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The tip of the iceberg – interest group behaviour in rule drafting and consultations during EU agency rulemaking

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ABSTRACT

Public consultations are used by regulatory agencies for input into their decisions and provide an opportunity for interest groups to voice their concerns. However, researchers emphasised that interest groups are also active before consultations, when drafting regulatory rules. Public consultations might be the tip of the iceberg, with influence during early rule drafting stages looming beneath the surface. This paper looks into interest group behaviour during rulemaking by the European Union Aviation Safety Agency (EASA). Combining datasets on interest group access to rule drafting workshops ($N=538$) and interest group behaviour in consultations ($N=42,595$), the paper assesses what those that help draft rules do during public consultations. Strikingly, only a minority of these groups participate in consultations afterwards. Those that do participate, however, make active attempts to change regulation. These findings do not differ for different interest group types or at different levels of salience. Public consultations are therefore actively used by insiders, emphasising their importance for providing input in the rulemaking process. However, as many of those that draft rules do not participate in public consultations, the impact of many vital interest groups exists beneath the surface.

KEYWORDS EU agency; consultation; EASA; interest groups; stakeholders; rulemaking

EU agencies develop regulatory rules to facilitate the development of EU implementing acts and specify how broad regulations are concretely enforced (Chiti, 2013). In establishing these rules, agencies seek outside input, often using public consultations (Arras & Braun, 2018). Through consultations, the agency gets crucial information that it may otherwise overlook (Klüver, 2012; Yackee, 2015). Consultations offer those with an interest in EU

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regulation an opportunity to have their concerns heard by the agency. However, the technical nature of regulatory rules often prevents the general public to mobilise and provide input (Culpepper, 2011; Olson, 1971). There is therefore a concern that consultations and therefore regulatory rules are biased towards business (Arras & Braun, 2018; Beyers & Arras, 2019).

This paper builds on these insights by looking at a phase of regulatory rule-making that is often overlooked. Before public consultations, rules are often discussed with selected interest groups during the rule drafting phase. Rule drafting can be defined as a phase in regulatory rulemaking before public consultation, during which the agency interacts with interest groups to outline a regulatory rule. Several scholars have looked at rule drafting in US federal agencies. They find that those involved in drafting are very influential compared to those that are involved later, during consultations (Naughton et al., 2009; West, 2009). Looking at rule drafting could therefore uncover important interest group behaviour for EU agencies as well.

This paper is, to the best of the author's knowledge, the first to look at interest group behaviour during EU rule drafting (although see Busuioc and Jevnaker (forthcoming) on stakeholder bodies' role in rule drafting). The paper combines data on rule drafting and consultations for a comprehensive image of interest group activity in rulemaking and uses two theories from interest group literature: venue shopping and resource exchange. The analysis shows what actors with access to rule drafting do during public consultations. The research question of this study reads;

To what extent do interest groups with access to regulatory rule drafting of EU agencies also participate and aim to change the draft in a public consultation on that rule?

The results show that those with access to rule drafting often limit themselves to this initial phase, implying that they are confident that their impact will not be reversed during the consultation. However, when groups that drafted a rule do participate in the public consultation, they often aim to change the rule. This implies that these particular groups were not influential during rule drafting and try again in consultations. These results do not differ between interest group types or at different levels of salience.

This paper uses 538 observations of rule drafting access and 42,595 responses from the European Union Aviation Safety Agency (EASA) to comments on consultations. This paper contributes to regulatory governance literature by showing whether and how interest groups with access to rule drafting use public consultations. It shows how regulation is developed and who shapes it and when they act. The study also has relevance beyond the EU. Whereas US rulemaking is determined by the federal Administrative Procedure Act (APA) (Yackee, 2019), EU agencies lack fixed procedures beyond small provisions in founding documents and adopt their own approach to rulemaking (Chiti,

2013). For the broader literature on regulatory rulemaking, this paper therefore shows what procedures regulators adopt at their own discretion.

Furthermore, the paper contributes to interest group literature. Studies in this literature often focus on one venue of influence, resulting in blind spots for interest group behaviour during stages of policymaking that lack attention (Lowery, 2013). Consultations are popular data for interest group scholars. As stated above, however, they may not be exemplary for the whole rulemaking process. By evaluating how interest groups use rule drafting, this article provides a broader picture of their behaviour.

Lastly, the paper contributes to EU agency literature. Recent contributions in this area investigated EU agencies' interaction with interest groups (Arras & Braun, 2018; Beyers & Arras, 2019; Borrás et al., 2007; Chalmers, 2015; Pérez Durán, 2017, 2018). This paper builds on this trend by introducing and testing findings from the literature on US regulatory agencies in the context of EU agencies.

