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Corporate Political Activity in the European Union

Amanda Moreira Alves

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THÈSE DE DOCTORAT

DE L'UNIVERSITÉ PSL

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Corporate Political Activity in the European Union

Soutenue par

Amanda M. ALVES

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Sciences de Gestion

Composition du jury :

Jean-Michel GLACHANT
Professeur, European University Institute *Président*

Jean-Philippe BONARDI
Professeur, Université de Lausanne *Rapporteur*

Madina RIVAL
Professeure, CNAM *Rapporteur*

Julien JOURDAN
Professeur, Université Paris-Dauphine *Examineur*

Eric BROUSSEAU
Professeur, Université Paris-Dauphine *Directeur de thèse*

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Résumé

Ce résumé a pour objectif de présenter les principaux points de cette thèse aux lecteurs francophones. Bien que non exhaustif, il cherche à fournir un bon aperçu de la recherche développée. Il est structuré de la façon suivante : tout d'abord, l'introduction permet aux lecteurs de comprendre le sujet, le terrain de recherche et l'articulation de la thèse. Ensuite, les axes de recherche présentés dans les chapitres 2, 3 et 4 sont décrits brièvement. Finalement, la conclusion de la thèse est présentée.

Introduction

Les entreprises cherchent à obtenir et à conserver des avantages concurrentiels afin de garantir la rentabilité et la pérennité de leurs activités. Dans ce sens, elles développent des stratégies pour atteindre les résultats attendus. Traditionnellement, l'axe central d'une stratégie envisage des actions vers les clients, les fournisseurs et les concurrents. Nous pouvons donc penser que la conception d'un plan stratégique prenant en compte tous ces éléments et, par conséquent, leur impact sur les performances des entreprises permettrait d'éviter tout risque de défaillance. Néanmoins, les entreprises opèrent dans un environnement complexe où les défis dépassent extrapolent le cadre du marché caractérisé par les relations entre les parties prenantes traditionnelles.

La littérature en management stratégique distingue deux environnements d'opération des entreprises : l'environnement du marché et l'environnement hors marché. Selon Baron (1995), l'environnement de marché comprend l'entreprise et les acteurs avec qui une relation formelle est établie à travers des échanges commerciaux, tels que les consommateurs et les fournisseurs. L'environnement hors marché comprend les dispositions sociales, politiques et juridiques qui structurent les interactions entre les entreprises et leur public. Celles-ci représentent des intérêts différents qui sont souvent en conflit avec les intérêts des entreprises (Baron, 2013).

Pour faire face aux défis qui dépassent leur environnement de marché, les entreprises s'engagent dans des stratégies hors marché dont l'objectif est d'améliorer leur performance globale

en façonnant ce dernier (Baron, 1999). Dans la littérature courante, les stratégies hors marché sont catégorisées dans deux groupes : la responsabilité sociale des entreprises (RSE) et les actions politiques des entreprises (traduction du terme américain *Corporate Political Activity* – CPA). La RSE fait référence aux initiatives qui traitent d'un bien social qui peut avoir une influence positive sur la performance organisationnelle des entreprises, alors que les CPA décrivent les actions qui visent à créer un environnement politique favorable à l'organisation et dont les cibles sont les acteurs gouvernementaux (Mellahi *et al.*, 2015). Toutes deux sont importantes pour le développement de la stratégie de l'entreprise. Par conséquent, de nombreux auteurs défendent l'importance de la mise au point d'une stratégie intégrée, où les stratégies de marché et hors marchés se complètent pour atteindre l'objectif principal de l'entreprise. De ce fait, la CPA et les RSE apparaissent tous deux comme des éléments essentiels d'une stratégie intégrée, et sont donc interdépendants, même si chacun s'adresse à une partie prenante différente.

Ainsi, il faut considérer que l'environnement économique où l'entreprise opère est aussi constitué d'organismes gouvernementaux, de citoyens, d'organisations non gouvernementales et de médias. L'interaction avec ces parties prenantes peut avoir un impact sur les performances des entreprises, non seulement en ajoutant des contraintes à leur fonctionnement, mais également en générant de nouvelles opportunités commerciales. Une liste non exhaustive des origines des problèmes qui relient les entreprises à ces acteurs économiques moins traditionnels comprend les conflits géopolitiques, les problèmes environnementaux, le changement climatique, les questions technologiques telles que le développement de l'intelligence artificielle et la vulgarisation des réseaux sociaux qui permettent la création de nouveaux modèles d'affaires. Par ailleurs, les opérations des entreprises sont aussi touchées par des questions politiques et bureaucratiques telles que les taxes, la réglementation sectorielle, et les politiques industrielles et commerciales.

Dans un tel scénario, il est difficile pour les entreprises d'assurer leur durabilité en ne comptant que sur les piliers du marché traditionnel - des fournisseurs, des concurrents et des clients. D'autres acteurs, tels que les hommes politiques, peuvent affecter la performance des entreprises. L'environnement hors marché est donc un domaine aussi riche en possibilités de recherche que l'environnement de marché. Néanmoins, compte tenu du cadre limité d'une thèse, cette recherche porte uniquement sur les CPA, c'est-à-dire l'interaction entre les entreprises et les institutions gouvernementales. Plus particulièrement cette thèse étudie cette interaction au niveau

de l'UE. Avant de présenter le projet de thèse, nous cherchons à illustrer l'impact des décisions gouvernementales sur le fonctionnement des entreprises, et leur réaction face à cette interférence, grâce à des cas récents parus dans la presse.

Récemment, le président brésilien Jair Bolsonaro, dans le but de renforcer les relations politiques avec Israël, a annoncé qu'il transférerait l'ambassade du Brésil en Israël à Jérusalem. Cependant, le Brésil est le principal exportateur de viande halal vers les pays arabes. Selon la Chambre de commerce arabe-brésilienne, les exportations ont augmenté de 418% au cours des 15 dernières années et s'élevaient en 2017 à 3,65 milliards de dollars. Cette décision a suscité l'hostilité de certains pays arabes et a créé un risque de représailles économiques.¹ Les entrepreneurs brésiliens du secteur de la viande ont décidé de faire pression sur son gouvernement pour qu'il renonce à cette décision afin d'éviter toute situation embarrassante avec leurs partenaires commerciaux arabes.

Huawei, le géant chinois des équipements de télécommunication, doit une partie de son succès au soutien reçu du gouvernement chinois, qui a pendant longtemps créé des barrières à la concurrence sur le marché intérieur. Cependant, ces mêmes liens politiques étroits entre l'entreprise et le gouvernement sont récemment devenus un problème. Le gouvernement américain a soupçonné Huawei d'avoir la capacité de faire de l'espionnage pour le compte du gouvernement chinois.² Par conséquent, les États-Unis ont décidé de boycotter les produits de Huawei et ont invité d'autres pays à suivre leur exemple. Pour répondre à cette crise internationale, Huawei a décidé d'entamer des poursuites judiciaires contre le gouvernement américain, en affirmant que les autorités américaines n'avaient pas présenté des preuves de leurs accusations.³ Certains spécialistes ont déjà prévu que cette question politique aura un impact sur les opérations de Huawei et retardera le déploiement des projets de réseaux 5G dans le monde entier.

Le dernier exemple s'agit du cas des sociétés pétrolières. La mise en place de politiques pour cibler le changement climatique et d'autres initiatives visant à préserver l'environnement ont toujours représenté une menace aux opérations actuelles et aux projets futurs des entreprises du

¹ Article paru dans la revue Epoca et consulté en ligne le 03/04/2019 : <https://epocanegocios.globo.com/Economia/noticia/2019/03/aproximacao-entre-bolsonaro-e-israel-pode-afetar-o-mercado-bilionario-de-carne-halal-no-brasil.html>

² Article paru sur BBC et consulté en ligne le 03/04/2019 : <https://www.bbc.co.uk/news/resources/idt-sh/Huawei>

³ Article paru sur BBC et consulté en ligne le 03/04/2019 : <https://www.bbc.com/news/business-47478587>

secteur. Pour répondre à ce problème, les principales entreprises du secteur ont décidé de faire du *lobbying* auprès des hommes politiques du monde entier en niant l'existence du changement climatique. Lorsque les circonstances sont devenues défavorables au maintien de cet argument, ils ont choisi d'agir pour retarder l'élaboration et la mise en œuvre de politiques pour cibler le changement climatique. Récemment, un article publié dans Forbes⁴ a révélé le budget millionnaire de ces actions politiques menées par les principales sociétés pétrolières. Dans la même période, des militants du *lobbying* ont dénoncé le refus de Exxon Mobil de participer à une audition organisée par le Parlement européen pour discuter de sa responsabilité face au changement climatique et son long déni de la situation.⁵

Les cas examinés mettent en avant la capacité des gouvernements à améliorer ou à endommager la performance des entreprises. Bien que les exemples examinés fassent référence à des entreprises dans un contexte international, des actions à tous les niveaux politiques peuvent avoir des conséquences pour celles-ci. Par exemple, des plateformes telles qu'Airbnb et Uber doivent faire face aux décisions des grandes métropoles comme Paris.⁶ Les administrations municipales essaient de trouver des moyens réglementaires pour équilibrer les avantages des solutions technologiques fournies par ces plateformes et ses risques potentiels au bon fonctionnement des villes. Par ailleurs, la mise en œuvre du *Roam-Like-at-Home* dans l'UE, qui a supprimé les frais d'itinérance au niveau supranational, a bouleversé le marché de télécom et a probablement provoqué des altérations sur les revenus de certains opérateurs.

En tant que solution aux défis concernant l'environnement politique, les entreprises vont s'engager dans les CPA pour obtenir des avantages ou pour éviter les risques institutionnels. Ces actions ont également le potentiel d'améliorer leur performance dans l'environnement de marché. À partir des exemples ci-dessus, nous pouvons souligner que le *lobbying* pour influencer les politiques publiques et des poursuites judiciaires pour changer une décision défavorable figurent parmi les stratégies les plus utilisés dans ce domaine.

⁴ Article paru sur Forbes et consulté en ligne le 03/04/2019 : <https://www.forbes.com/sites/zakdoffman/2019/02/19/huawei-founder-the-u-s-does-not-represent-the-world-they-will-not-crush-us/#25a42a422433>

⁵ Article paru sur CEO et consulté en ligne le 03/04/2019 : <https://corporateeurope.org/climate-and-energy/2019/03/climate-arson-strategies-and-impact-exxonmobil-dangerous-eu-lobbying>

⁶ Article paru sur Libération et consulté en ligne le 04/04/2019: https://www.liberation.fr/france/2016/07/24/anne-hidalgo-il-faut-se-battre-pour-faire-reconnaitre-que-les-villes-font-partie-des-solutions_1468259

Un corpus important de travaux de recherche existe consacré à la caractérisation des CPA et à la compréhension de leurs résultats et de leur dynamique. Cependant, une grande partie de ces œuvres est limitée à l'environnement institutionnel américain, où la recherche a déjà reconnu les résultats positifs du déploiement de CPA (Hillman, Zardkoohi, and Bierman, 1999; De Figueiredo and Silverman, 2006; De Figueiredo Jr. and Edwards, 2007; Hadani and Schuler, 2013; Holburn and Vanden Bergh, 2014), a identifié les raisons qui influencent le choix d'une tactique déterminée (De Figueiredo and Tiller, 2001; Hillman, 2003; De Figueiredo and Kim, 2004) et a analysé la manière comment l'interaction des institutions entre elles peut influencer les résultats de la CPA (Holburn and Vanden Bergh, 2004; Vanden Bergh and Holburn, 2007). Dans ce contexte, Meznar (2001) souligne que cette faiblesse du domaine de recherche est une conséquence de l'ethnocentrisme américain, et que de ce fait il n'est pas certain que ces mêmes principes et modèles soient suffisamment robustes pour expliquer les stratégies politiques dans un contexte mondial. Près de 20 ans après la parution de son article, la majorité des travaux de recherche dans ce domaine se concentrent encore sur les États-Unis, même si un certain progrès est perceptible.

La réflexion de Meznar (2001) est pertinente dans le sens où l'une des caractéristiques de ces activités est l'impossibilité de les considérer comme étant universelles ou uniformes, car l'environnement politique des entreprises change. Habituellement, les pays présentent des dispositions législatives et institutionnelles distinctes qui déclenchent des interactions et des dynamiques différentes entre les acteurs gouvernementaux et les entreprises. Par conséquent, nous ne pouvons pas automatiquement transposer les résultats et les conclusions d'un environnement politique à un autre. De plus, pour élargir les connaissances sur les activités politiques des entreprises, il est également nécessaire d'étendre les limites des environnements politiques étudiés. L'objectif principal de cette thèse est donc de contribuer à la recherche sur les CPA en approfondissant les connaissances sur l'environnement politique de l'UE. C'est un terrain intéressant en raison de ses particularités politiques et économiques.

La construction d'un marché unique, objectif premier de l'UE, implique de profonds changements dans le paysage politique et réglementaire qui imposent de nouvelles obligations aux entreprises. Ils représentent une menace pour la stabilité de l'entreprise, mais peuvent également

déclencher des opportunités stratégiques. Par conséquent, les entreprises vont adapter leur comportement à ce nouveau scénario.

Une caractéristique remarquable de l'UE est son identité institutionnelle. Ce n'est ni un pays souverain réunissant des États européens ni un accord international. C'est un arrangement institutionnel situé entre les deux, dont la réglementation touche seulement à quelques sujets déterminés, considérés comme essentiels à la construction d'un espace économique plus fort et intégré.

Les caractéristiques des États membres constituent un autre aspect important de l'UE. Certains d'entre eux figurent entre les plus puissantes économies mondiales, alors que d'autres jouent un rôle moins important dans l'économie globale. Cette coexistence est à l'origine de nombreux problèmes de coordination et d'intégration. Comment concevoir des politiques dans un environnement aussi hétérogène ? En outre, comment concilier les intérêts de l'éventail d'acteurs qui font partie de ce processus aux niveaux national et supranational ?

Malgré les défis, les avantages sont attrayants. L'UE a un énorme marché de consommation. Cela augmente non seulement les possibilités de gains d'échelle, mais aussi le nombre d'acteurs et le niveau de compétition. Ces aspects génèrent des changements significatifs dans le scénario commercial qui ne laissent pas les entreprises indifférentes.

Par ailleurs, l'UE possède certaines spécificités. La structure organisationnelle de ses institutions, les règles du processus d'élaboration des politiques et l'interconnexion entre les niveaux national et supranational créent une dynamique qui n'existe nulle part ailleurs. De ce fait, nous pouvons nous interroger sur la manière comment les entreprises se comportent dans un tel environnement et l'impact que peuvent avoir les institutions de l'UE sur les entreprises et vice-versa. Le but de cette thèse est de clarifier ces questions grâce à des recherches empiriques.

Certaines études consacrées aux activités des entreprises dans l'environnement politique de l'UE ont déjà démontré que la Commission européenne est la principale cible du *lobbying* au niveau européen non seulement en raison de son rôle prépondérant dans le processus de décision politique, mais aussi car peu de changements sont attendus entre la divulgation du premier texte de loi et l'approbation finale par les autres institutions européennes (Eising, 2007; Hix, 2011; Rival, 2012) . Par ailleurs, ces travaux ont aussi démontré que parmi les groupes d'intérêt actifs dans le

scénario européen, ceux liés au monde des entreprises sont beaucoup plus nombreux que les autres (Coen et Katsaitis, 2015). De même, leur décision de participer au scénario politique de l'UE est liée à leur taille et à leur exposition à la réglementation de l'UE (Bernhagen et Mitchell, 2009). En outre, le choix de faire du *lobbying* direct est positivement liée à des facteurs économiques, tels que la concentration sectorielle et des spécificités de la mobilité de ses actifs (Vannoni, 2012).

D'autres recherches pertinentes menées par Coen (1998; 2009) ont décrit l'augmentation massive du *lobbying* au sein de la Commission dans les années 1990, caractérisé par une tendance de *lobbying* individuel assisté par des lobbyistes externes en charge de surveiller l'environnement politique. Dans ce contexte, Coen suggère que l'arène politique est dominée par le pluralisme d'élite, où de nombreux groupes d'intérêt participent au processus politique, mais où certains d'entre eux ont plus de pouvoir que d'autres. En pratique, les grandes entreprises ont été encouragées à développer leurs capacités politiques afin de faire du *lobbying* au niveau européen et aussi au niveau national, compte tenu des demandes d'information externes de la Commission européenne. Ces entreprises sont devenues des pionnières du *lobbying* étant donné leur capacité à fournir des informations sur plusieurs sujets grâce à leur caractère multinational. Cela leur a permis de développer une identité européenne avec un accès privilégié à la Commission.

La Commission a donc besoin d'information provenant de parties prenantes externes afin d'améliorer ses décisions. En effet, son processus d'élaboration des politiques publiques est construit de manière à prendre en compte ces informations. Bouwen (2002) propose que cette nécessité donne naissance à ce qu'il appelle des « biens d'accès » : des informations cruciales liées aux connaissances spécialisées, aux intérêts européens ou nationaux, qui permettent aux fournisseurs d'information de nouer des relations étroites avec les représentants de l'UE. Selon cette théorie, les parties prenantes pouvant le mieux fournir ces biens ont plus d'accès aux institutions européennes.

Bien que certaines études aient été développées sur l'action politique des entreprises au niveau de l'UE, des faiblesses persistent encore. Tout d'abord il y a une pénurie de recherches empiriques. De plus, la plupart des recherches empiriques existantes utilisent des mesures indirectes des variables d'intérêt comme, par exemple, l'intensité des activités de lobbying. Cela est principalement dû à l'origine des données, basées sur des enquêtes ou déduites d'une combinaison de certaines variables disponibles dans les bases de données qui sont très limitées. Un

problème potentiel est donc que ces modèles de recherche peuvent conduire à des résultats moins précis et à un risque de biais de sélection. En outre, de nombreuses théories n'ont pas été testées empiriquement.

En vue de l'état actuel des recherches sur les CPA au niveau européen, l'objectif principal de cette thèse est de mener de nouvelles recherches empiriques dans cet environnement politique. Ceci pourrait générer de nouvelles bases des données pour augmenter les possibilités de recherche empirique et, simultanément, contribuer au progrès des certaines théories qui manquent encore de tests empiriques.

Compte tenu des multiples institutions de l'UE et de leurs interactions avec les entreprises, plusieurs voies existent pour entreprendre un travail de recherche sur les stratégies politiques de ces dernières dans l'UE. Dans cette thèse, je limite la portée de la recherche à certains aspects des CPA dans l'UE qui sont pertinents par rapport à mon objectif. Deux critères principaux ont motivé ce choix : la disponibilité des données et la pertinence des institutions choisies pour l'élaboration des politiques de l'UE. Il convient de souligner que ce projet de recherche a bénéficié des progrès récents du cadre réglementaire de l'UE en matière de transparence, qui ont permis la collecte de nouvelles données.

Par conséquent, le projet de recherche est structuré autour de la problématique générale : « *Comment les entreprises déploient-elles leurs stratégies politiques au sein de l'UE ? Quels sont les facteurs qui influent sur les résultats attendus ?* »

Pour commencer à structurer ce projet de recherche, le point de départ choisi est l'œuvre de Spiller & Liao (2008) qui identifie les trois principales stratégies utilisées pour intervenir dans le processus de développement des politiques publiques : *buying*, *lobbying* et *suing*. C'est-à-dire que les entreprises peuvent faire appel au financement de campagnes électorales pour essayer d'influencer le processus, faire du lobbying pour l'influencer, ou bien entamer des poursuites judiciaires pour l'influencer. Cependant, en reconnaissant que l'approche « *buying* » n'est pas autorisée dans l'UE, nous avons ciblé les deux autres approches : « *lobbying* » et « *suing* ». J'ai développé au moins un projet de recherche axé sur chacune de ces stratégies, comme illustré dans la Figure 1, qui traitent des actions politiques des entreprises auprès de la Commission européenne et de la Cour de Justice de l'Union Européenne.

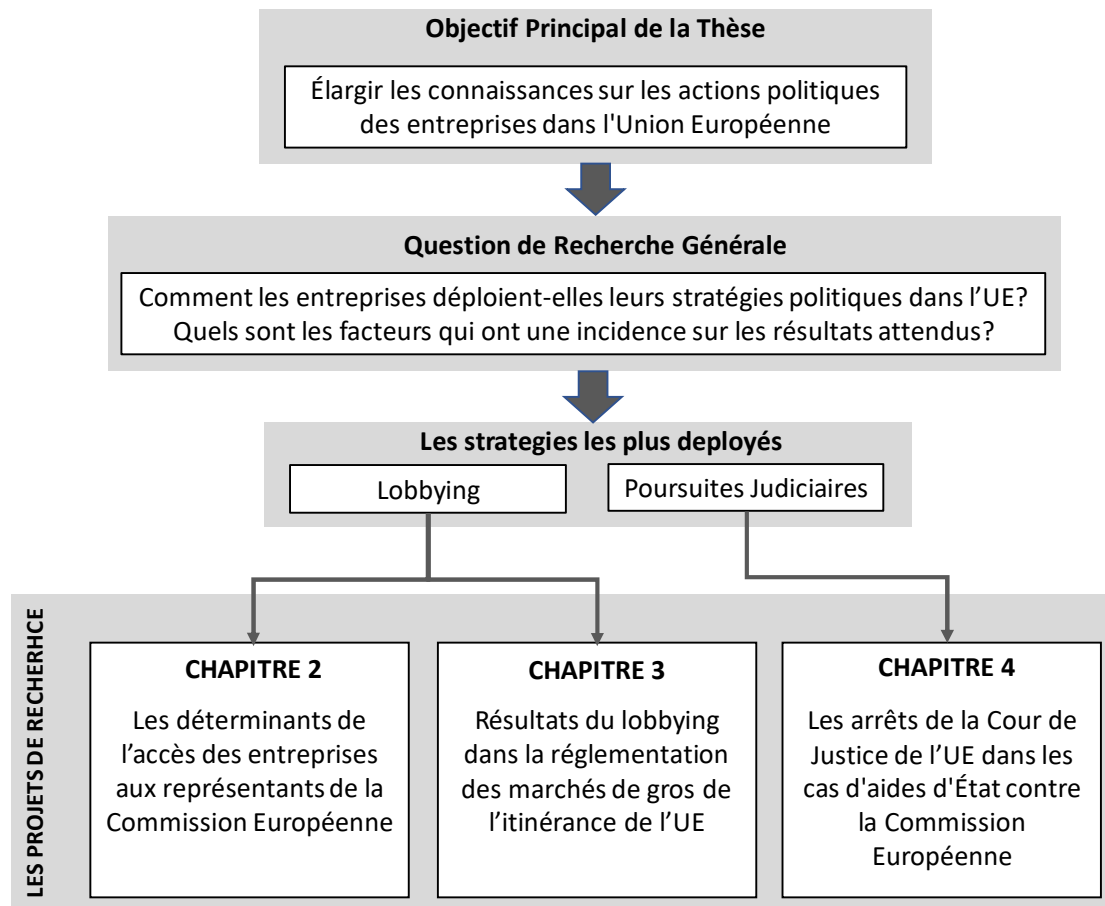


Figure 1- Articulation de la thèse

Cette thèse s'appuie sur trois grands axes de recherche dont deux qui explorent le lobbying à la Commission Européenne et un qui explore les procès judiciaires à la Cour de Justice de l'Union Européenne. Dans le chapitre 2, l'objectif est d'étudier les facteurs qui favorisent l'accès des entreprises à la CE pour faire du *lobbying*. Les analyses sont faites à partir du croisement des caractéristiques des entreprises avec les données de leurs réunions avec les représentants de la Commission. La recherche présentée dans le chapitre 3 porte sur les résultats du lobbying. En étudiant le processus d'élaboration de la réglementation des marchés de gros de l'itinérance qui est récemment entrée en vigueur dans l'UE, le but est de comprendre le rôle du *lobbying* dans la réglementation proposée par la CE à travers l'analyse des opinions des acteurs privés exprimés dans leur réponse à la consultation publique et leurs caractéristiques. On étudie leurs arguments,

leur alignement avec la Commission et la façon comment elle a répondu à leurs actions de *lobbying*. Enfin, le dernier axe, présenté dans le chapitre 4, porte sur les stratégies juridiques utilisées à partir de l'analyse de toutes les poursuites judiciaires auprès de la Cour de Justice de l'UE dont l'objet est l'aide d'État. Dans ces cas, les entreprises requérantes demandent l'annulation ou le changement d'une décision défavorable de la Commission européenne (partie défenderesse). L'objectif principal est de comprendre s'il existe un (des) facteur (s) qui peut (peuvent) influencer la décision finale de la Cour. Ces axes sont brièvement décrits par la suite.

[Chapitre 2] Les stratégies politiques des entreprises en Europe : les déterminants de l'accès des entreprises à la Commission Européenne

Ce chapitre, analyse les déterminants de l'accès des entreprises auprès de la Commission Européenne pour faire du *lobbying*. En examinant les caractéristiques de l'environnement institutionnel européen et les recherches existantes sur les activités des groupes d'intérêt au niveau supranational, on propose que les connaissances politiques constituent un facteur clé pour expliquer la différence d'accès aux hauts représentants de la Commission parmi les différentes entreprises intéressées par le *lobbying* au niveau européen.

Dans ce contexte, on utilise la définition de Bonardi et Vanden Bergh (2015) de la connaissance politique comme étant la connaissance organisationnelle de l'environnement politique qui pourrait représenter un avantage concurrentiel pour les entreprises dans cette arène. Ils en proposent deux dimensions : spécifique à l'institution et spécifique à l'entreprise. La première consiste en des connaissances des entreprises sur la dynamique de l'environnement politique, l'identification des hommes politiques pivots, le processus décisionnel et les mécanismes qui leur permettent d'y participer. Les connaissances spécifiques à l'entreprise font référence à la familiarité avec la valeur de l'entreprise dans l'environnement politique, telle que l'importance de leurs actifs, de leurs pratiques et de leurs stratégies dans le contexte politique.

Pour tester l'hypothèse de l'importance des connaissances politiques, trois variables ont été identifiés, représentant l'accumulation de ces connaissances dans l'environnement de l'UE : l'expérience de lobbying auprès de la Commission Européenne, la participation dans les groupes d'experts de la Commission et l'alignement entre le secteur d'activité de l'entreprise et les priorités

de l'agenda politique de la Commission. L'attente est que ces variables soient significatives et positivement liées au nombre de réunions de l'entreprise avec la Commission.

L'échantillon d'analyse contient des données de 1845 entreprises enregistrées comme faisant du lobbying dans l'Union Européenne. La variable d'intérêt « accès » est mesurée par le nombre de réunions entre les entreprises et les représentants de la Commission Européenne qui ont eu lieu entre décembre 2014 et décembre 2016. Des régressions binomiales négatives ont été utilisées pour mesurer la corrélation entre l'accès et les variables indépendantes.

Les résultats ont démontré l'interconnexion entre le nombre de réunions et les variables indépendantes, ils confirment donc l'hypothèse selon laquelle les connaissances politiques sont importantes et pèsent sur l'accès aux représentants de la Commission. Par ailleurs, ils montrent la pertinence d'autres facteurs, tels que le fait d'être une grande entreprise, de faire appel à des lobbyistes professionnels et d'avoir un bureau de représentation à Bruxelles. Ainsi, ce travail de recherche a également contribué à donner des supports empiriques aux travaux précédents sur la question.

[Chapitre 3] La concurrence pour la politique publique : le lobbying dans le marché de gros de l'itinérance de l'UE

Alors que le chapitre 2 touche à l'accès des entreprises pour faire du *lobbying* auprès de la Commission Européenne, le chapitre 3 s'intéresse aux résultats du *lobbying* dans l'arène politique de l'UE. Dans ce sens, on étudie la manière comment les entreprises structurent leur discours de *lobbying*, l'alignement de leurs points de vue sur celui de la Commission Européenne et la réponse de la Commission à leurs actions de *lobbying*.

Un aspect remarquable de cette régulation est son grand impact sur les revenus et les activités des opérateurs de télécom. Cependant, cet impact varie selon la taille et les caractéristiques de marché et d'opération de chaque opérateur, ce qui entraîne des préférences politiques différentes. Par conséquent, une concurrence intense apparaît dans le marché politique. Dans un contexte réglementaire aussi délicat, les principaux acteurs du secteur ont activement participé au processus politique pour défendre leurs intérêts.

Ainsi, leurs réponses à la consultation publique organisée par la Commission avant la publication du premier projet de régulation a été utilisé pour mieux comprendre les principaux arguments des parties prenantes et la manière comment la Commission y a répondu. À travers des analyses textuelles automatiques par des algorithmes de *topic modeling*, une évaluation générale de leur contribution a été effectuée pour comprendre leurs arguments. Ensuite, l'analyse s'est concentrée sur des points spécifiques de la régulation pour comprendre leur alignement sur les préférences de la Commission. Pour étudier les facteurs qui expliquent l'alignement des préférences, une méthode mixte basé sur une régression Probit est utilisée pour vérifier la relation entre variables tels quel les efforts de *lobbying*, les caractéristiques opérationnelles et de marché. Cette régression est complétée par une analyse textuelle qualitative.

Les résultats des analyses suggèrent qu'il existe deux groupes de parties prenantes, selon leur discours principal : l'un priorise le discours sur le « *fair use policy* » et l'autre les questions relatives à la fixation des prix réglementés. Cependant, leurs préférences politiques ne convergent pas, ce qui démontre une fragmentation de la demande sur le marché politique et justifie une analyse plus détaillée pour comprendre les enjeux du *lobbying* dans ce processus. À partir de cette analyse de points spécifiques de la régulation à travers des régressions, il est possible de conclure que ni leur pouvoir de marché ni leurs efforts de *lobbying* individuels n'ont suffi à influencer la Commission. De plus, l'analyse qualitative des réponses permet d'identifier que les parties prenantes étaient mitigées et que leurs préférences sont liées à leur position dans le marché. Finalement, il semble que la Commission a fait face à moins d'obstacles pour suivre son agenda politique, mais que ses choix politiques sont, finalement, alignés sur les préférences de la majorité. Ces résultats suggèrent que, sur les marchés politiques où il existe une intense concurrence entre les entreprises qui participent au processus de développement des politiques publiques, les stratégies politiques des entreprises risquent d'être moins efficaces et que la Commission dispose donc d'une plus grande liberté de décision.

[Chapitre 4] La dynamique de construction des institutions : les aides d'État, la Commission Européenne et la Cour de Justice de l'Union Européenne

Le chapitre 4 s'intéresse aux cas d'aides d'État dans l'Union Européenne dont l'octroi dépend des décisions de la Commission Européenne et de la Cour de Justice de l'UE. Alors que la première agit en tant qu'autorité de contrôle de la concurrence pour évaluer la compatibilité des aides avec le marché intérieur, la seconde intervient lorsque des parties prenantes insatisfaites décident de contester la décision de la Commission à la Cour. C'est un cadre particulièrement intéressant pour étudier la façon dont les entreprises utilisent les poursuites judiciaires pour façonner leur environnement politique.

Dans le processus des aides d'État, quatre acteurs peuvent être identifiés : les entreprises, la Commission, la Cour de justice et les États membres. Ici, la Commission assume le rôle de régulateur, différemment des chapitres précédents où elle représentait le pouvoir exécutif de l'UE. Une autre spécificité est dans la participation des États membres, qui sont l'origine des fonds des aides d'État et des entreprises qui peuvent en bénéficier.

Le but initial de cette recherche était de comprendre comment les entreprises utilisent les poursuites judiciaires comme stratégie pour changer des décisions défavorables dans le terrain politique. Ainsi, après une décision de la Commission Européenne sur l'octroi ou non d'une aide d'État, elles peuvent faire appel de la décision à la Cours. Les premières observations des procès juridiques qui ont pour objet les aides d'états ont montré que différentes structures sont employées dans les procès. Les entreprises peuvent choisir de faire appel d'une décision seules ou conjointement avec d'autres qui sont aussi insatisfaites de la décision de la Commission. De plus, elles peuvent demander le soutien d'États membres ou d'associations sectorielles pour renforcer leur argumentation. Par ailleurs, on a constaté qu'une partie des entreprises qui s'engagent dans des poursuites judiciaires font également du lobbying auprès des institutions de l'UE.

La première piste de recherche était que certains de ces choix stratégiques influenceraient le résultat de l'affaire. Cependant, les analyses démontrent qu'aucun des facteurs énoncés n'est significatif dans les décision de la Cour : les caractéristiques des entreprises, telles que le pouvoir financier ou le nombre d'employés, n'influent pas sur les jugements. Ainsi, une nouvelle voie a été choisie qui contemple le processus d'octroi d'aides d'État dans sa globalité pour comprendre sa dynamique. Cela passe par une analyse des décisions de la Commission qui peuvent entraîner une poursuite judiciaire auprès de la Cour de Justice.

Dans cette perspective, une base de données originale couvrant tous les programmes d'aides d'État entre 2000 et 2015 a été créé. L'analyse démontre que la Commission a tendance à rejeter les programmes provenant de pays qui sont résistants à l'intégration du marché intérieur. Ce rejet est mesuré à travers la variable proxy déficit de transposition. En outre, lorsque les entreprises ou les gouvernements nationaux se pourvoient en appel des décisions prises par la Commission, le renversement des décisions de la Commission par la Cour est positivement corrélé avec la variable déficit de transposition. Nous interprétons le résultat comme une preuve que la Commission est en réalité biaisée contre les pays qui manifestent une plus grande résistance à l'intégration, tandis que la Cour corrige ce biais.

Les résultats montrent comment la Commission et la Cour tentent de renforcer leur légitimité en prenant des décisions conformes à leurs mandats. La Commission a pour mandat d'élargir et de maintenir le marché unique et est donc tenté de punir les États membres qui résistent à l'intégration par le contrôle des aides d'État. La Cour quant à elle agit pour maintenir l'état de droit et limiter le pouvoir de la Commission.

Ces résultats enrichissent la discussion sur la dynamique des institutions européennes. Par ailleurs, ils apportent également des pistes importantes sur le déploiement des stratégies politiques des entreprises dans l'UE. Les subventions font partie des avantages que les entreprises peuvent poursuivre sur la scène politique. Dans le contexte de l'UE, leur autorisation est soumise à l'approbation des institutions supranationales dont la décision est influencée par la dynamique de l'environnement institutionnel et de ce fait, l'efficacité des stratégies politiques d'entreprises sont désormais atténuées.

