration of the legislative process.

1 Introduction

The responsiveness of governments to the political demands of the citizen is at the forefront of the research agenda of political science. The degree to which there is correspondance between public "demands" and policy "supply" touches upon the core dynamics of political representation. It is therefore surprising that there is little empirical research that systematically investigates whether there is such a link between the opinion of the citizens and public policy in practice (for exceptions see Arnold and Franklin 2006, Carrubba 2002, Franklin and Wlezien 1997, Soroka and Wlezien 2009, Toshkov 2011). When examining government responsiveness, the existing literature has often focused on the number of legislative acts agreed by governments without examining other aspects of responsiveness, such as how long it takes governments to respond to citizen demands (Toshkov 2011). Moreover, public opinion data has been used as a proxy for citizen demands even if such data mainly shows the attitude of the citizens towards certain policies rather than the number of actual demands for new policies raised by citizens to the decision-makers.

This paper extends work on political responsiveness to citizen demands by providing new measures for both sides of the equation. Rather than looking at the volume of legislation delivered by decision-makers to citizens, we look at the speed with which decision-makers react. Moreover, instead of using public opinion as a proxy for citizen demands, the paper uses a newly gathered dataset on the involvement of interest groups and other types of actors in legislative preparation. In this way, we conduct an analysis of the impact of the involvement of different types of actors in legislative preparation phase on the speed with which decision-makers respond to citizen demand and adopt legislation.

Whether the involvement of external interests contributes positively to the provision of public policy has been a recurrent discussion among interest group scholars. The literature contains no lack of warnings that too strong involvement of groups in the legislative processes creates the risk that decisions get captured by powerful, special interests at the expense of the "public interest" as a whole. In his work of the US system, Schattschneider explained how the US system of interest representation "is skewed, loaded and unbalanced in favor of a fraction of a minority" and that, "the flaw in the pluralist heaven is that the heavenly chorus sings with a strong upper-class accent" (1960: 35). Along the same lines, Olson (1965) emphasized that collective action problems will be particularly severe for interests with a high number of potential members and diffuse stakes, which face difficulty mobilizing in the first place. The result is that the policy-making scene is left to a set of groups that are not representative of the opinion of the general public. This negative picture of interest groups being instruments of "greed and selfishness" rather than defenders of the general public interests is also very prominent in the press coverage of their work (Lowery and Brasher 2004). For many scholars and commentators, interest groups are thus nothing but a necessary evil in modern society whose powers needed to be curtailed and monitored closely.

At the same time, there are scholars who present a more positive view of interest groups. They emphasize that in a representative democracy interest groups serve an important function because they act as transmissions belts or gate-keepers between the views of the citizens and the decision-makers (Easton, 1971). In this way, so-called pluralist scholars see groups as an important part of the machinery of government, which helps ensure that the demands of the citizens can be aggregated and passed on

to the political system (Truman 1951). In other words, according to such scholars interests are absolutely crucial for ensuring responsiveness between public "demands" and policy "supply".

There is still a vivid discussion among scholars and commentators of the role of groups in modern democracy, and the verdict is still out whether groups contribute positively or negatively to democracy. Surprising, the discussions have resulted in very little empirical research that systematically tries to examine the effect of interest group involvement on the legislative processes or on the policy outcomes. If we look at research on the EU, it is only in recent years that scholars have started tackling the issue of legislative influence (Dür and de Bièvre 2007), whereas studies of interest group influence on other procedural aspects of decision making do not exist (Eising 1998). The situation is not very different if we shift attention to research on other political system. In their seminal review of the state of the interest group literature, Baumgartner and Leech (1998) concluded that rather than focusing on the interest group system as a whole, interest group scholars had in recent years aspired to much narrower questions. According to them, "questions of collective action and mobilization have replaced group power and influence as the primary foci of interest" (65). Whereas this has contributed to making the discipline more "scientific", such narrow studies of interest groups entail the risk that aspects of the context are ignored which are important for understanding the more general role of these groups.

We propose to bring the literature back to some of the broad questions where it once was by examining the potential impact of the involvement of interest groups in legislative preparation on the legislative processes in the European Union. More specifically, we examine how the ways in which different types of actors have been

involved in legislative preparation affect the speed with which legislators respond and manage to agree on new legislation. Moreover, we analyze how these parameters are affected by the number of actors involved in legislative preparation and by how diverse the representation of different types of actors is in this preparatory phase. The European Union is a political system where interest groups play a particularly prominent role (Gaffney 1996; Kritzinger et al. 2007; Mair 2006; Andersen and Eliassen 1995) but where no one has systematically examined so far how these groups actually affect the legislative processes in which they are so heavily involved. To do so, we use two new datasets on decision making in the European Union. The first dataset covers the period 2005-9 and combines human-assisted coding of the Commission's online consultations with automated data collection (using Python) from the EP's Legislative Observatory and PRELEX to derive data on the existence and type of consultations during legislative preparation and legislative duration. The second dataset looks into detail into a smaller number of proposals for which online consultations have been conducted and collects information on the type and number of different societal actors involved.

Our results show that consultation with interest groups during the legislative preparation slows down the legislative process rather than making it more efficient. When external actors are involved in preparing the legislative dossiers, the transaction costs of bargaining go up and the decision-makers need more time to form the necessary coalitions to reach legislative deals. This conclusion holds irrespective of which kind of consultative mechanism is used to prepare legislation and when controlling for different factors relating to the political salience and controversy of the legislative dossiers. Interestingly, restrictive consultations are not less time-consuming

than open ones, and there is also no straightforward relationship between the number and diversity of participants involved and legislative duration.

The paper begins with a short introduction to the institutional set-up for interest group involvement in the preparation of legislation in the EU. Thereafter, we discuss the existing literature of interest representation and derive expectations about how interest group involvement should affect legislative duration. After a presentation of the data and methodology, we perform the empirical analysis and conclude.