Current insights on interest groups and consultations

As indicated above, there is a concern in the literature that consultations are biased towards groups that are directly impacted by their outcome. Researchers in the US and Europe therefore investigated which actors participate in (rule-making) consultations. They find that business actors often participate in large numbers (Beyers & Arras, 2019; Golden, 1998; Rasmussen & Carroll, 2014). Furthermore, these actors are found to have much impact on the outcome of consultations (Binderkrantz et al., 2014; Bunea, 2013; Yackee & Yackee, 2006).

However, as Naughton et al. (2009) indicated, it is important to consider the rule drafting stage when looking at interest group behaviour during rulemaking. Many see regulatory rule drafting as an internal process of agencies (West, 2005). However, in US literature, Chubb (1983) recognised interest group involvement in rule drafting as highly prevalent. In drafting stages of regulatory rulemaking, issues can be framed and added to or blocked from the regulatory agenda as agencies test the political waters for alternative plans (Naughton et al., 2009; West, 2005). Interest groups are aware that they get much done during rule drafting compared to public consultations (Crow et al., 2016). If interest groups successfully influence the draft, they arguably do not need to participate in consultations as their interests are already locked-in in the draft.

Considering these insights from the US literature, it is important to see whether similar dynamics unfold for EU agencies. To know how interest groups aim to influence EU regulatory rules, we need to assess whether interest groups limit themselves to the drafting phase or also participate and attempt to change regulation during the consultation on the rule they helped draft.

Venue shopping and resource exchange theory

To address these gaps in the literature, two sets of hypotheses on the role of interest groups with access to rule drafting are formulated. The first hypotheses address participation in and the second attempting to change the draft rule during public consultations after having access to rule drafting.

First, a distinction is made between access (to rule drafting) and participation (in consultations). Access happens '*when a group has entered a political arena passing a threshold controlled by relevant gatekeepers*' (Binderkrantz et al., 2017, p. 307). In this case, the agency determines which interest group passes the threshold of rule drafting groups. In (consultation) participation, interest groups are in control of being involved themselves.

Interest groups have many venues they could try to participate in, but limited resources (Baumgartner & Leech, 2001). Venue shopping theory is often used to explain interest groups' choice to lobby one institution over another, for instance the European Commission or national ministries (Beyers & Kerremans, 2012). It is used here to explain the decision to use different participation instruments, namely rule drafting and consultations, from a single institution. Interest groups are assumed to participate in venues they expect are most receptive to them (Baumgartner & Jones, 1993; Princen & Kerremans, 2008). Others indicated that venues with limited access to opponents are favoured by interest groups (Beyers & Kerremans, 2012). Interest groups can thus be expected to have their biggest impact during the more exclusive drafting phase. After having successful influence during rule drafting, their input is part of the draft rule before the public consultation. Therefore, they are less inclined to participate in the public consultation as they are satisfied with the status quo (Lowery, 2007). It is thus expected that:

H1: Interest groups with access to rule drafting are not likely to participate in public consultations on rules they drafted.

Some types of interest group may, however, be more influential than others during rule drafting and therefore less inclined to participate in public consultations. Resource exchange theory (Bouwen, 2004) is often adopted to explain differences in lobby success. It assumes that those with the resources an agency needs are successful in having their voices heard. EU agencies need technical expertise and knowledge about whether rules are politically and practically feasible to implement, but also support from actors they regulate to pre-empt enforcement problems (Arras & Braun, 2018). Business actors often have much expertise on their sector and their working practices (Crow et al., 2016; Klüver, 2012; Yackee, 2015). EU agencies also pursue support from business actors at an early stage (Arras & Braun, 2018). Business actors are therefore expected to be influential during the

drafting phase and participate less than other actors in consultations on rules they drafted. Business associations in particular are expected to be influential. The drafting phase allows access for few interest groups and business associations can speak for their constituency (Grömping & Halpin, 2019) whereas individual firms presumably defend their own interests. This makes associations more likely to become insiders (Fraussen et al., 2015), such as rule drafting group members. Furthermore, in the EU agency context, national regulatory agencies have relevant expertise. National agencies implement the rules established by EU agencies (Groenleer et al., 2010) and thus understand what implementation requires. They are furthermore essential to have on board to ease enforcement. It is therefore expected that:

H1a: Business associations and national regulators with access to rule drafting are less likely to participate in public consultations on rules they drafted than other interest groups with access to rule drafting.

