Analyzing the European Commission’s Use of Consultation during Policy Formulation: Routine Formation or Policy Design?

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Abstract

The European Commission frequently consults stakeholders during the formulation of a policy proposal using expert groups, conferences, online consultations, seminars and so on. This research argues that bureaucratic routines and policy proposal characteristics significantly explain such procedural variation in the lead DG’s use of consultation. It considers these practices as consultation units which, together, constitute a consultation pattern. Consultation patterns are compared across formulation processes because 1) a lead DG can use multiple consultation units during one formulation process and 2) that these consultation units vary in terms of practice. The use of consultation is conceptualized in ‘fixed use’ (suited only for dyadic information exchanges), ‘custom use’ (suited also for more horizontal interaction with a short-term focus) and, lastly, ‘all-around use’ (suited also for more horizontal interaction with a long-term focus). The empirical analysis is based on a cross-sectional sample of 150 policy proposals. Data are collected via EUR-Lex and from confidential documents. A multinomial regression model demonstrates how multifaceted the use of consultation is in reality. Fixed use occurs most likely regarding a proposal 1) with a high degree of policy settings, 2) with high transversality or 3) containing substantial and new provisions. Custom use is most likely regarding a proposal 1) which amends the extant policy acquis or 2) with high salience. All-round use can also take place regarding a proposal 1) with high transversality, although its occurrence noticeably depends on 2) the lead DG responsible for consultation.

Keywords
Consultations – European Commission – Policy characteristics – Policy formulation – Public administration – Stakeholders

Communication présentée avec le soutien de l’Association belge francophone de science politique (ABSP)
The European Commission, on the one hand, frequently interacts with stakeholders during the formulation of a policy proposal using various consultation practices like expert groups, conferences, online consultations, seminars and so on. On the other hand, the Commission can also organize multiple consultation practices during one and the same formulation process. Yet, why does the use of consultation vary so strongly across Commission Directorate-Generals (DGs) or even across formulation processes? The entire range of consultation practices per formulation process is studied and these practices are treated as consultation units which, together, constitute a consultation pattern. This perspective ties in closely with the daily work practice of Commission DGs, who can plan to consult different stakeholder audiences at various times throughout the formulation process. There have been reports of consultation patterns varying in the EU without explaining this variation (Rasmussen and Toshkov, 2013; Quittkat and Finke, 2008) but most studies simply miss out on this broader picture due to their analytical focus on particular consultation units like expert groups (Gornitzka and Sverdrup, 2008; Metz, 2015) or online consultations (Quittkat, 2011; Rasmussen, 2015a). By contrast, this research employs a higher level of analysis than previous research on Commission consultations.

This article tests the effects of bureaucratic routines and policy proposal characteristics on the lead DG’s use of consultation during policy formulation. Indeed, two theoretical explanations can account for variation in the use of consultation: bureaucratic routines and policy proposal characteristics. First, bureaucratic routines consist of standard operating procedures which guide the behavior of individuals such as the Commission officials (DiMaggio and Powell, 1991; March and Olsen, 1989). Previous use of consultation gets interlocked as each bureaucratic unit is inclined to re-use a roughly similar consultation pattern. Frequently switching between different consultation patterns would unnecessarily complicate the organization of consultation. The general reasoning therefore goes that officials presumably follow standard operation procedures instead of considering how to consult stakeholders in the most appropriate way each time anew. Second, policy proposal characteristics refer to the basic attributes associated with a policy under formulation (for instance Bunea, 2013; Mahoney, 2008; Klüver, 2011; Klüver et al., 2015). The policy perspective expects bureaucratic units to use consultation according to policy-specific needs. The lead DG is assumed to estimate the policy characteristics related to a draft policy rudimentarily. This assessment enables a bureaucratic unit to identify its precise needs and to organize consultation accordingly, by choosing the practices most suited to attain those needs. Hence, a bureaucratic unit is expected to assess anew how to consult for each formulation process and this is why we observe so much variation. This article tests the effect of five policy proposal characteristics on the use of consultation.

Studying EU consultation patterns is also relevant as the bulk of regulatory policy is formulated and adopted at the EU level before being implemented within the member states. The allocation of law-making competences at the EU level changed Europe’s political economy fundamentally over time as it caused an increasing number of interest groups to mobilize at the EU level (Wonka et al., 2010). Furthermore, public opinion also started paying closer attention to EU policy-making, developing more outspoken preferences on EU policies (Hooghe and Marks, 2009). This political upscaling constitutes the general background against which the interaction between the Commission and all kinds of stakeholders
– varying between member state representatives, interest group representatives and citizens – became more crucial and increasingly institutionalized through consultation practices.

This article proceeds directly by conceptualizing the use of consultation. Thereafter I formulate four hypotheses linking settings, transversality, newness, and salience with the use of consultation. The section on data collection and method outlines the operationalization of this research. The empirical analysis is based on a cross-sectional sample of 280 policy proposals, drafted by four Commission DGs and adopted by the College between 2010 and 2014. Data are triangulated through inspection of official documents. The section on data analysis justifies the choice for multinomial logistic regression and presents the statistical results. The discussion of these results proceeds in the following section, as the implications on the use of consultation are interpreted. Finally, the implications of this research on old and new research agendas are considered in the conclusion.