2 External interests in the preparation of EU legislation

The EU puts a lot of efforts into involving external interests in the preparation of EU legislation. One per cent of the EU budget is specifically allocated to promoting the interests of civil society in EU decision making, and a series of mechanisms exist to involve external interests in the early phases of the EU decision making processes. The special construction of the EU political system is one where national parties do not have the option to act as transmission belts between the demands of the citizens and the decision-makers as they do in many national political systems (Lindberg et al. 2008; Gaffney 1996; Kritzinger et al. 2007; Mair 2006; Andersen and Eliassen 1995). Instead, a lot of emphasis is being put on enabling interest groups to fulfill such a gate-keeping function between the citizens and the decision-makers. This means that they enjoy quite a privileged degree of access compared to what we often see at the national level in Europe. The EU's founding documents explicitly state that *"Before proposing legislative acts, the Commission shall consult widely"*³. Especially the European Commission is very eager to ensure that groups are involved in policy making and it has launched a number of initiatives to ensure their participation in the preparatory

³ Article 2, Protocol on the application of the principles of subsidiarity and proportionality, Treaty of Lisbon.

phases of the legislative processes. Doing so fulfills numerous goals. It helps the Commission to obtain valuable expertise necessary for it to produce legislative drafts in a situation where its own resources are limited. It also helps the non-democratically elected Commission bureaucracy to increase the democratic legitimacy behind its proposals. In the Commission own words, "good consultation serves a dual purpose by helping to improve the quality of the policy outcome and at the same time enhancing the involvement of interested parties and the public at large" (COM 2002a: 5). In addition, involving interest groups in the policy preparation might make the implementation of these policies at the national level smoother.

Especially since the beginning of the 21st century, the Commission has been particularly active in its efforts to link to civil society. It launched a series of initiative to improve European Governance (COM 2001) and introducing better regulation (COM2002b). Key in this process was a strategic document on minimum standards for consultation of interested parties, which in the Commission's own words aimed "*towards a reinforced culture of consultation and dialogue*" (COM 2002a). The document lays down a number of general principles and standards that should govern interaction with interested parties, often referred to under the broad heading of "consultations". Consultations can be seen as a process of dialogue among the European Commission and "*representatives of regional and local authorities, civil society organisations, undertakings and associations of undertakings, the individual citizens concerned, academics and technical experts, and interested parties in third countries*" (Commission 2002a: 4). Consultations do not systematically take place on all pieces of legislation but are usually standard with regard to initiatives subject to an extended impact assessment. Criteria for determining whether proposals fall under this heading are that they "*result in substantial economic, environmental and/or social impact on a specific sector, and whether the proposal will have a significant impact on major*

interested parties" and "*whether the proposal represents a major policy reform in one or several sectors*" (COM 2002a: 15).

Consultations can take various forms: sometimes, the Commission conducts consultations according to obligations in the treaties, for example through the use of institutionalized advisory bodies, i.e. the Economic and Social Committee (ESC) and the Committee of Regions (CoR) or as part of the social dialogue. Other times it conducts consultations through what itself refers to as "*less formalized direct contacts with interested parties*" (COM 2002a: 3). It is the second category that to which the minimum standards of consultations apply. However, this second category is broad and includes a wide range of different types of consultations ranging from consultations of the Commission's own expert committees to online consultations in which the general public can participate.

In case the Commission has conducted consultations on a proposal, the activities undertaken are usually described in an initial section of the legislative proposal under the title "*Consultation of Interested Parties*". Our reading of these sections in more than 200 proposals, reveals at least the following types of consultative exercises: 1) Online consultations, 2) Forums, conferences and seminars, 3) Restricted consultations, 4) Consultation of management and labor, and 5) Consultation of EU agencies and institutions.

Online consultations are open to everyone including interest groups, public actors and individual citizens. Calls for consultations are published on most of the Commission DG websites, and the Commission has set up a single access point for the consultations, *Your Voice in Europe*, as part of the Interactive Policy Making initiative from 2001. The website aims to systematize all online consultations published on the DG websites and to provide information about past consultations. In the beginning of each consultation phase, the Commission presents an initial policy document. Subsequently, interested parties are given a period of time to respond in writing. Typically the Commission

finishes the process by outlining what the number of responses were and explaining how it has taken the presented views into account in its final proposal.

Another way to involve external interests is to consult by organizing various meetings such as forums, conferences and seminars. The aim of forums is typically to bring stakeholders and Commission staff together. Examples include *The European Multi-Stakeholder Forum on Corporate Social Responsibility* and the *Pension Forum*. The participants to these consultations are mostly peak-level civil society and economic organizations with EU-wide membership. Membership can be restricted. However, DGs may also organize public conferences and seminars that are in principle open to all types of interests, even though civil society organizations are generally more involved than citizens.

Examples of restricted consultations include consultations of the Commission's own expert committees. The *European Commission Register of Expert Groups* provides summary information about the composition of the expert groups, DG affiliation and tasks. The groups can have a temporary or permanent status and may include academics, different interest groups and public authorities. The groups are created through a legislative act or directly by the Commission services, according to its policy input needs. However, the criteria on which experts are selected are rather obscure. According to Gornitska and Sverdrup, "*The main task of the groups is to advise the Commission on the preparation of legislative proposals and policy initiatives as well as on its tasks of monitoring and coordination or cooperation with the member states*" (2008: 727).

The next type of consultations are consultations of management and labor in accordance with the Treaty. The Treaty establishing the European Community (Articles 154-155 TFEU) sets out mandatory consultation of management and labour by the Commission with regard to social policy. In this policy area, management and labor have a unique status because it is legally required that they be consulted. These

consultations can be compared to consultations of other EU institutions (such as i.e. the Economic and Social Committee (ESC) and the Committee of Regions (CoR)). Again the Treaty requires the Commission to consult these in specific policy areas.