Despite the expectations in H1(a), interest groups that drafted a rule may still participate in consultations as the costs are very low for groups with access to rule drafting. Consultation participating is at the interest groups' discretion. Rule drafters already prepared positions and participating only requires them to submit these on a consultation website. Especially for highly salient and important rules, interest groups may ensure that issues they failed to get into the draft rule are taken into account again. Furthermore, interest groups may expect conflict in salient cases (Gormley, 1986; Klüver et al., 2015) and want to maintain any influence they had. Lastly, in salient cases, interest groups may make public statements, showing members that they defend their interests on high profile issues (Lowery, 2007). It is therefore expected that:

H1b: Interest groups with access to rule drafting are more likely to participate in public consultations on rules they drafted when the salience of a rule is higher.

As rule drafting group members may participate in consultations, it is necessary to look at what they do when they do. Participation does not mean attempting to change the draft rule. Interest groups may also express their agreement with the rule, which is likely if they were influential when drafting the rule and want to defend it. The second set of hypotheses therefore focuses on what groups that drafted regulatory rules do during consultations. Such groups would most likely attempt to change a draft rule only if they were not influential during rule drafting and are unsatisfied with the outcome. As interest groups are found to be influential during rule drafting in previous US research, it is expected that:

H2: Interest groups with access to rule drafting are less likely to attempt to change the draft rule in public consultations on rules they drafted than interest groups without access to rule drafting.

Similar to H1a, groups that are likely more influential than others during rule drafting should make less attempts to change rules compared to others. It is therefore expected that:

H2a: Business associations and national regulators with access to rule drafting are less likely to attempt to change the draft rule in public consultations on rules they drafted than other interest groups with access to rule drafting.

Research design

EASA as a case

Many EU agencies involve interest groups when drafting regulatory rules. Usually the working groups (also called expert groups, committees or working parties) that draft rules, offer interest group access. For instance, the European Securities and Markets Authority (ESMA) uses consultative working groups of market participants to provide expert advice on draft rules (ESMA, 2019) and the European Union Agency for Railways (ERA) has interest groups as participants in their working parties (ERA Executive Director, 2018). Rather than interest groups auditing and advising working groups that draft rules, which happens at many agencies, interest groups are members of EASA's working groups. EASA is advanced in formulating transparent rulemaking procedures (Chiti, 2013).

EASA is an interesting case to study interest group engagement. Different from many other EU agencies, EASA has enforcement competences (Scholten, 2017) and is highly independent from its political principals (Wonka & Rittberger, 2010). These attributes motivate interest groups to actively use consultations as, once finalised, EASA's rules are difficult to overturn and are directly enforced. Many interest groups likely participate actively in public consultations, in particular business associations and national regulators, which are involved in or subject to EASA enforcement. EASA is therefore a less likely case for H1(a) and H2(a). To put this in perspective, the interest group density of three years of ESMA (a very powerful EU agency) consultations (2395 (Chalmers, 2015)) is comparable to 11 years of EASA consultations (2504). EASA directly regulates airplane producers such as Boeing and Airbus, with substantive (lobbying) resources, but also smaller suppliers of aircraft parts and software. Furthermore, many aviation companies were formerly state-owned, such as airports and air traffic controllers. Despite decades of privatisation (Thelle & Sonne, 2018), many such actors have close ties with governments. National public authorities are prevalent in EASA's consultations (Beyers & Arras, 2019), making H1a and H2a less likely. Furthermore, EASA has limited environmental decision-making competences, limiting its appeal to environmental interest groups. Most citizen groups in EASA consultations are air sport groups seeking more lenient regulation. As

the content of EASA's rules is technical, citizens and citizen groups may not have much input to raise during consultations. It is therefore more likely to confirm H1a & H2a compared to agencies with less technical and more broadly appealing rules.

The agency's rules are drafted using two procedures; the 'agency procedure', in which the agency drafts a rule, and using rule drafting groups made up of EASA and national agency bureaucrats and interested parties (EASA Management Board, 2015). EASA's executive director determines access to rule drafting groups (EASA Management Board, 2015). Each rule drafting group is set up for a single rule. In the 225 EASA consultations on regulatory rules, rule drafting groups were used 88 times, about 40 per cent of the time. Drafting groups are used when the rule is complex, controversial and in need of expertise on implementation (EASA Management Board, 2015). They have multiple meetings spread over 3–18 months (EASA, 2019) to draft the rule. Rule drafting groups should reach consensus and '*resolve conflicts*' (EASA Management Board, 2015, p. 5). The Appendix reports qualitative evidence that EASA is reluctant to revisit such decisions during consultations, in line with the US finding that many decisions are locked-in in the draft. After the rule drafting group has prepared the draft, the agency's executive director verifies it and initiates the public consultation.