**CONCEPTUALIZING THE USE OF CONSULTATION**

To be precise, a consultation pattern is defined as the whole of consultation units organized regarding the same formulation process and having a minimum degree of institutionalization. Consultation patterns take into account the use of diverging practices such as seminars, workshops, expert groups, policy networks as well as conferences and online consultations (but matters like office appointments, lunch meetings or even phone calls fall outside the scope of the analysis). These practices are here studied at the aggregated level of a consultation pattern. This means that one consultation pattern might – but does not need to - include multiple units of consultations as the relation between consultation units and formulation processes is seen as ‘many units-to-one formulation process’ and not necessarily as ‘one unit-to-one formulation process’.

Consultation patterns are distinguished on the basis of the **use of consultation**, i.e. a novel concept describing the degree of freedom with which the lead DG engages stakeholders in the formulation of policies. Below I introduce the fixed use, custom use and all-round use of consultation which vary on the basis of two conceptual dimensions, accessibility and iteration, which are shown in Figure 1 on the vertical and horizontal axes, respectively. On the one hand, the degree of accessibility indicates the extent to which the lead DG restricts access to consultations for the consulted actors in a consultation pattern. The lead DG might make consultation freely accessible for all stakeholders that are capable and willing to participate (i.e. open access) or, alternatively, the lead DG could also preserve the privilege to select participants among stakeholders wishing to participate (i.e. restricted access). On the other hand, the degree of iteration denotes the extent at which the consultations in a pattern surmount to one-off meetings (i.e. a single-shot game) or, alternatively, consists of multiple consecutive meetings (i.e. an iterated game).
Fixed use of consultation indicates that a consultation pattern predominantly consists of open access and single-shot games (see upper-left corner of Figure 1). This combination restrains the use of consultation relatively most and ‘fixed use’ denotes that. On the one hand, open access potentially increases the diversity as well as the number of consulted actors, hence, increasing the transaction costs of consultation. Nothing constrains actors from taking advantage of each other under these circumstances (North, 1992: 7-8; North, 1990). The lead DG presumably anticipates this side-effect and only uses consultation with open access for dyadic exchanges of information. On the other hand, a single-shot game constrains the time horizon of the lead DG and of the stakeholders. This is relevant as actors with a shorter time horizon normally prioritize immediate gains over long-term gains. The likelihood for defection behavior among the consulted actors therefore is highest in a single-shot game – at least insofar as the long-term gains associated with cooperative behavior are compromised (Shepsle and Bonchek, 1997; North, 1992). Hence, the lead DG uses a clearly delineated procedure for consultation and lays down fixed rules to guide interaction with stakeholder participants.

Custom use indicates that a consultation pattern mainly consists of restricted access and single-shot games (see bottom-left corner of Figure 1). Custom use restrains consulting actors less than the fixed use of consultation. On the one hand, restricted access signals that the lead DG wants stakeholders to interact freely in consultation. This procedural trait is especially needed when consultation aims at more than dyadic information exchanges, for instance by providing the lead DG and stakeholders with a
platform for a more open discussion or substantive debate. Restricted access ensures that only a limited number of consulted actors comes in closer contact with each other as well as with the lead DG (Quittkat and Kotzian, 2011: 404). This also reduces the possibility that consulted actors will take advantage from each other (North, 1992: 7). On the other hand, the lead DG’s preference for single-shot games implies that short-term objectives have priority while consulting stakeholders – similar as with the fixed use of consultation. Thus, the lead DG gives stakeholders more freedom to intervene in consultation. This is so because custom use of consultation is mainly devoted to discussions on specific policy aspects and less to broader discussions about strategic political goals.

- **All-around use (restricted access – iterated game)**

All-round use of consultation notes that a consultation pattern mainly includes restricted access and iterated games (see bottom-right corner of Figure 1). The notion of ‘all-round use’ denotes that the lead DG uses a more versatile procedure for consultation in contrast to the more rigid course of action chosen under the fixed and custom use of consultation. On the one hand, and similar to the custom use, restricted access does not confine the consultation process to dyadic exchanges of information, but, instead, provides the lead DG and stakeholders more freedom to interact in a web-alike structure. On the other hand, an iterated game extends the time horizon as the lead DG and the stakeholders can use tit-for-tat strategies over consecutive rounds – responding to the previous behavior of others in the next round (Axelrod, 1981: 311-312). More precisely, the ability to use tit-for-tat strategies increases the likelihood that long-term gains of mutual cooperation prevail over the short-term gains of unilateral defection (Axelrod and Keohane, 1985: 232-234). Hence, the lead DG grants more procedural leeway under these circumstances and aims at reaching lasting political agreements on broader, strategic policy aspects which require repeat negotiating, consensus-building or problem-solving with stakeholders in a secluded setting (Rasmussen and Toshkov, 2013).

- **Implausible use (open access – iterated game)**

Finally, consultation patterns which combine open access with an iterated game are characterized as conceptually implausible (see upper-right half of Figure 1). In fact, my empirical data also confirm that the European Commission rarely uses consultations with open access and an iterated game. Conceptually speaking, iteration normally extends the time horizon of the consulted actors because a multiple meetings takes place in the same setting with the same consulted actors. This could stimulate reciprocal trust between the lead DG and the stakeholders on the precondition that access to consultation is restricted. Restricted access turns consultation more confidential in nature as a result of which stakeholders will more easily try to reach a common view. The situation is different when access to consultation is open, as there is no guarantee that any consulted actor will participate in the next round of consultation as well. The risk for defection prevents stakeholders from acting on behalf of the mutual benefit.