Conclusion

L'objectif principal de cette thèse était d'élargir les connaissances sur les activités politiques des entreprises dans l'Union Européenne en explorant de nouvelles voies pour le développement de la recherche empirique. Nous avons donc proposé la problématique suivante : « *Comment les entreprises déploient-elles leurs stratégies politiques au sein de l'UE ? Quels sont les facteurs qui influent sur les résultats attendus des entreprises ?* » Pour répondre à ces questions, trois grands axes sont traités. Ils correspondent chacun à un chapitre de cette thèse et

analysent à la fois les stratégies de *lobbying* et de poursuite judiciaire dans les institutions européennes.

Le chapitre 2 porte sur l'analyse des déterminants de l'accès à la Commission Européenne. En analysant les caractéristiques institutionnelles de la Commission ainsi que les recherches qui ont été menés sur le lobbying dans l'UE, l'hypothèse que les entreprises qui accumulent des connaissances politiques dans ses deux dimensions - connaissances propres à une entreprise et connaissances propres à une institution - ont un meilleur accès aux représentants de la Commission a été proposé. L'analyse quantitative a corroboré l'hypothèse en confirmant que les entreprises opéraient dans un secteur prioritaire pour l'agenda politique de la CE et que leur expérience avait un impact significatif sur leur niveau d'accès. En outre, l'analyse a également confirmé la pertinence d'autres facteurs déjà largement discutés, tels que le fait d'être une grande entreprise, d'avoir un bureau de représentation à Bruxelles et de faire appel à des lobbyistes externes pour compléter leur stratégie de *lobbying* direct.

Le chapitre 3 présente une étude du processus d'élaboration de la réglementation des marchés de gros de l'itinérance en Europe afin de comprendre les résultats du *lobbying* sur un marché politique caractérisé par la fragmentation et la concurrence intense entre les parties prenantes liées au secteur privé. La recherche est basée sur l'analyse approfondie de leurs réponses à la consultation publique ainsi qu'une évaluation de leurs efforts de *lobbying*, des indicateurs opérationnels du secteur et des indicateurs financiers. Les résultats suggèrent que dans un scénario aussi fragmenté, les efforts de *lobbying* individuels sont minés. En conséquence, l'institution responsable de la réglementation, la Commission, a plus de liberté pour décider sur le projet réglementaire et a tendance à s'aligner sur les préférences de la majorité des parties prenantes.

Le chapitre 4 s'intéresse aux litiges dans l'arène de l'UE. Plus spécifiquement, les cas d'aide d'État dans lesquels des entreprises ont fait appel à la Cour de Justice de l'UE pour obtenir l'annulation d'une décision de la Commission européenne sont étudiés. Au contraire des attentes initiales qui pensaient trouver des preuves que certaines tactiques conduiraient à plus de succès que d'autres devant les tribunaux, les résultats de cette recherche suggèrent que les affaires d'aides d'État sont une question pertinente pour les questions d'intégration européenne et que la prise de décision est liée à la dynamique des institutions européennes. Ainsi, alors que la Commission européenne a tendance à nier l'autorisation des aides d'État originaires des pays qui sont moins

performants en termes d'intégration Européenne, la Cour de Justice Européenne efface tout le biais introduit par les décisions de la Commission Européenne.

Cette discussion se poursuit avec les principales contributions de cette thèse et, en particulier, de la manière dont ces résultats contribuent à la recherche en gestion stratégique et à la nouvelle théorie institutionnelle. Enfin, les limites de cette recherche sont présentées.

Contributions à la recherche sur le management stratégique

Du point de vue de la gestion stratégique, la recherche sur les activités politiques des entreprises vise à préciser dans quelles circonstances les entreprises peuvent obtenir des résultats positifs en matière de réglementation. Dans ce contexte, ils devraient connaître les tactiques les plus efficaces, les ressources à investir et les capacités à développer pour déployer des stratégies efficaces sur l'environnement politique.

Hillman & Hitt (1999) ont ainsi affirmé que les choix des stratégies devraient dépendre des ressources des entreprises et des caractéristiques de l'environnement institutionnel. De plus, Bonardi, Hillman et Keim (2005) ont expliqué que les caractéristiques des marchés politiques auraient une incidence sur les résultats escomptés sur l'environnement politique et que, selon les caractéristiques des fournisseurs et des demandeurs des politiques publiques, il serait plus ou moins important pour les entreprises de participer activement au processus d'élaboration des politiques.

Cette recherche a démontré de manière empirique que les caractéristiques de l'environnement institutionnel affectent le déploiement des CPA. Par ailleurs, les résultats attendus dépendent des caractéristiques des marchés politiques. En effet, deux caractéristiques majeures incitent les entreprises à adapter leur stratégie politique dans l'UE : l'absence de financement de campagne et l'élection indirecte des membres de la Commission.

La Commission Européenne a une forte demande d'expertise externe. Son personnel interne n'est pas suffisant pour générer toutes les informations nécessaires à la prise de décision dans un environnement complexe de 28 pays. Ainsi, ils accueillent les entreprises capables de fournir de telles contributions utiles au processus d'élaboration des politiques. Cependant, il ne

suffit pas d'avoir les informations appropriées si les entreprises ne connaissent pas les règles du jeu pour s'approcher de l'arène politique. De ce fait, l'une des contributions de cette recherche est de démontrer que les connaissances politiques, qui incluent à la fois des connaissances spécifiques à une entreprise et à une institution, sont fondamentales pour permettre aux entreprises d'accéder aux représentants de la Commission Européenne.

À partir d'indices présents dans la littérature qui évoquent l'importance des connaissances pour l'élaboration de stratégies politiques, Bonardi et Vanden Bergh (2015) ont défini le cadre des connaissances politiques. Cependant, aucune recherche empirique n'avait testé la pertinence des connaissances politiques pour le déploiement des CPA. Ce travail a comblé une lacune empirique en mettant en évidence l'importance des connaissances politiques pour accéder aux acteurs politiques. Bien que l'hypothèse de la connaissance politique corresponde parfaitement aux conditions de l'environnement institutionnel de la Commission européenne, il est possible que la connaissance politique soit également importante pour d'autres environnements politiques, tels que ceux impliquant des agences de régulation aux États-Unis. Comme la Commission, ceux-ci ont une forte demande d'expertise externe et sont détachés des questions partisans.

Une autre contribution de cette recherche est l'exploration plus détaillée de la concurrence sur les marchés politiques. Des recherches antérieures avaient déjà démontré que la concurrence sur l'arène politique réduisait les chances de succès des stratégies politiques et que, dans un scénario de concurrence, les grandes entreprises seraient en position avantageuse car elles disposaient de plus de ressources et pouvaient mieux structurer leurs stratégies. Néanmoins, quels sont les résultats attendus lorsque les entreprises se font concurrence ? C'était là la principale lacune que l'étude de cas sur la réglementation des marchés de gros de l'itinérance visait à combler.

En choisissant une réglementation qui concerne principalement les acteurs du secteur privé et qui présente un scénario de fragmentation dû aux caractéristiques individuelles des entreprises (chacune ayant une préférence politique distincte), il est possible d'analyser la concurrence entre acteurs de même nature. De cette manière, la contribution principale consiste à démontrer que, dans un tel scénario, les stratégies individuelles de *lobbying* sont affaiblies et qu'il y a peu de chances d'obtenir le résultat souhaité. Cette concurrence laisse les décideurs politique plus à l'aise pour présenter des projets de loi selon leurs préférences.

La dernière contribution sur le plan stratégique concerne l'autorisation des aides d'État dans l'UE. De nombreuses entreprises européennes sont engagées dans les activités politiques au niveau national pour obtenir des subventions du gouvernement. Néanmoins, dans l'UE, ils dépendent de l'approbation de la Commission. L'analyse menée dans le cadre de cette thèse suggère un biais de la Commission dans l'octroi d'aides d'État liées au niveau d'intégration européenne. Une conséquence pour les entreprises est donc que leurs résultats politiques dans l'UE sont également soumis à la dynamique entre les multiples institutions de l'environnement politique.

Dans ce contexte, les recours aux litiges devant les tribunaux ont également été analysés. Comparée au *lobbying*, la littérature relative à l'utilisation du litige dans l'environnement politique est presque inexistante. Bien qu'il s'agisse d'une stratégie coûteuse et fastidieuse, les litiges peuvent aboutir à des résultats positifs dans l'environnement réglementaire. Néanmoins, les résultats obtenus démontrent que les arrêts de la Cour de Justice n'ont été influencés par aucune tactique utilisée dans l'arène juridique ni par les caractéristiques des requérants.

Contributions à la recherche sur les institutions

Si l'on considère que le déploiement et l'efficacité des activités politiques d'entreprise sont étroitement liés aux caractéristiques de l'environnement institutionnel, il est assez compliqué de individualiser la contribution de cette thèse à la gestion stratégique de la contribution à la théorie institutionnelle. Chacun des axes développés pour cette thèse a mis en évidence le poids de l'environnement institutionnel sur la performance hors marché des entreprises. Il est possible d'argumenter que cette conclusion manque d'originalité, mais cette recherche présente une contribution plus intéressante : la caractérisation de la Commission Européenne en tant qu'acteur politique avec beaucoup de pouvoir et d'influence sur le marché politique de l'UE.

La raison d'être de la Commission européenne est de promouvoir l'intégration européenne et la construction du marché unique européen. Grâce à ses pouvoirs de décideur politique et aussi de régulateur, elle dispose des principaux outils pour atteindre ses objectifs. Dans les recherches menées pour cette thèse il est constaté que, dans différents contextes, le mandat de la Commission façonne son interaction avec les autres acteurs de l'environnement de l'UE.

Par exemple, dans l'étude sur l'accès des entreprises au *lobbying* auprès de la Commission dans le chapitre 2, on constate que la Commission recherchait une expertise externe pour légitimer son processus décisionnel. Par conséquent, elle donne accès aux parties prenantes qui peuvent mieux l'offrir. Au chapitre 3, on analyse le processus décisionnel de la Commission face à la concurrence intense des demandeurs de politiques. Dans un tel scénario, la fragmentation des parties prenantes qui figurent en tant que demandeurs des politiques publiques a donné plus de liberté à la Commission pour choisir son option politique préférée. La Commission a donc décidé d'adopter une réglementation qui favorise l'intégration du marché et qui incite plus de concurrence en renforçant le potentiel d'action des nouveaux opérateurs et des petits opérateurs. Ce choix politique est donc totalement conforme au but d'intégration du marché européen poursuivi par la Commission européenne.

Le chapitre 4 apporte une contribution utile à la compréhension de la dynamique des institutions de l'UE par le biais de l'analyse de l'octroi des aides d'État et des interactions qui en résultent entre les institutions associées à ce processus. Les analyses ont démontré que, tandis que la Commission européenne s'acquitte de son mandat consistant à promouvoir plus d'intégration dans l'Union européenne, la Cour de Justice de l'UE s'acquitte pour sa part de son mandat d'établir et maintenir l'état de droit. Pour atteindre son objectif, la Commission utilise les aides d'État pour « punir » les pays plus résistants à l'intégration européenne, mais la Cour de Justice corrige tout biais introduit par le processus décisionnel de la Commission. De cette façon, chaque institution suit son mandat et les interactions entre eux en témoignent. À travers de cette interaction, ils renforcent leur rôle institutionnel et renforcent leur légitimité, élément fondamental pour accroître leur pouvoir et assurer leur survie.

Limitations de la thèse

Bien que les contributions de cette thèse à l'amélioration de la recherche empirique en CPA au niveau européen soient incontestables, elle présente certaines limites qui doivent être discutées.

Tout d'abord, il convient de souligner que, comme la plupart des recherches consacrées aux relations entre les entreprises et les acteurs politiques, on manque d'informations sur ce qui se

passer dans les coulisses. Il existe une partie importante des activités de *lobbying* qui ne fait pas l'objet d'un suivi officiel et dont les effets ne sont pas mesurables.

En ce qui concerne la partie visible du *lobbying*, des limitations existent également. Premièrement, les initiatives en matière de transparence sont assez récentes dans l'Union européenne. Par conséquent, la période pour laquelle les données sont disponibles pour effectuer des analyses empiriques est assez courte. De plus, le registre de transparence n'est pas encore assez mature, ce qui engendre des problèmes de qualité des données qui peuvent avoir des impacts mineurs sur l'analyse. Pour citer quelques exemples, la catégorisation de certains groupes d'intérêt est parfois incorrecte et certaines variables manquent de cohérence telles que le nombre d'employés ou les dépenses relatives à l'activité de *lobbying*. Ces problèmes mineurs ont été gérés avec un prétraitement strict des données pour éliminer les erreurs possibles. Bien que le registre de transparence représente un progrès qui a permis de nombreuses recherches dans ce domaine, le type d'information disponible est encore très limité.

Par ailleurs, il est assez difficile de trouver des bases de données supplémentaires pour compléter les informations fournies dans le registre de transparence en raison de l'énorme quantité de sociétés enregistrées et de leur hétérogénéité. Par conséquent, aucune des analyses menées dans cette thèse n'a inclus des variables plus complexes liées à la performance financière, aux caractéristiques internes ou à la structure organisationnelle des entreprises. C'est une contrainte importante qui empêche une analyse plus sophistiquée. Cet obstacle a imposé des limites, par exemple, au choix des variables qui étaient employées pour évaluer les connaissances politiques.

La limitation de la disponibilité des données concerne également les informations sur les réunions de *lobbying*. Les données disponibles actuellement sont insuffisantes pour identifier la politique pour laquelle un groupe d'intérêt milite. Il est impossible pour l'instant d'établir un lien entre l'accès des lobbyistes aux représentants politiques et les résultats du *lobbying*.

Cette recherche se concentre sur le *lobbying* auprès de la Commission européenne, qui est la principale cible du *lobbying* des entreprises. Pourtant, le *lobbying* auprès d'autres institutions participant au processus d'élaboration des politiques ne peut pas être négligé. Il faut considérer que le *lobbying* au sein de l'UE concerne plusieurs institutions. Les groupes d'intérêt visent également le Parlement européen et le Conseil. L'analyse de la façon dont les entreprises font du *lobbying*

auprès d'autres institutions permettrait d'élargir les connaissances sur le déploiement de la CPA au niveau européen. De plus, il faut clarifier que, même au sein de la Commission, le *lobbying* est transparent seulement au niveau de la haute hiérarchie et ce malgré le fait que, le *lobbying* est intense aussi au niveau du personnel, même si ces données ne sont pas encore disponibles. Pour ce travail de recherche, les articulations entre les activités politiques aux niveaux national et supranational ont été également écartées.

En ce qui concerne les résultats des activités politiques dans le processus d'élaboration des politiques, il faut reconnaître que l'étude d'un seul cas empêche la généralisation des résultats. En effet, des conclusions plus généralisables demandent un échantillon beaucoup plus important comprenant de nombreuses réglementations dans différents secteurs économiques.

Enfin, l'analyse des poursuites judiciaires envisageant le renversement des décisions sur les aides d'État suggère que les arrêts de la Cour de Justice ne sont pas biaisés. Cependant, certaines informations utiles n'étaient pas disponibles lors de la structuration de la base de données, telles que les juges en charge des affaires et le coût des processus. Par conséquent, une analyse plus approfondie des litiges dans l'UE devrait également prendre en compte des affaires d'autres natures plutôt qu'uniquement des affaires d'aides d'État. Une analyse plus élargie pourrait révéler certaines tendances qui n'ont pas été pas identifiées d'après le présent échantillon.

Introduction

Most firms aim to gain and maintain their competitive advantage in order to ensure profit and the sustainability of their businesses. In this sense, they develop strategies to achieve the expected results. Traditionally, the central axis of a strategy considers the actions necessary to form relationships with customers, suppliers and competitors. Hence, it is reasonable to assume that designing a strategic plan that considers all of these market elements and, consequently, their impact on the performance of a business, would prevent any failure risk. Nevertheless, the business environment is full of complex factors that extrapolate the market environment characterized by relationships among the traditional stakeholders.

Therefore, it is important not to neglect government bodies, citizens, non-governmental organizations, and the media in the business environment in which a firm operates. The interplay between these stakeholders can impact a firm's performance, not only by adding constraints to the firm's operation but also by triggering new business opportunities. A non-exhaustive list of the basic issues connecting companies with less traditional business stakeholders includes geopolitical conflict, environmental problems, climate change, and technological issues. The latter refers to the development of artificial intelligence and the popularization of social networks, creating new business models while simultaneously challenging old ones. In addition, there are political and bureaucratic issues, such as taxes, sectoral regulation and industrial and trade policies, that strongly impact the way businesses work.

In such a scenario, it is difficult for firms to ensure their survival by relying solely on the traditional market strategic trifecta of suppliers-competitors-customers. Actors, such as government authorities, will affect a firm's performance. To follow, I present some recent examples to illustrate how government decisions impact business operations and how firms respond to these decisions.

Recently, the Brazilian President, Jair Bolsonaro, announced his intention to relocate the Brazilian embassy in Israel to Jerusalem, in an effort to more strongly reinforce political relations with Israel. Brazil is the leading exporter of halal meat to Arabic countries, and, according to the Arabic-Brazilian Chamber of Commerce, the level of exports has increased 418% in the last 15

years, representing a turnover of US\$3.65 billion in 2017. The decision to relocate the Brazilian embassy caused hostility in some Arabic countries and created a risk of economic retaliation.⁷ Brazilian businesspeople within the meat sector began pressuring the Brazilian government to withdraw its decision in order to avoid a potentially challenging situation with their Arabic trade partners.

Huawei, the Chinese giant of telecommunications equipment, owes part of its success to support received from the Chinese government, that for a long period of time had established barriers to competitors in the domestic market. However, the same tight political connections between the company and the government have recently become a thorn in its own side, with the US government raising the possibility of Huawei being a spy of the Chinese government.⁸ Therefore, the US made a decision to boycott Huawei's products and invited other countries to follow suit. In its response to this international crisis, Huawei is suing the US government for its failure to present evidence in support of its claim.⁹ Some specialists have already anticipated that this political issue will impact Huawei's operations and have delayed the deployment of 5G network projects worldwide.

The last example is the case of oil and gas companies. The development of climate change policies and other initiatives to preserve the environment have always been a constraint to the present and future operation of firms in this sector. To respond to this issue, the main companies in the sector have decided to actively lobby politicians all over the world by denying the existence of climate change. When the circumstances become unfavorable to sustain this argument, they have elected to delay the development and implementation of these climate change prevention policies. Recently, an article published in *Forbes*¹⁰ revealed the millions-of-dollars budget for lobbying activities carried out by the main oil and gas companies in their attempt to deny climate change and delay policies. Within the same period, lobbying activists denounced Exxon Mobil in

⁷ Epoca article accessed in 03/04/2019: <https://epocanegocios.globo.com/Economia/noticia/2019/03/aproximacao-entre-bolsonaro-e-israel-pode-afetar-o-mercado-bilionario-de-carne-halal-no-brasil.html>

⁸ BBC article accessed in 03/04/2019: <https://www.bbc.co.uk/news/resources/idt-sh/Huawei>

⁹ BBC article accessed in 03/04/2019: <https://www.bbc.com/news/business-47478587>

¹⁰ Forbes article accessed in 03/04/2019: <https://www.forbes.com/sites/zakdoffman/2019/02/19/huawei-founder-the-u-s-does-not-represent-the-world-they-will-not-crush-us/#25a42a422433>

its refusal to appear at a hearing organized by the European Parliament to talk about its responsibility in climate change and its long-held denial of the situation.¹¹

The cases are examples of the potential for governments to leverage or sink a firm's performance. Although the examples discussed refer to businesses in an international context, every political level can impact a firm's operation. For example, platforms such as Airbnb and Uber face interference from the municipalities of large cities, such as Paris.¹² Many municipalities have sought regulatory instruments to balance the benefits of technological solutions provided by various platforms with the potential risks to the current well-functioning of urban areas. Furthermore, the implementation of Roam-Like-at-Home in the European Union,¹³ that abolished roaming charges at the EU level, unsettled the roaming market and has likely impacted the revenue of some operators.

As a solution to deal with the challenges that are beyond their market environment, firms engage in activities involving political actors, with the intention of capturing advantages or to avoid institutional risks in their own business environments. Such actions also have the potential to leverage their performance in the market environment, and are known as corporate political activities (hereafter, CPA). From the examples above, it is possible to highlight the two most commonly-employed strategies: first, lobbying for a preferred policy; and second, suing to revert an unfavorable decision.

Much research has already been devoted to characterizing CPA and understanding the outcomes and dynamics involved. However, the majority of this research refers to the US institutional environment. In this context, Meznar (2001) emphasizes a particular flaw in this field that is a consequence of American ethnocentrism: the lack of certainty that the same principles and models would be robust enough to explain political strategies in a global context. Almost 20 years after his article, research into CPA is still concentrated within the US, even though it is possible to identify some progress in other countries.

¹¹ CEO article accessed in 03/04/2019: <https://corporateeurope.org/climate-and-energy/2019/03/climate-arson-strategies-and-impact-exxonmobil-dangerous-eu-lobbying>

¹² Libération article accessed in 04/04/2019: https://www.liberation.fr/france/2016/07/24/anne-hidalgo-il-faut-se-battre-pour-faire-reconnaitre-que-les-villes-font-partie-des-solutions_1468259

¹³ European Union Newsroom: https://europa.eu/newsroom/highlights/special-coverage/end-roaming-charges_en

The views of Meznar (2001) make sense. One relevant aspect of CPA is that it is not realistic to consider them universal or uniform because firms' political constraints differ. For the most part, countries present distinct legislative and institutional arrangements that trigger different interactions and dynamics between government actors and firms. Consequently, it is not credible to automatically transpose the results and conclusions from one political environment to another. To extend the current knowledge base of corporate political activities, it is also necessary to expand the boundaries of the political environments studied. Therefore, the main goal of this thesis is to contribute to the research into CPA by deepening the knowledge base on the EU's political environment. It is an attractive scenario because of both its political and economic characteristics.

The building of a single market—which is the primary objective of the EU—entails many changes in the political and regulatory landscapes, imposing new obligations on business actors. These changes present a threat to business stability but also to strategic opportunities. Consequently, companies must attempt to accommodate their needs and adjust their behaviors in this new scenario.

A remarkable characteristic of the European Union is its institutional identity. It is neither a sovereign country uniting European states nor an international agreement. It is something between these two, and exists as the major authority to rule only in determined subject areas that are essential to building a stronger and more integrated economic region.

Another relevant aspect of the EU is its member states. Some of the states are leading economies in the world, while others are less protagonistic in the world economic scenario. This integration of “Davids” and “Goliaths” has created a significant number of coordination and integration challenges. How should the EU design policies in such a heterogeneous environment? Furthermore, how should policymakers reconcile the interests of so many veto players at both the national and supranational levels?

Despite these challenges, the benefits are attractive. The EU has an outsized consumer market. Not only does this increase the possibility of scale gains, but it also increases the number of players and the intensity of competition. These aspects generate both minor and significant changes in the business scenario that cause firms to act.

Furthermore, the EU has a unique institutional environment. The organizational structure of its institutions, the rules of the policymaking process, and the interconnection among national and supranational levels create dynamics that are not in existence elsewhere. How do firms behave in such an environment? Moreover, how do EU institutions impact businesses, and vice-versa?

This thesis is an attempt to bring some clarification to these questions through empirical research. In Chapter 1, the main concepts and the articulation of the thesis are introduced. Chapter 2 investigates the determinants of firms' access to the European Commission representatives, and Chapter 3 examines lobbying outcomes in the case of the Wholesale Roaming regulation. In Chapter 4, I study the lawsuits of state aid cases in the Court of Justice of the European Union. Finally, Chapter 5 provides the main conclusions of the thesis and a future potential research agenda.

Chapter 1

Corporate Political Activity in the European Union

1 Introduction

In the introductory chapter, I emphasized that the environment in which a firm operates is a sophisticated setting that includes not only stakeholders, such as suppliers, consumers and competitors, but also government bodies, citizens, non-governmental organizations and the media. Within this context, the strategic management literature differentiates two environments where firms operate: the market and the nonmarket environments. According to Baron (1995), the market environment includes the firm and the actors that establish a formal relationship with it through private agreements where the exchange of property is at stake, such as the consumer and supplier relationship. The nonmarket environment consists of the social, political and legal arrangements that provide the structure for interaction between companies and their stakeholders. These arrangements represent different interests that are often in conflict with firms' interests (Baron, 2013).

As a solution to deal with the challenges that are beyond their market environment, firms may engage in nonmarket strategies with the goal of improving firms' overall performance by shaping the nonmarket environment (Baron, 1999). The nonmarket strategies' literature usually distinguishes them into two main categories: corporate social responsibility (CSR) and corporate political activities (CPA). While CSR refers to initiatives that address some social good that can positively reflect on a firm's organizational performance, CPA refers to corporate attempts to deal with government actors whose aim it is to create a more favorable political environment (Mellahi *et al.*, 2015). Both are important to the development of a firm's strategy. In this manner, many authors defend the importance of the development of an integrated strategy of a firm, where both market and nonmarket strategies complement each other to reach its principal objective. Therefore, CPA and CSR—as part of an integrated strategy—will also be interrelated, even if each of them addresses different stakeholders.

The fact that a firm's competitive advantage depends both on their market and nonmarket performances, means that they will compete both in the market and nonmarket environments. The research of Fremeth and Shaver (2014) is a good example to illustrate this. They have empirically demonstrated that electricity utilities operating in the US increased the level of renewable power generation when their peers in the same region faced stricter regulatory standards in other regions. This result confirms that firms are anticipating modifications in the regulatory landscape and therefore change the competitive environment in their operating areas.

The nonmarket environment is a field as rich in research possibilities as the market environment. Nevertheless, recognizing the limited scope of this dissertation, I have focused only on the CPA; the interplay between firms and government institutions at the European Union level. This chapter includes a literature review that shows the importance of institutions for CPA research, then presents the main research on CPA and, finally, reviews the current state of CPA in the EU. I then proceed with the presentation of the dissertation project, a brief overview of the main EU institutions, the policymaking process, and some figures from the EU institutional environment. Finally, this chapter provides the data and methods employed in the dissertation and a summary of the research projects presented in the following chapters.

2 The importance of institutions for CPA research

A commonly-used definition of institutions states that they are formal and informal rules together with their enforcement mechanisms (North, 1990), and are essential to provide monitoring coordination and enforcement of the rules. In a complementary manner, Greif (2006) proposes an extended definition of an institution that states that it is a system of rules, beliefs and norms that generate regularity of behavior. This means that institutions can exert influence on individuals, and vice versa. This extended definition may help to explain the functioning of institutions, such as why some rules are respected while others are not, and why some institutions prevail over time while others do not. Thus, this definition may provide some clues as to the dynamics of institutional environments and their governance.

The institutional environment has the potential to clarify a wide range of issues, from social inequalities to economic performance (Acemoglu and Robinson, 2005). Consequently, an

institutional perspective is valuable in order to advance knowledge in many research fields. If its potential sounds ambitious, the way it attempts to understand these phenomena is gradual. As highlighted by Williamson (2000): “*NIE (New institutional economics) has progressed not by advancing an overarching theory but by uncovering and explicating the microanalytic features to which Arrow refers and by piling block upon block until the cumulative value added cannot be denied.*” Within this institutional perspective, there are many examples in the literature, such as the research demonstrating the expansion of trade in the Middle Ages, thanks to the development of the Merchant Guilds (Greif, 2006). Furthermore, Milgrom (1990) concluded that the Law Merchant system is the key to understanding the longevity of the Champagne fairs held in the 12th and 13th centuries. An historical analysis of the development of institutions in the United Kingdom led to the conclusion that institutional dynamics are at the root of its economic development. This has been primarily discussed in North and Weingast (1989) and North (1990), and further explored by Greif and Rubin (2014).

One way by which to comprehend the microanalytical features of the institutional system is to consider it as a layered system. Following Williamson (2000)’s proposition, there are four levels of social analysis necessary to understand the organization of institutions. At the top level are the basic rules that underpin institutions such as religion and widely-held traditions: they change extremely slowly. The second level refers to the institutional environment where formal rules are established. This level encompasses executive, legislative and judiciary institutions, for example. The third level refers to governance—how the game is played—which establishes the structures used to avoid conflict and incentivize gains. At the bottom level is employment and resource allocation, basically represented by variables of the production function. These levels are all interconnected, and exert to influence some extent on the lower level. Therefore, coherence between all of them is fundamental in explaining phenomena and economic outputs.

The research of CPA is embedded in the governance level where transactions between political actors and firms occur as an attempt to maximize gains for each side. When the rules and the play of the game are defined, organizations emerge as a result, and will be constrained by conditions imposed. So, economic performance will strongly depend on institutions. In such dynamics, no matter the institutional environment, it is certain that organizations within this set of rules will make an effort to “win the game”, through a combination of skills, strategy and

coordination (North, 1990). To summarize, organizations will carry on corporate political activities so as to be able to adapt to the institutional environment.

The research of Dorobantu, Kaul and Zelner (2017) has further explored the link between nonmarket strategies and the institutional environment. They assert that nonmarket strategies are alternative strategies that firms employ to create and appropriate value when facing institutional costs. These conditions are more likely to emerge in weak or incomplete institutional scenarios. However, even in the most developed ones, these alternative strategies are necessary and largely employed to address issues in the nonmarket environment. Hence, the nature of the institutional environment will influence the choice of strategy to be developed. Three alternatives are proposed: first, adapting to existing institutional structures; second, adding to such structures by establishing supplementary local institutional structures; and third, transforming the institutional context itself. Adaptive approaches are adequate for weak institutional environments with higher costs of hierarchical governance, politically risky environments and environments with pervasive corruption pressures. Some examples include alliances and political connections. Additive approaches aim to lower institutional costs, such as those emerging from collective action problems. They include self-regulation and CSR initiatives. Transformative approaches are alternatives for firms that seek advantages from special regulations. Mostly, they apply in contexts where the impact of existing institutional structures on firms' businesses is significant, usually in regulated industries. They refer mainly to lobbying and campaign contributions.

Thence, the strategies targeting the political environment arise as a possibility to use in order to change the current landscape, unlock opportunities and to set better conditions for market activities. Firms with enough bargaining power will use political activity to overcome institutional constraints when returns could counterbalance investments (North 1990). However, government policies, legal and regulatory frameworks may interfere with a firm's capacity to build and leverage resources and capabilities that will limit their ability to deploy CPA (Doh, Lawton and Rajwani, 2012). For instance, there are institutional environments where the private financing of political campaigns is forbidden or where lobbying is strongly regulated. It is also relevant to take into consideration the nomination process of political representatives. Elected and appointed representatives have different incentives and will therefore behave accordingly. Such differences

may imply diverse dynamics in the political arena and reinforce the importance of expanding the boundaries of CPA research.

3 Corporate Political Activity

The main reasons for firms engaging in CPA are the expected benefits arising from the political environment. Being aware that government can impact firms' performance (for example by unlocking market opportunities), firms may attempt to enhance their competitive advantages by influencing political representatives for a favorable regulatory decision or to shape policy outcomes. In this scenario, Spiller and Liao (2008) proposed that the primary strategies employed by firms in the political arena include buying influence, lobbying for influence and suing for influence. Here, buying refers to campaign contributions, lobbying refers to the provision of information directly from one company or a professional lobbyist or even from a coalition group, and suing refers to judicial actions.

Some research dedicated to understanding the outcomes of CPA deployment includes, for instance, De Figueiredo and Silverman (2006), who showed that universities that invested in lobbying activities increased the number of grants they received from the government. Also, De Figueiredo Jr. and Edwards (2007) demonstrated that campaign contributions could influence the set of regulated prices in the telecommunications sector. Holburn and Vanden Bergh's (2014) results suggested that campaign contributions were helpful to obtain favorable decisions on merger and acquisition (M&A) processes in the electricity sector. The positive outcomes are also the result of ties between a firm and the government. Hillman, Zardkoohi, and Bierman (1999) concluded that the participation of corporate leaders in official government posts would have a positive impact on a firm's performance. Similarly, Faccio (2006) found a significant increase in stock prices when a corporate leader entered politics.

Nevertheless, the positive results are not taken as given for firms deploying CPA. Hadani and Schuler (2013) investigated the effects of CPA on firms' financial performance. Even though they found a positive relationship between CPA and financial performance for firms in the regulated sector, in general, investments on CPA impact financial performance negatively. Such

findings align with Baron's (1995) proposition that such strategies are more valuable when the government controls more opportunities.

In a review on the research that connects CPA and firms' performance, Rajwani and Liedong (2015) point out that the current empirical results cast doubt on the effects of CPA on performance, and suggest that further investigation into different political environments is required. Furthermore, Hadani, Bonardi and Dahan (2016) conducted a meta-analysis of CPA and its outcomes from studies conducted in the US. They found its impact to be weak, and concluded that the effectiveness of political strategies depend on the context. In addition, after an in-depth analysis of lobbying in the US, Baumgartner et al. (2009) concluded that its outcomes are uncertain due to the difficulty in controlling policy processes. Thus, it is not possible to attribute lobbying success to only one factor and, therefore, to assume that lobbying investments will have the expected return.

However, the direct influence of policy outcomes is not the only goal of firms in the political environment. They often invest in such strategies to obtain access to targeted political representatives. Contact with politicians can reduce regulatory uncertainty, foresee changes in the policy environment and allow better strategic planning. In addition, taking into consideration that access to politicians is not available to all firms, being provided with such access can therefore represent an advantage for firms within the political arena (Hillman, Zardkoohi and Bierman, 1999; Schuler, 2002; Schuler and Rehbein, 2011).

In this context, Ansolabehere, De Figueiredo and Snyder Jr. (2003) analyzed the magnitude of investments in CPA in the US, and show that the money spent on campaign contributions is below the cap and much inferior to the amount spent on lobbying. They concluded, therefore, that firms use campaign contributions to increase their access to politicians. Moreover, Schuler and Rehbein (2011) empirically demonstrated that firms that lobby and make campaign contributions have more access to political representatives.

The unpredictable results of CPA and, of course, the investments to pursue such activities may prevent some firms from carrying out political actions. Thus, being politically active or not is a primary choice that a firm must make concerning nonmarket strategies. Among the factors that will influence this decision are organizational structure, financial resources, the institutional environment, industry, and market characteristics (Schuler, 1999; Lux, Crook and Woehr, 2011).

For firms that decide to be active in the political arena, there are three levels of decisions they should take. The first refers to the approach firms will choose for their strategy. It can be either relational—when firms are proactive in the political arena, or transactional—when they decide to have a defensive strategy when issues arise. Second, firms decide if they will participate individually or collectively. Finally, there is the choice of strategies to pursue: financial incentives, information and constituency-building strategies (Hillman and Hitt, 1999). However, note that, in contrast with Spiller and Liao (2008), they do not include litigation as a possibility. Furthermore, Hillman and Hitt (1999) affirm that the main factors guiding these decisions are institutional characteristics and firms' resources. Each one of these decision levels represents considerable research that has been conducted in order to understand the dynamics of CPA, and some of the research is presented to follow.