Data sources

The data for the two sets of hypotheses come from two sources and have different numbers of observations. Dataset A is based on attendance lists of EASA's rule drafting groups, gathered from EASA's website. The data span 11 years (2007–2017) and contain 538 observations of membership¹ in 65 rule drafting groups. Dataset A is used to test H1(a, b) to address the issue of whether interest groups are likely to participate in public consultations given their access to rule drafting.

Dataset B is based on Comment Response Documents (CRDs) containing interest group comments on consultations and EASA's responses on these comments. The data span 11 years of rulemaking (2007–2017) and consist of 72,245 interest group comments on 225 consultations. All CRDs on EASA's website were gathered using a web scraper. The standardised structure of these documents allowed an automated search algorithm to retrieve all observations. Not all consultations were drafted in rule drafting groups. Furthermore, in some cases, rules span multiple sub-consultations. The 42,595 comments on the 88 (sub-)consultations² prepared by the 65 rule drafting groups are used to test H2(a) as these hypotheses compare interest groups with and without access to rule drafting on their behaviour during public consultations.

Operationalisation

The dependent variable for H1(a, b), 'consultation participation', indicates whether a drafting group member participated in the public consultation on the rule they drafted (1) or not (0).

The dependent variable in H2(a) indicates whether a group attempted to change the draft rule. This variable is based on the standardised EASA responses to consultation comments. EASA states whether it adopts suggested changes to a rule using 'accepted', 'partially accepted' or 'not accepted'. When a comment does not require making changes to the rule, the agency responds with 'noted'. This is the case, for instance, when the interest group endorses the proposed rule, when EASA provides an explanation, when the comment goes beyond the scope of the consultation or is accounted for by existing regulation. Comments that are responded to with noted are not attempts to change the draft rule (see Appendix for qualitative examples). In the 'attempt to change draft' variable, 'noted' comments are indicated with 0 and 'accepted', 'partially accepted' and 'not accepted' comments with 1. Importantly, this measure relies on the agency's interpretation of the comments. Interest groups could therefore have suggested a change, but the agency may not recognise it as such. For instance, broad requests to 'make airplanes safer' are not considered changes to the draft by EASA because they lack focus on the rule. In a robustness check, 100 'noted' comments from rule drafting group members and non-members were manually examined. While there is a substantial number of suggestions to change the rule, the bias was approximately equally distributed between these groups (see Appendix), limiting consequences for the robustness of the findings. Importantly, the data underestimates how many attempts interest groups make to change the draft. Given that results are contrary to H2 (rule drafting group members make substantial efforts to change rules, see results) this bias does not threaten the validity of the conclusion. Rule drafting group members attempt to change regulatory rules, possibly more than measured here. There are two advantages to using the agency's responses. Manually coding the 42,595 comments is time consuming and likely unreliable. Secondly, the comments are technical. EASA acts as a knowledgeable and relatively impartial coder, overcoming the need to seek additional expertise.

Editorial comments are also not considered attempts to change the draft, as these do not aim to substantially change a rule. A dictionary analysis identified comments and responses containing 'typo*', 'editorial' or 'clarif*'. These were coded 0 in the 'attempt to change draft' variable regardless of the agency's response. When EASA provided no response to a comment, the observation was not considered in the analysis.

The independent variable for H2(a) is rule drafting group access. This dummy variable indicates whether interest groups that participate in a

consultation also had access to rule drafting for that particular rule (1) or not (0).

H1a and H2a look at interest group type. This variable was manually coded using online resources and the codebook developed in the INTEREURO project (Berkhout et al., 2015). Categories were merged if they were uninformative for the analysis (see Appendix). The types identified are business association, citizen group, firm, government or related, intergovernmental organisation, labour union, professional association, regulatory agency and other. The consultation comments are from 1648 unique actors and 124 unique actors had access to rule drafting groups (see Appendix for counts per group type).³

To test H1b, salience is operationalised in two ways that collectively fit its definition: an issue *'that affects a large number of people in a significant way'* (Gormley, 1986, p. 598) and usually sparks conflict between interest groups (Beyers et al., 2018). Firstly, the variable 'interest group density' reflects the number of participants in each consultation. This indicates how many actors are affected by a proposed rule, similarly operationalised by Beyers et al. (2018). The variable is mean centred and scaled. Secondly, the type of rule indicates salience in terms of the significance and therefore its potential for conflict and salience. All consultations in the data cover regulatory rules. These are guidance material, acceptable means of compliance and certification specifications. Some also cover EASA opinions to the European Commission on changes to regulation. Consultations on EASA opinions on regulation cover more significant changes to the regulatory framework than consultations that exclusively focus on implementation requirements. Ultimately, the former is assumed to have more impact on the benefits and burdens of regulation than the latter. Therefore, regulatory changes likely raise greater disagreement amongst interest groups and hence cause greater conflict than implementation requirements. Consultations on changes to regulation (1) therefore have more potential for salience than when only regulatory rules are discussed (0).