**THE USE OF CONSULTATION: A MATTER OF ROUTINE FORMATION OR OF POLICY DESIGN?**

The research design in Figure 2 represents the effects of a series of independent variables (white and grey boxes) on the use of consultation (black box). The concepts shown in white boxes, bureaucratic unit
and administrative capacity, deal with bureaucratic routines. The concepts shown in grey boxes represent different policy proposal characteristics, being settings, transversality, newness, salience and bindingness.

**Figure 2: Research design.**

The null hypothesis is rooted in the bureaucratic routine perspective and expects consultation patterns to vary depending on the bureaucratic unit which formulates a policy proposal. Bureaucratic organizations such as the European Commission are considered as highly conducive environments for the creation of standard operating procedures (DiMaggio and Powell, 1991; March and Olsen, 1989). This would cause the use of consultation to vary in the first place across bureaucratic units, instead of within them. The organizational structure of the European Commission also stresses the institution’s hierarchic and fragmented nature in functional DGs (Egeberg, 2012). State of the art research therefore considers DGs as the units of reference within the Commission bureaucracy that make interlocking decisions (Cini, 1996; Spence and Edwards, 2006; Stevens and Stevens, 2001). Research on EU consultation practices also focuses on studying variation in the use of consultation across DGs (Gornitzka and Sverdrup, 2008; Quittkat, 2011; Quittkat and Finke, 2008).

**H0:** The use of consultation varies in accordance with the bureaucratic unit which is in charge of the formulation process.

At the same time, I control for the administrative capacity of bureaucratic units to ensure that variation across bureaucratic units not merely reflects differences in the workload. Previous work stressed that Commission DGs can use expert groups to supplement poor in-house expertise (Gornitzka and Sverdrup,
or that processing input from online consultations is a labor-intensive process, especially for smaller DGs (Chalmers, 2014).

The following hypotheses emphasize policy proposal characteristics as the most important determinant of the use of consultation. Firstly, the concept of *settings* comes from the work of Hall (1993: 278) who considers settings as one of three conceptual elements constituting a policy: 1) the overall goals steering a policy in a field, 2) the policy instruments applied to achieve those goals and 3) the precise settings of these instruments. Consider, for example, the overall goal of reducing global warming by limiting CO2 emissions from cars (policy instrument). The conceptual interest here would go to the precise setting of the CO2 emission level. Settings like these can have major redistributive consequences (Majone, 1996). The lead DG is expected to invite private stakeholders to consultation because, without their assistance, it has insufficient information to assess the benefits and costs of proposed settings on stakeholder activities (Rasmussen, 2015b). A policy proposal which contains relatively many settings is most likely accompanied by the all-round use of consultation. All-around use of consultation is most conducive for negotiations due to their restricted access and iterated meetings. During these meetings the lead DG invites stakeholders to provide data (i.e. figures necessary to calibrate technical provisions in economic regulation), to exchange information (in order to assess the policy effects) as well as to negotiate about the feasibility of benefits and costs.

**H1:** The more settings a policy proposal comprises, the more likely the lead DG will use an all-round pattern for consultation.

Secondly, *transversality* indicates the scope of policy effects, with proposals focusing exclusively on one policy field or on multiple policy fields (see Mahoney, 2008). Historical institutionalism provides that policies might give way to unintended consequences directly or indirectly through interaction with other existing policies which the lead DG did not foresee in advance. However, such unintended consequences are likely to arise in specific circumstances (Pierson, 2000). I assume that the likelihood for unintended consequences increases, ceteris paribus, along with the transversality of a policy. To prevent any side-effects from arising out of more transversal policies, the lead DG is hypothesized to opt for fixed use of consultation. This is so because consultations with open access enable the lead DG can reach out to all relevant stakeholders without the risk of excluding anyone with relevant insights. Stakeholders have the opportunity to signal new concerns about potential side-effects of the draft policy. Thus, fixed use of consultation is instrumental to mitigate the information deficits that are typical for cross-cutting proposals.

**H2:** The more transversal a policy proposal is, the more likely the lead DG will use a fixed pattern for consultation.

Thirdly, *newness* is defined as the degree of proposed change in a policy which is highest for new proposals (instead of amending ones) that aim to change the policy acquis substantially (instead of procedurally). The proposed change typically constrains the lead DG during policy formulation because policy changes impose adjustment costs on stakeholders. The need to legitimize a proposal is therefore highest for new/substantial proposals which potentially affect a broad range of stakeholders. The lead DG is then hypothesized to choose the fixed use of consultation to hear out as many stakeholders as
necessary in order to map the political landscape and to inform all interested stakeholders. The situation is quite different for amending proposals which only affect the stakeholders who “adapted to the existing policy path over the course of time” (Hartlapp et al., 2014: 19; also see Pierson, 1996). When the policy acquis remains mostly intact, then the changeover from the old into new situation should proceed smoothly for the majority of stakeholders (Alexander, 2001: 258; Krasner, 1989: 87) and the lead DG most likely informs stakeholders by means of all-round use of consultation. The analysis should point out to what extent these logics also hold true for new/procedural and amending/substantial proposals.

H3: The more new policy provisions a policy proposal includes, the more likely the lead DG will use a fixed pattern for consultation.