Baron (1995) highlighted one particular difference between the market and nonmarket stakeholders' relation: while they are usually voluntary in the market environment (you choose to buy a product or a supplier for your business), they are involuntary in the nonmarket environment. Firms are frequently in contact with the government because they need to pay taxes, respect legislation and follow regulations. In this sense, it is common that firms need to engage in nonmarket strategies in order to respond to some issues that emerge, and are therefore reactive to a nonmarket issue. However, Fremeth and Richter (2011) asserted that being proactive in the nonmarket environment may be a means of obtaining a competitive advantage by decreasing regulatory uncertainties and increasing a firm's chance of also excelling in the market environment. They propose two ways to develop this: first, advocating for a pragmatic progressive policy; or second, systematically embracing advancing regulation. However, they also point out limitations to this strategy. Thus, it reinforces Hillman and Hitt's (1999) suggestion that the characteristics of the institutional environment—as well of the firm—are relevant in choosing political strategies.

As an empirical development of the previously designed framework, Hillman (2003) studied the variables that affect firms' nonmarket strategies choices by observing US multinational companies operating in European countries. She concluded that firms chose a relational approach in corporatist countries, whereas a transactional approach was the choice in pluralist countries. Another finding of this research is that firms adopting a transactional approach tend to use financial

incentive strategies, while firms more frequently adopt constituency building strategies in a relational approach.

Further research also seeks to explain strategic choices in the political environment. For example, De Figueiredo and Tiller (2001) analyzed the choice between individual and collective lobbying. Their findings suggest that the nature of the information requested on collective action is the determinant for this decision, and means that firms favor an individual approach when the sharing of strategic information is at stake. Nevertheless, firms can opt for both group and individual initiatives if they can obtain unique benefits beyond the common ones used to justify collective action. In other research, De Figueiredo and Kim (2004) concluded that the decision of internalizing or externalizing lobbying functions is considered to be a make-or-buy decision that is influenced by an opportunism risk related to the leakage of information. Thus, in issues that depend on sensitive information, firms use internal staff to lobby. Otherwise, firms tend to use outside lobbyists when the information required is not sensitive.

In general, there is more than one choice of strategy to pursue. Firms may combine several strategies to achieve the expected outcomes in the political environment. Schuler and Rehbien (2002) demonstrated that large firms—as well as firms facing activism within its industry—tend to combine lobbying and campaign contributions. Hence, we again note the weight of the political environment and firms' resources for planning political strategies.

At this point, it is pertinent to introduce the concept of political markets in order to understand how the political environment may influence the development of CPA and affect its outcomes. The political environment can be characterized as political markets for public policies. Analogously to economic markets, suppliers and demanders interact to negotiate merchandise. In this setting, the merchandise is public policy. The suppliers are government actors such as politicians and bureaucrats. On the demand side, there are firms, interest groups and individuals. In this market, demanders provide information, votes and financial support, whereas suppliers will provide the demanded public policies (Bonardi, Hillman and Keim, 2005).

It is worth noting that stakeholders on the demand side do not usually have the same demands and may pursue different policy outcomes. Thus, there is much competition in the political markets because stakeholders will try to sway the policy decisions according to their preferences. Such competition is a challenge for both sides of the political market. For demanders,

it would decrease the chance of obtaining the desired results. For suppliers, it would be challenging (to say the least) to meet the needs of the vast spectrum of stakeholders. In this scenario, firms can face regulatory uncertainty originating from competition among demanders and the political characteristics of the suppliers. Accordingly, firms will balance the attractiveness of the political market and decide whether or not to continue with political actions and adjust their strategies (Bonardi, Hillman and Keim, 2005; Kingsley, Vanden Bergh and Bonardi, 2012).

Some studies empirically demonstrate the potential of the characteristics of political markets in shaping expected CPA outcomes. An analysis of the regulated rates changing process in the electricity sector in the US has led to the conclusion that interest group opposition, plus experienced regulators with more resources, are factors that diminish the chances of an increase in the regulated rates, thus generating obstacles for the deployment of political strategies (Bonardi, Holburn and Vanden Bergh, 2006; Fremeth and Holburn, 2010).

Undoubtedly, the characteristics and preferences of the suppliers are relevant to the deployment of strategies in the political market. Some research has explored firms' strategies when multiple institutions participate in the political market, either directly or indirectly. Holburn and Vanden Bergh (2004) explored the relationship between regulatory agencies and legislatures in the US. They question whether or not agencies have incentives to rule according to political preference. Hence, firms should consider conducting political action to target the political principals in order to indirectly induce the desired regulatory changes. Vanden Bergh and Holburn (2007) have further explored this interdependency between institutions, arguing that to achieve the desired policy outcomes, firms should account for each institution's preference, and then target political actions towards pivotal institutions.

In addition, the possibility to take a case to court may broaden the range of political action a firm pursues. For instance, De Figueiredo and De Figueiredo Jr. (2002) outline that in the US regulatory environment, firms are allowed to appeal to the court to overturn a decision, and that this may affect the strategic choice of firms in the political arena. According to their model, firms would adjust their investment on lobbying depending on the position and ideology of the court. For instance, when the court is inclined to reverse a regulation, it could lead to a scenario where lobbying vanishes. Subsequently, an empirical study has demonstrated the effect of judicial

ideology on the selection and results of telecommunications regulatory cases that affected firms' strategic decisions. Thus, firms tend to choose litigation when the judiciary and regulatory agencies have different ideologies, and when they face more regulatory uncertainty (De Figueiredo, 2005).

Nonetheless, the way firms use litigation in the political arena is greatly dependent on the political environment. For instance, Ang and Jia (2014) showed that the use of litigation has different dynamics in China, which is an authoritarian political environment. Litigation in China is a choice made by politically-connected firms in order to solve disputes, as their political connections can potentially influence adjudication.

After acknowledging the relevance of the political environment for the deployment of corporate political activities, it is important to discuss other relevant factors, which are firms' resources and capabilities. Not only can they help firms to be more effective in their political strategies but they also represent a source of competitive advantage in the political environment (Baron, 1995; Bonardi, Holburn and Vanden Bergh, 2006; Oliver and Holzinger, 2008; Jia and Mayer, 2016).

There is much discussion in the literature about the political resources that would most benefit firms in the political arena. Dahan (2005) provided a comprehensive review of the literature about such resources. Even though there is a lack of harmonization among authors' definitions, he proposed a categorization that distinguishes between three types of resources. The first is that of primary resources that have a significant impact among political representatives, such as expertise and financial resources. The second is supporting resources that function as vectors of the primary ones. They include relational and organizational resources as well as political-administrative expertise. The third category refers to complementary resources. Even if they have a secondary status, they carry enough weight to leverage the impact of the primary ones, for example, public image and political reputation.

A common criticism of the resources approach being a source of competitive advantage is that the resources are likely to be replicated, and are therefore not robust enough to sustain a competitive advantage (Bonardi, 2011). To recap the political resources as identified by Dahan (2005), it is easy to identify some that fit into this description, such as organizational and financial resources. In this context, Bonardi and Vanden Bergh (2015) identify another resource that could

overcome the previous criticism, which is political knowledge; that is, the organizational knowledge about the political environment. This has two dimensions. The first is the institution-specific knowledge, which consists of firms' knowledge about political environment dynamics, the identification of pivotal politicians, the policymaking process, and the mechanisms which enable participation in this process. The second is the firm-specific knowledge, which consists of firms' knowledge about their value in the political environment, such as the political value of firms' business assets, practices and strategies.

Firms that acquire political knowledge enable the development of political capabilities that are crucial for the achievements of the intended political outputs. Witold and Zelner (2012) underline the importance of knowledge assets, mainly those developed through experiential learning—which are difficult to imitate—in the development of political capabilities. Oliver and Holzinger (2008) demonstrated that political environments are becoming more dynamic and requested the development of such capabilities to ensure the effectiveness of political strategies. However, what do “political capabilities” refer to, precisely? The literature offers some definitions. Baron (1995) refers to the processes and activities that firms develop in order to manage their nonmarket environments. Holburn and Zelner (2010) attest that they are organizational capabilities for assessing policy risk and managing the policymaking process, enabling a firm’s capacity to deploy or leverage its political resources on an ongoing basis. Finally, Jia and Mayer (2016) refer to it as a firm’s ability to know when and how to use particular political tactics to achieve a specific political outcome.

Even though firms’ political resources and capabilities can be considered a developing research issue, requiring further investigation to better define its components and its development process, scholars agree that it is relevant for the deployment of CPA. Some evidence from the empirical literature includes the research of Bonardi (1999) on integrated strategies in the telecommunications sector, and the research of Lawton and Rajwani (2011) in the airlines’ sector, that also suggest that these capabilities are a result of firms’ characteristics, such as type of ownership and organizational processes.

4 Corporate Political Activity in the European Union

Despite being a compelling environment for the research of corporate political activities, there are only a few researchers who have studied CPA in the EU. A plausible explanation for this scarcity is the unavailability (or at least substantial limitation) of data to enable further empirical research. While the Lobbying Disclosure Act has brought transparency of much information linked to lobbying activities in the US since 1995, the European Union is still taking the first steps towards more transparency. Thus, there are very few records of political activities at the EU level. There is also a considerable gap in research from a strategic management perspective. Political scientists have developed the few existing works available, however, as I will now discuss, they represent a valuable contribution to characterizing the EU political environment.

Among the specificities that impact on the development of corporate political activities, I highlight the inexistence of private electoral support. This decreases the range of actions allowed and accentuates the use of informational strategies. The policymaking process also involves three different institutions: the European Commission (EC), the European Parliament (EP) and the Council. While the members of the European Parliament are elected, the European commissioners are appointed by the member states and the Council is composed of national ministers. Such a scenario may incentivize corporate political actions targeting multiple institutions.

The interest of firms targeting their political strategies towards European institutions is a result of the gradual transfer of regulatory functions—from the national to the supranational level—in many policy areas that have directly impacted business operations over the last decades. It also contributed to the intensification of business lobbying in Brussels during the 1990s (Coen, 2009). Presently, Brussels has the second highest concentration of lobbyists in the world, behind Washington (Mulcahy, 2015). In this scenario, the European Commission has emerged as the primary target for corporate political actions, not only due to its power to initiate the policymaking process and to write the initial draft, but also due to the difficulty in implementing changes after issuing the first proposal (Hix, 2011).

An analysis of the active interest groups at the EU level has shown the clear interest of business stakeholders in comparison to other types of interest groups. Germany, France, UK, Italy, and the US are the countries with the most business representation in Brussels, with a main focus on regulatory issues (Coen and Katsaitis, 2015). Bernhagen and Mitchell (2009) analyzed a sample of 2,000 firms appearing in the Forbes Global 2000 list to understand the drivers of direct corporate lobbying in the EU. They concluded that large firms tend to perform direct lobbying as well as the firms that are more regulatorily exposed. As an extension of this research, Vannoni (2013) studied the economic factors that influence firms to perform direct lobbying. His results suggest that asset specificity—which is related to the costs of reallocating production factors between industries—is positively correlated to direct lobbying, while industry concentration is negatively correlated. The explanation follows the Olsonian argument for collective action. Firms in concentrated sectors prefer lobbying collectively. However, in an asset specificity scenario, firms are more exposed to collective action problems and would favor direct lobbying.

Furthermore, Ehrlich and Jones (2016) also built on the dataset of Bernhagen and Mitchell (2009) to investigate the choice of lobbying venues. Their results suggest that firms will opt for lobbying at the EU level when there are fewer access points to lobby at the national level. Rival (2012) also recognized that two things are most important in the design of political strategies: first, the national political environment; and second, the issue itself to be solved by deploying the political strategies. However, in a comparison between lobbying strategies of firms in France and the UK, she concluded that firms in both countries would interchange between strategies focused on the national and the EU levels. Hence, for these countries at least, lobbying at the EU level would not substitute lobbying at the national level, but would rather be an additional forum for issues that would better fit in the supranational agenda.

For some researchers, the EU political landscape is characterized by the elite pluralism phenomena, which means that some interest groups have more space in the political arena than others (Coen, 1998; 2009). This occurs because some firms have been encouraged to expand their political capabilities in order to engage in lobbying, both in the European and at the national levels, due to the European Commission's need for external information. These firms became pioneers in representational activity by supplying information on several political issues, due mainly to their multinationalism. This enabled them to develop a kind of European credential, which resulted in

their privileged access to the EC. Indeed, Eising (2007) surveyed around 800 business associations and 34 large firms to investigate access patterns to EU institutions and concluded that large firms have better access to both the Commission's leadership and to members of the European Parliament than business associations.

However, the hypothesis of elite pluralism does not seem to be valid for all hierarchical levels within EU institutions. According to Coen and Katsaitis (2013), at the staff level of the European Commission, some policy domains present greater participation of other types of interest groups: it depends on the nature of the policy domain and the organizational characteristics of the department in charge. Thus, they suggest that while an elite pluralism dominates at the system level (leadership), chameleon pluralism characterizes the sub-system level (staff).

The EU institutions' representatives at all levels require external expertise in order to bring legitimacy to their decisions, and, therefore, their interaction with interest groups will depend on their demand for such expertise. Bouwen (2002) acknowledged these different demands and proposed a theory of access to European institutions. It states that access to the institutions will depend on the capacity of interest groups to provide access goods, which is the crucial information related to expert knowledge, European or domestic interests. Due to the different demands of each institution, he proposed that large individual firms will have a better degree of access to the European Commission, whereas European associations will have better access to the European Parliament and national associations will have better access to the Council.

The literature about EU lobbying also discusses how the demand for external expertise may shape lobbying strategies. Mahoney (2008) highlighted one main difference between lobbying in the EU and US, which is that expertise is the primary driver of EU lobbying. She characterizes it rather as technical lobbying that relies on research, and uses technical, scientific and legal arguments. It differs significantly from lobbying in the US, where partisanship plays an important role. According to Coen and Vannoni (2018), it also impacts the organizational design of the government affairs departments of companies that lobby at the EU level. Their research indicates that firms may favor experienced in-house managers with specific competencies and an in-depth knowledge of their sector.

In considering the intense lobbying activity at the EU level, some researchers have dedicated their work to investigating whether or not interest groups can sway the policymaking

process. Hermansson (2016) analyzed interest groups' contributions to nine policy processes in the environmental sector to determine the factors that may contribute to successful lobbying. The results suggest that the European Commission tends to accept policy recommendations from stakeholders that combine expertise and privileged access. Additionally, recommendations that receive support from industry organizations have more chance of being accepted. Kluver (2011) performed a quantitative text analysis of more than 50 policy processes in order to understand the circumstances in which interest groups influence the policymaking process. Her analysis shows that lobbying success depends on the relative size of the coalition (the sum of interest groups with the same preference, even if it is not an organized coalition), and the saliency of the issues. These results are consistent with the analysis of lobbying and policy changes in the US performed by Baumgartner et al., (2009).

However, lobbying is not the only strategy that interest groups deploy at the EU level to shape the political environment according to their preferences. Litigation is also a possibility in the EU. Through the Court of Justice of the European Union (CJEU), interest groups can try to change their regulatory landscape by appealing a decision from both national and supranational institutions. Bouwen (2007) studied what drives interest groups' choice between lobbying and litigation. At first, the higher costs of litigation may motivate more frequent lobbying. Also, groups with a broader mandate may favor lobbying due to the difficulties of reconciling the different interests pursued by its members through judicial action. Another factor influencing this choice is the positioning of the judiciary and legislative branches. They will favor those who address actions with a view closer to theirs. However, a deadlock of the policy process on one branch will trigger actions on the other. As a result, interest groups may opt for a strategy that includes only lobbying, only litigation or a combination of both.

5 The dissertation project

There is still some weakness concerning the research on corporate political action at the EU level. Although some research has already started to investigate the EU political environment, there are few empirical studies. Most use indirect measures of the variables of interest, such as the intensity of lobbying activities, for example. This occurs mainly due to the origin of data that is

either based on surveys or inferred by a combination of variables within the limited databases available. A potential problem, therefore, is that these research designs may lead to less precise results and risk suffering a selection bias. Moreover, many theories lack further empirical testing. In considering the current status of CPA research at the EU level, the main goal of this research has been to conduct further empirical research in this political environment to provide some innovative data in order to enrich the empirical research possibilities, and, concurrently, advance some theories that still lack empirical testing.

Taking into consideration the multiple EU institutions and their interactions with firms, research on the corporate political strategies within the EU could follow several different pathways. Therefore, I restrict this research to some aspects of CPA in the EU that are relevant to my purpose. Within this context, two main criteria have led this choice: first, data availability; and second, relevance of the chosen institutions for EU policymaking. I should emphasize that this research project has benefited from recent advances in the EU transparency regulatory framework that has enabled the collection of new data. This will be discussed further in following sections.

Therefore, this research project is structured around the following general research questions: *“How do firms deploy their corporate political strategies in the EU? What are the factors that impact on the firms’ expected outcomes?”*

To structure this project, I have used as a simple departure point the three main ways by which firms try to shape policies’ outcomes, as proposed by Spiller and Liao (2008): buying influence, lobbying for influence and suing for influence. Nevertheless, by acknowledging that the “buying” approach is impracticable in the EU, I have also targeted the other approaches: lobbying and suing. One of my research projects focuses on each one of these strategies, as represented in Figure 2, addressing corporate political actions in the European Commission and the European Court of Justice.

This thesis presents three research projects: two explore lobbying in the European Commission, and one explores legal cases in the European Court of Justice. Chapter 2 analyzes the meetings between firms and European Commission representatives in order to understand the determinants of firms’ access to lobbying the European Commission. In Chapter 3, I examine the outcomes of lobbying. By studying the case of the wholesale roaming regulation that recently entered into force in the EU, I analyze the positions of competing private stakeholders on public

consultation in order to understand their arguments, their alignment with the European Commission and how the Commission has responded to their lobbying efforts. Finally, the last research project deals with legal strategies. I analyze all of the state aid cases in the Court of Justice of the European Union where stakeholders have decided to sue the European Commission to revert an unfavorable decision. The main goal is to investigate whether or not there is some factor that influences the final decision of the Court. Thus, I continue with an introduction to the empirical setting: a brief description of the EU institutions participating in the policymaking process, and a descriptive analysis of the EU political environment.

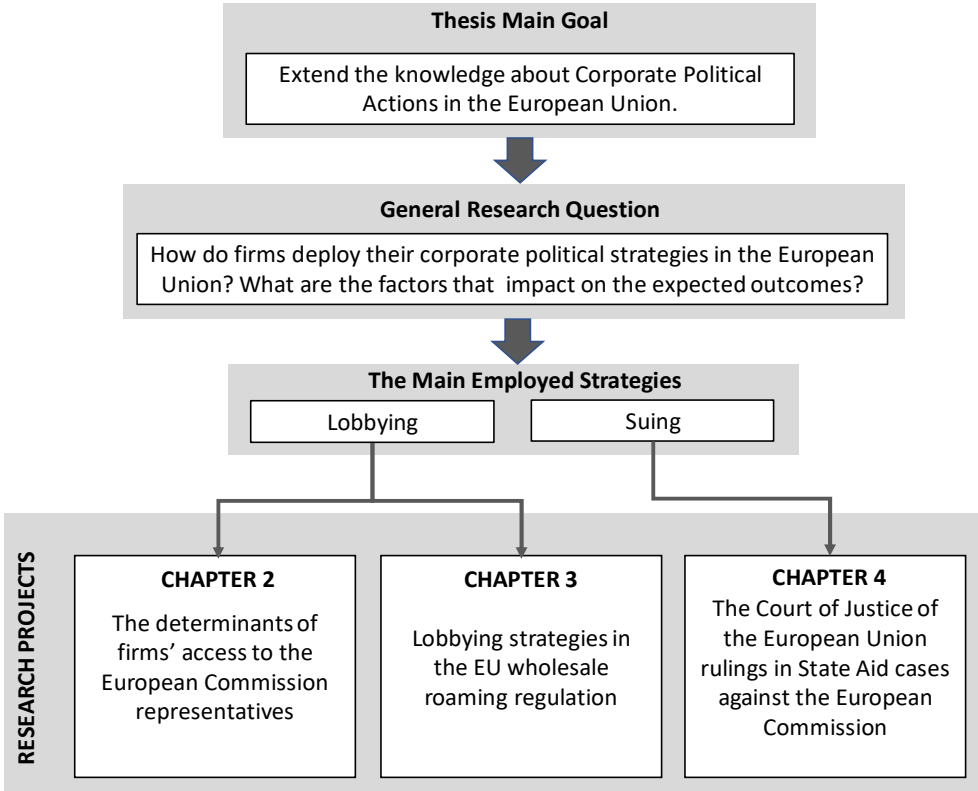


Figure 2 - Thesis structure

6 The European Union

The European dialogue started with the EU Steel and Coal Agreement of 1953. The concept of Jean Monnet and Robert Schuman—two of the main architects of European integration—was

to make war not only unthinkable but materially impossible. Later, in 1958, the western European countries signed the Treaty of Rome that established the European Union, at that time named the European Economic Community. Sixty years have since passed, and the European institutions have shown their resilience. From the initial six member states, it reached 28 members in 2013. During this time, some major events—such as the 2008 global economic crisis and Brexit in 2017—have demonstrated that the EU institutions are strong enough to prevail over time, and to continue developing their processes.

The European Union is a unique political system. While it is more than international cooperation, it does not reach the level of a federal system. It relies on the relinquishment of some member states' power and sovereignty that are then delegated to the European sphere; with the aim of constructing a European single market. We interpret such decisions as a trade-off for member states: they transfer part of their decision-making power from the national level to the supranational level, but they benefit from the European single market that offers real opportunities for their economic development, and places them in a more strategic position in the global sense. According to the European Commission (2014b), the single market has the largest GDP of any economy in the world. It represents 7% of the world's population, and accounts for 500 million consumers and 20 million SMEs. Furthermore, it is the largest global exporter and importer of food and animal feed.

The constitutional basis of the European Union is laid down in the European Treaties signed by the member states over time. The most recent is the Treaty of Lisbon that came into force in 2009, and covers two main pieces of legislation, namely The Treaty of the European Union (TEU) and the Treaty of Functioning of the European Union (TFEU), that together establish the first rules to ensure the free movement of people, services, goods, and capital. They include the main constitutional provisions, the policies and the functioning of the Union. They are the roots of the European institutions and define their primary objectives, plus the extension of the power that member states relinquish to them. The design of new institutions is the centerpiece to be able to safeguard the enforcement of the Treaties.

Three fundamental principles guide the development of the European Institutions and their roles: conferred powers, subsidiarity and proportionality. The first establishes that the Union can only act on issues upon which it has conferred powers. The second states that the Union cannot act

where member states can better achieve objectives. Finally, proportionality ensures that the Union will rule only where a measure is appropriate and necessary. These principles aim to respect the sovereignty of member states and provide the boundaries between the powers conferred to the EU and the member states. The central institutions on the implementation of Treaties' provisions and warranty of their correct implementation are the European Commission, the European Parliament, the Council, and the Court of Justice of the European Union.

The current state of the European Union demonstrates the capacity for integration between its member states. However, it has been a long and gradual process that is still under development. After the Treaty of Rome, there have been other five main reviews of the Treaties aimed to advance EU integration and the establishment of a single market, as it is today. After the ratification of the Treaty of Rome—that intended to remove trade barriers to establish the common market, there have been many factors in the political and economic environments of the member states that have created additional hurdles to integration. The main instruments for integration at that time were the directives that needed to be incorporated into national law. Despite efforts through the harmonization measures drafted by the European Commission, the results were not satisfactory and triggered the discussion for a first review of the Treaties: the Single European Act. Its main goal was to formalize the single market by promoting strategically policy development and institutional reform. It changed rules in the policymaking process and incorporated new policy areas into the supranational scope (Young, 2015).

Later, the Treaty of Maastricht in 1993 was responsible for further advancing the measures of the Single European Act. It created a new organization of the European Union and set up the basis for the creation of a single European currency; a crucial step towards consolidating the integrated market. The subsequent Treaties were the Treaty of Amsterdam (1999), which mainly reviewed some points of the previous Treaties to favor integration, and the Treaty of Nice (2003), which dealt mainly with issues related to the EU enlargement and its consequences on the institutional structure. Finally, the Treaty of Lisbon in 2009 brought the main reforms that shaped the European Union institutions and governance to be the way it is today (Nugent, 2017).

It is also important to highlight that the Treaties have also established powerful provisions to create a strong competition policy in the EU. This assures a free market and economic efficiency that, together with the legal enforcement in this field, are essential for the development of the

single market and, consequently, for the achievement of the European Union's main goal. Its relevance for the integrated market is comparable to the creation of the economic and monetary union; an important tool to deal with barriers that delayed the creation of the single market in the past, such as the use of cartels, selective intervention of governments and the encouragement of industrial concentration. The competition policy has taken on constitutional characteristics with implications on the structuring of additional policy areas, such as R&D and environment. In this field, the European Commission appears as the main authority responsible for ruling on every issue concerning competition within the EU (Wilks, 2015).

6.1 The European Commission

The European Commission works as the executive arm of the European Union. It was born from a merger between the executive bodies of the communities that formed the European Union. Since then, the role of the Commission has evolved, following the developments of the EU Treaties that have increased its powers and policy areas under its responsibility. Currently, the European Commission is the main actor to advance European integration. Its primary responsibilities include the international representation of the EU as well as the negotiations of trade agreements, the management of the EU budget, the proposal of new legislation, monitoring policy implementations, and arbitration in the legislative process.

Besides its executive characteristics, it is also responsible for the regulation of competition in the European single market, thereby working in partnership with the national competition authorities. However, it has autonomy to issue decisions on the five components of the competition policy, which include the prohibition of agreements that limit competition, the prohibition on the abuse of a dominant position, the control of mergers which create a dominant position, the control of aid given by a member state, and the liberalization of utilities (Wilks, 2005). Figure 3 details the main powers of the Commission.

The college of commissioners has 28 members, with one representing each member state. However, it should be noted that they are appointed to act in the general interests of the European Union rather than to favor their own nationalities' demands. The appointment of the commission representatives was designed to avoid partisan pressures and to be politically independent.

However, the commissioners have usually held political positions that will affect their portfolio choice, and the choice of their supporting team (Hix, 2011). The president of the Commission is appointed by the Council which, in turn, selects its commissioners based on the suggestions of the member states. The European Parliament has veto power on the nomination of the commissioners, thus every appointment is submitted for its approval. After the establishment of the College of the commissioners, the president of the Commission will define its structural organization by assigning a policy portfolio to each commissioner during his/her mandate.

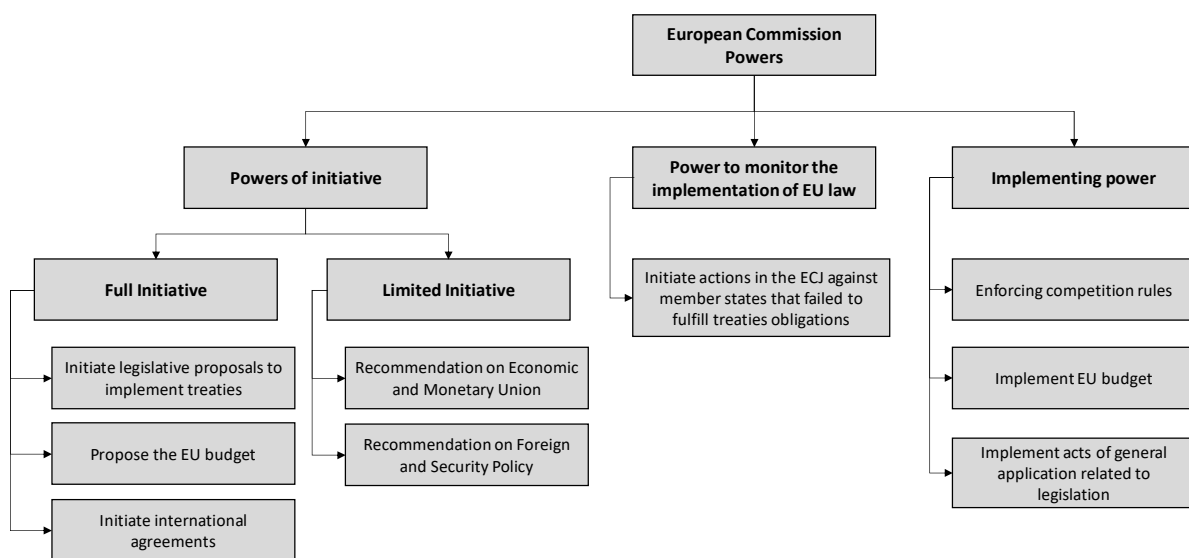


Figure 3 - An overview of European Commission powers¹⁴

To accomplish its extensive list of duties, the European Commission works with the support of the DGs (Directorates-General), which is the European Union civil service that performs various technical activities, such as the development of policies and preparation of legislation. They work as the "ministries" of the European Commission, with each one reporting to a Commissioner according to its portfolio.

¹⁴ Adapted from Fact Sheets on the European Union (www.europarl.europa.eu/factsheets/en/sheet/25/the-european-commission) accessed June, 2019.

Each commissioner also works with the structure of a cabinet, which is usually composed of six to 12 advisors that should represent a balance of nationalities. The mission of the cabinet is to serve as a political antenna and a filter for parties and interest group demands. They counterbalance the civil servant advice from the DGs, and also work closely with the DGs (Hix, 2011). Figure 4 provides the general structural organization of the European Commission. The governance of the European Commission follows the collegiality principle. Thus, decisions require the collective agreement of the members of the College. When decision-making occurs through voting, an approval needs to count on a majority of at least 15 votes. In this matter, commissioners enjoy the same weight on decision-making, independent of their nationalities or position in the College.

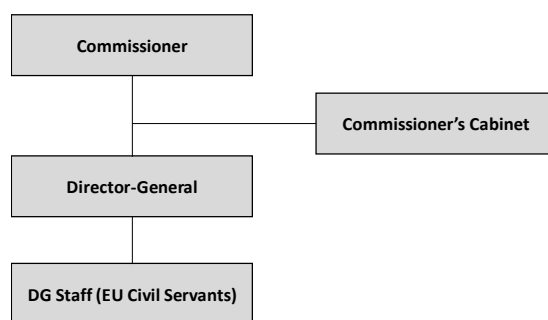


Figure 4 - General structural organization of the European Commission

6.2 The European Parliament

The European Parliament is the only institution with elected representatives in the European Union. There are 751¹⁵ members of the European Parliament (MEPs), representing the 28 EU nationalities proportionally, according to the population of each EU country. Their responsibilities include legislative, supervisory and budgetary tasks.

In the legislative arena, they are responsible for the following: passing EU laws, together with the Council—based on the proposals of the European Commission, deciding on international agreements and enlargements and reviewing the Commission's work program and requesting new

¹⁵ This number considers EU28; possible modifications due to the Brexit process have not been considered in this document.

proposals for legislation. The supervisory agenda includes discussion of monetary policies with the European Central Bank, electing the European Commission's president and approving names for the College of commissioners. Finally, on budget issues, they establish the EU budget with the Council and approve the EU long-term budget.

6.3 The Council of the European Union

The Council is composed of government ministers from each EU country. They participate in the legislative process by developing legislation, and work with members of the Commission and their national governments to implement EU legislation. They also work as mediators in EU fora by developing mutual understandings between the member states on specific EU matters. They are organized in different committees that are structured according to the policy issue under discussion (Nugent, 2017).

6.4 The Court of Justice of the European Union

The Court of Justice of the European Union is the central institution for the enforcement of the EU law. Its jurisdiction includes actions against member states for failure to comply with their obligations under EU Treaties (which are known as the infringement procedures), judicial review of the EU legislative and executive acts, and legal advice on the interpretation of the EU law (which are the preliminary rulings). Under this procedure, all national courts can ask the Court to issue a ruling on cases that relate to any aspect of the EU law (Hix, 2011).

Two courts form the Court of Justice of the European Union: the European Court of Justice and the General Court, which have similar organizational structures. Three to five judges will normally rule on a case, depending on its complexity. However, only the European Court of Justice has general advocates who are invited to present their opinions to assist in making a judgment. The appointment process is the same for both Courts. The judges must be independent and have the capabilities to exercise the highest of jurisdictional functions. Member states appoint them for a six-year term. The choice of member states is validated by a panel of seven specialists prior to appointment, who assess whether or not the candidate fulfills all of the necessary requirements.

The President of the Court suggests the composition of the panel and the Council approves it. The body of judges reflects a balance of nationalities in order for all member-states to be equally represented. The responsibilities of the courts are slightly different. The General Court has a two-fold mission: to relieve the charge of economic cases that have caused bottlenecks in the European Court of Justice; and to offer a second level of decision-making, where the General Court would be the first tier of choice and the European Court of Justice the second tier. This arrangement aims to increase the legal protection of persons who decide to appeal to the Court. The European Court of Justice responds to requests for preliminary rulings from national courts, and actions for the annulment of illegal actions of EU institutions, plus appeals of cases judged in the General Court.

6.5 The European Policymaking Process through OLS

OLS stands for the Ordinary Legislative procedure which is the former co-decision process. While there are other forms of policymaking within the EU, this is the most frequently used and the one that covers the main legislation impacting the business environment.

In this process, the European Commission works as the agenda-setter and drafts the first proposal of legislation. After that, the proposal is submitted to bicameral approval, where the Council and the European Parliament will decide whether or not to approve it. The process can have up to three readings. Figure 5 presents a detailed flowchart of the OLS process.

Before issuing a proposal, the European Commission promotes discussions amongst stakeholders. These discussions can take the form of specialized workshops, public debates and public consultations that have become a meaningful method by which to introduce stakeholders' participation in the EU policymaking process. Public consultations are not a formal step in the OLS process, but are largely employed as good practice in EU policymaking. This pre-proposal stage includes the most intense lobbying activity because it offers the most opportunities to influence policymakers.

During the period 2004-2009, most of the legislation was decided on the first reading of agreements, most likely as a result of the use of trilogue. This is an informal process that aims to expedite the policymaking process, in which representatives of the Parliament and the Council

agree on their respective compromises in the legislation under discussion, prior to voting (Pollack, 2015).