See the Appendix for descriptive statistics of all variables.

Analysis approach

The analysis uses logistic, random intercept, fixed slope, cross classified multi-level models. Consultation participation and rule drafting group access are nested per rule and per interest group. Rules differ on characteristics that affect interest group behaviour in consultation and rule drafting such as salience and complexity. Nesting at the interest group level accounts for interest groups commenting multiple times on a consultation and for being part of several consultations and rule drafting groups. Behaviour of the same interest group is likely more similar than behaviour of different groups. Furthermore,

to analyse H2(a), consultations are hierarchically nested per year to account for between year variance. Models for H1(a, b) are not nested per year as they lack between year variance (0–0.002 per cent, see Appendix for other ICC values).

The analysis includes several control variables. The two salience indicators that test H1b are used as consultation level control variables for the other hypotheses. Beyond salience, controlling for when a consultation is on an opinion to the European Commission accounts for strategic use of consultations. EASA may use interest group pressure from consultations against its political principal. Three control variables are on the interest group level. The first is interest group type, discussed earlier as an independent variable. The second is whether an interest group exclusively focusses on the aviation sector or (also) on other sectors, indicating a basic level of expertise. Due to a lack of variance, this variable is not used for H1(a, b). The third interest group level control variable is experience with EASA consultations. This variable shows the proportion of consultations that an interest group participated in and indicates their strategic knowledge on how to navigate consultations. It also accounts for groups always participating in consultations, regardless of their impact on the draft rule. This variable changes over time as the interest group participates or refrains from participating in consultations. The variable is mean centred and scaled.

Results

Participation in consultations

To address H1, the extent to which members of rule drafting groups also participate in the consultation for the rule they drafted is assessed. Overall, 45 per cent of groups that drafted regulatory rules took part in the consultation afterwards (see descriptive statistics in Appendix). Three models show the differences between interest group types and levels of salience (Table 1, Models 1, 2 & 3). There are statistically significant differences between group types at a 0.1 significance level, namely between the reference category business association and firms and labour unions (Table 1, Model 3). Business associations are less likely to participate in consultations for rules they have drafted than firms and labour unions. The predicted probability of participating in a consultation (Figure 1) after drafting a rule is 35 per cent for business associations, 51 per cent for firms, 68 per cent for labour unions and 37 per cent for regulatory agencies. These results reflect H1a, as the predicted probabilities for business associations and regulatory agencies are lower than those of many other interest group types. The confidence intervals of the predicted probabilities, however, overlap considerably. These differences are therefore not substantial. Furthermore, the indicators of salience, interest group density and European Commission regulation, are not significant (Table 1, Model 3) despite expectations in H1b.

Table 1. Models for consultation participation (1, 2, 3) and attempt to change draft (4, 5, 6). Logit estimates with (standard errors). REF = Reference category, RGA = Rule drafting group access.

	<i>Dependent variable:</i>					
	Consultation participation			Attempt to change draft		
	(1)	(2)	(3)	(4)	(5)	(6)
<i>Interest group type</i>						
Business association	REF		REF		REF	REF
Citizen group	0.450 (0.811)		0.211 (0.624)		-0.131 (0.166)	-0.122 (0.167)
Firm	0.966** (0.453)		0.657* (0.387)		0.159 (0.138)	0.178 (0.139)
Government or related	-0.122 (1.027)		-0.280 (0.788)		0.020 (0.236)	0.060 (0.247)
Intergovernmental organisation	1.129 (1.253)		0.574 (0.955)		0.482 (0.417)	0.486 (0.420)
Labour union	1.530 (0.979)		1.362* (0.751)		0.131 (0.233)	0.162 (0.237)
Professional association	0.869 (0.676)		0.657 (0.546)		0.079 (0.209)	0.102 (0.210)
Regulatory agency	1.311*** (0.473)		0.097 (0.433)		0.052 (0.171)	0.020 (0.173)
Other					-0.368*** (0.138)	-0.300 (0.184)
Salience (Interest group density)		0.169 (0.147)	0.180 (0.165)			-0.067 (0.170)
Salience (EC regulation)		0.341 (0.281)	0.350 (0.307)			-0.124 (0.233)
Rule drafting group access				0.145*** (0.042)	0.479*** (0.149)	0.471*** (0.148)
<i>Interaction effects</i>						
RGA* Business association					REF	REF
RGA* Citizen group					-0.618**	-0.615**

(Continued)

Table 1. Continued.