Fourthly, salience is defined as the relative importance attached to a policy by particular decision-makers or political elites – in accordance with literature on public policy (Leuffen et al., 2014: 169; Warntjen, 2012). The theoretical relevance of salience is linked with the ‘politics of attention’, which refers to the fact that decision-makers have discretion in deciding which policy problems to place on the political agenda (Jones and Baumgartner, 2005). Policy-makers have limited working capacity and resources to process information within a given time period due to which they prioritize policy problems on their working agendas (Spendzharova and Versluis, 2013: 1502). Salience basically comprises the ‘cognitive shortcut’ which enables a decision-maker to select which policy problems will form the subject matter of public policy (Oppermann and de Vries, 2011: 3-4).

Against the backdrop of this research, especially the salience associated with the Secretariat-General is of interest given its responsibility to oversee the formulation process between the policy-making DGs. In accordance with the political responsibility of the Secretariat-General, salience should vary along with the intensity of coordination between Commission DGs. Inter-service coordination enables other Commission DGs and the Secretariat-General to monitor the lead DG in the drafting process, most clearly in the Impact Assessment or IA procedure (Radaelli and Meuwese, 2010). The importance attached to a dossier by the Secretariat-General in this sense is also representative for the salience level attributed by other DGs – and by extension even the Commission Presidency.

The formulation of a salient policy is therefore expected to go accompanied by the custom use of consultation. Single-shot games suffice for the lead DG to consult stakeholders about a specific stage of the IA procedure. These consultations would focus on specific aspects of a draft policy like the problem definition, the identification of policy options, the assessment of the policy’s impact on the economy, and so on. Thus, custom use of consultation has the advantage of being capable to mirror the structure of the IA procedure with additional consultations being organized at different stages of the IA.

H4: The more pivotal actors consider a policy proposal as salient, the more likely the lead DG will use a custom pattern for consultation.

Finally, I control for the bindingness of a policy proposal which indicates whether the Commission proposes a non-binding proposal (soft law) or a specific legally binding proposal (hard law) to implement policies. The intrusiveness of a binding proposal, which refers to the degree by which policies materially
affect actors, is higher than the intrusiveness of a proposal requiring no binding commitments (Bouwen, 2007). Studies on EU legislative decision-making and implementation demonstrated the usefulness of differentiating between legally binding instruments. However, the course of the formulation process and the respective decision-making procedure within the Commission is similar for non-binding and binding proposals due to which no effect on the use of consultation is expected.

**DATA COLLECTION AND METHOD**

Each formulation process linked with a policy proposal is considered an individual case. This is consistent with the view that multiple consultation units are likely nested in a consultation pattern per formulation process. Cases are identified through EUR-Lex, the online database gathering documents issued by EU institutions. The research sample includes policy proposals formulated by DG Climate Action, DG Communications Networks, Content & Technology, DG Environment and DG Internal Market and Services, which have been adopted by the College of Commissioners in the period between 2010 and 2014. The sampled DGs administer cross-cutting, regulatory policy fields. However, they possess of diverse administrative capacities and their respective competences have been transferred to the EU level at different times. This makes a total of 260 cases with the lead DG making use of consultation in 150 or 57.7 per cent of the cases. The empirical analysis thus focuses on the subsample of 150 cases. The remainder of this section presents the operationalization of the variables as provided in Table 1.

*Table 1*: Operationalization of variables.

<table>
<thead>
<tr>
<th>Variables</th>
<th>Indicators</th>
<th>Distribution (min; max) or (%)</th>
<th>Sources</th>
</tr>
</thead>
<tbody>
<tr>
<td>Use of consultation</td>
<td>Consultation units; Degree of accessibility; Degree of iteration</td>
<td>Fixed use (40.7 %); Custom use (24.0 %); All-round use (35.3 %)</td>
<td>Commission proposal, IA report, official correspondence</td>
</tr>
<tr>
<td>Bureaucratic unit</td>
<td>Lead DG which formulated the proposal</td>
<td>DG Climate (8.7 %); DG Connect (18.7 %); DG Environment (20.0 %); DG Markt (52.7 %)</td>
<td>EUR-Lex</td>
</tr>
<tr>
<td>Administrative capacity</td>
<td>Number of staff working within the Directorate</td>
<td>Ratio (24; 570)</td>
<td>Annual activity reports, DG HR</td>
</tr>
<tr>
<td>Settings</td>
<td>Weighted share of indicators, standards or targets.</td>
<td>Ratio (0; 21.6)</td>
<td>Commission proposal</td>
</tr>
<tr>
<td>Transversality</td>
<td>Number of EUROVOC-descriptors of a proposal</td>
<td>Interval (1; 7)</td>
<td>EUR-Lex</td>
</tr>
<tr>
<td>Newness</td>
<td>Nature of policy change</td>
<td>Procedural/amendment (13.3 %); Substantial/amendment (22 %); Procedural/new (1.3 %); Substantial/new (63.3 %)</td>
<td>Commission proposal; Legislative Observatory</td>
</tr>
<tr>
<td>Salience</td>
<td>Number of meetings of IASG</td>
<td>Ratio (0; 8)</td>
<td>IA report</td>
</tr>
<tr>
<td>Bindingness</td>
<td>Legal instrument under proposal</td>
<td>Non-binding document (39.3 %); Proposal for a Decision (4.0 %);</td>
<td>EUR-Lex</td>
</tr>
</tbody>
</table>
• Measuring the use of consultation