Below we examine the effect of the use of these different kinds of consultative mechanisms on the length of the legislative processes. We examine how A) the type of consultation and b) the number and diversity of the participants involved in a given consultative exercise affect legislative duration. However, before turning to the empirical analysis, we return to the interest group literature to derive some expectations about the effects of these factors on legislative duration.

3 Interest groups and legislative responsiveness

The literature examining how properties of interest group populations (such as the degree of density and diversity) affect the introduction, enactments and the ratio of bill enactments to introductions is rather sparse. Gray and Lowery (1995; 2000) find that it is harder to get legislation passed in US states with a high number of groups that are not very diverse. Moreover, a recent paper (Berkhout et al 2011) examines whether legislative production in the EU systems follows or precedes increases in the density of the EU interest group population. However, to the best of our knowledge no one has so far tried to link characteristics of EU interest group activity to legislative duration.

If one is interested in how responsive legislators are to the characteristics of interest group involvement, it may seem surprising that the issue of duration has been ignored. Clearly, legislative outputs are essential parameters for determining whether legislators respond to group activity. The duration of the legislative process is an important one aspect of this policy responsiveness. At the extreme, legislative outputs may be worth very little if they are provided too late. In order to know whether legislators are really responsive to group activity, we therefore need know not only

whether they provide more outputs when groups are involved, but also whether group involvement affects the speed with which they respond with such outputs.

We have an emerging literature on the speed of the EU legislative processes (Golub 2007; 2008; Golub and Steunenberg 2007; König 2007; 2008; Rasmussen and Toshkov 2011; Toshkov and Rasmussen 2010). However, this literature has not so far paid attention to interest group involvement as an independent variable. This may seem surprising, because the EU system is one where various ways of consulting civil society plays a key role in legislative preparation as explained in the previous section.

In addition to the lack of empirical literature on the relationship between group involvement and speed, we also have no theoretical work on this linkage. At the same time, the interest group literature may offer some implicit speculations about this relationship. We use these ideas to theorize about group involvement in a similar manner to Gray and Lowery's (1994) attempt to draw predictions about the linkage between characteristics of interest group populations and legislative productivity.

The first question that concerns us is how interest group involvement in legislative preparation affects duration. It is possible to imagine two contradictory scenarios. First, we could consider that interest group involvement can decrease duration. Pluralists emphasize that in a representative democracy interest groups serve an important function because they act as transmissions belts or gate-keepers between the views of the citizens and the decision-makers (Easton, 1971). In this way, groups can be seen as an important part of the machinery of government, which helps ensure that the demands of the citizens can be aggregated and passed on to the political system (Truman 1951). The alternative is one where legislators would have to deal with citizens on an individual basis, which would increase the transaction costs of legislative bargaining considerably and require a greater time investment to resolve matters. Another reason why interest group involvement in legislative preparation might decrease legislative duration is that such preparation might help resolve a range of

conflicts before proposals reach the legislative process. If legislative proposals are better prepared, they may be less controversial once introduced, which could help reduce the transaction costs of bargaining considerably and speed up legislative matters. In fact, this argument is the one that the EU institutions have used themselves to explain why a higher share of legislation in the EU co-decision procedure is being reconciled already at the first reading stage. In the 2004-09 status report from the EP delegations to the conciliation committee, it is stated, that "*Perhaps the major factor (our note: explaining early conclusion of the legislative process) is the trend to prepare more exhaustively the 1st reading (through evaluation of the Commission's Impact assessment, systematic evidence gathering, studies, public hearings, etc.)*" (2009: 41).

Alternatively, several arguments can be presented against the idea that interest group involvement in legislative preparation should speed up matters. Most importantly, even if the interest groups involved unquestionably serve an important role aggregating the concerns of citizens to decision-makers, the alternative to group involvement is unlikely to be a version of direct democracy where all citizens appear and voice their concerns to decision-makers on an individual basis on a given piece of legislation. Moreover, whereas involvement of interest groups may help clear issues before the legislative process it could also have exactly the opposite function. It may bring a high number of issues to the attention of decision-makers, which could increase the time they need to resolve matters later on. Hence, according to so-called neo-pluralist scholars (Salisbury 1992; Heinz et al. 1993) having more active interests should make it more difficult (and thus probably also more time-consuming) to enact legislation. These scholars point out how in such a situation having a greater number of actors involved increases the risk that legislation can get delayed or even blocked because of the greater difficulty involved in forming coalitions. As emphasized by Gray and Lowery, "*more and more interest associations strangle their collective ability to influence legislators*" (1995: 548). Our first hypothesis is therefore that:

H1: Legislative proposals where interest groups are involved in the preparation of legislation have a longer duration than those where groups are not involved.

The second sets of questions of relevance to a study of how interest group involvement affects duration is not simply whether involvement has an effect as such, but how the number and diversity of actors involved affect the time decision-makers need to agree on legislation. Just as we would expect interest group involvement in general to increase duration, we would also expect duration to increase, the greater the number of actors that participate in a given consultative exercise. The logic behind our reasoning is largely the same as above. Again extrapolating from neo-pluralist reasoning, we would expect that the difficulty in a dense system of forming coalitions on a piece of legislation should generally be greater. Again this should mean that the risk that legislation gets delayed should therefore also be greater. The more groups that are active, the greater the transaction costs involved in reaching a compromise. Hypothesis 2 is therefore that:

H2: The higher the number of external participants involved in legislative preparation, the longer the legislative process.