	<i>Dependent variable:</i>					
	Consultation participation			Attempt to change draft		
	(1)	(2)	(3)	(4)	(5)	(6)
RGA* Firm					(0.267)	(0.267)
					-0.427**	-0.425**
					(0.172)	(0.171)
RGA* Government or related					0.288	0.287
					(0.303)	(0.300)
RGA* Intergovernmental organisation					-1.459***	-1.433***
					(0.291)	(0.289)
RGA * Labour union					-0.352	-0.337
					(0.476)	(0.469)
RGA* Professional association					-0.481*	-0.488**
					(0.248)	(0.245)
RGA * Regulatory agency					-0.298*	-0.294*
					(0.159)	(0.157)
RGA * Other					-13.498*	-13.941
					(7.889)	(10.698)
Consultation experience			1.118***			0.107*
			(0.179)			(0.058)
Aviation specialisation						0.045
						(0.131)
Constant	-1.535***	-0.918***	-0.791**	0.315**	0.381**	0.393
	(0.398)	(0.253)	(0.386)	(0.146)	(0.192)	(0.303)
Observations	538	538	538	42,595	42,595	42,595
Log Likelihood	-335.509	-338.307	-316.197	-23,262.530	-23,215.340	-23,213.170
Akaike Inf. Crit.	691.018	686.613	658.394	46,535.070	46,472.680	46,476.340
Bayesian Inf. Crit.	733.896	708.052	714.136	46,578.370	46,654.530	46,692.830

Note: * $p < 0.1$; ** $p < 0.05$; *** $p < 0.01$.

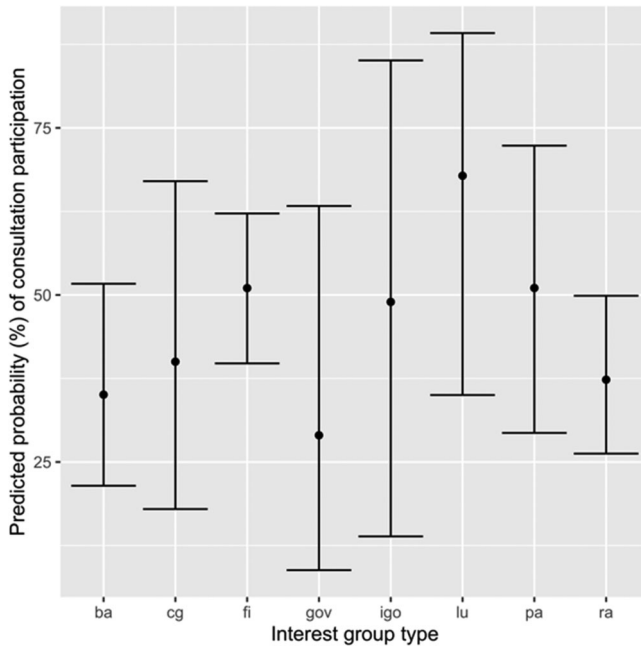


Figure 1. Predicted probability of consultation participation for interest group types, from model 3. Error bars reflect 95 per cent confidence intervals. ba = business association, cg = citizen group, fi = firm, gov = government or related, igo = intergovernmental organisation, lu = labour union, pa = professional association, ra = regulatory agency.

Given these results, H1 is confirmed. H1a and H1b are both rejected, as the results lack a substantial difference and statistical significance respectively.

Attempting to change the draft

Concerning H2, descriptive statistics show that interest groups often attempt to change the rule in consultations after drafting it. 67 per cent of comments made by interest groups with access to rule drafting are attempts to change the rule. This is lower (62 per cent) for interest groups without access, opposite to the expectation in H2.

This difference is also statistically significant. In all models (Table 1, Model 4, 5 & 6), the drafting group access variable is statistically significant and positive. For groups without access to the rule drafting group, the predicted probability of attempting to change the draft is estimated at 59 per cent and for groups with access it is estimated at 70 per cent (Figure 2). This is a large difference, but as the confidence intervals overlap considerably, it is not substantial.

The interaction effects that test H2a show negative statistically significant interactions for citizen groups, firms, intergovernmental organisations and professional associations. The interaction effect for regulatory agencies is