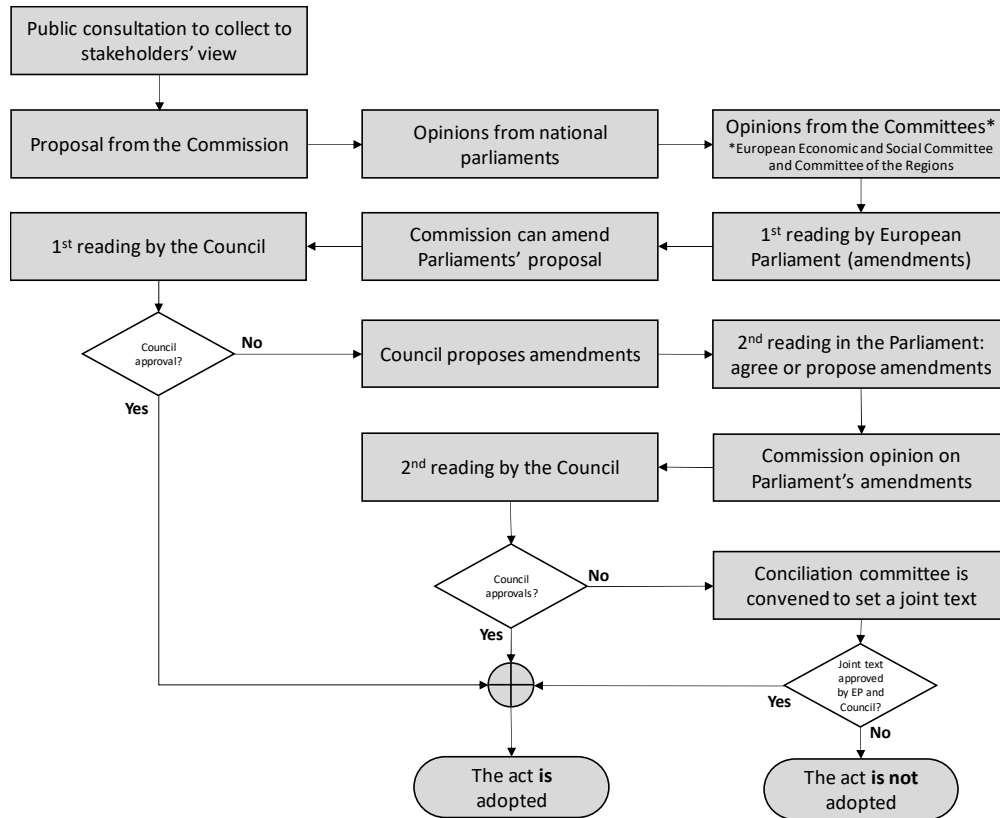


Figure 5 - Policymaking process in the EU

6.6 Descriptive analysis of the EU political arena

In the previous sections, I have discussed how there has been a gradual transfer of policymaking in many areas from national to supranational institutions. This phenomenon has also generated noticeable interest amongst stakeholders, in order to deploy political action at the EU level in an attempt to shape these policies according to their preferences. In this section, I use publicly available sources of data to provide an overview of the extension of the EU political markets.

Each year the EU institutions issue hundreds of legislative acts among directives, regulation, decisions, and recommendations. While the targets of decisions may be specific countries or stakeholders, and the recommendations have the value of soft law, the directives and legislation are the legislative acts that shape the nonmarket environment and, of course, may impact the market environment. The directives are legislation that, after being approved, will be transposed into national laws, and all regulations are binding legislative acts valid in all member states. Between 2015 and 2018, there were more than 100 directives approved and more than 400 regulations, with a peak of regulations approved in 2018, as shown in Figure 6.

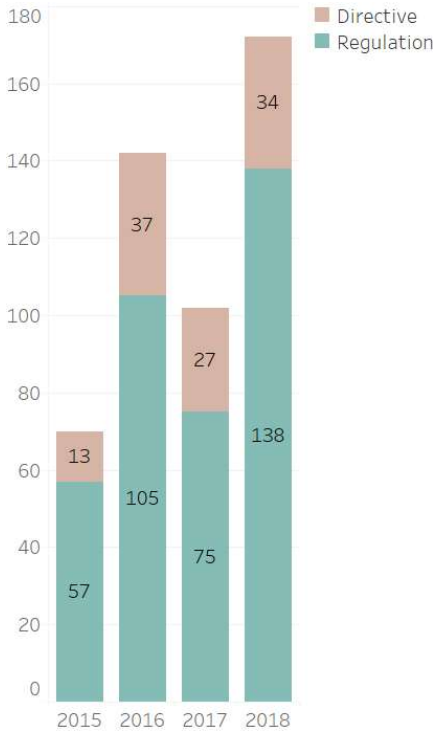


Figure 6 - Regulations and Directives approved between 2015 and 2018

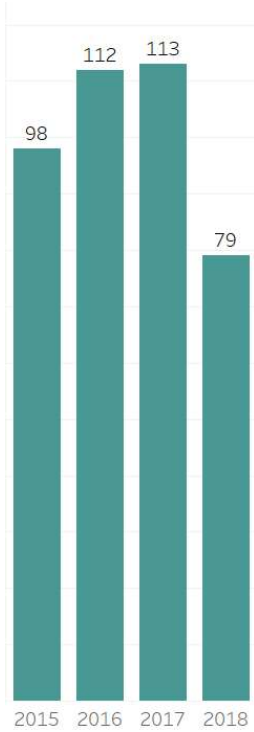


Figure 7 - Public consultations organized between 2015 and 2018

For the development of these legislative acts, the European Commission is regularly in contact with the main stakeholders impacted by the legislation in order to acquire external information and listen to their policy preferences. These exchanges occur mainly in the form of public consultation, which is one of the most important channels for stakeholders to be able to communicate their preferences, concerns and arguments to the Commission. The feedback

received acts as input to the legislative proposals. These proposals are the first draft of legislation that the Commission will submit to the approval of the Council and the Parliament. On average, each year, 100 public consultations are organized by the Commission, as observed in Figure 7.

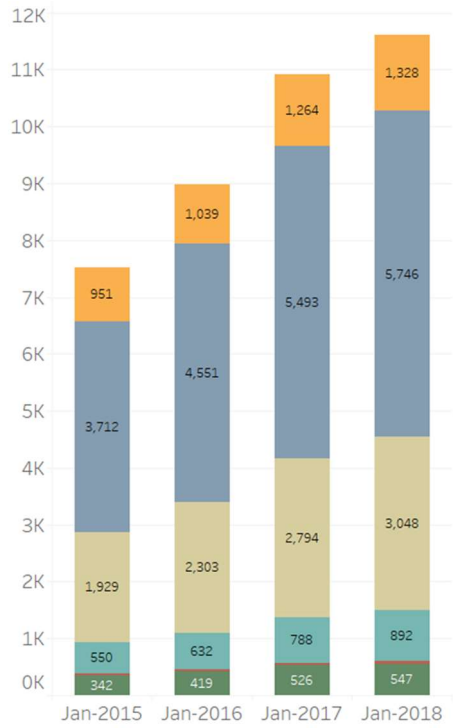


Figure 8 - TR registers between 2015 and 2018

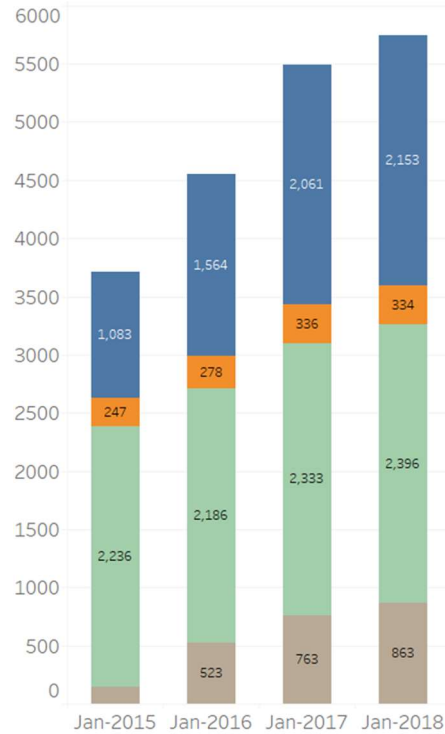


Figure 9 - Category II registers between 2015 and 2018

On the demand side of the EU political market, as previously highlighted, there has been an increasing participation of interest groups since the 1990s, mainly representing business interests. From Figure 8, we observe that the number of interest groups continues to rise. In 2015, there were less than 8,000 interest groups registered on the Transparency Register¹⁶ (TR), whereas the total of entities registered surpassed 11,000 in 2018. The category with the most entities registered is “II – In house lobbyists/trade – professional associations”, thus confirming that

¹⁶ The Transparency Register is the lobbying register of the European Union. Section 6.7 provides further details.

business representatives are in the majority in the EU political arena. If we examine the registers in this category (see Figure 9), we note there is a vast number of business associations, but, while they have an almost stable representation in this category, the firms and groups have almost doubled in their participation rates. This demonstrates an increasing interest in direct lobbying at the EU level.

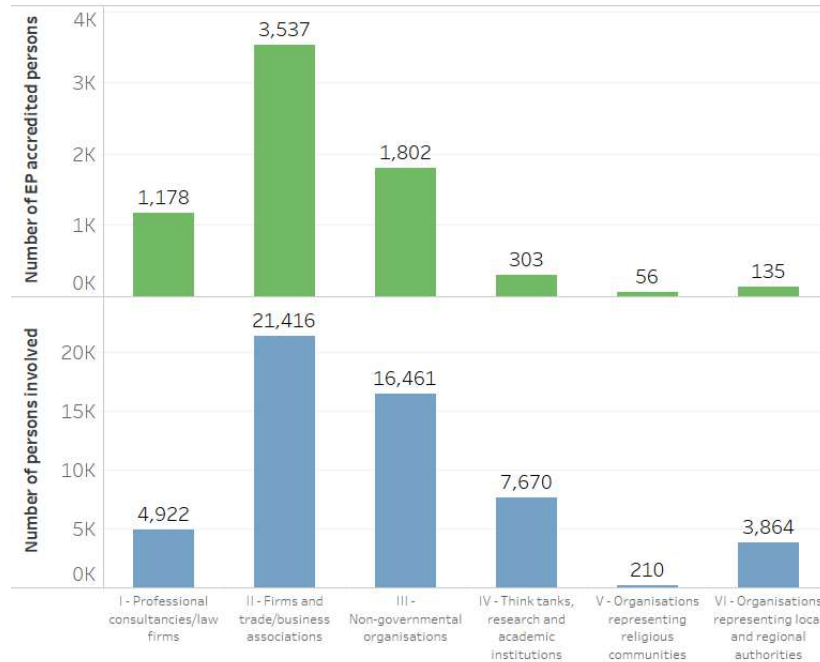


Figure 10 - People working on EU lobbying

As the number of represented interest groups is increasing, the number of lobbyists follows the same trend. There are currently thousands of people working on activities linked to lobbying. This is one of only a few items of information that interest groups need to disclose in the TR (see Figure 10). Based on the information in the Register in 2018, there were more than 50,000 people involved in representation activities; not surprisingly, with the majority for business interests. Many of them—approximately 7,000—also have a pass to access the Parliament, and thus have the opportunity to establish closer contact with members of the European Parliament (MEPs).

As business interests are the most represented within the EU political arena, the primary goal of this thesis is to study corporate political action at the EU level. Figure 11 presents a detailed

view of the companies and groups participating in the EU policymaking process. I highlight that EU policymaking stimulates the interest of firms worldwide—notably from American firms, but we see also firms from China, India and Australia. The map on the right-hand side is an enlargement of the European continent. Companies from every member state are politically active at the EU level. Nevertheless, Germany, the UK and France have more firms registered. At the bottom of Figure 11, the countries with more firms active in the political arena are listed. It is interesting to note that there are more US companies than Italian, Dutch and Belgian companies, and that Switzerland has more registered companies than some EU member states.

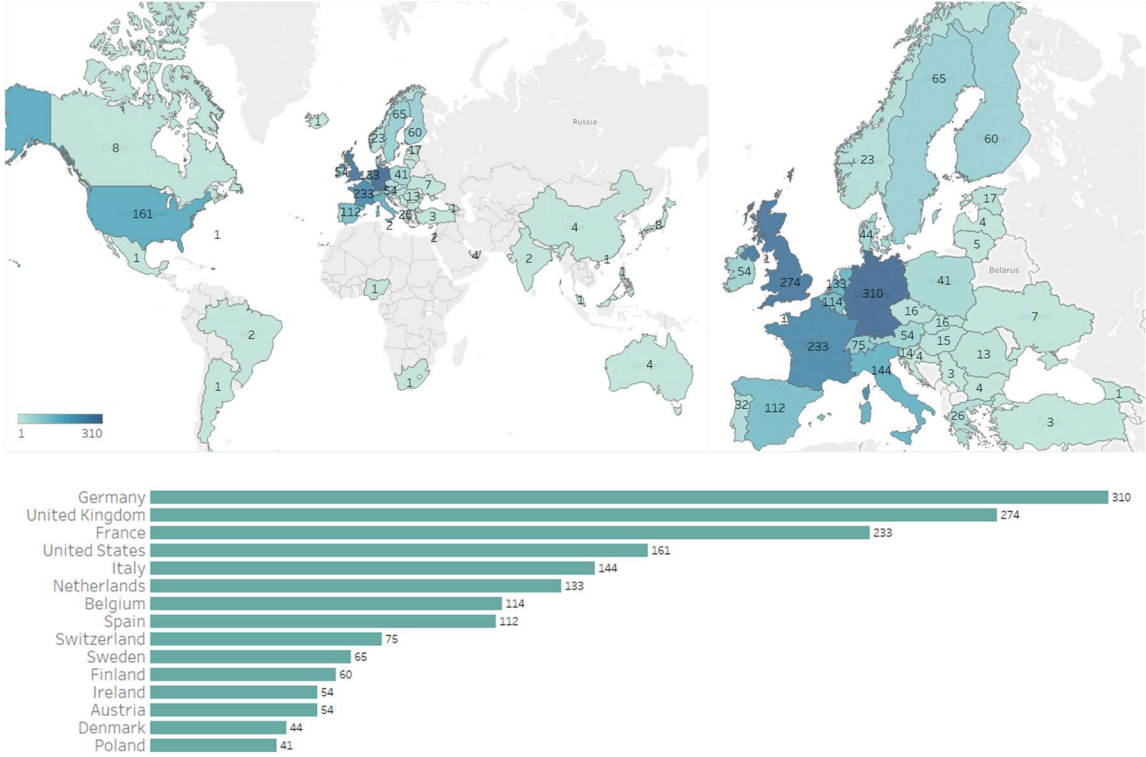


Figure 11 - Registered firms per country

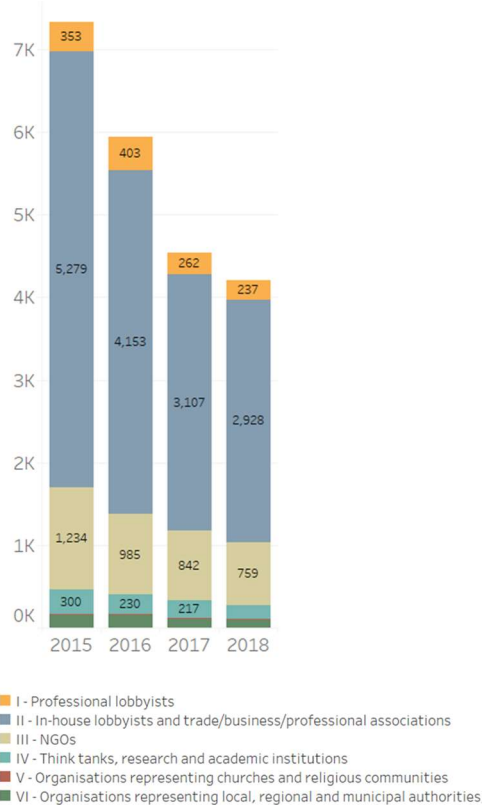


Figure 12 - Meetings between 2015 and 2018

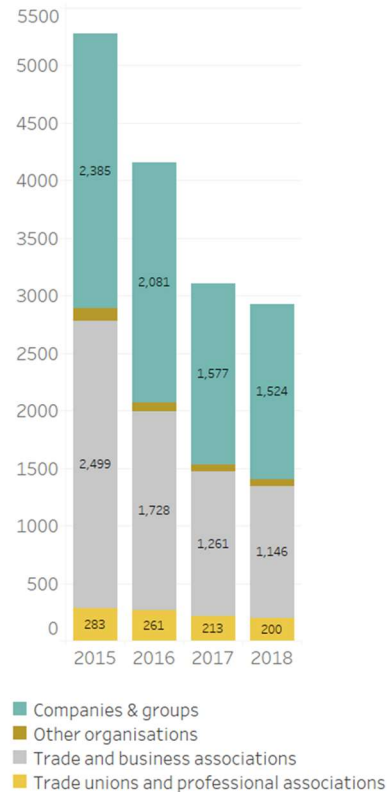


Figure 13 - Meetings of representatives of Business interests only between 2015 and 2018

However, while being registered denotes interest in the political arena, it does not mean that interest groups can effectively have contact with the main actors in the policymaking process. I use the disclosed information about meetings between interest groups and the representatives of the European Commission to analyze the patterns of access of interest groups (see Figure 12 and Figure 13). Category II includes the representatives of business interests and accounts for the most meetings during the period analyzed, followed by NGOs and professional lobbyists. There is a discrepancy of access between categories. Business interests have around four times more access to the representatives of the Commission than NGOs, in second position. When compared with the proportion of registrations, business interests represent twice the number of NGOs registrations. Another interesting change, for which there appears to be no explanation, is the evolution of the total number of meetings during the period, which has systematically decreased over the last few years.

Following the same analysis provided for the number of registers, I also carefully examine the meetings held with interest groups in category II that represent business interests. This follows the same trend of systematically decreasing in the total number of meetings for each sub-category. Companies and business associations have the same level of access to the representatives of the European Commission. However, if business associations had more meetings with the Commission in 2015, this scenario has changed in the following years, with an increased number of meetings between the Commission and firms, suggesting a small increase in direct lobbying activities.

Last, I note that there is unbalanced access between interest groups. While some interest groups are regularly in touch with the leadership of the European Commission, many interest groups have limited access to these political actors. To illustrate, Figure 14 presents a list of the interest groups that had the most meetings with the European Commission during the period of analysis. Google accounts for a total of 185 meetings with members of the Commission during the last four years. The listed interest groups are mainly firms and business associations. If we total the number of meetings of this small sample, they had more meetings than the total of the category of think tanks and academic institutions. The descriptive information presented in this section confirms the heightened interest of stakeholders in lobbying at the EU level, and confirms that business interests mainly dominate.

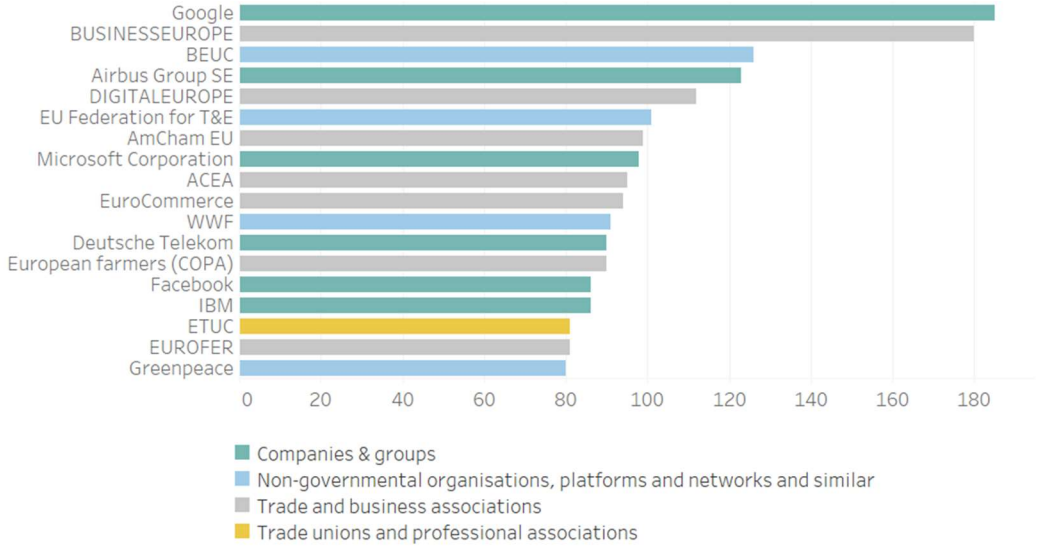


Figure 14 - List of entities with more meetings with the Commission during the 2015-2018 period

6.7 Main transparency initiatives on interest groups' activities in the EU

The transparency measures align with the better regulation initiative promoted by the European Commission, aiming to improve the design and evaluation of EU policies and laws. One of its pillars is to bring more transparency and stakeholder engagement. In this regard, an initiative that merits attention is the improvement of the public consultation process to foster stakeholder participation in the policymaking process. This is not a novelty, as there are official communications from the Commission from 2002 defending the importance of its mechanism to ensure the quality of its proposals using a bottom-up approach (The European Commission 2002). The current initiative, however, aims to improve consultation transparency, standardization, and accessibility. Consequently, it also improves access to data on interest groups' representation. Consultations are the main channel for all stakeholders, including individuals, NGOs, organizations, and government bodies, that externalize their policies preferences.

The first transparency initiative in the EU level was the Register of Interest Representatives set up by the European Commission in 2008. This register evolved in 2011 to become the Transparency Register¹⁷ (TR) that expanded to be a joint register for groups lobbying the Commission and the European Parliament. It contains information regarding legal aspects, financial aspects and expected goals regarding interest representation, among other information. As the first and foremost lobbying register at the EU level, many researchers have used it as input for their empirical analysis. A non-exhaustive list includes Bernhagen and Mitchell (2009), Vannoni (2012) and Coen and Katsaitis (2015).

Despite its potential for being a robust source of information, there are some gaps to be filled. First, the registration is not mandatory. Second, there is much useful information that organizations have left blank in the register due to their disinclination to disclose it and the absence of auditing to enforce the disclosure of some fields. This also leads to some data quality problems.

There is still a long way to go to improve transparency on private interests' representation in the European Union, but EU institutions have already taken the first steps towards improving this situation. There is an ongoing negotiation of a mandatory inter-institutional Transparency

¹⁷ Transparency register: <http://ec.europa.eu/transparencyregister/public/homePage.do?redir=false&locale=en> accessed in April, 2019.

Register that would also include the Council.¹⁸ However, recently, it became a condition that some lobbying initiatives are only allowed to registered interest groups in order to enforce more adhesion. For instance, to meet a Commissioner or to participate in a public consultation, interest groups should be registered. Currently, the TR has a total of more than 10,000 registers of a different nature: firms, NGOs, think tanks, and professional lobbyists, among others.

In addition to the Transparency Register, in November 2014 the President of the European Commission published an official decision on the publication of information on meetings held between Members of the Commission and organizations or self-employed individuals (European Commission, 2014). According to the document, the commissioners and the members of their cabinet must publicize information of all meetings held with third parties. This decision has improved the information available, which allows for further investigation of the lobbying dynamics in the European Commission. The data is available on each commissioner's webpage, and includes information on the date and venue of the meeting, commission participants (commissioner or member of the commissioner cabinet), meeting subject, and the participants' interest groups.

7 Data and Methods

Data availability is a critical problem for CPA research in Europe. Despite some progress being made (see the previous section concerning transparency measures that have improved data availability), it has been necessary to personally undertake a significant level of data collection. This has necessitated the design and build of original databases that have allowed me to perform some of the empirical analysis. Each project has a specific goal and uses a different dependent variable, thus, for each project, I have used a different methodology and a unique database that are described in the following subsections.

¹⁸ Negotiations on a mandatory inter-institutional TR: <http://www.europarl.europa.eu/news/fr/press-room/20190213IPR26332/third-round-of-talks-on-the-proposal-for-a-mandatory-transparency-register> accessed in April, 2019.

7.1 The determinants of firms' access to the European Commission

For the first project that investigates the determinants of firms' access to the European Commission, I have built a database derived from the TR. Due to the focus on firms, I have filtered the entries classified as companies and groups. The TR presents only some basic information about lobbying characteristics, and therefore it was necessary to complement this with extra information, for example, information was collected about firms' size from the Forbes and Fortune list. In addition, I classified each firm according to the economic sector following TRBC categories, and confirmed whether or not they have memberships in the leading EU associations. Finally, I merged the information of TR with the meetings information in order to obtain the degree of access of each firm. Figure 15 presents an informal summary of the database structure.

The dependent variable "access" is operationalized through the number of meetings. Some characteristics of this variable are discrete, non-negative, overdispersed, and follow a Poisson distribution. This allows the use of a negative binomial regression which is a methodology that complies with all criteria of the dependent variable.

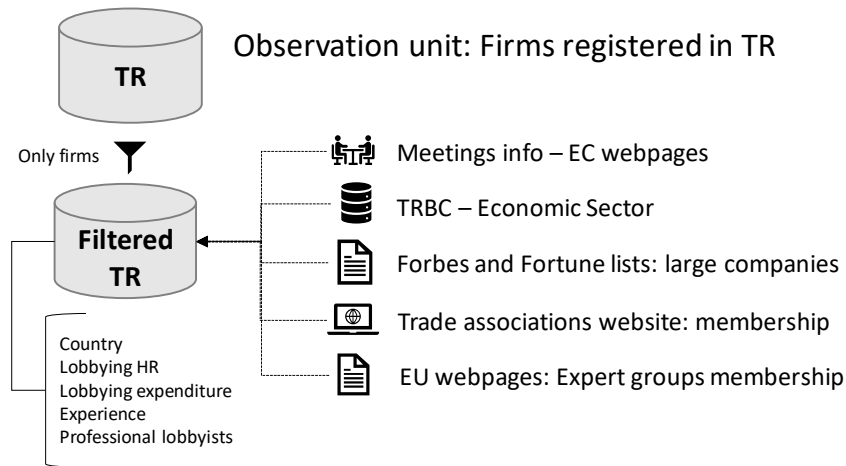


Figure 15 - Schema of Access Database

7.2 Analysis of lobbying outcomes of the Wholesale Roaming regulation

The second project is an in-depth case study of the wholesale roaming regulation. Hence, a mixed approach was employed. The main inputs for the analysis are the replies of the interest groups that have participated in the public consultation process prior to the legislative proposal. Following the goal to study CPA with innovative technologies, this research has used natural language processing algorithms (more specifically, topic modeling), in order to analyze the main arguments of the interest groups in their replies to the consultation.

Moreover, qualitative textual analysis and quantitative analysis were performed to enrich the analysis of the case. This resulted in a dedicated dataset for the project where the policy preferences of each stakeholder were coded and merged with sectorial information, financial and lobbying information from, respectively, BEREC reports, the Orbis database and the TR database. Figure 16 summarizes the structure of this dataset. The quantitative analysis is based on a probit regression where the dependent variable is the policy preference; a dummy variable that takes value 1 when the stakeholder has the same policy preference as the Commission.

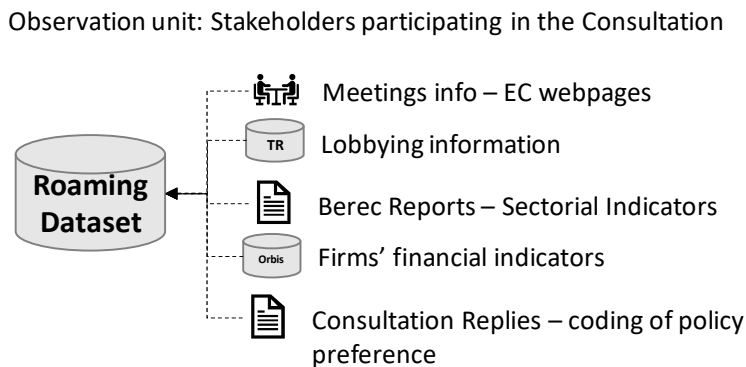


Figure 16 - Schema of Wholesale Roaming dataset

7.3 CJEU Rulings on State aid cases

For this project, the goal was to investigate whether or not there is a factor that may influence the result of a legal case on state aid. Thus, all state aid cases in the Court of Justice of

the European Union from 2000 to 2015 were analyzed. Although the case law database from the Court is easily accessible and well structured, some important information in the cases appears in the files of the judgment. This necessitated the manual coding of each case in the sample to build variables, including the case result, the number of applicants and the existence of member states’ support to the parties (either the applicants or defendants). Additionally, external variables have enriched the dataset, such as lobbying and financial information of the applicants, and macroeconomic, governance and European integration indicators of the applicants’ country.

In addition, this research project presents a complementary analysis of decision-making in the first stage of the state aid granting process performed by the European Commission. Therefore, a second database—including state aid cases analyzed by the Commission—was developed. Its main source information is the ISEF platform that stores all competition cases analyzed by the Commission. It was complemented by the same indicators used in the Court database: macroeconomics, governance and European integration indicators.

Figure 17 presents the schema of the two databases used for this project. For the analysis, a probit regression was employed where the dependent variable is a dummy that takes value 1 when the state aid was granted.

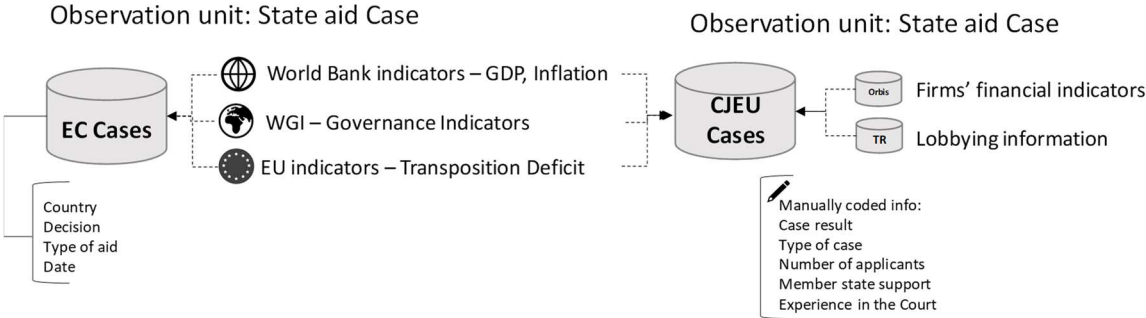


Figure 17 – Schema of State Aid Project Databases

8 Three Essays on EU Institutions and Firms

8.1 Corporate Political Strategies in Europe: The determinants of firms' access to the European Commission

In Chapter 2, I analyze the determinants of firms' access to lobby the European Commission. By examining the characteristics of the European institutional environment and state of the art information on corporate political strategies in the European Union, I propose that political knowledge is a key factor to explain firms' level of access to the highest level of representatives on the Commission. I take the definition of Bonardi and Vanden Bergh (2015) that states that political knowledge is organizational knowledge about the political environment. This could represent a source of competitive advantage for firms in the political arena. I identify three variables that represent political knowledge accumulation in the EU environment, and I propose that they will influence the degree of firms' access to the representatives of the European Commission.

The analysis relies on data from 1,845 companies registered to lobby within the European Union. Access is measured using the number of meetings held by companies with European Commission representatives between December 2014 and December 2016. I employ negative binomial regressions to measure how access is correlated with the independent variables, which include experience lobbying the European Commission, enrolment on the Commission's expert groups and firm's operating sector aligned with priorities of the Commission political agenda.

The results provide support for the interconnection between the level of access and political knowledge. Furthermore, they show the relevance of other factors, such as being a large company, using professional lobbyists and keeping a representative office in Brussels: thus, endorsing previous research.

8.2 Competing for Policy: Lobbying in the EU Wholesale Roaming Regulation

While Chapter 2 deals with firms' access to lobby the European Commission, Chapter 3 examines the organization of lobbying in the EU political arena. I investigate how firms structure their lobbying discourse, the alignment of their views with those of the European Commission and how the Commission responds to their lobbying efforts.

A noteworthy aspect of this regulation is that it is particularly relevant to telecommunications operators' revenues and operations, while having different policy preferences that have created intense competition in the political market. In such a delicate regulatory context, there has been intense participation of the main stakeholders within the sector in order to protect their interests.

Thus, I have used their replies to the public consultation organized by the Commission before the issue of the first draft of the regulation in order to understand stakeholders' main arguments and how the Commission has responded to them. I performed a general analysis of their responses through topic modeling followed by a focus on specific policy issues so as to understand their alignments with the Commission's preference. The analysis of specific issues is based both on qualitative textual analysis and quantitative analysis using probit regression.

The main findings suggest that there were two clusters of stakeholders according to their central discourse: the first prioritizes the discussion on fair usage policy, with the other prioritizing privilege price cap setting issues. However, they were not convergent in terms of their policy preferences, demonstrating a fragmentation of the demand side of the political market. Furthermore, neither their market power nor their individual lobbying efforts were enough to influence the Commission's decision-making, thus suggesting that in political markets with intense competition on the demand side, corporate political strategies may be less effective.

8.3 The Dynamics of Institution Building: State Aids, the European Commission, and the Court of Justice of the European Union

Chapter 4 analyzes state aid cases in the European Union. This is an interesting setting to analyze the decision-making of both the European Commission and the Court of Justice of the European Union. While the first acts as a competition regulator evaluating the compatibility of the aid with the internal market, the second enters the process when unsatisfied stakeholders decide to challenge the Commission's decisions in Court.

Within the state aid process, besides the participation of the Court and the Commission (that assumes the role of regulator instead of that of a policymaking institution, as was the case in

previous chapters), there is also the participation of the member states that are sponsors of the state aid and the firms that can benefit from it.

The initial aim was to understand how firms use litigation as a strategy to reverse unfavorable decisions. Thus, after a decision of the European Commission on whether or not to grant state aid is made, they could appeal the decision at Court. The analysis of the cases showed that firms use different structures in the judicial processes. They can choose to appeal a decision alone or jointly with other firms. They can also demand the support of member states or sectorial associations. Furthermore, many of them are politically active firms that also lobby EU institutions.

It became clear that some of these strategic choices would influence the result of the case. Nevertheless, the analysis concluded that none of these stated factors were significant to the results. Neither firms' characteristics such as financial power nor the number of employees were significant enough to impact the judgments. Thus, I pursued this research in another direction.

Relying on an original database covering all state aid programs between 2000 and 2015, I showed that the Commission tends to reject programs originating from countries that are resistant to the integration of the internal market, which is proxied by transposition deficit. I also showed that when firms or national governments appeal the decisions made by the Commission, the reversal of the Commission's rejection decisions by the Court is positively correlated with the transposition deficit; a measure of European integration. I interpret this as evidence that the Commission is in fact biased against countries with greater resistance to integration, while the Court corrects this bias.