Finally, we need to consider how not just the number of groups involved but also the diversity of interests represented might affect duration of the legislative processes. Whether we would expect diversity to matter depends whether one assumes that interest groups compete with each other or not. Some scholars who expected that a higher number of interest groups would result in greater regulatory activity (Olson 1982; Coughlin, Mueller and Murrell 1990; Mueller and Murrell 1986), largely assumed that interest groups do not compete much with each. The claims of different groups were not assumed to cancel out each other. Instead, it was assumed that groups would

engage in some sort of logrolling with each other where each and everyone would get some legislation. Other scholars envisioned that groups would operate in separate niches from each other, in which case they would not even need to engage in logrolling (McFarland 1992; McConnell 1966; Cater 1964) but simply get what they wanted without too much opposition. Whatever the reasoning, the net result is that the higher the total number of groups, the higher the total amount of regulatory activity should be. We would not necessarily expect diversity in the range of represented interest to prolong matters if competition between them is limited. If groups simply divide the pork between them, having a more diverse set of groups on the scene should not necessarily prolong deliberation of concrete pieces of legislation.

However, recent research has demonstrated that there is typically considerable conflict among groups and that it is not the case that they operate in isolated policy niches (Gray and Lower 2000; Walker 1983; Heinz et al. 1993). When conflict between groups exists, we would expect diversity to affect duration negatively. Hence, the greater the degree of diversity is, the greater the potential for conflict between groups should be (Salisbury 1992). In such a situation, it should be harder (and thus slower) to adopt legislation because when a broad range of interests is involved it is likely that a greater set of different views need to be accommodated. Hypothesis 3 states therefore that:

H3: The more diverse the external participants involved in legislative preparation the longer the legislative process.

The logics behind hypotheses 2 and 3 also help us derive predictions what the differential effect of different kinds of consultations conducted by the Commission might be on duration. Hence, as the previous sections made clear, the different ways of involving civil society in the EU distinguish themselves from each other by involving

different numbers of actors and different degrees of diversity in the range of actors involved. Of course we often do not know the precise density and diversity of actors involved in a given consultative exercise. However, it can generally be expected that those types of consultation that involve the public (such as online consultations and open conferences) involve a higher number and more diverse group of actors than consultations that only consult information from a restricted number of actors (for example consultation of expert committees). As it was explained in the overview of the different types of consultations in the previous section, open consultations enable every individual, company, group etc to voice their concerns on a given matter. Whereas this may help the Commission ensure that everyone gets a chance to voice their concerns, it may also mean that the Commission is faced with having to process inputs from a very high number of diverse participants. Instead, restricted consultations of a limited number of experts on a committee might involve considerably lower transaction costs for the decision-makers when they subsequently have to reach a compromise. One of the philosophies behind a corporatist system where a strong relationship is established between the state and a *narrow* set of specific interest groups (typically capital and labour) is exactly that this is a more effective way of taking decisions (Schmitter 1974). Settling matters with a few influential, representative interests that are not too diverse reduces the transaction costs of bargaining for the decision-makers. Hypothesis 4 is therefore that:

H4: Consultative exercises with open access (1: Online consultations, 2: Forums, conferences and seminars) are likely to result in longer legislative processes than exercises with restrictive access (3: Restricted consultations of expert committees, 4: Consultation of management and labor, and 5: Consultation of EU agencies and institutions).

In addition to the structure of interest group involvement, we also need to control for other factors in the analysis of legislative duration, which previous research found to be important (Golub 2007; 2008; Golub and Steunenberg 2007; König 2007; 2008; Rasmussen and Toshkov 2011; Toshkov and Rasmussen 2010).. Most importantly, we need to include additional measures of the degree of salience and political controversy of the proposals in the equation. Otherwise, we face the risk that our measures of interest group involvement on the proposal simply become another measure of their salience, since all things equal we would expect groups to be more involved on salient than non-salient legislation. We therefore include control that relate to the nature of the act (directive, regulation or decision), whether the act is a new proposal or simply an amendment to an existing EU act, what the number of EP amendments tabled at the first reading to the proposal is and what the number of EP committees involved in debating the proposal are. The type and novelty of the legal acts are directly related to the importance of the proposal. In addition, the number of EP amendments captures another facet of the concept. Previous research has shown than directives generally require longer deliberation than decisions and regulations, and that new acts are more time-consuming than amendments of existing ones. Moreover, the higher the degree of controversy reflected in the number of EP amendments the longer we would expect things to take (Toshkov and Rasmussen 2011). At the outset one might see the number of EP committees involved as a measure of political salience and the expectation might be that the higher the number of committees involved the more salient the file. However, the number of committees may also be an indication of a file's *technical* complexity rather than political salience. The fact that a file cross-cuts multiple policy areas does not necessarily imply disagreement or sensitivity. Thus we do not have any prior expectation whether this variable will result in a positive or negative relationship with duration. In the next section, we explain in more detail how the data collection that enables the empirical analyses presented later in the paper.

4 Data collection

Getting reliable data on the consultations that the Commission undertakes is difficult. There is no uniform way in which the consultations are reported and there is no standardized form that tracks the type of consultation or the actors involved. As mentioned, the Commission is obliged by the Treaties to consult some institutions and the social partners before it submits its legislative proposals on some occasions, but these cases are relatively rare and confined to specific policy areas (e.g. social or regional policy). Usually, the Commission enjoys substantial discretion in deciding what type of consultation to conduct and which actors to involve. While it is precisely this discretion that makes the issue of consultation in the EU interesting, the lack of rules on the exercise of discretion makes collecting data on consultations during the preparatory phase of EU legislation tricky. In view of these difficulties, we adopt a strategy that attacks the problem of the impact of consultation on legislative duration from two sides.

4.1 Dataset of co-decision proposals submitted to the 2004-09 EP

First, we collect data on all co-decision proposals submitted to the 2004-09 EP in order to compare the legislative duration of proposals that have had (different types of) consultation vis-à-vis those that had not involved any consultation of interested parties. In order to balance the concerns for the validity and reliability of the data with the need for a large number of cases, we employ a two-step procedure that combines automated data extraction and human coding. Since the details of the data collection procedure might have important implications for the validity of the empirical analyses presented later in this paper, we are providing an extended discussion of our data collection efforts.