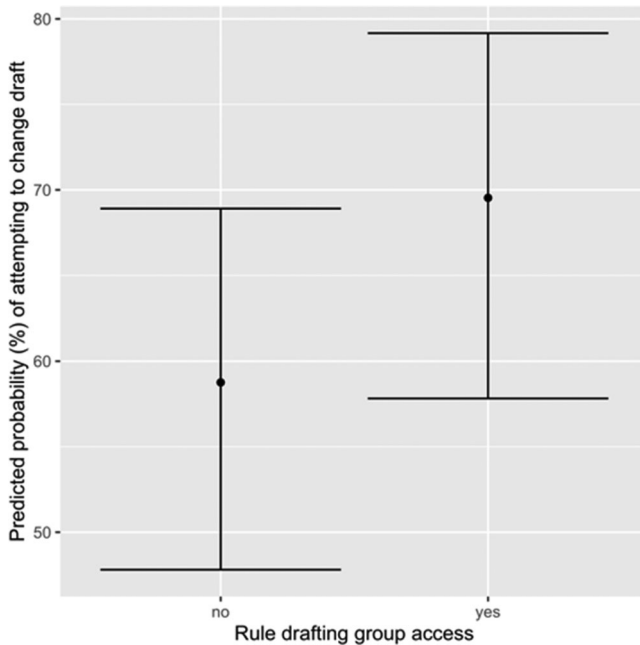


Figure 2. Predicted probability of attempting to change the draft for groups with and without access to drafting groups, from model 6. Error bars reflect 95 per cent confidence intervals.

statistically significant, but only at a 0.1 level (Table 1, Model 6). These interest group types were less likely to attempt to change the draft rule when they had access to the rule drafting groups compared to the reference category, business associations. This contradicts hypothesis H2a. The predicted probabilities further illustrate this (Figure 3). As the confidence intervals overlap, there is no substantial difference in attempting to change the draft between interest group types when only considering those with access to rule drafting.

Both H2 and H2a are therefore rejected as the differences were in the opposite direction and not substantial.

Discussion

In line with H1, less than half of the interest groups that drafted regulatory rules participate in accompanying consultations. Lacking a clear benchmark, it is unclear whether this is a lot or a little. However, this result implies that much influence is achieved in this initial phase as many groups do not try to consolidate their efforts during the public consultation. This is striking as the costs of public consultation participation are low for rule drafting group members. Groups that limited the scope of the rule during rule drafting,

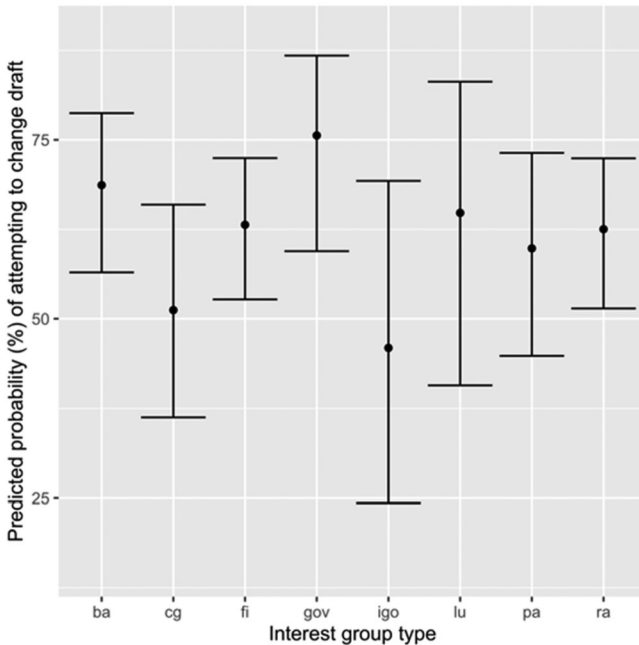


Figure 3. Predicted probability of attempting to change the draft for different group types, only for those with drafting group access, from model 6. Error bars reflect 95 per cent confidence intervals. ba = business association, cg = citizen group, fi = firm, gov = government or related, igo = intergovernmental organisation, lu = labour union, pa = professional association, ra = regulatory agency.

which others claimed they do (Naughton et al., 2009), may not need to participate in public consultations.

Differences between interest group types in consultation participation after drafting rules are limited, contrary to H1a. Beyond a lack of difference in influence during the drafting stage, this result may be due to the independence (Wonka & Rittberger, 2010) and the enforcement powers (Scholten, 2017) of EASA. Especially groups that are subject to or are involved in enforcing EASA's regulatory rules, such as businesses and national regulators, may still want to participate in consultations as the resulting rules are directly enforced by EASA and are difficult to overturn. This may offset their lower likelihood of participation resulting from their initial influence, as was hypothesised in H1a. Business associations and national regulators may therefore still have more influence during rule drafting than other interest group types, although the results imply otherwise.

Furthermore, the results do not support the expectation that rule drafting group members are more likely to participate in consultations that have higher levels of salience (H1b). Those with access to rule drafting do not

participate more in public consultations that attract more participants or cover far reaching changes to regulation rather than implementation specifications. This implies that influence in rule drafting may be sufficient for interest groups, even when conflict is likely. Note that the level of conflict was not directly measured but rather two indicators of potential conflict and salience. Importantly, these results do not imply that group type and salience do not explain public consultation participation in general; others find otherwise for several EU agencies (Beyers & Arras, 2019; Chalmers, 2015). These variables, however, do not explain consultation participation specifically for those with access to rule drafting.