The results demonstrate how the Commission and the Court attempt to strengthen their legitimacy by making decisions in line with their mandates. The former has the mandate to enlarge and maintain the single market and is thus of a mind to punish those member states that are resistant to integration by state aid control. The latter is established to maintain the rule of law and limit the power of the Commission.

Even though the results are useful in clarifying the dynamics of the EU institutions, they also provide relevant insights as to the deployment of corporate political strategies within the EU. Subsidies are among the advantages that firms can obtain in the political arena. In the EU

context—where their authorization is subject to supranational institutions approval—the dynamics of the institutional environment have a significant impact on the results and attenuate the effectiveness of corporate political strategies.

Chapter 2

Corporate Political Strategies in Europe: The determinants of firms' access to the European Commission

Corporate political strategies have been used extensively by firms attempting to shape their political environments. In this context, access to targeted policymakers is essential to allow their deployment. Thus, we propose to study the determinants of access to the European Commission representatives. This research builds on the resource-based view (RBV) of firms to argue that political knowledge is a valuable resource to increase firms' degree of access to the European Commission. To test our hypotheses, we built a novel dataset that merges firms characteristics with lobbying meetings information and analyze it through negative binomial regression. The results suggest the importance of political knowledge, emphasizing that it may represent a source of sustainable competitive advantage. This study highlights interesting information that broadens the understanding of corporate political strategies in the European Union.

1 Introduction

Corporate political strategies have enormous potential, delivering benefits to firms that deploy them. Among the advantages are the increase in regulated prices (de Figueiredo Jr. and Edwards, 2007; Bonardi, Holburn, and Vanden Bergh, 2006) favorable decisions on merger and acquisition processes (Holburn and Vanden Bergh, 2014), better financial performance for companies operating in regulated sectors (Hadani and Schuler, 2013), and public grants (de Figueiredo and Silverman, 2006). Such strategies include all initiatives addressed to political institutions attempting to align their business environment with their preferences. In this context, lobbying is a frequently employed approach which is defined as the strategic supply of politically relevant information to government representatives (Baron, 2013).

First, companies willing to lobby need to gain access to policymakers (de Figueiredo, 2009); however this is a scarce good due to their time and resource constraints (Schuler, Rehbién and Cramer, 2002; Ehrlich and Jones, 2016). Nevertheless, access can lead to advantages such as

strengthening ties with political actors, access to information that decreases political uncertainties and anticipation of changes within the political arena (Hillman, Zardkoohi and Bierman, 1999; Schuler, Rehbien and Cramer, 2002). In addition, companies benefiting from this access may be able to influence the regulatory process. As a result, the expected benefits from the deployment of political activities also impel firms to compete in the political environment (Baron, 1999).

Previous research that investigated the determinants of access to politicians in the US points towards campaign contributions as a significant factor (Schuler, Rehbien and Cramer, 2002; Schuler and Rehbein, 2011). Furthermore, research by Ansolabehere, de Figueiredo, and Snyder Jr. (2003) shows that expenditure on lobbying is much higher than expenditure on campaign contributions, leading to the conclusion that financial incentives may be used to open up access in order to lobby politicians. Indeed, other research suggests that firms will combine different resources, such as representative offices close to policymakers, campaign contributions and outside lobbyists, in order to gain access to the political arena (Schuler, Rehbien, and Cramer, 2002).

However, the same conclusion is not valid when analyzing firms' access to the US bureaucracies where money is not at stake. Even though their exchanges are more difficult to observe and are likely to occur either informally by email and telephone or during the formal procedures where interest groups are invited to give feedback on new rules (McKay, 2011), it is well known that most participants in this procedure are business actors (Yackee and Yackee, 2006). Also, further research confirmed the existence of informal exchanges during proposal developments (West, 2004) and regular interactions between business representatives and regulators in their routines (West and Raso, 2012). Therefore, these findings suggest that business have a relative easiness of access to the bureaucracy representatives. A plausible explanation is the ability of business representatives to provide regulators with expertise and tools that they would not be able to provide by themselves (Yackee, 2006; McKay and Yackee, 2007).

In this context, a broad understanding of lobbying dynamics must start by understanding the dynamics of access to the policymakers. Even if access does not mean influence, the former is a requirement to try to exert the latter Kluver (2011; 2013). Nevertheless, lobbying dynamics change according to the institutional setting as verified above. Indeed, some authors have already

emphasized the relevance of the institutional environment in the choice of firms' corporate political strategies (Hillman, 2003; Dorobantu, Kaul, and Zelner, 2017).

In this research, we aim to broaden the knowledge about lobbying in the European Commission (hereafter also Commission or EC). A remarkable institutional aspect is that the Commission has a hybrid nature. If we compare to the US institutional setting, the Commission combines attributions of both congressional committees and regulatory bureaucracies (Pollack, 1997). Furthermore, its supranational characteristics bring additional constraints to the policymaking process as well as the interdiction to use financial strategies that limits firms' initiatives in the political arena. In such a context, lobbying dynamics are still unclear.

Moreover, the EC's portfolio of assignments includes many issues that impact on firms' operating environments. Therefore, Brussels has become an important lobbying location which has witnessed intense growth in the last decades (Mahoney, 2008; Coen and Richardson, 2009). A brief examination of the figures illustrates this well: there are more than 2,300 business and trade associations registered for interest representation in the Commission and more than 500 firms with their headquarters or representative offices in Brussels.¹⁹ Also, recent data on meetings between Commission representatives and interest groups indicate an uneven pattern of access among companies: while few of them had regularly accessed the commission representatives, the majority had very few meetings with the Commission.²⁰ Such figures are consistent with the concept of competition in the political arena, and thereby the following question arises: why do any firms have more access to the representatives than others when lobbying the European Commission?

In this research, we propose that the hybrid institutional characteristics of the Commission will lead to high demand for expertise, but access to its representatives is a scarce good due to their time constraints. There is flourishing literature on the relevance of political knowledge, which is considered a valuable political resource to the development of corporate political strategies (Bonardi and Vanden Bergh, 2015). Thus, political knowledge would be an important factor to explain the difference of access among firms. To advance this hypothesis, we perform an empirical analysis using negative binomial regression relying on a unique dataset built from meetings

¹⁹ Data from the Transparency Register database, December 2016. More detail can be found in the section on Empirical Approach.

²⁰ From the author's database. More details available in the Empirical Approach section.

between representatives of the commission and interest groups, merged with information on firms. The results suggest that political knowledge accumulation can increase firms' access to high-level officials within the Commission.

Thus, we expect to address two gaps in the literature of corporate political strategies with this research: an insufficiency of empirical studies to analyze firms' strategies to lobby the European Commission and a lack of empirical evidence to support the role of political knowledge to the development of corporate political strategies, especially in what concerns access to political arenas. The paper proceeds as follows: Section 2 develops the concept of political knowledge. Section 3 describes the EU political environment and the main research concerning lobbying in this arena, while Section 4 discusses how political knowledge affects it. In Section 5, we explain the empirical approach. Finally, we present the results in Section 6, and conclude with a discussion on the main findings in Section 7.

2 Political Knowledge: a valuable resource in the political environment

Many authors suggest that companies that own political resources and develop political capabilities (Bonardi, Holburn and Vanden Bergh, 2006; Oliver and Holzinger, 2008; Jia and Mayer, 2016) may be more effective in their political strategies, and may represent a source of competitive advantage in the political arena. These findings are anchored in the RBV perspective which states that firms owning rare, inimitable, valuable, and non-substitutable resources have a sustainable competitive advantage because of imperfections in strategic market factors (Wernerfelt, 1984; Barney, 1986; Barney, 1991). Dahan (2005) attempted to identify which resources could be characterized as political ones. Thus, he performed a detailed analysis of the literature that culminated with the identification of three categories named primary, supporting and complementary resources. Some examples are: expertise, financial resources, organizational structure, and reputation.

Indeed, Bonardi (2011) recognizes that the RBV framework is appealing to corporate political strategies research. However, he points out that the main political resources identified in the literature are based on information and money which are not hard to imitate. Consequently, the

RBV framework should embody a real exploration of corporate political resources. In an attempt to develop it further, Bonardi and Vanden Bergh (2015) explore the concept of political knowledge which represents the organizational knowledge about the political environment. Therefore, companies owing political knowledge can develop political capabilities to help them achieve the intended political outputs.

They define two dimensions of political knowledge: institution-specific and firm-specific. The former consists of firms' knowledge about political environment dynamics, the identification of pivotal politicians, the policymaking process, and the mechanisms which enable participation in this process. The latter refers to the knowledge of the firms' value in the political environment, such as the political value of firms' business assets, practices and strategies. Therefore, it means that firms are aware of their weight in the political environment, they can identify internally valuable information for the policymaking process, and they know how to communicate it to win the attention of policymakers. In this state, they suggest that firms that combine both dimensions of knowledge—meaning they have developed firm- and institution-specific knowledge—are more likely to generate a sustainable competitive advantage.

Hence, the development of firm-specific knowledge is consistent with the analysis of Barney (1986) on the sources of informational advantage through organizational analysis in strategic factor markets. While not uncommon, firms have access to internal information that is not available to their competitors. Then, if they manage to develop assets to create firm-specific knowledge in their organizations, it can be a source of competitive advantage.

Also, the development of institution-specific knowledge is aligned with previous research that underlined the relevance of institutional characteristics in terms of choosing corporate political strategies (Dorobantu, Kaul and Zelner, 2017; Hillman and Hitt, 1999) and defining whether or not a firm will be politically active (Schuler and Rehbein, 2011); Benhagen and Mitchel, 2009). In this context, the importance of the institutional environment is justified by the differences in the way in which institutions are organized and governance is developed within them. In practice, this means that the rules and the play of the game which characterize the institutional setting may impose constraints on organizations (North, 1990).

It is worth clarifying that the concept of political knowledge in management differs from its usual meaning in political sciences, which refers to the ability to predict the consequences of political actions (Lupia and McCubbins, 1998). In management, this concept approaches the tacit and explicit knowledge that is developed inside the firm aiming to improve its performance in the political arena. It is an intangible resource that can impact the design of corporate political strategies. For instance, firms with little political knowledge may prefer collective actions rather than independent initiatives (Hillman and Hitt, 1999). The accumulation of political knowledge is strategic for companies that decide to be active in the political arena. Those that develop little political knowledge risk placing too much dependence on external resources, such as professional lobbyists, and consequently, they may lose the potential rents that come from political activities (Jia and Mayer, 2016).

Indeed, there are several ways by which to acquire political knowledge. It can be internally developed as a part of a company's integrated strategy, whereby companies can learn either by their own experience or by observing their fellow companies. Nevertheless, it is unlikely that firms that operate in many countries are able to transfer their institution-specific knowledge from one political environment to another, due to their institutional differences. However, they may opt for investing in the means to obtain external knowledge by hiring a professional lobbyist or joining a business association (Bonardi and Vanden Bergh, 2015). These tactics are not mutually exclusive options, and they can be combined to intensify political action (Schuler, Rehbien and Cramer, 2002). Generally, some issues that may also affect these choices are the financial resources available to invest in political activities (Baron, 2013) and the risk of disclosure of proprietary information (de Figueiredo and Tiller, 2001); de Figueiredo and Kim, 2004).

3 Political Environment and Corporate Political Strategies in the European Commission

The EU is a unique political system where member states transferred part of their decision-making power from the national to the supra-national level, with the aim of constructing the European single market. Concerning its policymaking process, three institutions are directly involved: the European Parliament, which is composed of elected representatives from all member

states; the Council, which consist of government ministers from each EU country; and the European Commission, the members of which are appointed by the heads of the national governments.

The EU political agenda results from an inter-institutional dialogue that sets the overall political strategy. Then, the leaders of the EU countries determine the general guidelines that will be reflected in the political priorities fixed by the President of the Commission for the duration of his/her five-year mandate. In general, the ordinary legislative procedure is the main process for policymaking in the EU. In this process, the Commission works as the agenda setter and drafts the first proposal of legislation. Thereafter, the proposal is submitted to bicameral approval, where the Council and the European Parliament will decide whether or not to approve it.

From this perspective, the Commission figures as the principal executive body of the EU with a central role in the policymaking process (Hix, 2011). Its involvement comprises of initiating policies, issuing rules and regulations and monitoring policy implementation. With reference to its governance, decisions are taken by the college of commissioners through either consensus or majority voting. In their daily responsibilities, the Commission counts on the support of the DGs (Directorates-General), the European Union civil service that performs technical activities such as the development of policies and the preparation of legislation. They work as the "ministries" of the EU. Furthermore, each commissioner is assisted by his cabinet which consists of six to twelve policy advisors.

Nonetheless, the number of Commission staff members is relatively few, resulting in a pronounced need for external information and expertise (Baron, 2013; Coen and Katsaitis, 2013). As a part of the policymaking process, the Commission therefore engages with stakeholders through several avenues—such as hearings and public consultations—before issuing legislative proposals. For instance, it includes working closely with consultative bodies that offer specialist recommendations in regards to policy making; the "Commission Experts Groups".²¹ These groups, organized according to their differing policy issues, meet on a regular basis. They also involve members of the Commission, as well as a variety of external stakeholders such as NGOs, member state authorities, associations, and firms. They represent the formal participation of interest groups

²¹ Commission Expert Groups: <http://ec.europa.eu/transparency/regexpert/index> accessed in March, 2018.

in the policymaking process, and their selection is based on their expertise, which includes an examination of their potential to contribute to policymaking process, as well as identifying possible conflicts of interest.

The protagonism of the Commission in the policymaking process, combined with the expectation that few changes will occur in the first legislation draft until final approval by the other EU institutions (Hix, 2011), set it as the main target for lobbying at the EU level (Eising, 2007; Rival, 2012). Thus, research that investigated this phenomenon demonstrated that a high percentage of business-related stakeholders are politically active, when compared to other kinds of groups (Coen and Katsaitis, 2015). Similarly, their decision to participate in the EU political scenario is related to their size and exposure to EU regulation (Bernhagen and Mitchell, 2009); however, the choice to engage in direct lobbying is positively related to economic factors, such as the sector's concentration and asset mobility specificities (Vannoni, 2012).

Additional relevant research from Coen (1998; 2009) described the massive increase in lobbying within the Commission during the 1990s, characterized by a trend of individual lobbying assisted by outside lobbyists responsible for political monitoring. He suggested that the EC political arena is dominated by elite pluralism, meaning that many interest groups participate in the political process, some of them with more power than others. In practice, firms were encouraged to expand their political capabilities in order to engage in lobbying, both in the European and at the national levels, due to the European Commission's need for external information. These firms became pioneers in representational activity by supplying information on several political issues, due mainly to their multinationalism. This enabled them to develop a kind of European credential, which resulted in their privileged access to the EC.

In this context, the EU institutions' demand for expertise and legitimacy for their decisions appears to be the main driver for lobbying at the EU level. Indeed, in a comparative research of lobbying in the US and the EU, Mahoney (2008) described EU lobbyists as being very mild mannered, whereby they attempt to sway the policymaking process using technical, scientific or legalistic arguments based on research. Additionally, she emphasizes that the EC appreciates the involvement of firms' in-house lobbyists more than outsourced lobbyists, as the former are able to provide verifiable information.

According to Coen and Vannoni (2018), outside lobbyists are limited to helping firms build a trusting relationship with policy makers, thus playing a complementary role to the in-house lobbyists in the EU lobbying process. They also conclude that this EU expertise-based lobbying may influence the organizational design of the government affairs departments of politically active companies. Their research indicates that firms would favor experienced in-house managers with specific competencies and in-depth knowledge of their sector.

Contrary to general belief, instead of describing business participation in European politics as a pervasive influence, one should recognize that the Commission needs information from external stakeholders in order to improve its decisions, and its policymaking process is constructed so as to utilize this. Bouwen (2002) identifies such demand as access goods. This is crucial information related to expert knowledge, European or domestic interests that enables information suppliers to develop a close relationship with the EU representatives. According to this theory, stakeholders that could better supply access goods will gain access to the European institutions. In the particular case of the Commission, its need to support the legitimacy of its decisions leads to the hypothesis that large individual firms will have more access to lobbying the Commission. However, it is worth underlining that business actors may compete for different outcomes in some salient policies (Alves, Brousseau, Mimouni, and Yeung, 2019), thus resulting in a strong competition between firms for access the EC.

4 Political Knowledge: An Approach to Understand Firms' Access to the European Commission

Considering the Commission situation, on the one hand it has a demand for external information and will welcome firms that can provide it. On the other hand, access is a scarce good due to the time constraints of its representatives. In practice, we see that some firms have privileged access to the Commission, although it is still not clear what determines this privilege.

Furthermore, both EU institutional environment aspects and clues from the literature that pointed towards an expertise-based lobbying lead us to consider that political knowledge has an important role in explaining firms' differing levels of access to EC representatives. In this sense,

we continue this section discussing how firms can develop their political knowledge in the EU political arena and, therefore, increasing their access to the European Commission.

There are many ways to build and accumulate political knowledge in the EU. For instance, the establishment of a representative office in Brussels enables the extension of political networks and closer follow-up of European debates. Moreover, market-based solutions, such as hiring lobbyists who know the policymaking process and most likely have political ties, are available. It is also possible that large businesses would have an advantage in accumulating political knowledge due to their familiarity with the markets and the sectors in which they operate. Nonetheless, it is possible that these sources of knowledge are effective in increasing access to the EC due to other mechanisms, such as network issues or market power. That being so, we propose exploring the importance of political knowledge through other dimensions that are more anchored to its accumulation in the EU context: experience, the participation in expert groups and operation in priority sectors according to the EU political agenda.

Initially, experience is an essential component of knowledge. Firms with more experience in lobbying accumulate more political knowledge due to previous interactions in the political arena. It allows intra-firm sharing of tacit knowledge and transforming it into explicit knowledge. Therefore, they are more familiar with the policymaking process and institutional environments. Schuler and Rehbein (1997) propose that firms need the will and ability to become politically involved, and experience is one of the factors to influence this. Additionally, previous research demonstrates that experience in dealing with regulators has been significant in relation to favorable decisions made about regulated price adjustments (Bonardi, Holburn and Vanden Bergh, 2006). This suggests that experience is valuable and helps to develop political knowledge, and leads us to our first hypothesis:

H1: Firms with more experience lobbying at the EU level will have more access to the European Commission.

Furthermore, participation in the expert groups is also an alternative to developing political knowledge in the EC, considering that it formally calls for external advice. In this environment, participants have contact with several stakeholders in the political arena, where they can create connections with the staff of the Commission. As participants gather more information about the political agenda, they also develop a social network in which they can exchange knowledge. Therefore, companies benefiting from this opportunity acquire institution-specific knowledge. Also, the admission process analyzes companies' potential to contribute to discussions. It legitimates them as actors with recognized expertise in a policy domain, thereby indicating that they must have firm-specific knowledge. For example, according to a report from ALTER-EU (2018), there is intense business participation in the expert groups dealing with financial, gas and trade domains—which are reported as being successful in shaping policy discussions in the EU—because the Commission recognizes their expertise. Thus, we propose the second hypothesis:

H2: Firms that participate in commission expert groups will have more access to the European Commission.

It is noteworthy that access to the Commission is not only based on firms' efforts but also on the Commission's interests, which is related to firms' ability to provide relevant information to the policymaking process. Hence, considering that Commission representatives face time availability constraints, they will favor listening to firms that can address issues that are priorities in their political agenda. Consequently, if companies are fortunate enough to have knowledge that fits these priorities, they will receive more attention from the representatives of the Commission and, consequently, more access to them.

For instance, the Digital Single Market is a current priority. Therefore, companies in the telecommunications sector can provide meaningful information concerning the target policy domain. These firms have a natural advantage to be able to supply the Commission with relevant, firm-specific information aligned to the needs of the Commission, leading to advantages regarding access.

By contrast, it would be more difficult for companies in other sectors to raise the same level of interest from the Commission and, consequently, it would impact their probability of meeting a Commissioner (although, they may try to arrange it). For example, The Walt Disney Company met with the Commission in order to highlight the role of creative industries in the Digital Single Market. Likewise, TetraPak met the Commission to discuss the circular economy in relation to environmental policies (currently another priority). Therefore, companies in non-priority sectors can also access the Commission, either by linking their activities to a priority or by approaching general issues such as general regulatory issues. However, companies in sectors directly impacted by political agendas receive intrinsic benefits because of their firm-specific knowledge. This leads us to our last hypothesis:

H3: Firms that operate in sectors that are priorities in the political agenda will have more access to the European Commission.

5 Empirical Approach

To bring some novelty to the empirical research on lobbying in the EU, we rely on a new dataset built from the merger of two primary sources: information about the Commission meetings with interest groups and the Transparency Register (hereafter TR). A new perspective for research on lobbying in the Commission came from an official decision in 2014 stating the mandatory requirement to publish information on all meetings involving the commissioners, the members of their cabinets and directors-general with third parties.²² Through the stakeholder name, we obtain further information from the TR²³ database.

The TR is a non-mandatory register which contains basic information about interest groups intending to participate in European policymaking discussions. The register is valid both for the

²² European Commission (2014).

²³ Transparency Register website: <http://ec.europa.eu/transparencyregister/public/homePage.do?locale=en#en> accessed in December, 2016.

Commission and the European Parliament. Despite its voluntary character, interest groups are impelled to register because some lobbying activities are restricted to registered stakeholders, such as participation in expert groups and meetings with commissioners. Thus, the TR contains more than ten thousand registrations, from amongst associations, NGOs, professional lobbyists, small and large firms, and others. Some of the available information includes stakeholders' basic financial information, lobbying resources and interest representation information. It is the main source of lobbying information at the EU level and has already been exploited by previous researchers (Coen and Katsaitis, 2015); Eising, 2007; Bernhagen and Mitchell, 2009; Vannoni, 2012) . It is worth to highlight that among the fourteen hundred meetings occurred in the period studied, only 1.5 percent of meetings included a non-registered interest group.

To enrich the dataset, we have added information about membership of the expert groups and the economic sector using Thomson Reuters Business Classification (TRBC)²⁴. We also differentiate between small and large companies using both the Fortune Global 500²⁵ list for 2016 and 2016 Forbes World's Biggest Public Companies.²⁶ Furthermore, we consider the top four European business associations with access to the European Commission in order to identify participants in the main coalitions, which are BusinessEurope,²⁷ DigitalEurope,²⁸ Eurocommerce,²⁹ and American Chamber of Commerce to the EU.³⁰ Only the associations with more than fifty meetings registered in the period were studied, representing 7 percent of the total of this category which is composed of more than 750 business associations.

The resulting sample is a cross-sectional dataset including 1,845 observations which represent worldwide companies registered in the TR in December 2016. In the final sample, 808 observations showed meeting with a European Commission representative at least once during the period studied—from December 2014 and December 2016—whereas 1,037 had no meeting during

²⁴ TRBC: Thomson Reuters Business Classification. It is a 5 level hierarchical structure. For our sample, only the top level is used, which is "Economic Sector".

²⁵ Fortune Global 500 2016 list: <http://beta.fortune.com/global500/list> accessed in December, 2016.

²⁶ Forbes World's Biggest Public companies: <http://www.forbes.com/global2000/list/> accessed in December, 2016.

²⁷ BusinessEurope: <https://www.buinesseuropa.eu/> accessed in March, 2018.

²⁸ Digital Europe: <http://www.digitaleurope.org/> accessed in March, 2018.

²⁹ Eurocommerce: <http://www.eurocommerce.eu/> accessed in March, 2018.

³⁰ American Chamber of Commerce to the EU: <http://www.amchameu.eu/> accessed in March, 2018.

this period. The dataset dismissed 210 observations that were either missing relevant information for the analysis or misclassified as companies.

5.1 Measures

The dependent variable is a measurement of access to the European Commission. We operationalize it through the number of meetings a company had with a commissioner, a member of the commissioner's cabinet or director-general during the two-year period observed.

The independent variables associated with political knowledge include *Experience* which is measured by the number of years a company is active in the TR for interest representation. *Expert Group* is a dummy variable that takes true value for companies that have any membership status in any Commission expert group, as extracted from the official webpage of EU expert groups. *Sector in EU Political Agenda* is also a dummy that identifies sectors directly involved in the priorities established by the European Commission. The priorities related to economic sectors are Energy Union, Digital Single Market, Economic and Monetary Union. Therefore, using the TRBC ten major economic sectors as a reference, energy, financials, technology, telecommunication services, and utilities were set as priorities, whereas basic materials, industrials, consumer cyclicals, consumer non-cyclicals, and healthcare were not considered to be priority sectors.

We also include some variables associated with the deployment of corporate political strategies that can influence access. *Brussels Office* is a dummy variable that identifies from the TR database whether a company has either a representative office or headquarters in Brussels. *Lobbyist* is a dummy to identify if an outside professional lobbyist is representing the company, and also comes from TR. *Large Companies* is a dummy variable that takes true value for the companies that appear either on the Forbes list, "The World Biggest Public Companies" or the Fortune Global 500 list. *Business Association* is another dummy variable to classify if a company has membership of one of the main associations identified in the previous subsection.

Finally, the dataset contains other variables extracted from the declared information in the TR: full-time equivalent people involved in lobbying activities (*FTE*); number of people accredited

access to the European Parliament (*Parliament*); expenditure with lobbying activities measured in thousands of euros (*Lobbying Costs*); and a dummy variable that indicates if the company is from the EU (*EU Country*). These are variables that could interfere with the level of access of firms to the European Commission, although the hypotheses do not contemplate them.

5.2 Analysis

The analysis follows the characteristics of the dependent variable: a count variable which is discrete and non-negative. The classical least squares regression methods may present estimation errors when the variable has the mentioned characteristics (Winkelmann, 2008). The count models are adequate for this type of data because it considers all its specificities in the regression.

The basic approach to analyzing count data is by using the Poisson model. However, one of the principles of the model is the equidispersion of the variable, meaning that the variance and the mean must present the same value. When a violation of this condition occurs, another model should be employed to avoid misspecification of the regression components. If there is data overdispersion, which is the case of the dependent variable *number of meetings*, then, for the most part, the negative binomial model is used. The negative binomial model derives from a Poisson-gamma mixture distribution where an additional term is incorporated to accommodate overdispersion. In a Poisson model, μ represents the variance whereas $\mu + \mu^2/v$ is the variance in the negative binomial model, where μ^2/v is the gamma variance, and v is the gamma shape parameter corresponding to the overdispersion (Hilbe, 2011).

A challenge to our analysis is the excess of zeros in the sample. Only 43 percent of the firms had a meeting during the observed period. We cannot assume that all firms have attempted to meet with representatives of the highest level of hierarchy within the Commission as they may have been pursuing other lobbying initiatives, such as targeting Parliament or participating in public consultations. On the other hand, there is a risk of selection bias if we only consider the observations that account for at least one meeting. To deal with this, we run two types of analysis in order to test our hypotheses. The first includes the full sample with the excess of zeros leading us to employ a zero-inflated negative binomial (ZINB) regression. The second considers only the 808 observations that account for a meeting so as to focus on the difference in access among

companies that have selected the European Commission as a target for lobbying. Thus, we employ a zero-truncated negative binomial (ZTNB) regression.

The existence of zeros in the sample is a principle valid both for the Poisson and negative binomial models. The excess or the absence of zeros is a violation of the model which would result in estimation errors if not treated (Hilbe, 2011). The variable *number of meetings* violates this condition in the two types of analysis we propose. Thus, it justifies the use of ZINB and ZTNB models that deal with all of the specificities of the dependent variable.

Before running the regression, it is necessary to certify that overdispersion is real instead of apparent. The use of negative binomial models for apparent overdispersion can also lead to the wrong specification of the estimators. Our data present a very high Pearson statistic which denotes overdispersion. Some tests were performed to check the following: (i) the apparent overdispersion caused by outliers; (ii) the omission of explanatory variables; and (iii) link problems. The results indicate real overdispersion. We used different configurations of regressions to test (i) and (ii) that indicated the persistence of high Pearson statistic, whereas test (iii) was performed by the Tukey-Pregibon link test that calculates the hat matrix diagonal statistic after modeling the data.

Furthermore, some tests such as Z-score and Lagrange Multiplier evaluate overdispersion. They analyze if the amount of overdispersion in a Poisson model is sufficient to violate assumptions. The Z-score test is based on t-test probability whereas the Lagrange multiplier evaluates chi2 statistics (Hilbe, 2011). We ran both tests and, according to their results, we can reject the hypothesis of no overdispersion. Finally, the observation of the results of the likelihood ratio test ensured that a negative binomial model is more appropriate than a Poisson model, while the Vuong test ensured that the zero-inflated approach is better than the standard negative binomial approach for the full sample.

We present in Figure 18 the histogram of the dependent variable number of meetings. Table 1 and Table 2 presents, respectively, a summary of the variables as well as the correlation matrix for the full sample and the reduced sample. Table 3 presents the frequency distribution of firms among sectors.

Table 1 - Descriptive Statistics and Correlation Matrix - Full Sample

Variables	Mean	Std. Dev.	Min	Max	(A)	(B)	(C)	(D)	(E)	(F)	(G)	(H)	(I)	(J)	(K)	(L)
A. Number of meetings	2.22	5.05	0.00	50.00	1											
B. Experience	2.44	2.27	0.03	8.41	0.41	1										
C. Expert Group	0.13	0.33	0.00	1.00	0.27	0.19	1									
D. Political Agenda Sector	0.37	0.48	0.00	1.00	0.15	0.00	0.01	1								
E. Brussels Office	0.24	0.43	0.00	1.00	0.36	0.41	0.17	0.01	1							
F. Lobbyist	0.28	0.45	0.00	1.00	0.38	0.31	0.10	0.01	0.22	1						
G. Large Companies	0.24	0.43	0.00	1.00	0.41	0.39	0.22	0.05	0.32	0.37	1					
H. Business Association	0.10	0.30	0.00	1.00	0.36	0.34	0.18	-0.02	0.35	0.30	0.43	1				
I. EU Country	0.81	0.39	0.00	1.00	-0.08	-0.09	-0.03	-0.03	-0.18	-0.23	-0.30	-0.28	1			
J. Lobbying costs	207.03	456.71	0.01	5000.00	0.52	0.35	0.26	0.08	0.32	0.24	0.37	0.39	-0.10	1		
K. FTE	1.71	4.16	0.25	100.00	0.16	0.14	0.08	0.04	0.10	0.09	0.08	0.08	0.00	0.21	1	
L. Parliament	0.69	1.48	0.00	15.00	0.56	0.50	0.22	0.05	0.47	0.33	0.42	0.39	-0.11	0.53	0.19	1

Table 2 - Descriptive Statistics and Correlation Matrix - Reduced Sample

Variables	Mean	Std. Dev.	Min	Max	(A)	(B)	(C)	(D)	(E)	(F)	(G)	(H)	(I)	(J)	(K)	(L)
A. Number of meetings	5.06	6.62	1.00	50.00	1											
B. Experience	3.27	2.42	0.07	8.41	0.40	1										
C. Expert Group	0.17	0.38	0.00	1.00	0.34	0.34	1									
D. Political Agenda Sector	0.45	0.50	0.00	1.00	0.14	-0.05	0.04	1								
E. Brussels Office	0.37	0.48	0.00	1.00	0.35	0.48	0.24	-0.01	1							
F. Lobbyist	0.49	0.50	0.00	1.00	0.27	0.19	0.11	-0.06	0.14	1						
G. Large Companies	0.39	0.49	0.00	1.00	0.38	0.41	0.29	0.05	0.30	0.24	1					
H. Business Association	0.18	0.39	0.00	1.00	0.33	0.36	0.22	-0.09	0.37	0.20	0.40	1				
I. EU Country	0.76	0.43	0.00	1.00	-0.03	-0.07	-0.01	-0.03	-0.17	-0.20	-0.27	-0.29	1			
J. Lobbying costs	337.82	580.14	1.00	5000.00	0.54	0.41	0.33	0.10	0.32	0.17	0.38	0.42	-0.08	1		
K. FTE	2.06	4.81	0.25	100.00	0.18	0.17	0.10	0.04	0.12	0.09	0.09	0.09	0.03	0.22	1	
L. Parliament	1.23	1.87	0.00	13.00	0.54	0.55	0.30	0.02	0.45	0.24	0.40	0.38	-0.06	0.58	0.22	1

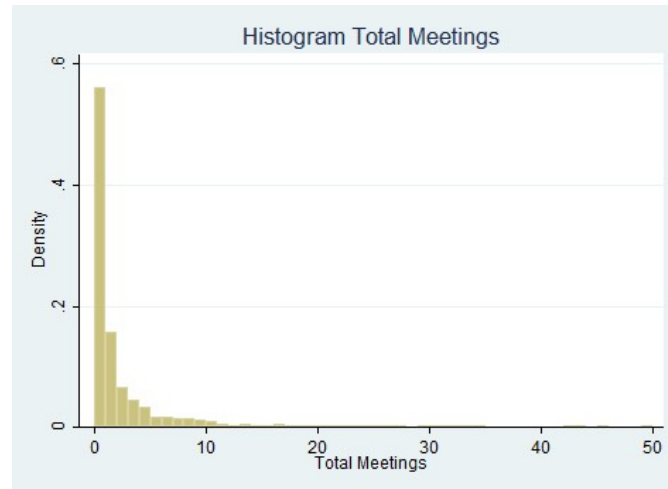


Figure 18 - Histogram

Table 3 - Distribution per Economic Sector

Economic Sector	Political Agenda	<i>Full Sample</i>			<i>Reduced Sample</i>		
		Freq.	Percent	Cum.	Freq.	Percent	Cum.
Energy	1	73	3.96	3.96	47	5.82	5.82
Basic Materials	0	138	7.48	11.44	60	7.43	13.24
Industrials	0	486	26.34	37.78	184	22.77	36.01
Consumer Cyclicals	0	304	16.48	54.25	118	14.6	50.62
Consumer Non Cyclicals	0	142	7.7	61.95	59	7.3	57.92
Financials	1	220	11.92	73.88	122	15.1	73.02
Healthcare	0	85	4.61	78.48	25	3.09	76.11
Technology	1	229	12.41	90.89	96	11.88	88
Telecommunication Services	1	72	3.9	94.8	31	3.84	91.83
Utilities	1	96	5.2	100	66	8.17	100
Total		1845	100		808	100	

6 Results

Tables 4 shows the results of the analysis with the full sample using a ZINB regression. It is a two-part regression that models zero counts using both the binary and count processes. It assumes that zeros may have two different origins: a failure or, merely, no attempt to achieve the expected result. Therefore, the binary part, also known as the inflation process, uses predictors to define the results of the binary process and, then a negative binomial regression analyzes the count process (Winkelmann, 2008; Hilbe, 2011). The binary process uses a logit regression, and it is noteworthy that it estimates the probability of a zero observation.