The first step in the process is to identify the proposals submitted to the EP and get the texts of the Commission proposals. The Legislative Observatory of the EP (OEIL) provides access to all legislative proposals and links to the Commission proposals as well. Using scripts written in Python we collected all these proposals as well as data on the duration of the legislative process and a number of covariates including the number of EP amendments proposed, the type and novelty of act, the number of recitals, the EP committees and rapporteurs, etc. The second step is to search through the texts of the proposals, which include explanatory memoranda in addition to the legislative texts themselves, for mentions of the *consult** word-stem. At the same time we also searched for the expression *consultation with interested parties* which seemed to be the standard way for the Commission to report on the type of consultation conducted. At this stage we had three groups of proposals: (I) no consultations, (II) consultations with interested parties, and (III) evidence for consultation but no details available. The last group consists of those proposals which include *consult** somewhere in the text but no *interested parties*. The search is done using regular expressions implemented in Python. We can be pretty confident that group I indeed involved no consultations since the Commission has both an incentive and a requirement to mention the fact that (any type of) consultation has been organized in the preparation of the legislative act. Similarly, for those proposals where *consultation with interested parties* is encountered we can reasonably assume that indeed a consultation conforming to our definitions has been conducted (we check this assumption later). Group III is problematic however since a mention of *consult** can stand for many things – a true consultation, or a requirement for consultations during the implementation of the act recorded somewhere in the text of the proposal, or a reference to the Consultation decision-making procedure, etc. Since there is no easy way to weed out the relevant proposals from the stack of all Group III texts, we opt to exclude these from the analysis altogether. This leaves us with

proposals that did not involve consultation for certain (Group I) and those which had a substantive consultation according to our standards (Group II).

Group II itself is quite a mixed bag. Consultation with interested parties can stand for several different types of engagement with interest groups and the differences might be important with regard to our outcome of interest – legislative speed. Therefore we examined each of these proposals in order to determine the precise type of consultation that took place. Since this information is not standardized in the text of the proposals, automated scripts are of limited value and we used human coding in going through the proposals. Each of the acts in Group II was further categorized into one of these (non-exclusive) categories 1) Online consultations, 2) Forums, conferences and seminars 3) Restricted consultations, 4) Consultation of management and labor, 5) Consultation of EU agencies and institutions. In the first section of the paper, we described in more detail what the differences between these different types of consultative exercises are.

As a result, we acquire a dataset on the proposals submitted to the 2004-09 EP which had either no consultation, or consultation with interested parties narrowly defined, which in turn is categorized into several more-detailed groups. This dataset allows us to investigate the impact of having a consultation on legislative speed – our first line of empirical enquiry which will be complemented by an exploration of the influence of the density and diversity of the EU interest group system.

4.2 Dataset of Commission online consultations

Second, we record details on all actors involved in several recent online consultations initiated by the Commission between December 2001 and April 2010. The dataset records information about all the consultations that were found on the Commission's

Your Voice in Europe portal⁴ and the websites of Commission Directorates (DGs) that contained online consultations. Originally, *Your Voice in Europe* was set up to offer a single access point for all the public consultations on the Commission policy initiatives. This goal is yet to be achieved. At present, some consultations are only listed on *Your Voice in Europe*, some are only listed on the Commission DG websites and some are listed in both sources. The information from which the database was constructed is available in digital format (.html, .doc, .pdf) on the websites mentioned above. We recorded the title and the list of contributing individuals and organizations in case this information was available. Human coders subsequently checked the websites of the participating organizations to group the actors into the following categories: 1) Company, 2) Public, 3) European bodies and institutions, 4) Private person, 5) Interest group, 6) International organization, 7) Other. An interest group was defined here as *'a formally organized, non-governmental association of individuals and/or groups that attempts to influence public policy'*. Altogether, there were 137,695 contributions submitted to 436 consultations. In order to link the data on participation of interests groups in legislative preparation to legislative dossiers, we went through all the 436 consultations to check how many of these had been followed up and in case of follow-ups, how many of these follow-ups were legislative. To do so we searched Prelex and the Legislative Observatory of the European Parliament for important key words related to the consultation. In addition we checked the webpages of the DGs where information about the consultation was published in October 2010. In total we were able to identify 62 legislative follow-ups.

In the case of a legislative follow-up, we recoded the procedural code of the legislative dossier, which enabled us to link the data to our dataset of legislative decision making introduced above. By combining these two types of data, we are able

⁴ http://ec.europa.eu/yourvoice/consultations/index_en.htm

to examine the influence of the density and diversity of the populations of consulted parties on legislative speed for proposals where online consultations took place.

5 Empirical analysis I: Types of consultation and legislative duration

The first empirical strategy we pursue is to examine the duration of acts for which there has been consultation with interested parties at the legislative preparation stage and those for which there has been no consultation. The major challenge in this approach is to account for potential omitted variables that might lead to spurious correlations between consultation and duration. We approach this problem with two alternative strategies. First, following standard statistical practice in EU politics research, we include the potential omitted variables as co-variates in the estimated equation for duration. If the dataset is unbalanced, however, this approach can lead to misleading inferences. Hence, our second approach is to estimate a matching model which ensures that the consultation and no-consultation categories of legislation are comparable with regard to a range of background characteristics.