Data are triangulated through inspection of policy proposals, IA reports and requests for access to confidential Commission documents. The use of consultation is measured by first identifying all units of consultations organized with regard to a formulation process. It is noted whether, in principle, anyone could participate to a consultation practice (open access) or not (restricted access) and whether consultation provides the Commission and stakeholders one occasion (single-shot game) or multiple occasions (iterated game) to interact with each other. Second, I calculated the degree of accessibility and the degree of iteration per consultation pattern. On the one hand, the degree of accessibility in a consultation pattern is expressed as an odds value between $-\infty$ and $+\infty$. Odds below 1 indicate that a consultation pattern includes mainly restricted access consultations. Odds above 1 indicate that a consultation pattern contains mainly open access consultations. Odds equal to 1 mean that a consultation pattern includes as many open as restricted consultations.

\[
\text{Degree of accessibility} = \frac{\text{Number of open access consultations}}{\text{Number of restricted access consultations}}
\]

On the other hand, the iteration of a consultation pattern is expressed as an odds value between $-\infty$ and $+\infty$. Odds below 1 indicate that a consultation pattern includes mainly single-shot consultations. Odds above 1 indicate that a consultation pattern contains mainly iterated consultations. Likewise, odds equal to 1 indicate that a consultation pattern is composed of as many iterated as single-shot games.

\[
\text{Degree of iteration} = \frac{\text{Number of iterated consultations}}{\text{Number single-shot consultations}}
\]

Finally, I turned the degree of accessibility and the degree of iteration into symmetric ratios by means of a logarithmic transformation. The results of this measurement procedure are represented in the two figures below.

Figure 3a provides guidance on how to interpret the distribution of the use of consultation. Consultation patterns with a homogeneous composition lie close to the corners of the map and the black dots should therefore be considered as ideal-types of the fixed, custom and all-round use of consultation, respectively. However, as the composition of consultation pattern grows more heterogeneous, it is pulled towards the center of the map. The direction in which consultation patterns can be pulled is illustrated by the arrows in Figure 3a. There are no pull forces in the direction of the upper-right half of the map, which remains empty. The colors of the quadrants in Figure 3a match the corresponding dots in Figure 3b and mark the use of consultation: dark grey indicates the fixed use, medium grey indicates the custom use and light grey indicates the all-round use of consultation. The size of the dots indicates the number of cases having a similar composition and lying at the same position. There are 61 consultation patterns with fixed use, 36 patterns with custom use and 53 patterns with all-round use of consultation.
Overall, Figure 3b confirms that consultation patterns vary both in terms of their degree of accessibility and their degree of iteration. It also shows that most consultation patterns lie close to the center of the map; hence, having a heterogeneous composition.

**Figure 3a:** Operationalization of the use of consultation.  
**Figure 3b:** Mapping the use of consultation (N = 159).

- **Measuring policy proposal characteristics and bureaucratic routines**

The following paragraphs present the operationalization of the independent variables linked with bureaucratic routines and policy proposal characteristics. On the one hand, two variables relate with bureaucratic routines. First, *bureaucratic unit* indicates which department is responsible for the formulation of a policy proposal, thus, acting as the lead DG. The sample includes dossiers managed by DG Climate action, DG Connect, DG Environment and former DG Markt. Second, *administrative capacity* measures the absolute number of staff working within a Directorate (one hierarchic level below the DG) (Chalmers, 2014: 9-10). Information is retrieved from the annual activity reports of DGs and through correspondence with DG Human Resources and Security.

On the other hand, five variables measure the different policy proposal characteristics. First, *settings* are measured by searching in each Commission proposal for the terms ‘standards’, ‘standardi’, ‘indicator’ and ‘target’ as policy-makers use these terms interchangeably, while referring to a similar practice of calibrating economic processes through settings. I then added the number of search hits for each proposal and weighted this summed score by the text length of the respective proposal. Thus, the
relative importance of settings in each proposal is reflected in how pronouncedly that proposal treats indicator-, standard- or target-setting (Van Ballaert, 2015).

Second, **transversality** is measured on the basis of EUROVOC-descriptors. EUROVOC is a multilingual thesaurus, managed by the Publications Office of the European Union, which includes thousands of keywords that are hierarchically organized into 21 fields and 127 subdomains. The assigned keywords reflect a document’s conceptual content and cover all policy fields in which the EU institutions are active (Steinberger et al., 2002: 417). Hence, increasing transversality should coincide with multiple EUROVOC-descriptors referring to different policy fields.

Third, **newness** can take on four categorical values: procedural/amendment, substantial/amendment, procedural/new and substantial/new. This measure identifies, on the one hand, whether proposed changes mainly amend an extant policy or introduce new policy provisions as inferred from the proposal’s title (Rasmussen and Toshkov, 2013; Reh et al., 2013) and, on the other hand, whether the proposed changes are mainly procedural or substantial in nature as inferred from the proposal’s introduction. The final sample, however, contains no ‘procedural/new’ proposals as consultation is nearly always absent regarding such proposals.

Fourth, the **salience** attributed to a proposal by the Secretariat-General is measured as the number of formal meetings organized in an Impact Assessment Steering Group. The IA procedure empowers the Secretariat-General in intra-Commission decision-making because the lead DG requires the Secretariat-General’s approval for every IA report in order to proceed the formulation process (Radaelli and Meuwese, 2010). Information is retrieved via IA reports.

Finally, **bindingness** is measured in four categorical values. Non-binding documents cover green papers, white papers or Commission communications which are all instances of ‘soft law’ and therefore the least intrusive. In ascending order of intrusiveness, legally binding instruments include a Commission proposal for a Decision, a Commission proposal for a Directive or a Commission proposal for a Regulation (Chalmers et al., 2010: 98-103).