The logical approach of ZINB fits our sample. Zero meetings indicate either the Commission's refusal of a meeting request or no attempt to organize it. It is important to emphasize a difference between the binary and the count processes. The former is related to the willingness of the firms that will make an effort (or not) to organize a meeting, whereas the latter represents the willingness of the Commission to meet that firm. The count process is the one which we are interested in so as to test our political knowledge hypothesis.

However, we need to understand the two processes that generate zeros to set the predictors of the ZINB regression. We propose that firms aiming to meet the representatives of the Commission will invest in lobbying activities and the expansion of their lobbying network. Consequently, the variables *Brussels Office*, *Lobbyist*, *Lobbying Costs*, *FTE* and *Parliament* could be good predictors. Because some of them may also explain the count process, they are present in both parts of the regression.

First, we regress the dependent variables on one of our variables linked to the hypotheses and other control variables, as shown in Models 1 to 3. In Model 4, we include three measures of political knowledge together. Finally, on top of Model 4, we investigate some interactive effects in Models 5 to 8. Specifically, we focus on the interactions between *Experience* and other variables of the models that characterize the firms. From our set of independent variables, *Experience* is the one that most explicitly symbolizes knowledge accumulation. Therefore, the interactions can give us further understanding of political knowledge building at the EU level, and how it affects firms' access to the Commission. Also, from Model 5, we dismiss some variables in the inflated part that were not significant. This reconfiguration took into consideration the results of Akaike's (AIC) and Bayesian (BIC) information criteria.

In the inflated part of the regressions, we note that the number of accredited people with access to Parliament, and the full-time equivalent people, are all predictors of positive counts. Taking into consideration that the inflated part measures the probability of zero, we can interpret that the more people with access to Parliament increases the possibility of a meeting, while the more people working in lobbying activities decreases it. People accessing Parliament are lobbying the European deputies that are also part of the hierarchy of targets for EU lobbying. This result suggests that the number of people reaching targeted representatives is more relevant than the size

Table 4 - Zero-Inflated Negative Binomial Regression Analysis - Number of Observations: 1845

Variables	Model 1	Model 2	Model 3	Model 4	Model 5	Model 6	Model 7	Model 8
Experience	0.1120 ***			0.1134 ***	0.1977 ***	0.1445 ***	0.0320	0.5628 ***
Expert Group		0.2465 **		0.1463	0.1350	0.1573	0.1252	0.1966 *
Political Agenda Sector			0.3452 ***	0.3747 ***	0.3830 ***	0.3730 ***	0.3633 ***	0.3383 ***
Brussels Office	0.2956 ***	0.3991 ***	0.4170 ***	0.2884 ***	0.3224 ***	0.2995 ***	0.3005 ***	0.2983 ***
Lobbyist	0.6706 ***	0.6237 ***	0.6671 ***	0.6980 ***	1.2646 ***	0.6919 ***	0.6993 ***	0.6580 ***
Large Companies	0.5030 ***	0.5470 ***	0.5573 ***	0.4368 ***	0.4499 ***	0.6561 ***	0.4240 ***	0.4482 ***
Business Association	0.0723	0.1134	0.1991 *	0.1239	0.1240	0.1382	0.1578	0.1589
EU Country	0.1802 *	0.2252 **	0.2705 ***	0.1922 **	0.1985 **	0.2042 **	-0.1581	0.1962 **
Lobbying costs	0.2328 ***	0.2636 ***	0.2559 ***	0.2104 ***	0.2124 ***	0.2205 ***	0.2167 ***	0.2221 ***
FTE	0.0115	0.0163	0.0175	0.0066	0.0056	0.0066	0.0044	0.0059
Experience * Lobbyist					-0.1622 ***			
Experience * Large Companies						-0.0657 *		
Experience * EU Country							0.1070 ***	
Experience * Experience								-0.0545 ***
Constant	-1.3378 ***	-1.2158 ***	-1.3810 ***	-1.4242 ***	-1.7418 ***	-1.5658 ***	-1.1819 ***	-2.0672 ***
Inflate								
Parliament	-1.1159 ***	-1.1121 ***	-1.1431 ***	-1.1058 ***	-1.0703 ***	-1.1144 ***	-1.1311 ***	-1.0793 ***
Lobbyist	-31.2937	-30.4458	-30.7398	-33.1410	-32.0041	-31.0195	-29.4812	-32.1506
Lobbying costs	-0.0462	-0.0160	-0.0215	-0.0695				
FTE	0.1295 **	0.1189 **	0.1262 **	0.1305 **	0.1234 **	0.1158 **	0.1136 **	0.1268 **
Brussels Office	-0.2215	-0.1848	-0.1965	-0.2301				
Constant	-0.3012	-0.2427	-0.2883	-0.2179	-0.6871 ***	-0.5188 ***	-0.5021 **	-0.7051 ***
/lnalpha	0.0909	0.0694	0.0647	0.0450	0.0408	0.0413	0.0288	0.0251
alpha	1.0951	1.0719	1.0668	1.0460	1.0417	1.0422	1.0292	1.0254
AIC	5530.6	5556.4	5541.5	5508.0	5482.7	5504.0	5499.1	5456.7
BIC	5619.0	5644.8	5629.8	5607.3	5576.5	5597.8	5593.0	5550.5
Vuong test of zinb vs. NB:	z= 3.94 Pr>z = 0.000	z= 4.45 Pr>z = 0.000	z= 4.22 Pr>z = 0.000	z= 3.82 Pr>z = 0.0001	z= 3.43 Pr>z = 0.0003	z= 3.73 Pr>z = 0.0001	z= 3.73 Pr>z = 0.0001	z= 3.49 Pr>z = 0.0002

* p < .10, ** p < .05, *** p < .01

of the team. Contrary to our initial idea, lobbying expenditure and a representative office in Brussels are not good predictors of positive counts.

In general, the estimation results are consistent with our hypotheses. Models 1 to 3 show that our measures of political knowledge, namely, *Experience*, *Expert Group* and *Political Agenda Sector*, are significant with a correct sign in explaining the number of meetings. When all three measures are included in one single regression in Model 4, only *Experience* and *Political Agenda Sector* are significant. Unsurprisingly, and aligned with the current state of the art, *Brussels Office*, *Lobbyist*, *Large Companies*, and *Lobbying Costs* are also positively correlated with access to the European Commission.

We are interested in the possibility that experience may interact with other variables, and that the effect of experience may diminish over time. In Model 5, the interaction of *Experience* and *Lobbyist* is included. The interaction is negative and significant, and, therefore, experience is more relevant for companies that do not hire an outsourced lobbyist, as illustrated in Figure 19 through the predictive margins. In other words, an additional year of experience impacts less when the stakeholders hire professional lobbyists, while doing so is associated with a higher number of meetings. In Model 6, we interact *Experience* and *Large Companies* and find that it is negative and significant, suggesting that experience can compensate in some way for the advantage in terms of firms' size to gain access to the Commission. Refer to Figure 20; given the same level of experience, small companies are, on average, associated with fewer meetings, but are not significantly different from large companies at a sufficiently high level of experience. In Model 7, we find that the interaction between *Experience* and *EU Country* is positively significant. It is easier to interpret this effect through the predictive margins' graphic shown in Figure 21. At a low level of experience, stakeholders from both EU and non-EU countries are almost identical in terms of the number of meetings, but the effect of experience on the former is established quickly and produces a significant difference. The flat curve of non-EU countries shows that experience is almost irrelevant for non-EU companies. Finally, we add the squared term of *Experience* to Model 8, which is negative and significant. Figure 22 shows the average marginal effects of *Experience*. The marginal effect is positive in the beginning, reaching its peak at two years, but falls to almost zero at roughly five years. Beyond five years, the marginal effect becomes negative. This result

suggests that the effect of experience is more pronounced when the companies are still new to the EU lobbying framework.

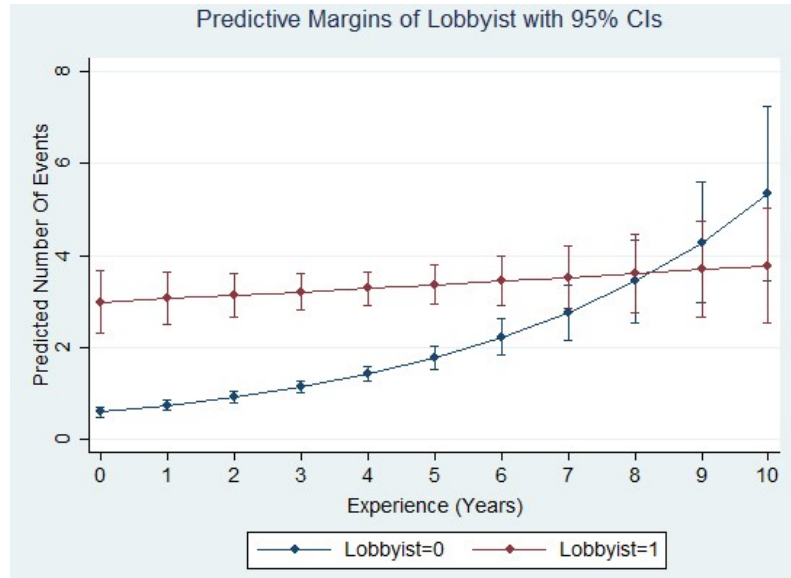


Figure 19 – Predictive Margins of Lobbyist

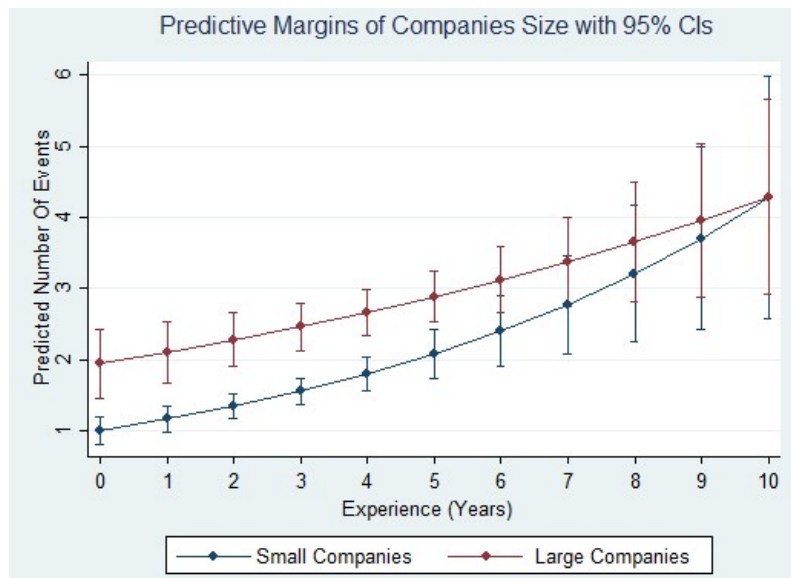


Figure 20 - Predictive Margins of Companies Size

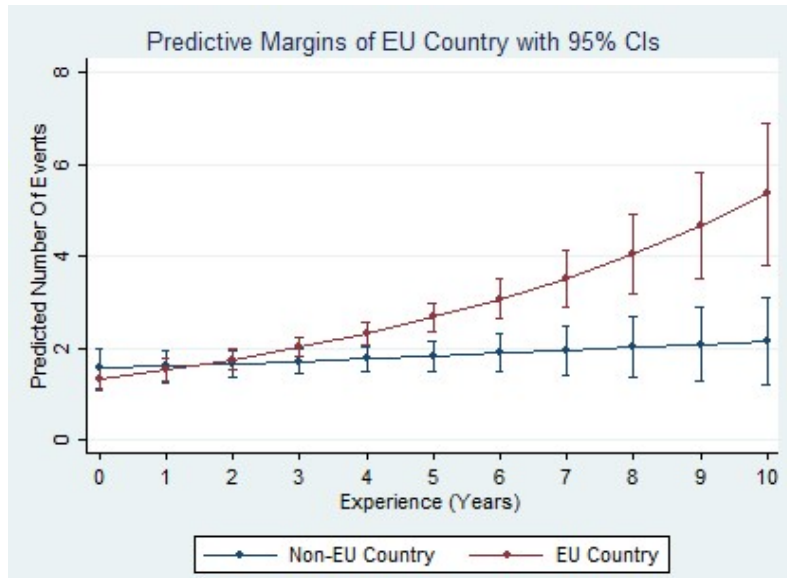


Figure 21 - Predictive Margins of EU Country

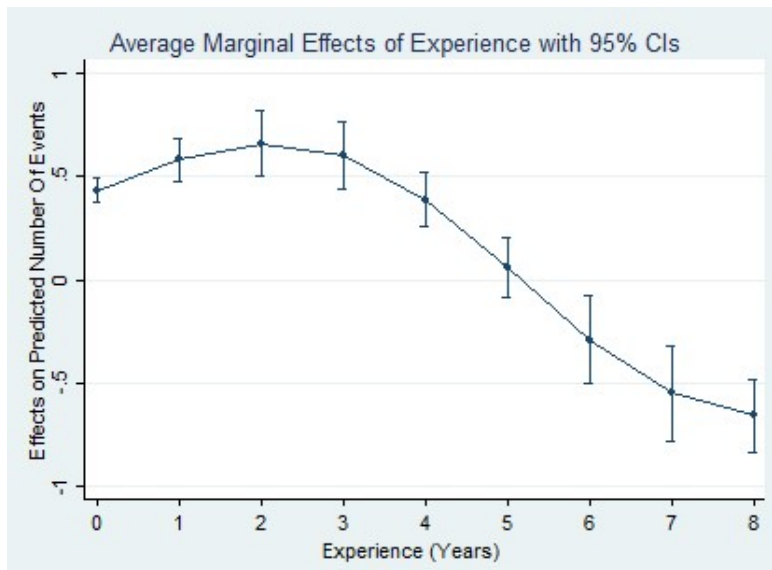


Figure 22 - Average Marginal Effects of Experience

To confirm our results, we performed a ZTNB regression only with the 808 observations that accounted for at least one meeting. Unlike the ZINB, this is a one-part regression without

predictors. Following the rationale of Table 4, we run the ZTNB regression in different configurations in order to analyze the effects of the interactions. The results presented in Table 5 support our hypotheses H1 and H3; both *Experience* and *Political Agenda Sector* are significant. However, *Expert Group* is less significant and not a robust result. Likewise, the results of interactions are equivalent to the previous analysis. It is interesting to note that according to the ZTNB, the nationality of the companies is not a determinant factor in obtaining privileged access to the European Commission. A possible explanation is that many non-EU companies, mainly American ones, are able to establish a good relationship with the Commission due to their major role in sectors, such as Google, Microsoft and Facebook. Finally, we observe that the participation in business associations was not significant in both analyses. This suggests that collective strategies may not be an effective way to leverage access to individual strategies in the EU political arena despite its potential to provide some institution-specific knowledge.

Table 5 - Zero-Truncated Negative Binomial Regression Analysis - Number of Observations: 808

Variables	Model 1	Model 2	Model 3	Model 4	Model 5
Experience	0.0687 ***	0.1588 ***	0.1310 ***	-0.0263	0.5155 ***
Expert Group	0.1902 *	0.1738	0.1949 *	0.1688	0.2149 *
Political Agenda Sector	0.1790 ***	0.1947 **	0.1852 **	0.1730 **	0.1406
Brussels Office	0.2748 **	0.2773 ***	0.2538 **	0.2660 ***	0.2498 **
Lobbyist	0.5852 ***	1.1589 ***	0.5834 ***	0.5815 ***	0.5540 ***
Large Companies	0.3639 ***	0.3737 ***	0.7487 ***	0.3456 ***	0.3784 ***
Business Association	0.0351	0.0324	0.0681	0.0816	0.0651
EU Country	0.1125	0.1261	0.1330	-0.3482 *	0.1127
Lobbying costs	0.1955 ***	0.1824 ***	0.1915 ***	0.1878 ***	0.1960 ***
FTE	-0.0096	-0.0111	-0.0085	-0.0108	-0.0094
Parliament	0.1372 ***	0.1447 ***	0.1441 ***	0.1400 ***	0.1283 ***
Experience * Lobbyist		-0.1563 ***			
Experience * Large Companies			-0.1099 ***		
Experience * EU Country				0.1288 ***	
Experience^2					-0.0513 ***
Constant	-1.0741 ***	-1.3436 ***	-1.2517 ***	-0.6760 ***	-1.6736 ***
/lnalpha	-0.0486	-0.0845	-0.0623	-0.0943	-0.0983
alpha	0.9526	0.9189	0.9396	0.9100	0.9064

Likelihood-ratio test of alpha=0: Prob>=chibar2 = 0.000 for all models.

* $p < .10$, ** $p < .05$, *** $p < .01$

To summarize, our results suggest that, *ceteris paribus*, lobbying experience and operating in a sector that focuses on the political agenda are important factors to help gain access to the European Commission representatives while attending expert groups is a less relevant one. It demonstrates the relevance of the accumulation of political knowledge for the deployment of corporate political strategies within the Commission. Moreover, the results also corroborate the relevance of other characteristics and tactics, such as firms' size, the use of outside lobbyists and the establishment of a representative office in Brussels, as previously discussed in the literature.

6.1 Discussion on Potential Endogeneity

A likely source of endogeneity is reverse causality. Political knowledge impacts on political connections and thus on the number of meetings, but causality may go in the opposite direction. We discuss each variable of interest in order. We measure *Experience* by the years the stakeholders have been registered in the TR, which has been exogenously determined in the model. The decision to register has been made before any meetings have been arranged. Although there could be common factors that drive two variables at the same time, they are very likely associated with those characteristics of stakeholders for which the model has controlled.

For *Political Agenda*, one may argue that lobbying efforts influence it. However, we should be aware that successfully fixing an agenda would require much coordination among firms within the sector, which is hardly achievable as they operate in different Member States where economic and political constraints are far from identical. Political agenda priorities are results of inter-institutional dialogues, thus leaving little room for lobbying and, consequently, leading us to discard such any possibility of reverse causality associated with *Political Agenda*.

Lastly, the correlation between *Expert Group* and the number of meetings could be subject to reverse causality even if there has been a procedure to ensure the positions are judiciously assigned. The potential possibility of reverse causality would have strengthened the positive correlation between *Expert Group* and the number of meetings. Therefore, we employed a two-stage instrumental variable approach to tackle the problem. The first stage is an OLS regression in which *Expert Group* is explained by the instrumental variable *Business Association* and other variables. *Business Association* is a reasonable pick as it does not significantly explain the number

of meetings, as shown in Table 4 and 5, and the Commission would appoint some expert group members according to the nominations made by representative EU-level associations (Nugent, 2017). The second stage is the same negative binomial regression, except that *Business Association* is taken away and the residual of the first stage is now included. We do not find a robust and significant effect of *Expert Group*.³¹ 2 Nonetheless, *Expert Group* is not a robust predictor of the number of meetings, as shown in our baseline results of Table 4 and 5.

7 Discussion

In this study, we investigated the determinants of firms' access to the European Commission. Some researchers have analyzed the dynamics of European lobbying, yet few have analyzed it empirically. During the 1990s, many companies established offices in Brussels, aspiring to participate in the European policymaking process. Several researchers have studied this phenomenon and how the lobbying strategies have evolved through the years, from a national approach to a more sophisticated one that includes supra-national strategies. Much research has confirmed this corporate interest, and some research theorized that a number of stakeholders enjoy privileged access to the Commission representatives.

In general, theories related to lobbying dynamics in the European Union are quite convergent concerning access differentiation. Indeed, the number of business-related stakeholders that have established an office in Brussels strongly suggests that there is substantial corporate interest in the EU. This is reinforced by the share of meetings that include these stakeholders, reaching 68 percent of the total according to our data. Therefore, one of the missing pieces in the Commission lobbying puzzle has been a quantitative analysis, which provides some empirical support to confirm the theories already developed, related to the dynamics of access. We aim to fill this specific gap by performing further investigation on the determinants of firms' access to the European Commission representatives.

³¹ We performed F-test to check the strength of the instrument variable. Results range from $F = 3.257$ and $F = 5.769$ which means the instrument is not very strong. However, we argue it is sufficient to bring clarifications about the role of the Expert Group that is not robust.

In this research, we propose that firms' accumulation of political knowledge is associated with their level of access to the European Commission. Considering the two dimensions of this knowledge—institution-specific and firm-specific, as developed by Bonardi and Vanden Bergh (2015)—we discuss various ways in which firms build political knowledge in the Commission context and how this leads to more access to its representatives. The reported analysis relies on a new dataset built from the merger of the Commission representatives' meetings information, the TR database and additional firms' data. Our sample has 1,845 companies, of which 808 held a meeting with the European Commission during the two-year period of analysis. The strength of this dataset is the establishment of a direct measure of access to representatives, that is, the number of meetings. Before meeting detail information was made available, researchers relied on different measures. For instance, Hermansson (2016) measured privileged access through participation in exclusive public fora. Eising (2007) used surveys to analyze business associations and firms' access. Bernhagen and Mitchell (2009) made direct lobbying operational through a combination of firms' parameters, such as a Brussels office, the use of an external lobbyist and the existence of an EU affairs representative. Although these approaches provide some clues about lobbying dynamics, they are less precise in measuring the level of direct lobbying activity.

Our results support the relevance of political knowledge accumulation for gaining more access to the European Commission. The lobbying experience and the sector included in the political agenda were significant in every analysis performed. However, we did not find support for the hypothesis that links expert group membership to access. In addition, experience appeared as a relevant factor to compensate for the impact of the firms' size in obtaining access, plus the absence of a professional lobbyist to leverage their political actions, despite this effect fading in the long term. Furthermore, other variables included in the analysis, such as firms' size, use of outside lobbyists and the existence of a representative office in Brussels, presented extremely robust results, suggesting they are also relevant to access.

Thus, our contribution is twofold. Firstly, it extends the knowledge about corporate political strategies in the European Commission, a hybrid institution that has both agenda-setter and regulatory responsibilities. Thus far, there is a scarcity of data, which holds back the development of quantitative studies. Our novel dataset allows us to shed some light on the dynamics of access and complement previous research on EU lobbying. Secondly, we empirically

test the relevance of political knowledge to the deployment of corporate political strategies. Even if previous research hinted about its importance, no empirical research has directly analyzed it. We show that political knowledge is important to access policymakers and smooth the effects of some potential disadvantages in the political arena such as being a small firm or lacking the support of an outsourced lobbyist. These findings provide useful insights for companies planning to deploy political strategies in Europe.

It is worth to discuss how our findings relates to the existent literature. For instance, Coen (1998; 2009) described the emergence of a European identity for some companies that resulted in privileged access; the elite pluralism phenomenon. According to the analysis provided in this article, this identity is probably built and sustained through the accumulation of political knowledge. We confirm that the main characteristics of the companies identified in the elite pluralism (firms' size, office in Brussels and lobbying experience) are relevant factors for access.

Moreover, these findings are also consistent with the theory proposed by Bouwen (2002). He hypothesizes that companies that are able to provide access goods would gain more access to the Commission, and refers to value-added information supplied by companies during the policymaking process. In the context of this research, access goods are equivalent to the outputs of political knowledge of firms. Our findings are also convergent with the results of Hermansson (2016), who suggests that stakeholders' expertise is a relevant dimension for the Commission.

We also analyze the impact of the economic sector on the level of access. Vannoni (2012) hypothesized that the different weight of economic sectors in direct lobbying due to the Olsonian argument attributes access to industry concentration. In a different way, in this research, we suggest that the participation of various sectors is related to the policy agenda setting. Our results confirm that most of the sectors operating in those areas that are considered priorities to the European legislation are more easily able to access the EC representatives.

Despite these interesting results, some limitations of this study should be noted. First, lobbying in Europe involves all EU institutions as well as national institutions. In this research we focus on the EC, and thus we do not have the complete picture of inter-institutional dynamics. Additionally, meeting information is only available for high-level Commission officers, but lobbying also occurs at the operational levels of European institutions. An interesting finding in this research is the relevance of the number of people accredited with access to Parliament. The

results indicate that this variable is important for both the binary and count processes. It points towards a relationship between lobbying in Parliament and in the Commission that is little explored in the literature and deserves more attention.

It is also pertinent to mention that a considerable percentage of the data comes from the TR database. The register is voluntary, and there is no audit of the data, which may lead to inconsistencies. Furthermore, as meeting information disclosure is very recent, we have a short period of analysis. Finally, it would be valuable to have more specific information about firms' financial indicators. However, our sample contains more than eighteen hundred companies, with a variety of sizes and nationalities, which creates challenges in finding sources to supply this data.

The reported findings encourage us to continue to investigate lobbying dynamics in Europe. An extended period of analysis would provide more robustness to the results and would discard the risk of bias related to discussions of specific policy issues due to the analysis of one single agenda. Additionally, it would be interesting to evaluate if or how access is translated into influence. Current research typically mentions that access does not necessarily imply influence. However, would it impact policymaking in any case? If previous studies in the US have demonstrated that corporate political strategies result in several positive outcomes for companies, we have reason to presume that the same could happen in the EU. We believe there are many avenues for future research on corporate political strategies in the EU that would provide additional insights to this research field.

Chapter 3

Competing for Policy: Lobbying in the EU Wholesale Roaming Regulation ³²

This work studies the change of regulation of the EU wholesale roaming market, that was aimed at facilitating the previously ratified roam-like-at-home (RLAH) policy in the retail market, through the lens of the framework of political market for policy. This regulation was strategic not only for the European Commission that aimed to develop the EU digital single market but also for telecommunications operators because of its impact on revenues. By studying the textual inputs and options chosen of specific questions in the responses to the public consultation, we identify through topic modeling two main focuses of the debate or clusters of stakeholders - one concerned with fair use policy issues and other concerned with price issues. However, stakeholders lobbied for different outcomes even within a cluster, demonstrating intense competition among policy demanders. Such fragmentation on the demand side of the political market provided room for the supplier of the policy, the European Commission, to react to lobbying efforts impartially. Regression results show that the Commission did not consistently favor certain stakeholders with specific characteristics. Instead, the Commission was coherent with its political agenda to promote a competitive internal market, and the public consultation in effect gave legitimacy to the changes of the regulation.

1 Introduction

The European Union (EU, hereafter) has been a pioneer in the international roaming regulation scenario (Bourassa et al., 2016). Since 2007, when the first roaming package entered into force, the European institutions have continually worked to develop further the roaming regulation framework which is considered an essential issue for building the long-targeted EU single market.

One of the most recent achievements in this regard was the approval of the "Roam Like at Home" (RLAH), a regulation stating that EU mobile users would not pay roaming charges

³² This chapter counts with the collaboration of Prof. Eric Brousseau and of the Post-doc Researchers Nada Mimouni (PSL- Governance Analytics) and Timothy Yu-Cheong Yeung (Chaire Gouvernance et Régulation).

anymore while visiting another EU country. The European Commission was the proposer of this regulation that is strategic to demonstrate the Commission's concern of serving EU citizens' interests as well as to give a step further towards the development of the EU single market. Such a change in the roaming retail market implied a necessary review of the wholesale roaming regulation. As it is a significant source of revenues to some operators and expenses to others, they actively participated in the policy-making process, trying to influence policy outcomes.

A remarkable particularity of this regulation is that it does not directly affect consumers because the retail market regulation has been previously defined. Nevertheless, there was stiff competition among the business' stakeholders due to their different profiles. The European telecommunications landscape comprises a variety of actors that contrast in their market roles (standard operators versus virtual operators), in their business models, and in characteristics such as the number of countries in which they operate, the number of subscribers they have, and geographical and regulatory issues in their operating countries. In such a scenario, interests are diverse, and thus, policy preferences. Therefore, the following question arises: How lobbying is organized in this environment of conflicting interests between stakeholders of the same nature?

This study examines lobbying strategies in the policymaking process of the EU wholesale roaming regulation through the perspective of political market (Bonardi et al., 2005), where business representatives are the policy demanders and the European Commission is the policy supplier. In this political market, stakeholders lobby for their intended outcome through different channels. One significant and relatively transparent channel of lobbying is the public consultation conducted by the Commission prior to the drafting of the proposal for a regulation, which is our primary source of information to investigate the deployment of lobbying strategies in this case. Moreover, we resort to additional lobbying information and market indicators to perform the analysis. We use both textual analysis tools and regressions to examine firms' and the Commission's decision-making and the alignments between them.

This paper is structured as follows. Section 2 reviews the relevant literature about lobbying and political markets. Section 3 provides an overview of the political market of the wholesale roaming regulation in the EU and explain in detail its policymaking process. Section 4 gives a general assessment of the textual information provided by stakeholders, aiming at identifying important cleavages among the stakeholders. Section 5 analyzes selected issues and examines

the relationships between various factors and the alignment between the stakeholders' and the Commission's positions. Section 6 presents a discussion of the results through the lens of political market for policy. Section 7 draws the paper to a conclusion.

2 Theoretical Background

Not only the market environment is important for firms' performance but also the nonmarket environment. The latter refers to the social, political, and legal arrangements related to firms' operation (Baron, 1995). In this context, the nonmarket environment, mainly the political environment, is especially important for firms operating in regulated markets where governmental authorities have the power to create or block market opportunities. Therefore, neither strategies targeting only the market environment nor the ones targeting only the nonmarket environment are sufficient to ensure firms' performance, which depends on the integration of both. In this approach called integrated strategy, the nonmarket strategies will facilitate the deployment of market strategies while their deployment will depend on firms' market strategies (Baron, 2013).

The political environment can be conceptualized as markets of public policies where firms, political representatives and other stakeholders interact. In political markets, firms are policy demanders interested in securing or improving a sustainable environment for their businesses, whereas politicians and bureaucrats are the policy suppliers with the power to issue legislation with significant impacts on economic activities (Bonardi et al., 2005). Therefore, firms will actively develop corporate political strategies, which are nonmarket strategies addressed to political institutions to attempt to align the business environment to their preference. Some of the results documented in the literature include increases in regulated prices (Bonardi et al., 2006; de Figueiredo Jr and Edwards, 2007), favorable decisions on mergers and acquisitions (Holburn and Vanden Bergh, 2014), public grants or fiscal advantages (De Figueiredo and Silverman, 2006), and might result in better financial performances in some circumstances (Hadani and Schuler, 2013).

Analogously to economic markets, companies are competing in political markets (Baron, 1999). They compete for access to politicians in the aim of acquiring information and deploying strategies of influence whereby firms can reduce uncertainties about the outcome of the political games and sway the regulatory process. However, in a political market, firms are not only

competing with its market competitors, business associations, trade unions, NGOs, and organizations representing citizens' interests are also part of the demand side in political markets. The literature suggests that large businesses usually prevail against other stakeholders because they face lower collective action problems, they are able to diversify strategies and to access highest level of government representatives (Schuler et al., 2002; Baumgartner et al., 2009). Furthermore, in a scenario of rivalry on the demand side, the level of regulatory uncertainty increases (Kingsley et al., 2012), and the effectiveness of corporate political strategies may decrease (Bonardi and Keim, 2005). The current research mainly focuses on the competition between producers' and consumers' interests and how the dynamics between them shape the policy outcome. Gawande et al. (2005) showed theoretically and empirically that competing lobbyists cancel off each other and tariffs are lower with more intense competition for policies between upstream and downstream firms. Martimort and Semenov (2008), in a model of monetary contribution, suggested that the presence of competing lobbyists biases the decision towards the decision-maker's ideal point. Also, Bonardi et al. (2006) showed that firms are less successful in increasing the price of their regulated services when they face the competition of interest groups advocating for consumers interests.

The most common strategies to persuade policy suppliers are lobbying and the financing of electoral campaigns. Baron (2013) defines lobbying as the strategic supply of politically relevant information to government representatives. Firms may choose to deploy these strategies either individually through their internal departments or outsourced lobbyists on their behalf, or collectively through associations. Nevertheless, small firms with budget constraints will usually adopt collective strategies or no political strategy at all (De Figueiredo and Tiller, 2001).

The EU political environment has specific characteristics influencing the deployment of corporate political strategies: in particular the interdiction of corporate financing of electoral campaigns, and the appointment by the member states of the members of the European Commission. The latter is a central body in the EU policy-making process: it prepares the decisions and bills that are discussed and potentially amended in the Parliament, and finally adopted by the Council (made of the head of ministries of the members countries). The ban of campaign contributions establishes lobbying as the most important dimension of nonmarket strategy in the EU political arena. The absence of elections influences the incentives of policymakers. In the

standard context, the usual political-economy approach is to consider that they are essentially driven by the quest for reelection. In the EU context, the Commission members tend to be driven by their ability to show to their peers (the politicians and high flyers bureaucrats in the system of transnational governance) their ability to fulfill their mandate and establish their legitimacy in being able to navigate the complex political environment of the EU political game characterized by a persisting tensions between national (sometimes local) interests and the shared will to build a stronger Union. They are in a sense the trustees of the EU and are concerned by their future appointment in the system of power either at the international level or in their home country.

Some research highlighted the activism of business interests in lobbying the EU institutions (Coen, 1998, 2009). One main characteristic of lobbying in the EU is that it is significantly technical and based on the expertise of the interest groups. Their inputs are considered as relevant and legitimate to inform the policy-making process (Bouwen, 2002; Mahoney, 2008). Previous research that investigated interest groups' influence in the EU policy-making process gives some clues about factors that contribute to a successful lobbying. For instance, Hermansson (2016) suggested that recommendations from industry organizations have higher chances to be accepted as well as recommendations coming from stakeholders with specific expertise and privileged access to the European Commission. In this environment, the political knowledge about the institutions' governance and the policy-making process, as well as the value of firms' assets and strategies in matter of public policies matter for the success of lobbying strategies (Alves, 2019). In addition, the size of the coalition influences policy results; "coalition" meaning here that a group of stakeholders target the same policy outcome, even if they are not necessarily organized in ad hoc coalition (Mahoney, 2007; Klüver, 2011).

The case of the wholesale roaming regulation is particularly interesting to further understand the organization of lobbying in the EU because the supplier's motive may change significantly when consumers, basically the voters or those who theoretically grant the authority the mandate, are absent. To better illustrate our idea, we characterize the political market of the wholesale roaming as shown in Figure 23. On the demand side, there are many telecommunication operators: some of them are mobile network operators (MNOs) while others are mobile virtual network operators (MVNOs). Also, some business associations, which represent markets niches, as well as some specialized consulting companies are active. The policies outcomes they are

expecting are not necessarily unified. On the supply side, the European Commission is in charge of the first draft of legislation called the legislative proposal. Stakeholders interact with the supply side through information exchanges that include both participation in public consultations and other forms of direct lobbying such as private meetings with the European Commission representatives. In the next section, we discuss in more details this political market.