5.1 Direct regression

At the onset our dataset all proposals submitted under Co-decision to the 2004-09 EP contains 569 observation. From these, 160 cases are classified as 'no consultation' since *consult** was nowhere to be found in the text of the proposals. From the remaining ones, in 120 cases there was evidence for an *online consultation* conducted during the preparation of the legislative proposal. Another 119 cases had a *forum-type of consultation*. In 96 cases *restricted consultation* was organized with the Commission contacting selected interest groups. Management and labour organizations were consulted in 4 cases, advisory groups in 83 cases, and EU agencies and bodies in 18

cases. Consultations were classified as informal in 8 cases. Note that these categories of consultations are not exclusive – a case can be a member of several of the groups. In 178 cases a reference to *consult** was found but no mention of *consultation of interested parties*. We opt to exclude these cases altogether since we are not sure whether they have been a subject to consultation, and if yes to which type. Hence, the remaining dataset has 391 cases.

Our initial categorization of the type of consultation can be simplified on the basis of our theoretical reasoning. Since we are specifically interested in the impact of online consultations (which are also the focus of the second part of the empirical analysis), we classify all cases that included an online consultation in a group (*Online*) (120 cases). The second group we distinguish is *Forums* (52 cases) which collects (from the remaining cases) those which had a forum-type of consultation. Three types of consultation have an important characteristic in common – they have had *restricted* consultations, either with advisory groups, EU bodies, or a general consultation with a restricted number of participants. Therefore, we group these three types into a single *Restricted* (59) category. Management and labour and informal consultation have too few observations each so we excluded the cases which had only one of these two types. The remaining cases are 'No consultations' (160).

We estimate a negative binomial model which is appropriate given that our dependent variable is essentially a count (of days) between the proposal and adoption of a directive and that it is over-dispersed. A survival model could also be used but since the number of censored observations is not great, there is little added value in switching to the event history framework. We report two models. Model 1 features only our categorical explanatory variable while Model 2 adds a number of control variables, which provide different ways to account for the the degree of political salience and controversy of the files.

Model 1 indicates that Forum consultations take significantly longer than cases that had no consultation at all (duration increases by a factor of 1.30). Similarly, Online and Restricted consultation also increase the length of the legislative process but the effects are not significant. It could be, however, that the types of acts that do get a consultation are different than the types of acts that do not. The major omitted variable we suspect is the importance and degree of political controversy of the proposal which could very well be related to the onset of a consultation process *and* to legislative duration. Therefore, in Model 2 we include several control variables that should take account of the underlying differences between the files that get and do not get consultation. We report the results from an estimation including the type and novelty of the legal act, the number of proposed EP amendments during the 1st reading, and the number of EP committees involved. While none of these indicators perfectly reflects importance (or salience) of the files, they provide some leverage to control for the underlying differences⁵.

According to the results from Model 2, all types of consultations significantly increase the duration of the legislative process in line with what we expected in hypothesis 1. The size of the estimated effects is not trivial with Forums leading to 45% increase in the duration and Online consultation to a 21% increase. Hence, it seems that having interest groups involved in legislative preparation makes it more difficult and time-consuming to enact legislation because in such a situation coalition formation is likely to be more difficult. According to hypothesis 4, we expected differences in how much different types of consultative exercises prolonged matters because of general differences between them in level of density and diversity.

⁵ We also tried out models that included the number of recitals, the responsible Commission DG (thus, controlling for the area of the proposal), the year and the month of the proposals, and the number of rapporteurs. None of these additional controls showed substantive effects and, more importantly, none of them changed the inference for our main variable of interest – the existence and type of consultation.

Table 1. Results from a negative binomial model of legislative duration

Variable	<i>Model 1</i>	<i>Model 2</i>
	Coeff. (st. error)	Coeff. (st. error)
(Intercept)	6.25 (0.04) ***	6.62 (0.11) ***
Consultation (Forums)	0.26 (0.08) **	0.38 (0.07) ***
Consultation (Online)	0.12 (0.07) .	0.19 (0.06) **
Consultation (Restricted)	0.12 (0.08)	0.28 (0.07) **
Type of act (Directive)	-	0.25 (0.08) **
Type of act (Regulation)	-	0.15 (0.09) .
Novelty of act (Amendment)	-	-0.26 (0.05) ***
Number of EP amendments (10)	-	0.01 (0.00) ***
Number of EP committees	-	-0.41 (0.05) ***

Notes: N=300; DV- duration in days between proposal and adoption of Co-decision legislative acts. Baseline category for Consultation – No consultation. Baseline category for Type of act – Decision.

We do see that the impact of one type of open consultations (forums, conferences and seminars) is the greatest, but the differences *between* the different types of consultations do not appear significant. Hence, we cannot find support for the argument that the group of consultations indicating use of forums, conference and seminars lasts significantly longer than restricted consultations. Moreover, we actually see that even if online consultations also prolong the legislative process compared to a situation without legislative preparation, the co-efficient for this type of open consultation is actually lower than for restricted consultations. Hence, we do not have ground for concluding that open consultations delay matters more than restricted ones.

From the control variables, directives and to a lesser extent regulations take significantly longer than decisions, and the number of EP amendments proposed also increases the length between proposal and adoption. Amending acts take shorter time

to get adopted and the involvement of more EP committees further increases legislative speed. The involvement of multiple committees may help prepare the ground better, or include a more varied set of views, which means that the legislative act can be adopted faster.

Including possible omitted variables in the equation for legislative speed can increase our confidence that the positive effect of consultation on duration is not a statistical artifact. In essence, the inclusion of these control variables tries to approximate the counterfactual situation for legal proposals that are similar in all other respects but differ only in the occurrence or not of consultation with interest groups. This approach is reasonable if the dataset is well-balanced meaning that there is a sufficient overlap between the treatment (consultation) and baseline (no consultation) groups in terms of the background characteristics. If the overlap is limited, however, the inferences presented above might be misleading. In order to account for this possible threat to the analysis we complement the analysis of the full dataset with a 'matching' analysis that explicitly adjusts the treatment and the control group vis-à-vis background characteristics of the legal acts.