Interest groups with access to rule drafting groups make more attempts to change the draft rule compared to those without access, contradicting H2. Judging from the predicted probabilities this difference is negligible. This implies that many interest groups were likely not influential during rule drafting and still have issues to settle once the draft was finalised. However, rather than reiterating these issues, they may address issues for which the rule drafting process is merely not the right venue. The content of their consultation contribution might be of a different, more specific, nature than what they address during rule drafting. However, considering that rule drafting groups operate in consensus (EASA Management Board, 2015), it is likely that interest groups compromise during rule drafting. Note also that less than half of the interest groups with access to rule drafting participate in consultations. Those that do not participate were likely influential at the expense of those who end up reiterating their points during the consultation.

Furthermore, business associations and national regulators with draft group access make more attempts to change the draft compared to some other interest group types with access to rule drafting, contradicting H2a. These differences are not substantial. The lack of difference between interest group types may be due to EASA's particular competences as discussed before. Nevertheless, the results show that public consultations are a venue that insiders value, without substantial differences between interest group types. What they discuss may, however, have been largely decided on at an earlier stage.

The finding that business associations and national regulators with draft group access are not less active in public consultations than others with access to rule drafting is a reassurance for the way EU agencies deal with interest group bias. Businesses are already overly represented in EU agency consultations (Beyers & Arras, 2019) and have much access to rule drafting groups (see Appendix). In rule drafting groups, EU agencies can however get more input into draft rules from actors that find it difficult to reach them (Arras & Braun, 2018). As the likelihood of participation in and attempting to change the rule during consultation do not differ substantially per interest group type, bias towards powerful actors such as business associations is not increased through rule drafting groups. However, it is also not relieved by

listening more to public interest groups. Importantly, as discussed before, EASA establishes rule drafting groups with national agency bureaucrats and interested parties that have expertise on implementation (EASA Management Board, 2015). Looking at which group types get access to rule drafting (see Appendix), it can be assumed that EASA considers business actors as interested parties rather than public interest groups. Although the analysis does not imply a difference in influence during rule drafting between group types, bias towards business may still be a relevant factor in that stage due to a high level of business access. Considering how EASA establishes rule drafting groups, the inclusion of interests beyond businesses and regulators was not prioritised.

Conclusion

This research focussed on the behaviour of interest groups that drafted a rule when that rule is up for public consultation. The results show that both rule drafting and public consultations are heavily used by interest groups. Furthermore, most of those involved in rule drafting remain under the radar as they often do not participate in consultations on rules they help draft despite high levels of salience and without differences between interest group types. However, when interest groups do participate in public consultations after drafting a rule, they actively aim to change the draft rule. Consultations are thus a relevant venue to influence regulatory rules, as actors that had privileged access to the rulemaking process also use it. However, the fact that draft group members attempt to change the rule in consultations, implies that groups that do not go beyond the drafting phase may have prevented them from having influence initially. This notion should be considered by scholars that use rulemaking consultation data, as these data neglect the initial impact interest groups have during rule drafting.

The rule drafting phase is something that regulatory governance literature, interest group literature and EU agency scholars should look at further. Specifically, the findings should be evaluated for EU agencies with less far reaching competences and independence. Future research should also directly assess the extent to which groups have influence during the initial drafting phase, as the results imply they do. It is furthermore valuable to know what interest groups pursue during rule drafting and compare that to their comments on public consultations. What they aim for in these two phases may not be the same. Furthermore, a qualitative analysis could give fine-grained insights into the importance of specific actors. Lastly, the validity of the results should be assessed for comparable sequential procedures of establishing legislative or regulatory policy where drafts are subject to early interest group access. Because while this study indicates that consultations can give valuable insights on interest group conduct, it shows that by also

looking at earlier stages, we can answer some important questions about the role of interest groups in regulatory politics.

Notes

1. When a person represented two interests, for instance when he/she works for Airbus, but takes part on behalf its business association, both interests were counted. Two people representing the same actor were counted as one.
2. For this analysis, CRD 2011–16 on pilot licenses was removed. Many individual citizens responded. Due to the many comments, all were responded to with 'noted'. This biases the data against observing attempts to change the rule by individuals, which never had access to rule drafting groups.
3. The data contained duplicates due to inconsistent use of interest group names. To address this, all interest group names of the same type were compared automatically. Similar names were identified using Levenshtein distance. The threshold for similarity was 0.5. Similar names were manually merged if it concerns the same actor. Afterwards, manual checks ensured that interest group names are unique.

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