### DATA ANALYSIS

Multinomial logistic regression is selected to analyze the use of consultation which is a nominal variable. The sample is designed so that independence between cases is guaranteed. Independent variables are related linearly with the dependent variable and there is no multicollinearity. The analysis is performed on 138 cases as 6 cases were excluded after residual inspection. Maximum likelihood is used to estimate the model parameters. Table 2 provides information about the model fit. The fitted model predicts the use of consultation significantly better than the null model. This is evidenced by the decrease in -2LL between the null and the fitted model which is significant at the level of p < 0.000. McFadden R² is equal to .241 which indicates that this improvement in model fit is excellent (McFadden, 1979). More precisely, five independent variables predict the use of consultation significantly in the regression model. In decreasing order of significance, these are settings (p = 0.000), newness (p = 0.023), salience (p = 0.011), bureaucratic unit (p = 0.015) and transversality (p = 0.044). In contrast, bindingness and administrative capacity cannot significantly predict the use of consultation.
Table 2: Model fit parameters.

<table>
<thead>
<tr>
<th>Independent variables</th>
<th>Chi-Square (significance level )</th>
</tr>
</thead>
<tbody>
<tr>
<td>Settings</td>
<td>28.923***</td>
</tr>
<tr>
<td>Transversality</td>
<td>6.268*</td>
</tr>
<tr>
<td>Bindingness</td>
<td>7.873</td>
</tr>
<tr>
<td>Newness</td>
<td>11.381*</td>
</tr>
<tr>
<td>Salience</td>
<td>9.023*</td>
</tr>
<tr>
<td>Bureaucratic unit</td>
<td>15.730*</td>
</tr>
<tr>
<td>Administrative capacity</td>
<td>3.361</td>
</tr>
<tr>
<td>-2LL of the null model</td>
<td>296.073</td>
</tr>
<tr>
<td>-2LL of the fitted model</td>
<td>224.850</td>
</tr>
<tr>
<td>Likelihood ratio chi-square</td>
<td>***</td>
</tr>
</tbody>
</table>

Notes: Dependent variable—Use of consultation. Significance testing is done by likelihood ratio tests; significance levels: ***p ≤ 0.001; **p ≤ 0.01; *p ≤ 0.05. McFadden R² = .241.

Multinomial regression is basically an extension of a binomial logistic regression model for which the custom use of consultation is here set as the referent category. The regression model as shown in Table 3 estimates parameters separately for (1) the likelihood of finding custom use relative to fixed use, (2) the likelihood of finding custom use relative to all-round use and, (3) as a logical consequence, also the likelihood of finding fixed use relative to all-round use. However, it also provides the overall significance of variables across these binary models and produces smaller estimates of standard errors. The regression coefficients assigned to the independent variables (and their categorical values) are odds ratios. An odds ratio indicates whether and how an increase in one measurement unit of an independent variable affects the likelihood for having fixed use of consultation relative to the likelihood that we find the custom use of consultation. The interpretation for continuous variables is quite straightforward: When an odds ratio has a value smaller than 1, the outcome of the DV becomes less likely in response to a unit increase of the IV. When an odds ratio is larger than 1, the outcome of the DV becomes more likely in response to a unit increase of the IV. The interpretation is slightly more difficult for categorical variables where a referent category is chosen against which to compare each other category. Finally, Table 3 also includes confidence intervals for which we can say with 95 per cent confidence that the odds ratio lies between the bottom and upper limit. The 95 per cent confidence interval is only meaningful for interpretation as long as it does not include the value of 1.
Table 3: Multinomial logistic regression model for use of consultation (N = 138).

<table>
<thead>
<tr>
<th>Independent variables</th>
<th>(1) Fixed use relative to Custom use</th>
<th>(2) All-round use relative to Custom use</th>
<th>(3) All-round use relative to Fixed use</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Odds ratio (95% C.I.)</td>
<td>Odds ratio (95% C.I.)</td>
<td>Odds ratio (95% C.I.)</td>
</tr>
<tr>
<td>Settings</td>
<td>3.036 *** (1.659; 5.557)</td>
<td>1.880 * (1.033; 3.422)</td>
<td>.619 * (.428; .897)</td>
</tr>
<tr>
<td>Transversality</td>
<td>1.717 * (1.070; 2.756)</td>
<td>1.587 * (1.027; 2.453)</td>
<td>.924 (.633; 1.350)</td>
</tr>
<tr>
<td>Newness (referent category = substantially new)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>• procedural/amendment</td>
<td>.200 (.036; 1.129)</td>
<td>.403 (.076; 2.138)</td>
<td>2.010 (.423; 9.552)</td>
</tr>
<tr>
<td>• substantial/amendment</td>
<td>.106 * (.016; .703)</td>
<td>1.089 (.222; 5.344)</td>
<td>10.297 ** (1.946; 54.474)</td>
</tr>
<tr>
<td>Salience</td>
<td>.620 * (.408; .941)</td>
<td>1.014 (.726; 1.416)</td>
<td>1.637 ** (1.127; 2.377)</td>
</tr>
<tr>
<td>Bindingness (referent category = proposal for a Regulation)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>• non-binding COM document</td>
<td>.319 (.050; 2.042)</td>
<td>1.294 (.249; 6.721)</td>
<td>4.062 (.805; 20.499)</td>
</tr>
<tr>
<td>• proposal for a Directive</td>
<td>3.956 (.836; 18.725)</td>
<td>1.125 (.270; 4.684)</td>
<td>.285 (.071; 1.135)</td>
</tr>
<tr>
<td>Bureaucratic unit (referent category = DG Markt)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>• DG Climate Action</td>
<td>.512 (.056; 4.643)</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>• DG Connect</td>
<td>1.839 (.218; 15.481)</td>
<td>2.285 (.412; 12.671)</td>
<td>1.243 (.211; 7.305)</td>
</tr>
<tr>
<td>• DG Environment</td>
<td>.757 (.165; 3.466)</td>
<td>.305 (.073; 1.263)</td>
<td>.402 (.096; 1.678)</td>
</tr>
<tr>
<td>Administrative capacity</td>
<td>.990 (.974; 1.005)</td>
<td>.992 (.992; 1.003)</td>
<td>1.008 (.993; 1.023)</td>
</tr>
</tbody>
</table>