5.2 Matching

Matchif refers to a "variety of procedures that restrict and reorganize the original sample in preparation for a statistical analysis" (Gelman and Hill 2007:206). The goal of matching is to adjust the data prior to the parametric analysis so that the link between the treatment variable and the relevant pre-treatment variables is eliminated or reduced (Ho et al. 2007: 211). Matching can alleviate problems in estimating causal effects due to imbalances and incomplete overlaps. Imbalance refers to situation in which the distribution of the control variables differ for the treatment and no-treatment groups (Gelman and Hill 2007: 199) while lack of complete overlap implies that some treated units do not have corresponding no-treatment units with regard to the values or

categories of some relevant control variable. In short, matching and related techniques address the problem where we have no counterfactuals for the treated observations.

In order to prepare the data for the matching analysis, we dichotomize our main explanatory variable – consultations. Since we saw that there are no significant differences between the different types of consultation, but there seem to be differences between files without consultation and the rest, the dichotomization is not problematic. The second column of Table 2 reproduces our statistical model with the dichotomized Consultation variable. The inferences that the model support are very similar to the model reported in Table 1.

From the many possibilities for preprocessing we choose the full matching procedure, as implemented by the MatchIt library for R (Ho et al. 2007). Exact matching discards too many observations because one of our control variables – the number of EP amendments is continuous. Nearest neighbor matching did not improve the balance between the consultation and no-consultation groups. Full matching achieved excellent improvements in the balance between the groups. In full matching, a fully matched sample is composed of matched sets, where each matched set contains one treated unit and one or more controls (or one control unit and one or more treated units) (Ho et al. 2007). Here is an indication of the imbalances involved in the original dataset and the improvements after matching: Originally, the mean number of EP amendments for files which had any type of interest group consultation was 85 vs. 27 for the files which had none; after matching, the corresponding numbers are 85 vs. 72 – the balance improvement is 75%. Similarly, the mean number of committees involved in consultation files was 1.6 vs. 1.3 for the non-consultation dossiers – after matching the difference is only 0.1 (1.6 vs. 1.7).

Table 2. Comparison of results of negative binomial regressions with and without matching

Variable	<i>Direct regression</i>	<i>After matching</i>
	Coeff. (st. error)	Coeff. (st. error)
(Intercept)	6.62 (0.11) ***	6.21 (0.17) ***
Consultation (Yes)	0.27 (0.05) ***	0.18 (0.06) **
Type of act (Directive)	0.25 (0.09) **	0.50 (0.12) ***
Type of act (Regulation)	0.15 (0.09) .	0.29 (0.10) **
Novelty of act (Amendment)	-0.25 (0.05) ***	-0.23 (0.05) ***
Number of EP amendments (10)	0.01 (0.00) ***	-0.006 (0.006)
Number of EP committees	-0.42 (0.05) ***	-0.71 (0.46) ***
Distance	-	1.34 (0.46) **

DV- duration in days between proposal and adoption of Co-decision legislative acts. Full matching performed.

The results for the matched data, however, still support the finding that consultation increases the duration of legislative decision making, although the estimated effect is smaller. Interestingly, the effect of EP amendments has lost its significance altogether, while the effect of the involvement of more than one EP committee is even greater after the preprocessing.

Overall, our conclusions remain the same. As suspected in hypothesis 1, involving civil society in legislative preparation does seem to increase the transaction costs of forming legislative coalition and prolong the legislative processes. In contrast, we did not find evidence for hypothesis 4 capturing the expectation that there should be a systematic difference in how much open and restricted types of consultative exercises prolong matters. Even if we expected open consultations to have a greater number and more diverse set of participants involved than restricted ones, we did not find evidence that the former type of consultations delay legislation more than the latter. Before we infer from these findings that density and diversity do not matter and reject hypotheses 2 and 3, we need to conduct additional checks. Hence, even if we assume that there are

some general differences between open and restricted consultations as far as density and diversity are concerned, we do not have the precise numbers for these parameters for each activity in this part of the analysis. We therefore continue examining these factors by looking at our second dataset which links density and diversity of the EU interest group population involved in the preparation of particular legal acts with the legislative duration of these acts.

6 Empirical analysis II: Density and diversity of the EU interest group population and legislative duration

As mentioned there were 62 files with legislative follow-ups in our dataset of the Commission's online consultations. Some of these consultations were eventually followed up in the same legislative proposals, which means that the total number of legislative proposals preceded by online consultations examined here is 51.

First, we look into the impact of density on legislative duration. Density is defined as the total number of actors who submitted positions in the online consultation. Data on this variable is available for 40 of the 51 cases. We have information on the final duration of the legislative process (proposal to adoption) for 25 of these cases. The rest are either non-completed or abandoned. We take the log of the values of the density since the distribution is dominated by two extreme outliers (with 73154 and 42655 actors involved respectively; for reference, the median is 100 actors). Figure 1 plots the bivariate relationship between density and duration. The correlation is negative but small (-0.17) and the graphical inspection also does not reveal any significant patterns.