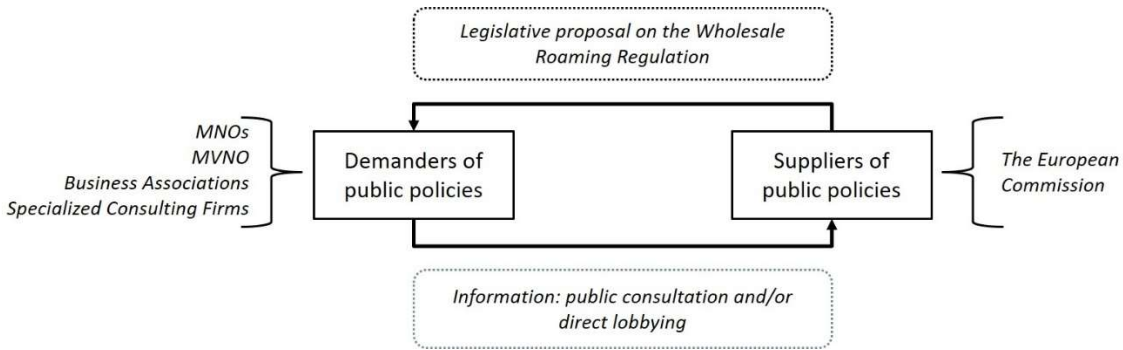


Figure 23 - The EU Wholesale Roaming Regulation Political Market

3 The political market of the EU Wholesale Roaming regulation

In order to comprehend the main components of this political market, it is worthy to introduce the particular context of the wholesale roaming regulation. Thence, we start presenting a brief historical overview of the development of the roaming regulation in the EU as well as the main cleavages among policy demanders. We continue the section with considerations about the supply side, the demand side, and how both sides interacted during the policymaking process.

3.1 EU Roaming Regulation in a historical perspective

As a result of an assessment of the Roaming market in 2003, the European Commission concluded that the roaming charges were excessive and ex-ante regulation should be implemented. As a consequence, in 2007, the *Roaming I* regulation was approved. It established price caps for intra-EU international roaming covering voice services at both wholesale and retail levels, named the Euro tariff. Further improvements on the regulation occurred subsequently with the

implementation of *Roaming II*. It reviewed the 2007 regulation by lowering the price caps for voice services and introducing price caps for SMS on both wholesale and retail charges. Also, it introduced a price cap to data service only at the wholesale level. Later in 2009, the *Roaming III* extended the price cap of data to the retail market and established a gradual price cap reduction from 2014.

These regulations decreased the prices of roaming services significantly. As highlighted by Infante and Vallejo (2012), to ensure that the price drop would benefit end users, there should be retail market regulation in parallel with wholesale market regulation. That was precisely the strategy used in the roaming regulation in the EU. It is worth mentioning that the supranational structure of the EU was critical to reaching this level of regulation because national regulators are very limited to take measures to increase competition at the international level. Indeed, the prices of international roaming inter-EU did not face the same price reduction (Bourassa et al., 2016).

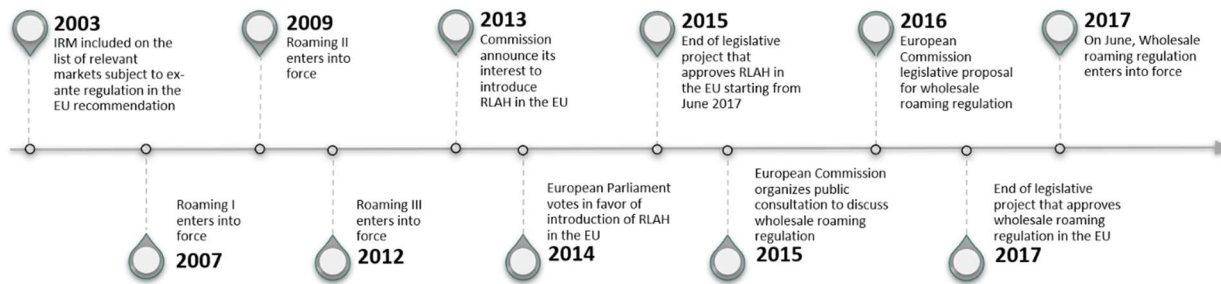


Figure 24 - Evolution of Roaming Regulation in the EU

Although these regulations had lessened the burden of roaming charges for EU mobile users, they were not sufficient for achieving the ambition of the Commission. A necessary step would be to extinguish roaming charges within the Union as proposed by the Commission in 2013. After the agreement of the European Parliament and Council in 2015, new legislation entered into force implementing the RLAH (banning all retail roaming tariffs) from June 2017. This regulation triggered the need for an additional regulation to adapt the wholesale roaming market to the new rules concerning the retail market. A summary of the main milestones in the EU roaming regulation is presented in Figure 24.

3.2 The main cleavages

The wholesale roaming regulation is a delicate issue since it has a direct and substantial impact on the telecommunication companies' operation and revenues. Infante and Vallejo (2012) suggested that roaming revenues in Europe are higher than the world average. Although operators usually do not disclose this information, recent research has estimated these revenues accounted for more than 8% of mobile turnover for Belgium operators (Spruytte et al., 2017). Therefore, the telecommunication industry was actively interested in the policymaking process of wholesale roaming regulation. Among the main issues was the implementation of a fair usage policy aimed at preventing distortions of domestic markets, and at maintaining the sustainability of competition on these markets. An even more contested issue was the level of price caps that would affect the capacity and the maintenance of networks, investment recovery, and the profitability of their businesses.

Spruytte et al. (2017) nicely presented the main positions of different stakeholders in the international roaming market. We won't repeat the same exercise but briefly summarizes the arguments. The telecommunication market is populated by service providers with different backgrounds, facilities and market power. A uniform regulation generates winners and losers. First, MNOs and MVNOs are very different service providers. MNOs own their infrastructures, while MVNOs do not own their network and rent services from MNOs. Therefore, MVNOs cannot provide wholesale roaming service to others, and have to pay for it whenever their customers travel to another country and activate roaming. A higher price cap may lead to a higher wholesale price that eventually encroaches MVNOs' profits as no retail roaming charges can be charged. Meanwhile, net roaming service buyers are very concerned by the drafting of fair use policy preventing users or operators to strategically play on differences among national retail prices, as abuses of roaming may imply significant operational losses.

Second, the locations where those service providers operate determines significantly the volumes of inflows and outflows of calls and data. Companies operating in hot touristic destinations usually receive a large amount of incoming roaming demands, and are then very likely to support a high price cap. On the other hand, companies located in countries with net outflows of customers may want a lower price cap. Therefore, the inbound-outbound flow ratio of operators is a crucial determinant of their policy preferences: when superior to one, the stakeholder is a net

seller of roaming service, and thus has a clear preference for higher caps. The EU countries present enormous variations in this indicator. For example, in 2014, the inbound-outbound ratio for data was 42.38 in Croatia while it accounted for 0.34 in the Netherlands (BEREC, 2016).

Third, companies having cross-border networks enjoy a competitive advantage because they can arrange cheap roaming prices by using their own facilities. Moreover, they enjoy larger bargaining power toward smaller operators when negotiating wholesale roaming deals.

Fourth, when a regulatory framework is designed, national operators are likely to emphasize their country specificities and pursue a regulatory outcome that differs from what international operators prefer. Indeed, the latter may value a unified regulatory framework that decreases its organizational/compliance costs.

Last but not least, mobile termination rates (MTR) have a significant weight in the cost of roaming services and may influence companies' preferences. These are voice call termination rates that telecom networks charge each other to deliver calls between networks. In the EU, MTR is set up by national regulators. Even though the Commission issued recommendations in 2009 expecting further alignment of MTRs across the EU, they still lack harmonization (Commission, 2017). For instance, in 2014, the average MTR prices varied from e0.40 in Malta to e2.6 in Ireland. As a result, operators in a low MTR country bear high costs to provide roaming services in countries with expensive MTR. Hence, a lower cap would alleviate their roaming costs. More detailed analyses of the factors discussed above can be found in the summary report of the EU public consultation and the one by BEREC³³ (Commission, 2016b; BEREC, 2016). To sum up, as various factors come into play, it can be expected that operators have contrasted policy preferences for which they would fight.

3.3 The supply side

The European Commission represents the supply side of this political market. Its primary role is to propitiate further integration among member states and its main policy vector is to

³³ BEREC is the Body of European Regulators for Electronic Communications responsible for assisting the Commission and the national regulatory authorities (NRAs) in implementing the EU regulatory framework for electronic communications.

promote a deeper economic integration through the achievement of a single market because the latter is the essential mandate given by the members states, which remain sovereign states with authority on most public policies. The European Commission is thus a nonstandard political actor for which promoting competition is almost a constitutional commitment (*e.g.* Wilks (2015)), and eliminating distortions on each and across national markets is a strong driver of its policy, which is therefore characterized by free market principles.

The building of an EU single market is not the only concern of the Commission. Since Commissioners are appointed by each national government, and are therefore not directly accountable to EU citizens, the Commission needs to establish its legitimacy, which strongly depends on the view of EU stakeholders about its performance. Hence, it attempts to involve the latter in the policy-making process.

Of course, to rebalance the relationship with national governments, the Commission also attempts to gain in public popularity by showing to the citizens the gains they can get from the European integration. When Jean-Claude Juncker was appointed as President of the European Commission in 2014, he established the development of the Digital Single Market as a priority of its mandate. It included the elimination of roaming surcharges. When the abolition of roaming charges at the retail level was confirmed, the need of a new wholesale market regulation emerged.

The Commission had already clues on the functioning of the roaming market from an assessment performed in 2011. This report highlighted some noncompetitive features of the wholesale roaming market, including oligopolistic character and the bilateral nature of the agreements (Commission, 2011). To update its information, and prepare the new regulation, and to get inputs from interested parties, the Commission involved the main stakeholders in the policy-making process. Besides counting on the participation of the main impacted stakeholders (MNOs and MVNOs), the Commission also consulted the BEREC and requested coordination with the national regulatory agencies to collect market data.

The central challenge for the Commission was to balance the new price cap. On the one hand, it should be sufficiently low to allow a sustainable implementation of RLAH, to promote competition, and to avoid increases retail price. On the other hand, it should be high enough to allow cost recovery, a return of investments to visited network operators, and to prevent damages of MVNO competition in the visited markets (BEREC, 2016).

It is worth to emphasize that the European Commission is not the only institution responsible for the EU policymaking. A legislative proposal of the Commission only enters into force after the approval of the European Parliament and the Council of the EU. However, until the release of the first draft, the Commission has full autonomy to design the policies. On top of that, there is little transparency on the participation of stakeholders in the subsequent stages of the policymaking process. Thus, this research investigates the making of the wholesale roaming regulation until the publication of the first draft by the European Commission and does not include the other EU institutions in the supply side.

3.4 The demand side

Being the rules of the retail market defined, the actors of the telecommunications industry are the main representants of the demand side of the EU wholesale roaming political market. As mentioned before, it includes the two types of operators, MNOs and MVNOs, some specialized consulting firms, and the sectoral business associations.

Each country of the EU has generally three or four MNOs that totalize 96 operators in 28 countries. However, some operators are part of the same group and operate in many EU countries, decreasing the total of MNOs in the EU to approximately 39 operators. The MVNO market is less concentrated than the MNO one. According to a report from GSMA, two-thirds of MVNOs worldwide are located in Europe, which represents 585 virtual operators (Dewar, 2015). Not all operators participated in the policymaking process, according to the report of the Commission, there were only 32 MNOs and 8 MVNOs. The low rate of participation of MVNOs was not surprising. Considering that most of them are relatively small firms, they have fewer resources to invest in political activities. Even if it is free to participate in the EU public consultation, the participants still need to make some effort to analyze the questions and provide evidence to their arguments that can be demanding for small players. Among the MNOs, the participation rate was high and counted with the largest EU firms in the sector, the ones that did not participate are some small operators.

In Figure 25, we provide a summary of all private stakeholders whose contributions to the policymaking process were publicly available. There are 34 operators, including MNOs and

MVNOs, four consulting companies, and five business associations. For the operators, we identify all the countries they operate, and their country of origin represented by “X”. The consulting companies are identified according to their home country, but we do not know if they work for any operators. The associations represent the interest of the sector and, more specifically, of their members. We thus identify the companies that have membership in some of the participating associations. Among the participating associations, there is AMETIC, a national association that advocates for the technology market in Spain. ECTA, ETNO, and MVNO Europe are EU associations. ECTA represents the interests of new market entrants. ETNO represents Europe’s telecommunication network operators, most of its members are incumbents. MVNO Europe, as inferred by its name, aggregates MVNO companies. GSMA is an international association that gathers companies of the mobile communication industry.

Among the participants, there are eight operators (1 MVNO and 7 MNOs) that did not authorize the disclosure of their position, and, thus, they were not included in Figure 25. From the report issued by the European Commission, the Austrian operator A1 Telekom and the Spanish operator Telefonica are part of the stakeholders that preferred to keep confidential their opinion.

ID		Associations					EU Countries List																													
Companies	Role	AMETIC	ECTA	ETNO	MVNO EU	GSMA	AT	BE	BG	HR	CY	CZ	DK	EE	FI	FR	DE	EL	HU	IE	IT	LV	LT	LU	MT	NL	PL	PT	RO	SK	SI	ES	SE	UK		
aero 2 sp z o.o.	MNO																											X								
Bite Lietuva	MNO																						X													
Bouygues Europe	MNO															X																				
Cyfrowy Polsat S.A.	MVNO																											X								
Deutsche Telekom AG	MNO																X																			
Drillisch AG	MVNO																X																			
eircom Ltd/Meteor Mobile	MNO															X					X															
Elisa Coporation	MNO															X																				
POST Luxembourg	MNO																							X												
CETIN	Network											X																								
Fastweb S.p.A	MVNO																					X														
Free Mobile	MNO															X																				
Hutchison Europe	MNO																																			
Liberty Global B.V.	MVNO																											X								
Max Telecom OOD	MNO									X																										
Melita plc	MNO																								X											
NOS comunicações, S.A.	MNO																								X				X							
Numericable - SFR	MNO															X																				
O2 Czech Republic a.a	MNO											X																								
ORANGE	MNO															X																				
Polkomtel Sp. Z o.o.	MNO																											X								
Proximus SA	MNO								X																											
PT Portugal SGPS	MNO																																			
TDC Group	MNO												X																							
Tele2 AB	MNO																																		X	
Telecom Italia SpA	MNO																					X														
Telenor	MNO																																			
TeliaSonera AB	MNO																																		X	
TRANSATEL	MVNO															X																				
United Internet AG	MVNO																X																			
Versatel GmbH	MVNO																X																			
Vivacom (BG)	MNO								X																											
Vodafone	MNO																																			X
WIND Hellas	MNO																		X																	
eutema GmbH	Consulting																					X														
Mobileum Inc.	Consulting																																			
QSC AG	Consulting																																			
Sciamus Kft.	Consulting																																			
Association Level:		Spain	EU	EU	EU	World																														

Figure 25 - Stakeholders Map

3.5 The interplay between the demand and supply side

In order to understand all the constraints and possible consequences of new regulation, the European Commission launched the *Public consultation on the review of national wholesale roaming markets, fair use policy and the sustainability mechanism referred to in the Roaming Regulation 531/2012 as amended by Regulation 2015/2120* from 26 November 2015 to 18 February 2016. It was the main channel of information exchange between the Commission and the stakeholders interested in this regulation. As we described in the demand side section, it gathered 51 replies from stakeholders in 25 EU countries and Norway. However, only 43 of them allowed publishing their positions. Views were divided, as the Summary Report concluded.

In the public consultation, stakeholders are incited to disclose their real position, because the information they provide is an essential tool for the Commission to understand and acknowledge the preferences of the stakeholders. The public consultation is an important channel for private stakeholders to have their voices listened at European level due to its transparency and low cost. Moreover, it is essential for stakeholders to clearly express their arguments in such a formal process, since ex-post the Commission and its officers can rely on these publicly expressed opinions to justify their proposal. We obtained the main material dealt with in this paper — *i.e.* the information on stakeholders' interests and main arguments — from the responses to this public consultation.

However, the various parties have other opportunities to share their views with the Commission, which include bilateral meetings with the commissioners and specialized workshops organized by the Commission. Usually, firms and associations organize bilateral meetings with commissioners or members of their cabinet to directly lobby the policymakers, which may increase their chance to influence the policymaking process. During the period between the issue of the public consultation and publication of the legislative proposal, the representatives of the European Commission had more than one hundred meetings with stakeholders of the telecommunication sector. However, access to them is not balanced. While Deutsche Telekom, Orange, Vodafone, and ETNO met a commissioner representative more than ten times in this period, other stakeholders had no meeting with them.³⁴

³⁴ This information is available in the webpage of each commissioner. We checked the pages of the 28 ommissioners

For the preparation of this regulation, the Commission also organized a dedicated workshop to discuss the model that was relied upon to assess the impact of the new regulation. The workshop occurred on 28 January 2016; *i.e.* during the period of the public consultation. For this occasion, the Commission invited the BEREC, the national regulatory agencies, firms, and associations of the telecommunications sector to be made aware of the main characteristics of the model, and to listen to their views about it. The benefits of participating in this type of workshop are twofold. First, stakeholders get important information to elaborate their opinion in the public consultation. Second, they have the opportunity to opine on the rules of the model that can lead to outputs more aligned to their interests. We did not have access to detailed information of the workshop, but, from the final report of the consulting in charge to assess the market, we could identify some of the participants representing the private sector: Deutsche Telekom, Free, Orange, Proximus, TDC, Telecom Italia, Telefonica, Telenor, Telia Sonera, and Vodafone (TERA-Consultants, 2016).

The legislative proposal presented by the European Commission after the consultation process did not establish specific rules for the fair use policy claiming that the roaming regulation in force allows operators to include conditions in their reference offer for wholesale roaming to prevent permanent roaming and other abuses. Nevertheless, the Commission proposed an EU-wide cap at a lower level than the previous legislation. Such a decision, at first sight, has a positive impact on operators with high roaming costs and low bargaining power. This paper is going to investigate the followings. Firstly, we are interested in the main points or arguments raised by the stakeholders. The result will help us understand the main concerns of the stakeholders, which also point to the main cleavages in the industry. This investigation is done with the technique of topic modeling. Secondly, by matching stakeholders' preferences and the Commission's choices, we check if any factors would explain the alignment, which could also be interpreted as lobbying success. We rely on regressions to disentangle effects of multiple variables as well as to qualitative text analysis to complement the interpretation of the results.

during the period to calculate the total of meetings of the telecommunications sector' stakeholders.

4 General Assessment of the Demanders by their Textual Inputs

The essence of the public consultation is the textual information provided by the stakeholders, which are the demanders of the policy. We propose a general assessment of the information by topic modeling. Ideally, the technique gives us a mapping or clustering of stakeholders according to what was written on the responses to the consultation. The clustering allows us to identify the main dimensions of debates on the wholesale roaming regulation, and also clusters of stakeholders who argued over similar lines of reasoning.

4.1 Topic modeling: A Brief Introduction

We will only briefly discuss the technique and the objective of applying topic modeling. Most of the details are suppressed to the Appendix. Topic modeling is a technique to identify "topics" of documents, and a topic is broadly defined as co-occurrences of terms. In this work, we adopt the Latent Dirichlet Allocation (LDA) topic modeling (Blei et al., 2002) that assumes sparse Dirichlet prior distributions over document-topic and topic-word distributions and incorporates the intuition that documents contain a small number of topics and topics involve a small number of words. By topic modeling, we obtain the words associated with the clusters (topics) and their salience, as well as documents' proportions, or probabilities, of belonging to different topics. In other words, the result will give us the most relevant issues debated in the public consultation and also the clusters of stakeholders according to how similar is their information provided to the Commission.

The result presented below is based on the assumption that the number of topics is two. The choice of the number is an exogenous input to the topic modeling and could only be evaluated or justified ex-post. We appeal to our intuition and conclude that the result of two topics is the most interpretable.³⁵

³⁵ We tried with 3, 4 and 5 topics, but failed to interpret clearly and consistently the topics.

4.2 Topic modeling: The Result

We first present the clusters of stakeholders before moving to the topics. In Figure 26, we rank the probability of belonging to Cluster 1, $p1$, from the lowest to the highest.³⁶ As there are only two topics, the probability of belonging to Cluster 2 is $1 - p1$. In other words, any stakeholder having $p1$ lower than 0.5 belongs to Cluster 2 according to the topic modeling result. An obvious observation is that MVNOs and small MNOs cluster together, where we find, for examples, Fastweb from Italy, Drillisch from Germany and the Association MVNO EU, while the other side is mainly populated by MNOs, including Vodafone, Orange and Deutsche Telekom.

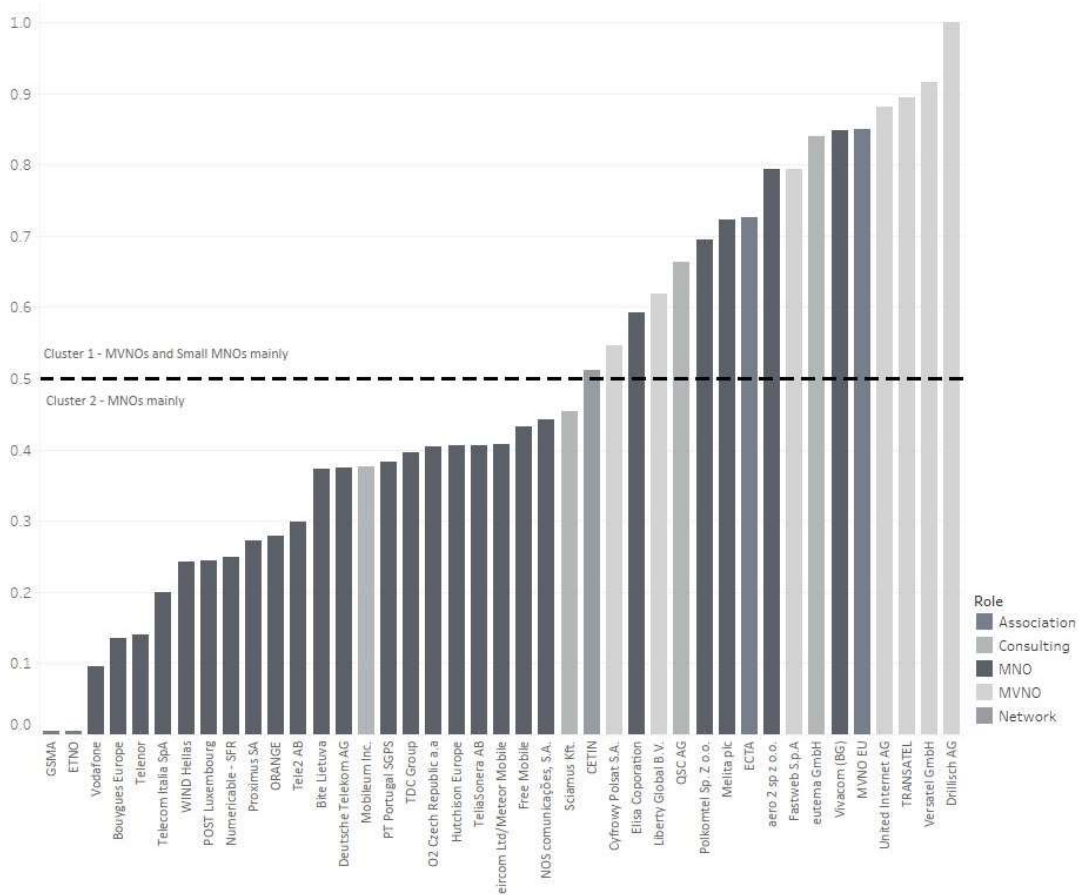


Figure 26 - Topic modeling Clusters

The score on y-axis is the probability that the stakeholder belongs to Cluster 1. Since there are only two clusters, the probability of belonging to Cluster 2 is one minus the score.

³⁶ There was no text available in the contributions of Max Telecom and Ametic. They only answered the multiple choice questions. Therefore, they do not integrate the topic modeling analysis.

The more salient and distinguishable terms characterizing each cluster or topic are listed in Table 6. Also, we present some extracts of the replies to contextualize how they employ the terms. Cluster 1 is dominated by terms related to the fair use policy and permanent roaming. The absence of a fair use policy would increase the risk of abuse on roaming in an RLAH environment. As retail service fees across countries are still far from being harmonized, abuses of roaming could lead to unwanted distortions that would trigger increases both in retail prices and wholesale roaming costs. In this scenario, roaming costs under RLAH would make the operations of MVNOs, who must be net roaming service buyers, and small MNOs economically unsustainable because of their lack of bargaining power to negotiate competitive rates with large operators. Furthermore, MVNOs usually need to pay additional services to the visited operator due to their virtual structure that results in a roaming cost exceeding the caps. Therefore, for these operators, fair use policy rules are a essential in the design of the new regulation.

Table 6 - Summary of topics

	Cluster 1 Predominantly MVNOs and Small MNOs	Cluster 2 Predominantly MNOs
Words	Fair_use , year, perman_roam , travel, sustain, fair-usage-policy	Charg , rate, wholesal_cap, mobile-network-operator, price_cap, retail_price
Extracts	<p>Transatel: "The fair use policy should only cover the periodic roaming, i.e. occasional roaming, such as the one we have highlighted above. All the other areas should not be covered by the fair use policy because they are not periodic roaming ..."</p> <p>Drillisch: "We consider "periodic travel" to mean a maximum of a two-week annual vacation taken by an average EU citizen. Wealthy citizens travelling through the Union on a weekly basis or even several weeks at a time should not be taken into account. We even assume that average EU citizens spent less than two weeks in another EU Member State..."</p>	<p>ETNO: "... commercially negotiated prices are currently the norm for wholesale roaming and market prices are much below the regulated price caps, especially for data .."</p> <p>Bouygues: " Competition both on price and quality should remain the main driver on the wholesale market. Decreasing wholesale price caps will have adverse effects... "</p>

On the other hand, Cluster 2 is dominated by terms related to prices. The larger MNOs are more sensitive to price changes than to the fair use policy design. While they are also subject to distortions in the domestic market, they are partially protected by their size. However, price represent a main concern. Net receivers wanted to secure their roaming revenues, arguing that the prices are already low and competitive while net senders defended lower prices that could improve their competitiveness. Anyway, wholesale roaming prices are influential to their operation due to the size of their portfolio of subscribers.

The result shows that "MNOs vs. MVNOs" cleavage is robust, and the two groups approach their informational lobbying on different grounds. While stakeholders were delivering different messages to the Commission, we can show that two clusters of messages can be identified and we can summarized. However, it does not tell us anything about the alignments of the preferences of the stakeholders with those of the Commission. A more in-depth and precise investigation of the responses and options preferred by the players on the demand side is needed. We therefore investigate the alignments of preferences on specific issues of this regulation.

5 Investigation of Alignments of Specific Issues

The Public Consultation contains 77 questions in total. The Commission has not addressed most of the questions in the subsequent proposal. We have selected four questions which we can clearly identify the positions taken by the Commission in the proposal. These four questions concern particular aspects of the new proposal, surrounding the desirable change of the policy instrument to implement RLAH without substantially interfering the retail market.³⁷ We take the options chosen by stakeholders in the multiple choice questions and match them with the option taken by the Commission to construct a measure of alignment on each question. Such a measure can be interpreted in two ways. First, it is a measure of alignment indicating that the stakeholder's preference is also the option chosen by the Commission. Second, it could be a measure of lobbying success that allows us to infer causality from lobbying efforts to outcomes.

³⁷ We state and briefly explain the four questions in the Appendix.

We provide the information in Figure 27, where a dark grey cell refers to the alignment between the stakeholder and the Commission, a white cell is the opposite, and a light grey cell refers to "neutral" or "don't know".

Stakeholders within a cluster do disagree with each other in a particular policy issue. It suggests an intense policy competition even within a cluster. For instance, although MVNOs are more concerned with the fair use policy, they lobby for different outcomes on different policy issues.

Companies		Q20	Q25	Q26	Q27
Cluster 1	aero 2 sp z o.o.				
	CETIN				
	Cyfrowy Polsat S.A.				
	Drillisch AG				
	ECTA				
	Elisa Coporation				
	eutema GmbH				
	Fastweb S.p.A				
	Liberty Global B.V.				
	Melita plc				
	MVNO EU				
	Polkomtel Sp. Z o.o.				
	QSC AG				
	TRANSATEL				
	United Internet AG				
	Versatel GmbH				
	Vivacom (BG)				
Cluster 2	Bite Lietuva				
	Bouygues Europe				
	Deutsche Telekom AG				
	eircom Ltd/Meteor Mobile				
	ETNO				
	Free Mobile				
	GSMA				
	Hutchison Europe				
	Mobileum Inc.				
	NOS comunicações, S.A.				
	Numericable - SFR				
	O2 Czech Republic a.a				
	ORANGE				
	POST Luxembourg				
	Proximus SA				
	PT Portugal SGPS				
	Sciamus Kft.				
	TDC Group				
	Tele2 AB				
	Telecom Italia SpA				
Telenor					
TeliaSonera AB					
Vodafone					
WIND Hellas					

	Yes
	No
	Neutral

Figure 27 - Alignments between the Stakeholders and the European Commission

To understand the reasons behind policy preferences, we appeal to multivariate regressions. We employ Probit model, where the dependent variable is the binary measure that is one if the position chosen by the stakeholder is the same as the Commission's, and zero otherwise. Due to the small sample size, we select our explanatory variables carefully based on the literature and the debates concerning the cleavages of the wholesale roaming market. We categorize three types of factors and each of them contains only two variables. The first type is company's characteristics, which include the type of stakeholders (MNO or MVNO) and the size of the company measured by the total assets.³⁸ The second type is operational characteristics which include the number of subscribers and inbound-outbound ratio.³⁹ The inbound-outbound ratio has been weighted by the numbers of subscribers in the countries of operation. The final type is lobbying efforts, measured by an aggregate lobbying measure and information quality. The aggregate lobbying measure is a composite index composed of four elements: number of meetings, experience (proxied by the length of time registered in the EU Transparency Register), number of full-time employees on lobbying, and lobbying expenditure.⁴⁰ Each of the components is normalized to a scale from 0 to 1 and an average score is computed. Constructing a composite index reduces the number of variables, and lessens the problem of measurement errors. For instance, lobbying expenditure is coded as a categorical variable in the original dataset and the Commission has not verified its truthfulness. Information quality is measured by the number of unique terms used in the response to the public consultation. In the following regressions, we first include one type of variables and then two types at one time, limiting the number of explanatory variables to at most five (including a constant).

We discuss the results of the four questions one by one, shown in Table 7, Table 8, Table 9 and Table 10 respectively, in the subsequent subsections. The specifications of the regressions are kept the same throughout. The first column involves company characteristics only, the second column operational characteristics only, and the third column lobbying efforts only. Columns 4-6

³⁸ Total assets information was obtained from Orbis database for the year 2015.

³⁹ Numbers of subscribers are available in BEREC report on termination rates (BEREC, 2015) and termination rates are available in BEREC report on the wholesale roaming market (BEREC, 2016). Note that inbound-outbound ratio is only available for MNOs.

⁴⁰ Information about experience, expenditures and employees were extracted from the Transparency Register (<http://ec.europa.eu/transparencyregister/public/homePage.do?redir=false&locale=en>) - the EU lobbying register. Meetings information were collected from the Commissioners' official webpages during the period 01/11/2015 and 15/06/2016. It includes some days before the Public Consultation was issued until the day when the legislative proposal was submitted.

include combinations of them. Being aware of the limitation of our multivariate approach due to the smallness of the sample, we complement the interpretations of the results with a qualitative analysis of the stakeholders inputs.

5.1 Question 20 - The need for regulation

Question 20, in short, asks whether the subject agrees that RLAH could be implemented without any regulations and the option taken by the Commission is "No". Refer to Table 7, apart from inbound-outbound ratio, no variable is significant. A larger than one inbound-outbound ratio means that the operator is a net roaming service seller. A positive coefficient suggests that the tend to prefer having regulations, which is also the position taken by the Commission. Column (4) includes both company and operational characteristics. The number of subscribers is significant at 10% level. Column (5) includes both company characteristics and lobbying efforts, where no variable is significant. Column (6) includes both operational and lobbying efforts. The inbound-outbound ratio remains significant. In contrast to what literature suggests and people may think, we find no evidence supporting any positive effect of lobbying on policy outcome.

Table 7 - Q20

	(1)	(2)	(3)	(4)	(5)	(6)
MVNO	0.855 (0.563)				0.824 (0.592)	
log Total Assets	-0.078 (0.115)			-0.608* (0.311)	-0.141 (0.186)	
log Subscriber		0.037 (0.161)		0.712* (0.364)		0.563* (0.315)
In-outbound ratio		0.840** (0.388)		1.219* (0.646)		1.123* (0.582)
agg lobbying			-0.778 (1.350)		0.543 (1.811)	-1.899 (2.001)
ln length			-0.398 (0.510)		-0.422 (0.522)	-1.520* (0.809)
Constant	0.914 (1.803)	-1.803 (2.780)	3.231 (3.962)	-3.245 (3.351)	5.212 (4.615)	2.041 (5.534)
<i>N</i>	33	24	32	24	32	24
R-squared	0.065	0.091	0.037	0.205	0.097	0.264

Standard errors in parentheses

* $p < .1$, ** $p < .05$, *** $p < .01$

While the multivariate regression identifies that inbound-outbound ratios tend to influence the view of the stakeholders, the analysis of the consultation replies points to negotiation power of operators in the core of the discussion of the need for regulation. On the one hand, some operators argue that prices are already competitive, and no further regulation is necessary. This group includes some large operators. It is coherent with the negative sign of total assets in the regression results. On the other hand, other operators ponder that in the absence of regulation, it would be very tough to negotiate wholesale prices that would make RLAH sustainable. We can depict the tension between these two sides through their responses. For example, Melita, a small operator from Malta wrote: *“The wholesale roaming costs should be dropped down especially for small networks that are not part of an alliance”*. It suggests that operators out of an alliance occupy a worse position in negotiations of wholesale roaming prices. However, participants of alliances do not recognize being in an alliance help them obtaining better prices outside the alliance. Telecom Italia, an Italian operator with a worldwide footprint, wrote: *“The Alliance doesn’t directly negotiate roaming terms with other groups or alliances; outside the alliance, all negotiations are carried out by each operator separately.”* Also, Orange, which operates in seven EU countries wrote: *“The wholesale roaming business is not a topic discussed by the Alliance.”* Judged by what they have written, being in an alliance does not improve their position when dealing with other operators.