Notes: Dependent variable—Use of consultation. Reference categories: Lead DG —DG Markt; Bindingness—proposal for a Regulation; Newness —substantially new. Coefficients represent odds ratios; 95 per cent confidence intervals in parentheses; significance levels: ***p ≤ 0.001; **p ≤ 0.01; *p ≤ 0.05.
Bureaucratic routines explain part of the variation in the dependent variable. First, bureaucratic unit significantly predicts the use of consultation. However, the regression model further remains inconclusive as the confidence intervals all exceed the benchmark value of 1. This means that estimation of the effect of bureaucratic unit in another, yet similar, sample is just as likely to be negative or positive. Closer inspection of the data is needed before drawing any conclusions on this. Second, administrative capacity cannot predict the use of consultation in a meaningful way.

Most variation is explained by the policy proposal characteristics. First, proposals with a higher degree of settings are most likely associated with the fixed use and least likely with the custom use of consultation (custom < all-round < fixed). The empirical data refute H1. Second, proposals that are more transversal in nature are most likely associated with all-round use or fixed use of consultation (custom < fixed = all-round). This confirms H2 although this relationship is equally strong than the one between transversality and all-round use of consultation. It is therefore more adequate to infer that increasing transversality is least likely associated with the custom use of consultation. Third, a substantial/new proposal is set as the referent category for newness. This means that the lead DG most likely opts for fixed use (than for custom use of consultation) when formulating a substantial/new proposal relative to an amending/substantial as well as procedural/amending proposal. In similar circumstances, the lead DG also more likely chooses fixed use instead of all-round use of consultation which confirms H3. Fourth, a more salient proposal is most likely subject to custom use or all-round use of consultation (fixed < custom = all-round). This also confirms H4 although the all-round use of consultation occurs equally likely. Finally, bindingness cannot predict the use of consultation significantly.

**DISCUSSION OF RESULTS**

This article initially asked why the lead DG consults stakeholders through different practices with variation occurring at the level of policy proposals. The empirical analysis demonstrated that bureaucratic routines and especially policy proposal characteristics can explain the use of consultation considerably. The cause-effect relationships marked as statistically significant are discussed hereafter.

The relationship between bureaucratic units and the use of consultation confirms H0. The distribution of consultation patterns across DGs shows that DG Connect and DG Markt choose the all-round use of consultation more frequently than DG Climate action and DG Environment. This is most likely so because the policy fields related with the digital economy and the internal market are highly fragmented in different policy sectors. The stakeholder landscape in these economic sectors is frequently characterized by so-called policy communities. Policy communities are networks that include policy-makers as well as stakeholders with an interest in a single policy sector (Sabatier and Weible, 2014). They are typically characterized by their stable membership and limited access for outsiders – hence, falling under the all-round use of consultation. To the extent that the lead DG consults a policy community each time when undertaking a new initiative in a respective sector, routine formation is most likely within DG Connect and DG Markt and is mainly reflected in all-round use of consultation. This is entirely different for DG Climate action, whose policy competences are more horizontal in nature and which did not opt for the all-round use of consultation in the research sample. To be clear, DG Climate action does consult expert groups and the like but, from an aggregated perspective, these consultation units are outweighed by
other ones. In addition, DG Climate action became an independent Commission department in 2010 when there was already repeated public criticism of the use of expert groups. Since then an overall decrease could be noted concerning the creation of new expert groups (Metz, 2015) and this dynamic probably plays out most in new policy fields such as the one dealing with climate change. My findings about DG Environment are more ambiguous. This is likely because the latter consults about policies dealing with traditional sectors like waste policy, water policy, etc. but also about more horizontal policies like those dealing with sustainable development. In this respect, DG Environment’s use of consultation falls somewhere in between of that of the other three DGs.

The relation between administrative capacity and the use of consultation is insignificant and could not account for the differences found across Commission DGs and across policy proposals. This is all the more remarkable given that the sampled DGs possess of diverse administrative capacity.

On the other hand, the various policy proposal characteristics are also linked with the use of consultation. Settings are related with the use of consultation but inversely to the expectation in H1. Instead of granting stakeholders a seat directly at the negotiation table, the lead DG opts for the fixed use of consultation regarding proposals with relatively many settings. Such consultations attract more participants than other practices which enable the lead DG, as it turns, to play out regulatory competition between competitors by triangulating information from a large and diverse audience of stakeholders. Given the redistributive consequences which settings might have, it is not hard to imagine that diverse stakeholders ranging from associational groups to competing enterprises and national regulatory authorities all want to have a say in the formulation process.