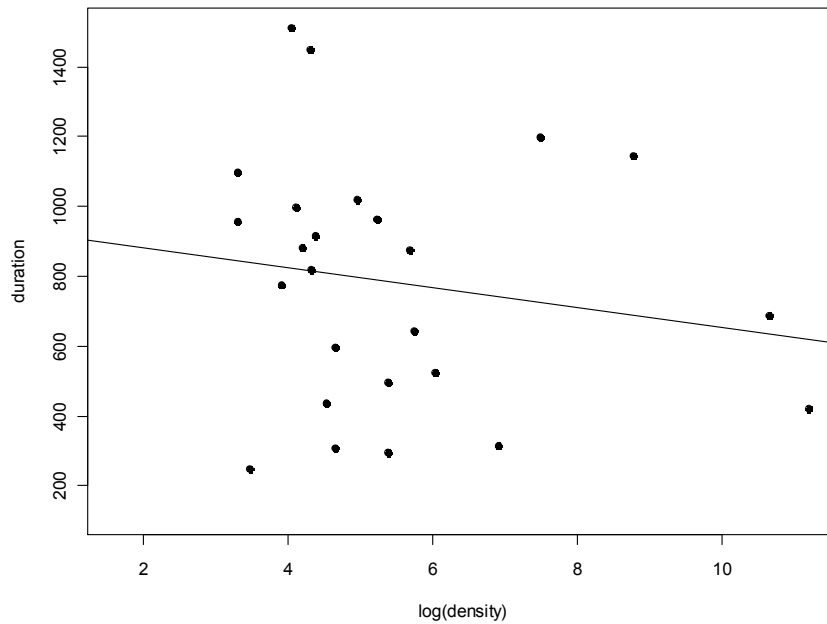


Figure 1 Legislative duration and log(density). *Source: own data*

The second relationship we want to examine is the one between the diversity of the actors involved in the consultation and legislative duration. Following Gray and Lowery (1996), we examine diversity by calculating Herfindal indices. Such indices are standard measures of concentration/diversity that have, for example, previously been used to measure market shares of firms in antitrust litigation. They are calculated by summing the squared proportions of cases distributed across categories of a nominally measured variable. In our case, where there are five categories of actors, the least diverse system we could have is one in which actors fall one of the five categories. Such a proposal would have an index value of 1. In contrast, an extremely diverse proposal in which activities of different substantive types of organizations are proportionally distributed across the five categories would have a diversity or concentration value of $1/7$, i.e. 0.143. In other words, the *higher* the value, the *lower* the degree of diversity.

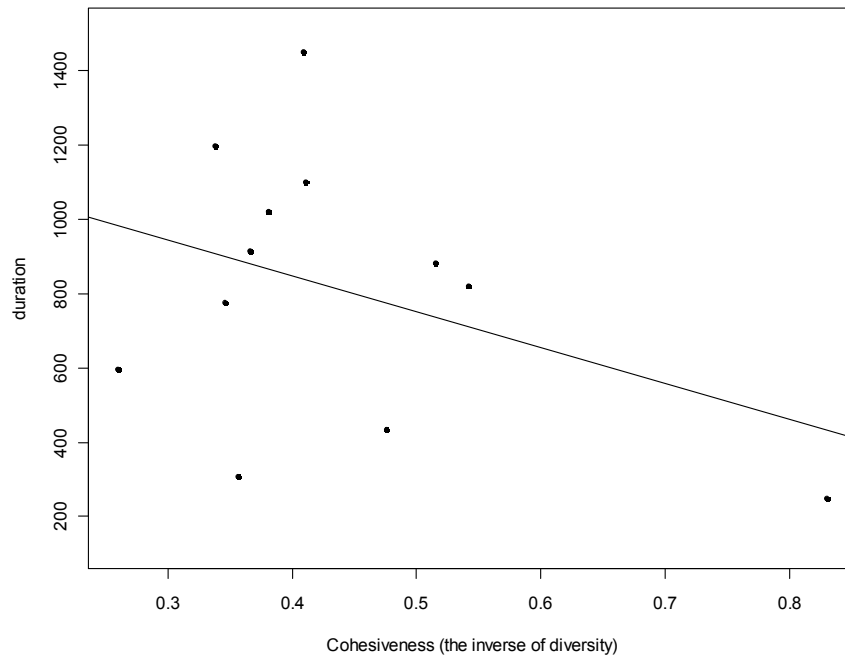


Figure 2 Legislative duration and cohesiveness (the inverse of diversity).

Source: own data

Unfortunately, we only have 12 observations which have values for both diversity and duration. For these 12 observations there seems to be a rather strong negative correlation (-0.39). In other words, as expected in hypothesis four we see that the lower the degree of diversity in representation the shorter the legislative process. Hence, it looks as if having a more diverse set of group does in fact make it harder to strike coalitions and requires more length before a deal is reached. However, when we look at Figure 2, which plots the two variables together, we can note that the relationship is anchored by only one observation having low diversity and relatively short duration. We therefore cannot infer from this that there is necessarily a relation between the two parameters.

Given the small number of cases any more complex statistical analysis will be of very limited value. In the future it is likely that more of the cases in the consultations dataset will have had legislative follow-ups and that more of the existing ones with legislative follow-ups will have completed the legislative procedures. This will enable more systematic testing of density and diversity in a larger n design.

7 Conclusion

In this paper, we analyzed the effect of interest group involvement on decision making in the EU. Using direct regression and matching techniques we find that the involvement of interest groups during the preparatory phase increases overall legislative duration. Open and inclusive consultations are not, however, different in terms of legislative speed from restricted consultations. In addition, the density of the interest group system is not related to duration, according to the analysis of the second dataset. But we find some evidence that the bigger the diversity between the type of actors involved in the online consultations, the longer the legislative process. In sum, we conclude that consultation with interest groups does not have the purported beneficial effects for the duration of the legislative process.

Of course, the longer duration of the legislative process is not necessarily a bad outcome. The benefits of consultation in terms of accommodating the preferences of different actors and improving the *quality* and *legitimacy* of legislation might well outweigh the potential losses due to the retarded policy-making process. Nevertheless, the ability of a policy-making system to adapt fast to the demands of the public is important in its own right.

In fact, one way of interpreting our findings is that actors who do not get their interests accommodated during the consultation phase, try to influence the process through the EP and/or the Council – hence, the legislative delay. Additional research is,

however, needed to investigate the possible mechanisms through which interest group involvement slows down the passage of legislation. Furthermore, since our findings about the effect of density and diversity are based on a very small number of legislations, their robustness should be subject to subsequent checks, once more data becomes available.

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