The relationship between transversality and the use of consultation confirms H2. To clarify, information collection through fixed use of consultation minimizes the risk that the lead DG’s policy proposal will create unintended side-effects. Yet, this relationship also requires more consideration as transversal policies might just as well be accompanied by all-round use of consultation. This involves a captive stakeholder audience and, more importantly, continued follow-up work. One possible reading could therefore be that long-term cooperation with stakeholders is crucial for transversal policies to ensure effectiveness.

Settings and transversality can be considered as distinct conceptual dimensions of issue complexity, a catch-all concept used frequently to denote how policy-makers cope with uncertainty in decision-making (Klüver, 2011). The empirical analysis demonstrates the added value of decomposing issue complexity and future research could extend this approach to include other conceptual dimensions like ‘scientific uncertainty’ (see literature on risk analysis) or ‘procedural complexity’. This would improve our understanding of the causal mechanism driving the behavior of policy-makers.

The relationship between salience and the use of consultation also confirms H3. Increasing salience enhances the probability for custom use but also all-round use of consultation, which ties in with the findings by Radaelli and Meuwese (2010). These scholars demonstrated that inter-service coordination is enforced more strictly within the European Commission when the IA procedure applies. I would add that a similar effect occurs regarding the use of consultation. Given that IA compartmentalizes policy analysis into the problem analysis, policy objectives, policy effects and the respective cost-benefit analyses, policy
proposals subject to IA are most likely accompanied by multiple units of consultation. Even though the lead DG nearly always organizes a public online consultation at an early stage, the subsequent stages of IA are more focused in nature and are therefore usually accompanied by additional units of consultations with restricted access. The lead DG could customize each consultation to a specific stage of IA, by inviting a targeted audience to an expert seminar or policy workshop to discuss a particular aspect. Alternatively, the lead DG could also use expert groups or a policy forum to consult the same stakeholders repeatedly throughout the IA. Curiously enough, the fixed use of consultation is least likely for a relatively salient proposal even though online consultations are considered the main opportunity to participate in consultation for many stakeholders. One likely explanation is that multiple units of consultations with open access risk exacerbating tensions between stakeholders (given that the political stakes are high) whereas the added value of their input would marginally decrease. In that sense the custom and all-around use of consultation provide more discretion to the lead DG and stakeholders.

The relationship between newness and the use of consultation reflects the theoretical expectation as formulated in H3 and requires no further explanation. Finally, it is noteworthy that the use of consultation does not vary meaningfully depending on the bindingness of a policy proposal because related quantitative research normally focuses attention on studying hard law, suggesting that soft law is irrelevant. Legally binding proposals do potentially contain harder commitments from actors (Bouwen, 2007). However, proposals for binding legislation frequently build further upon decisions that were already signaled by the lead DG in previous non-binding proposals, hence, demonstrating that EU policy formulation frequently follows a path-dependent logic (Delreux and Happaerts, 2016: 151). In other words, soft law often signals the lead DG’s plans on future binding policies which makes these policy proposals just as relevant for the use of consultation.

CONCLUSIONS

This article presented a comprehensive approach to study consultation patterns and showed that the European Commission consults stakeholders on a regular basis by means of fixed, custom and all-around use of consultation. Consultation patterns frequently include online consultations as well as expert groups and seminar-alike practices as is, for instance, noticeable for salient proposals. As such, the Commission’s use of consultation is actually more adaptable and multifaceted than what many academic accounts and media outlets suggest. Follow-up case studies could analyze how different consultation units relate to each other, for instance, using venue shopping theory (Baumgartner and Jones, 2009).

The use of consultation varies systematically depending on policy proposal characteristics. First, fixed use of consultation occurs less frequently than one would expect. Nevertheless, online consultations, conferences and public workshops are most likely dominantly present in a consultation pattern under three circumstances: when a policy proposal focuses strongly on settings, has high transversality or is substantial/new. Second, custom use of consultation, usually constituted by seminars, targeted online consultations and workshops, have escaped systematic scrutiny until now. Nonetheless, their use is as common as the use of more reputed practices like expert groups or online consultations. Custom use of consultation is most likely under two circumstances: when the lead DG consults about an amending proposal or a salient policy proposal. However, a lead DG is equally likely to opt for all-around use of
consultation under these specific circumstances. This suggests that EU policy-makers organize expert seminars and such as an alternative for using expert groups which are more contested. Third, all-round use of consultation is also most likely to occur when the lead DG’s policy proposal has high transversality. An important nuance, however, is that the probability of finding all-round use of consultation depends strongly on the policy field and its responsible DG as well.

These findings extend to other research as well given their comprehensive nature. Comparisons across consultation units are absent in recent studies who mapped the stakeholder population attending online consultations (Rasmussen and Alexandrova, 2012) and expert groups (Rasmussen and Gross, 2015; Gornitzka and Sverdrup, 2015) (yet, see Quittkat and Kotzian, 2011). Yet, such comparisons appear indispensable to juxtapose each other’s findings or to evaluate EU consultation based on normative criteria (Schmidt, 2013). A comprehensive approach would also benefit research on interest group behavior. For example, online consultations constitute the empirical environment in which scholars analyze interest group position alignment (Bunea, 2014) or preference attainment (Rasmussen and Carroll, 2013; Klüver, 2013) in the EU formulation process. Elsewhere scholars studied stakeholder involvement and influence throughout the formulation process in expert groups (Metz, 2015; Robert, 2013). Thus, similar research agendas are pursued by focusing on particular ‘consultation units’ which suggests that cross-fertilization between these research fields can only benefit our understanding of EU consultations.
REFERENCES