These same operators that participate in alliances believe that the market works fine and no regulation is required. In its reply to the referred question, Orange affirmed: *“This means that wholesale roaming regulation is justified only insofar as it addresses problems with competition on this market. If it can be shown that the wholesale roaming markets are currently competitive, there is no justification for regulating wholesale roaming”*. This view is also shared by Telecom Italia that wrote: *“Prices wise, the wholesale market is dynamic and accessing suitable conditions has never been an issue. We don’t expect this to change because of RLAH and we believe that creating a suitable wholesale basis for RLAH won’t be problematic.”*

Nevertheless, the negotiation issues were also underlined by other operators such as Free, a French operator: *“Then, our experience shows that whilst it was easy to negotiate the first year of RLAH, where the amount traffic literally exploded, the negotiation is each year more difficult*

with the increment of volume becoming less and less important over time.” Verstatel, an MVNO from Germany, also highlighted its vulnerability for roaming negotiations: “If there would be no regulated intervention at all and wholesale roaming conditions will not be reduced to the domestic wholesale prices, international MNOs will misuse their market power against smaller mobile service providers. Consequently, smaller mobile service providers, MVNOs and SPs, will not survive in the mobile telecommunication market.”

The need for regulation seems to be necessary for players with less bargain power to ensure they will pay at maximum the cap for the wholesale roaming service. Thence, only operators with good bargain power would not prefer regulation of the market. Two characteristics increase the ability of operators to set favorable bilateral agreements: the quality of the network and the capacity of organizing alliances in the sector. By acknowledging these factors and analyzing some market facts, it is simple to understand the motivations of the stakeholders that prefer a nonregulated market. Telecom Italia, Orange, and Deutsche Telekom are members of the freemove alliance, which the main goal is to enhance the quality of international mobile services.⁴¹ SFR has a partner market agreement with Vodafone.⁴² Bouygues has no specific roaming alliance, but it is a player with a great capacity to articulate with other players in the sector. For example, it is a founding member of the LoRa alliance for the development of the internet of things, which other European operators such as KPN and Proximus are also members.⁴³ Also, it has a joint company with Telefonica to provide business solutions in France.⁴⁴ Although these alliances are not related to roaming, it may also facilitate the development of better roaming negotiations. For other operators such as Polkomtel and PT Portugal, the quality of the network is their differential. When an operator has a superior coverage of the territory, foreign operators can hardly avoid setting an agreement with it because they need to ensure their clients will not lack service availability while roaming.

⁴¹ Freemove alliance website accessed in June 2019: <https://www.freemove.com/>

⁴² Communication on the renew of market agreement between SFR and Vodafone accessed in June 2019: <https://www.vodafone.com/content/index/what/partner-markets/news-pages/sfr-renew.html>

⁴³ Bouygues press release accessed in June 2019: <http://www.bouygues.com/wp-content/uploads/2015/11/11-06alertepressequatreopérateursdeploientdesreseauxlora.pdf>

⁴⁴ Article at Les Echos newspaper accessed in June 2019: <https://www.lesechos.fr/2016/06/lalliance-bouyguetelefonica-porte-ses-premiers-fruits-222632>

In summary, the regressions of question 20 show a tendency of alignment between net receiver operators and the European Commission that agree on the importance of regulation to ensure the functioning of this market. At first sight, this result may appear counterintuitive, but it seems to be driven by some small firms that, despite operating in net receiver countries, lack bargain power. That is the case, for example, of Wind Hellas in Greece, Vivacom in Bulgaria, Melita in Malta. We note through a qualitative analysis of the replies to this question that lack of negotiation power is one of their main motivation to push for regulation in the wholesale roaming market. Indeed, most of MVNOs and small operators, who occupy a weak position to negotiate, claim that regulation is needed for the good functioning of the market while operators in a good negotiation position will defend the opposite. We also highlight that more than one-third of participants had a neutral position in this question. It includes all the business associations except MVNO EU.

5.2 Question 25 - The price cap value

Question 25 is the core of this public consultation. Stakeholders were asked to choose among lifting, maintaining, and lowering the price caps so that the new regulation would facilitate the implementation of RLAH. We know ex-post that the Commission proposed to reduce the cap. Refer to Table 8, generally speaking, company characteristics do not robustly explain positions. The number of subscribers and inbound-outbound ratio are negatively related to the preference for lower caps. Meanwhile, those providing more information tend to be the "losers" in terms of the alignment with the Commission's decision. It hints that either the information was not useful and thus they were not listened to, or the Commission chose not to listen to them. A more convincing explanation is that those "losers" expected the Commission to lower the caps and thus very eager to try to salvage the political competition of policy. In any case, we do not find informational lobbying particular useful in this case.

The analysis of responses is convergent with the results of the regression. The preference of a lower price cap is usually the choice of MVNOs and small MNOs who lack bargaining power and some international MNOs who, despite their large size, are net buyers in the wholesale roaming market. Their main argument for a lower price cap is that a sustainable RLAH depends

on a lower cap to prevent shifting the cost to the retail market. For example, the Danish operator TDC wrote: *"Low caps will provide safety against operators that have no incentive to lower wholesale prices to support RLAH for home operator."* Also Liberty Global wrote: *"The best way to mitigate against any potential domestic price increases would be to reduce wholesale roaming charges significantly"*.

Table 8 - Q25

	(1)	(2)	(3)	(4)	(5)	(6)
MVNO	0.926 (0.703)				1.096 (0.699)	
log Total Assets	-0.237** (0.113)			0.038 (0.284)	-0.118 (0.180)	
log Subscriber		-0.811*** (0.253)		-0.860** (0.392)		-0.914** (0.441)
in-outbound ratio		-0.996** (0.429)		-1.004** (0.431)		-1.394** (0.585)
agg lobbying			-1.054 (1.364)		0.467 (1.536)	2.274 (2.898)
ln length			-1.081** (0.527)		-1.233** (0.497)	-1.431* (0.864)
Constant	3.794** (1.819)	14.185*** (4.326)	9.073** (4.103)	14.368*** (4.295)	11.660** (4.596)	27.443*** (9.845)
N	33	24	32	24	32	24
R-squared	0.148	0.371	0.155	0.371	0.232	0.467

Standard errors in parentheses
 * $p < .1$, ** $p < .05$, *** $p < .01$

The preference for other options such as lifting any price regulation or keeping the current price is shared among large operators and some small ones who operate in countries with high seasonal roaming demand. Small operators' concerns refer to the ability to recover their network investments. For instance, Wind Hellas, a Greek operator, opted for a lift of price regulation. It wrote referring to the time when there was no wholesale roaming regulation: *"Rates were sufficient to allow discount negotiations and also to cover all related costs and allow investments."* Moreover, NOS Comunicações, a Portuguese operator, opted by an alternative solution: *"However, in net receiving (and highly seasonal) destinations such as Portugal, the networks need to invest massively to deliver the roaming service... the revision of the current wholesale price caps by ensuring a methodology that will take into account each country's idiosyncrasies."*

The large operators mainly used the prevention of permanent roaming to justify their preference to keep current prices or lift the price regulation. For instance, Deutsche Telekom wrote:

“Today the commercial differences between the national wholesale price level (i.e., for MVNOs) and the international wholesale price level (i.e., roaming) is sustainable protection against uncontrollable market entry via ‘permanent roaming’.” Orange’s reply follows the same line of argumentation: “The wholesale caps are used as a safeguard against fraud or non-compliance with contract terms. This is why it is important to maintain the wholesale caps at a sufficiently high level above market prices.”

The replies to question 25 about the levels of price caps is probably the one that most clearly evidences the cleavage between operators and how they are pursuing their individual interests. At first, we call attention to the fact that no operator was neutral to this question while some business associations including ETNO, ECTA, and GSMA decided to keep neutral. Furthermore, the result of the regression is aligned with the qualitative assessment of the replies. While MVNOs claim for a lower cap, MNOs are divided. Usually, the operators that obtain significant revenues from roaming services lobby against a lower cap to protect their rents. It worths to mention that not only the roaming regulation but also other competitive measures implemented by the European Commission decreased the revenue of the main EU operators in the last years (Dewar, 2015). Thus, additional revenue losses would generate negative impacts on their performance and would impact investments to deploy their market strategies.

5.3 Question 26 - Setting the price cap: EU wide vs. country-specific

Question 26 asks if the regulation should be implemented uniformly at the EU-level or heterogeneously at the national level. Only the aggregate lobbying score appears to be a significant variable, which is positively related to the preference for EU-wide regulation. This result is not surprising since stakeholders who have been intensively lobbying tend to operate over different countries and more integrated to the EU political environment.

A closer look into the data reinforce the regression result that the stakeholders who lobbied intensively are favorable to a regulation implemented at the EU level. Vodafone, Orange, and Deutsche Telekom had more than 15 meetings with Commissioners and members of their cabinets during the period of the discussion of the wholesale roaming regulation. They are favorable to an EU wholesale roaming cap. Not only these MNOs with a large EU footprint preferred this option

but also MVNOs. It is not difficult to understand that EU-wide caps would reduce transaction costs and favor their expansions into other EU countries. On this, Telia Sonera, which operate in Nordic and Baltic countries, wrote: “*Any differences in cost between EU countries make business planning and decisions even more difficult for operators.*” Another example is the Italian MVNO Fastweb: “*Moreover, differentiation of wholesale caps for each Member State could force operators into complex consumer unfriendly retail pricing structures and usage restrictions. This seems difficult to reconcile with the political objective of the elimination of retail roaming surcharges.*”

Table 9 - Q26

	(1)	(2)	(3)	(4)	(5)	(6)
MVNO	0.557 (0.649)				0.890 (0.665)	
log Total Assets	-0.023 (0.108)			0.119 (0.254)	-0.179 (0.189)	
log Subscriber		-0.224 (0.166)		-0.351 (0.272)		-0.719** (0.306)
in-outbound ratio		-0.476 (0.419)		-0.483 (0.398)		-0.875** (0.427)
agg lobbying			1.717 (1.410)		3.593** (1.755)	5.004** (2.486)
ln length			-0.472 (0.480)		-0.558 (0.473)	-0.374 (0.719)
Constant	0.858 (1.707)	4.704 (2.875)	4.062 (3.720)	4.825* (2.809)	7.089* (4.213)	15.085** (6.394)
<i>N</i>	33	24	32	24	32	24
R-squared	0.023	0.065	0.042	0.071	0.108	0.226

Standard errors in parentheses

* $p < .1$, ** $p < .05$, *** $p < .01$

However, companies that operate in a single country tend to highlight their country specificities to have a regulation that fits into their characteristics. For example, Wind Hellas wrote about its ideal price cap: “*Country Specific and also per operator approach since Groups do not have the same costs. Groups benefit from the traffic maintained within the Group, eliminating costs, without impacting their wholesale margins, as revenues are “kept” within the Group.*” Also, Cyfrowy Polsat tried to defend a specific cap: “*If domestic retail prices (which are of major importance to the average consumer) and domestic wholesale prices (which reflect costs of providing mobile communications services) vary to such an extent between EU countries, how can one EU wholesale price for roaming services be justified and fair?*”

This question presented the highest percentage of alignment between participants of the public consultation and the European Commission. An EU-wide cap is the preference of 70% of them. All the operators that preferred a country-specific cap are single-country operators that are either not registered for EU lobbying or invest little in lobbying activities.

5.4 Question 27 - Setting the price cap: Efficient Operator vs. Actual Costs

Question 27 concerns the reference for the calculation of costs. The Commission has then chosen to compute the costs based on a theoretical efficient operator, instead of actual operators. We find some evidence that the abundance of the information provided is negatively correlated with the lobbying success. Again, we do not expect information has a negative impact but the expectation that the Commission had a pre-determined position in mind induced stakeholders to provide more information.

Table 10 - Q27

	(1)	(2)	(3)	(4)	(5)	(6)
MVNO	0.758 (0.547)				0.963 (0.596)	
log Total Assets	0.159 (0.101)			-0.066 (0.268)	0.440** (0.210)	
log Subscriber		-0.034 (0.147)		0.030 (0.319)		0.893* (0.475)
in-outbound ratio		-0.696 (0.570)		-0.685 (0.560)		-0.535 (0.447)
agg lobbying			0.449 (1.246)		-2.168 (2.232)	-4.728 (3.397)
ln length			-0.918 (0.595)		-1.348** (0.656)	-3.100** (1.569)
Constant	-3.378** (1.653)	0.502 (2.646)	6.503 (4.596)	0.519 (2.643)	3.188 (5.099)	10.653 (8.793)
<i>N</i>	33	24	32	24	32	24
R-squared	0.080	0.048	0.071	0.049	0.232	0.330

Standard errors in parentheses
 * $p < .1$, ** $p < .05$, *** $p < .01$

The preference of basing the computation of costs on a hypothetical efficient operator seems to prevail among operators from net sender countries such as Elisa, TDC, and Tele2, which

mainly operate in Nordic and Baltic countries. The preference is also shared with the majority of sectorial consultancies and some MVNOs such as Fastweb, Liberty, and Transatel. Their responses were, however, brief. According to them, efficient-operator is the solution that best matches the ambition of the RLAH. For example, Telia Sonera wrote: *“Since the retail roaming regulation (RLAH) is based on the assumption of costs to provide roaming being the same as domestic productions cost, this needs to be reflected in the wholesale roaming caps, hence they should be based on a hypothetical efficient operator.”* In addition, MVNO EU wrote: *“The aim of the regulation is to compensate for the lack of efficiency in price setting resulting from lack of competition. Modeling a hypothetical efficient operator is consistent with this aim.”*

The analysis also reveals some operators’ fear of a model-based cap that would not cover the real costs of operators. As a result, many operators preferred to defend a model based on actual costs or even to criticize the weakness of a model-based solution. For example, the Baltic operator Bite Lietuva explained its disagreement with a cap based on an efficient operator: *“By reference to the costs of hypothetical efficient operator we might encounter situations where for some operators it might be not sustainable to provide wholesale roaming service.”* Besides, the Portuguese operator PT Portugal talked about its preference for a model based on actual costs: *“Actual costs should be considered, which include all the costs associated to the service provision, such as carrier traffic transportation, IPX, GRX, signaling, among others.”* As well as Orange: *“Therefore, any cost modeling used to control the requirement of cost recovery must reflect the actual cost function deriving from actual technical solutions of actual operators.”* The position of Deutsche Telekom is against a model-based approach to set the cap: *“A regulated wholesale roaming price cap must cover all relevant costs but must not be set on a cost model or cost estimates. Any cost-estimate can only serve as a reference point and provide a range of expected average costs.”*

In question 27, it is hard to identify a pattern that could explain the policy preferences. Neither the quantitative nor the qualitative analysis point towards a characteristic that is consistent enough to interpret the policy choices. Also, this is the question that raised greater divergence among participants. The preferred option among stakeholders, the efficient operator option, received almost the same support of other available options. However, most of the operators that supported the efficient operator option also supported a lower price cap, which is reasonably

consistent. Considering the model parametrization, the use of a hypothetical efficient operator tends to give a lower estimation of costs of the provision of roaming services than the use of a model based on actual costs.

5.5 The Policy Choices of Demand and Supply Sides

On the demand side, we identified that the preferences of operators depend on their market positioning. Characteristics such as being a net seller or buyer of roaming services, operating in one or many countries, and their bargaining power to negotiate roaming agreements are among the factors that have influenced their preferred regulation. The regulatory environment of the wholesale roaming market is of strategic importance for firms and, therefore, they employ an integrated strategy approach where their regulatory preferences align with their market strategies. The diverse incentives led to different positioning on policy preferences and, consequently, more intense competition on the demand side of the political market.

On the supply side, we do not find a variable that could consistently explain alignments or lobbying success. We can reject that, at least in this case, lobbying efforts impact positively on the policy outcome from the perspective of the private sector. There is no evidence that either large corporations' interests or lobbying efforts influenced the decision of the European Commission.

In order to understand the choices of the Commission, we propose to look beyond the lobbying efforts until the publication of the first legislative proposal. The Commission has been regulating roaming markets since 2007 when the Roaming I package entered into force. As part of the implemented regulation, the Commission was responsible for monitoring its impacts on the market. Thus, when the Commission started the review of the wholesale roaming regulation, it was aware that the market was not sufficiently competitive due to market failures and structural particularities such as the oligopolistic nature of national wholesale roaming markets, bilateral nature of roaming agreements, imperfect wholesale roaming substitutes, and exclusion of MVNOs from wholesale roaming markets (Commission, 2011, 2016a). The lack of competition gave big MNOs significant bargaining power over setting the wholesale price.

The European Commission stated clear that one of the pillars in the strategy for the digital single market would be the creation of the right conditions for the development of the services including regulatory provisions for fair competition (Commission, 2015). Competition rules are the main tool to achieve the promotion of the single market by the Commission (Wilks, 2015). Thus, taking into consideration the Commission institutional role, its strategy for the digital single market, and its analysis that roaming markets are not sufficiently competitive, it is reasonable to consider that stakeholders would expect a legislative proposal that would incentivize competition. Indeed, the proposal for the wholesale roaming regulation included a single EU-wide price cap that was lower than the one in force at that time. This decision was favorable for small MNOs and MVNOs which benefitted from improved conditions to compete with large operators.

Given the technicalities of the roaming markets and the need to maximize its legitimacy, the Commission relied on different sources of information to design the new regulation. On one hand, the assessment of costs of providing roaming services hinted on the sustainable cap level. On the other hand, the public consultation revealed additional aspects of the functioning of the market that could not be identified through cost simulations, for example, the lack of bargaining power of small MNOs and MVNOs in roaming service agreements. The consultation was essential to confirm the suspicions of the Commission about the non-competitive aspects of the market. It revealed that while some large operators and net receiver operators argued that the wholesale roaming market worked fine and caps should not be lowered, many operators, usually small MNOs and MVNOs, faced challenges to negotiate roaming conditions.

The choices of the Commission coincided with the option that received the most support from the stakeholders, as showed in Figure 28. It is noteworthy that, for each question, the group of stakeholders aligned with the Commission changes, suggesting an intense fragmentation of the demand side that weakened individual lobbying efforts. The fragmentation meant that the Commission faced less resistance to advance its agenda as it would in any case have some support from some stakeholders independent of its policy preferences.

The literature in EU lobbying suggests that the Commission tends to follow the opinion of the majority or to yield to the pressure of stakeholders, a sort of democratic decision-making process - the ad-hoc coalition explanation. Klüver (2011), following Baumgartner et al. (2009), defines lobbying coalitions as a group of stakeholders lobbying for the same policy objective

without an explicit agreement among them. Our interpretation of her result is that the positive effect of coalitions is stronger when the policy issue is more salient.⁴⁵ Although in the case of the wholesale roaming regulation the decision of the Commission corresponds to the preference of the majority, from the analysis presented above, it is reasonable to believe that the Commission was not merely following the majority; its own policy agenda was the main driver of the decision.⁴⁶

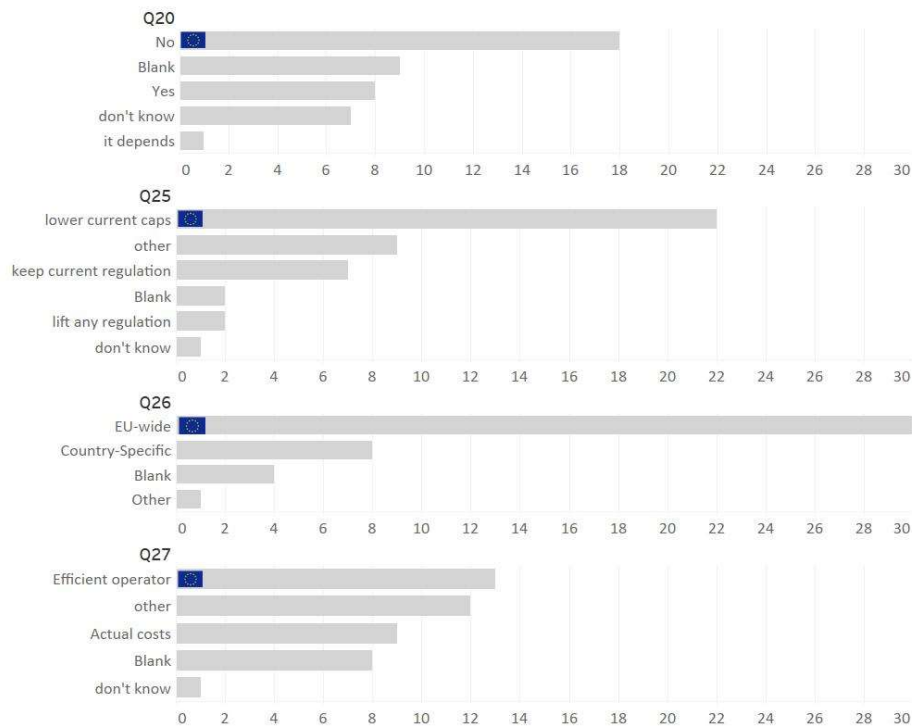


Figure 28 - Policy preferences

⁴⁵ Klüver (2011) claimed that the effect of salience, defined as the attention drawn by a policy issue, on lobbying success is positive if the stakeholder belongs to a larger coalition. However, we find our interpretation easier to fit into causality inference. The drive of the effect on lobbying success is the size of the coalition but not salience of an issue which is issue-specific and thus the same for all stakeholders.

⁴⁶ In political science, there is a strand of the literature of "competence creep" that states the Commission is short of expertise while competing for institutional power with Member States (Prechal, 2010; Mathieu and Bauer, 2018). However, our findings did not support this view. The European Commission has been following the functioning of the roaming markets since the first wave of regulation in 2007. The constant monitoring of the sector enables the Commission to develop its knowledge that was enhanced by the several interactions with a variety of stakeholders in the sector. The draft of the wholesale roaming regulation showed that the proposal is consistent with its policy goals, and showed the Commission had acknowledged the main issues of the sector.

In any case, finding a close correspondence between the Commission's final decision and the general opinion of a public consultation should not be surprising. The Commission can always choose to address or not to address an issue. A public consultation may contain dozens of questions, but the following proposal for a directive may only respond to a few of them. The Commission is not trying to push for a policy change that would encounter strong resistance from the private sector and, eventually, undermine its legitimacy as the main driver of European integration. The explanation by Klüver (2011) may require a new interpretation. Saliency being a source of legitimacy, following the larger ad-hoc coalition could be an appealing option for the supplier of policy. The Commission could rely upon public consultations and discussion with the stakeholders to identify the domains in which the preferences are sufficiently divided to allow the Commission to navigate the fragmented opinion, pushing policy initiatives in line with its long-term objectives. It would be consistent with the observation that the Commission's decisions are closer to that of an ad-hoc coalition when issue is more salient.

6 Discussion on the Political Market

The making of the EU wholesale roaming regulation can be characterized as a political market where the demand side is composed mainly of business representatives who are aiming at different outcomes. In this policy race, they interact with the European Commission, the supplier, who is in charge of the design of the legislative proposal that relies on external expertise and information to design the legislation. This regulation was strategic for the two sides. For the Commission, it represented an important step to the development of the digital single market, which is one of its priorities. For the firms, it represented a major change in their operations with direct impact on revenues.

From the textual analysis we conducted, we identified two clusters in the demand side according to their focuses revealed by the information submitted to the Commission. The two clusters roughly correspond to the division of the types of operations (MNOs vs. MVNO), and, thus, the result seems to suggest the main debate was between the two camps. However, a closer look into their preferences revealed by their chosen options tells us that preferences were diverse

even within one camp. There is almost no trace that operators gathered and formed a single and bigger voice.

Although such a fragmentation in the demand side of a political market of the same sector and nature is uncommon, it is not totally unexpected in this particular case. The approval of the RLAH at the retail level represented a drop on the revenues of some operators, and firms were aware that the Commission was pursuing a digital single market where competition would be incentivized. Facing a potential regulatory change, firms needed to develop their strategies aiming at adapting to the change in a way that it would limit the damages or maximize the benefits. The scrutinized analysis of the replies to the consultation shows that stakeholders had different motivations, which were based on their individual features. Although there is evidence that their preferences follow some lines of logic, we do not find stakeholders of certain characteristics aligned consistently in all questions. For instance, companies with lower inbound-outbound ratio tend to support lower price caps, but they disagree with each other on the implementation level (national or EU-wide) and on the choice of reference (hypothetical or actual operator).

The fragmentation of the demand side impacted the effectiveness of firms' lobbying strategies. Our results suggest that factors such as market power or individual lobbying efforts were not driving the Commission's choices. On the contrary, the Commission followed its policy objectives and proposed a regulation that privileged competition. In effect, the public consultation was a tool to reinforce its choices. Despite the divergence of preferences among the stakeholders, the Commission's choice on one single issue aligned with the preference of most of the stakeholders. However, the large corporations that invested more in lobbying, measured by a composite measure of lobbying efforts and the amount of information provided in the response to the consultation, are, on average, the stakeholders whose views were farther from the ones of the Commission. Obviously, their arguments did not convince the Commission, but allowed the Commission to identify their intention to protect their strong market power.

It is also interesting to analyze the behavior of business associations in the making of this regulation. We expected they would unify discourse of some stakeholders. As highlighted by Rajwani et al. (2015), these associations aim to influence the policymaking process on behalf of the collective needs and objectives of their members. However, we noted that business associations were not capable of unifying the preferences of their members. In fact, the associations decided to

have a neutral approach in most of the questions. We noted that it usually occurred when their members are not aligned. For example, ETNO and GSMA took neutral positions in all the questions. Among GSMA members, there are operators with contrasting positions such as the MVNO Transatel, the large MNO Orange, and the single-country MNO PT Portugal. ETNO has only MNO members, but they have different profiles. Some are single-country operators while others are the largest operators in the EU. Also, while some of them are net sellers of roaming services, others are net buyers. On the contrary, when members were aligned, the associations disclosed their position. That is the case of MVNO EU of which members were convergent in all questions. ECTA decided to take a position only in half of the questions, coincidentally, when their members had the same opinion. This finding also reinforces the existence of the intense competition on the demand side.

The design of the wholesale roaming regulation clearly privileged a more competitive market environment. The Commission choice is in line with its mandate of promoting a level playing field of the EU internal market by going against the dominant players. As an institution, the Commission seeks more legitimacy, and it needs to build and keep its reputation as an impartial entity which is mainly achieved through its regulatory outputs. This finding is against the belief that the European Commission mainly serves the interests of large multinational corporations as described by ALTER-EU (2018) which reported some pervasive influence of businesses in banking regulation and international trade agreement design. At least in the case of the wholesale roaming regulation, the European Commission demonstrated sufficient independence. This result does not imply that business lobbying is completely ineffective, whereas we observe intensive lobbying going on every day in Brussels. However, in a political market where the demand side is fragmented and actively compete with each other, the effectiveness of lobbying is substantially undermined, and the supplier finds less resistance in the political market. That said, from a collective welfare viewpoint, the public decision is better/more informed.

The literature has not clearly discussed the implication on policy outcomes of a competitive demand side and a resolute and election-independent supply side. It mainly focused on cases where elected politicians are in charge of the supply side. By defining lobbying as efforts about changing the status quo, Baumgartner et al. (2009) found that financial advantages had a slight positive effect on both protecting and challenging the status quo, and no evidence showing that having

organized interest groups on the other side deteriorated the chance of policy success. This result seems to suggest that competition on the demand side is not a significant obstacle for lobbying success. However, their empirical model is unable to explain most of the variations in policy success, suggesting that either policy success is a very random event or they have not taken into account some influential factors.⁴⁷ The differences between the EU and the US cast doubt on whether most of the research on the US would carry over to the EU, where officials are not directly elected by citizens. Moving away from elected politicians, McKay and Yackee (2007) studied agency rule-makings in the US and found evidence supporting that agencies tend to maintain their rules (keeping the status-quo) when there is intense interest group competition, and are more likely to change the rules when one side dominates the lobbying efforts. The results suggested that agencies listen to loud and united voices. Our work, also studying an agency, provides evidence that an agency is more able to pursue its own aim while stakeholders on the demand side of a political market are sufficiently diverse in preferences. It makes also an argument in favor of the (political) independence of the ruler. When the ruler is not depending on the stakeholders to be appointed or elected, he can more easily benefit from the potential division among them to fulfill his mandate, ignoring in particular the "weight" of the more powerful actors.

6.1 The Aftermath

The publication of the legislation draft is one of the first steps of the policymaking process. Its sequence includes the discussion with other EU institutions, the Parliament and the Council, to reach an agreement for the legislation that would enter into force. It is noteworthy that the main structure of the Commission proposal text was approved, however, the main divergence that encumbered an agreement was the value of the cap of the roaming services, in particular, the cap for data services. While the Commission proposed a cap of €8.5/Gb, the Parliament proposed an initial cap of €4.0/Gb and the Council proposed an initial cap of €10/Gb.^{48,49} In the view of the

⁴⁷ R-squared ranges from 0.04 to 0.29 for the most important results.

⁴⁸ Council press release accessed on June 2019: <https://www.consilium.europa.eu/en/press/pressreleases/2016/12/02/wholesale-roaming/>

⁴⁹ Report on the proposal for a regulation of the European Parliament and of the Council amending Regulation (EU) No 531/2012 as regards rules for wholesale roaming markets (COM(2016)0399 – C8-0219/2016 – 2016/0185(COD)) accessed on June 2019: <http://www.europarl.europa.eu/doceo/document/A-8-2016-0372EN.html>

Parliament, the Commission had a conservative approach that did not take into consideration the technological developments of the sector that would allow a decrease in the costs of providing roaming services. Concerning the Council's position, we find no report where arguments were presented for the suggested cap. The three institutions reached a final agreement setting the initial price cap for data services at €7.7/Gb.

Despite the lack of data, we are aware that lobbying happens in other EU institution but cannot measure its effects. What we know is that the rapporteur of the wholesale roaming regulation in the European Parliament was a Finnish MEP, who might have the authority to amend the agenda of the discussion in a way that her home country would be favored. On the other hand, there was some speculation that some members of the Council were trying to protect the interests of their large national operators and, therefore, pressuring for a higher cap.^{50,51}

Even with the decrease of the caps, MVNOs and some operators from net sender countries claimed that the cap was still too high to afford RLAH.^{52,53} This fact raises doubt if lobbying strategies were unsuccessful. A cap as high as possible was the interest of many large operators. Even if at the first sight they were not successful in avoiding a cap reduction, their lobbying efforts might be useful to avoid a more significant reduction. A more detailed research that covers interinstitutional lobbying in the EU would be interesting as we could better understand the lobbying dynamics and outcomes. Still, the challenge is the lack of transparency and thus data in some parts of the whole decision-making process.

7 Conclusion

This work studies the change of regulation of the European Union wholesale roaming market through the lens of the framework of political market for policy. We identify two clusters of stakeholders according their textual inputs to the public consultation launched by the European

⁵⁰ Tallberg (2008) found that, by conducting interviews with top officials, despite some influences of institutions and personal qualities, the largest source of bargaining power inside the European Council came from the state where Germany, France and the UK could usually set the parameters of negotiations.

⁵¹ Article from Politico entitled "EU reaches mobile roaming deal": <https://www.politico.eu/article/eu-reachesmobile-roaming-deal/>

⁵² Telecompaper article accessed on June 2019: <https://www.telecompaper.com/news/mvnos-unhappy-with-higheu-wholesale-data-roaming-rates-1181912>

⁵³ Article published on Esmerk Baltic News on February 1, 2017 entitled "Estonia: Telecoms operators claim cap on roaming charge too high"

Commission by employing topic modeling. However, we do not find the stakeholders within a cluster aligned in their preferences on the four selected issues/questions. This fragmentation provides room for independent decisions by the Commission. Regression results show no evidence that the Commission consistently made its decisions according to a fixed set of characteristics, implying that no favoritism towards certain stakeholders. Instead, we conclude with reasoning that the Commission had predetermined positions over different issues and the public consultation in fact gave the legitimacy to the Commission to implement the changes of regulation.

Chapter 4

*The Dynamics of Institution Building: State Aids, the European Commission, and the Court of Justice of the European Union*⁵⁴

This work studies the interactions between the European Union institutions and the Member States with regard to state aid control. The European Commission is mandated to maintain and reinforce economic integration and is thus inclined to punish those Member States which might rely on state aids and other means to weaken the single market achievement. The Court of Justice of the European Union is established to guarantee the rule of law and check how the Commission rules. Relying on an original database covering all state aids programs between 2000 and 2015, we show that the Commission tends to reject programs originating from countries who are resistant to the EU integration, which is proxied by the transposition deficit. On the other hand, we show that when firms or national governments appeal the decisions made by the Commission, the reversal of the Commission's rejection decisions by the Court is positively correlated with the transposition deficit. It is an evidence that the Commission is actually biased against countries with greater resistance to the integration, while the Court corrects this bias. We claim that these revealed policy preferences are consistent with the assumptions that these two bodies attempt to strengthen their legitimacy by making decisions in line with their mandates. In addition, the interaction between these two quests for legitimacy tend to reinforce the overall legitimacy of the Union. This suggests another driver of evolutions in an equilibrium approach of institutions.

1 Introduction

The European Union is primarily built as an economic confederation. It aims at establishing *i.a.* an internal market where people, labor and capital are free to flow. The single market is clearly aimed at triggering further political integration. At the same time, this is an acceptable objective for Nation-States and their citizens since it promises economic benefits without relinquishing too much sovereignty at first sight. The EU treaties were very careful in delineating the powers conferred to the EU and the Member States, since the Union aims at preserving the sovereignty of the later. The authority granted to each level of government might, however, be subject to

⁵⁴ This chapter counts with the collaboration of Prof. Eric Brousseau and Timothy Yu-Cheong Yeung, Post-doc Researcher of the Chair Governance and Regulation.

interpretations and might evolve over time. Such ambiguities may lead to conflicts between the European Institutions and Member States; even if the main policy decisions are voted by representatives of national governments and are implemented by national public administrations.⁵⁵ Member States tend thus to have a complex relationship with the EU institutions. On the one hand, they are likely to compromise since on many issues the benefits of the European integration are high both in terms of wealth and political influence at the global level. On the other hand, national politicians and voters would like to minimize the costs of adaptation of national “social contracts”, resulting potentially into slowness in implementing reforms and imperfect compliance with EU commitments. These resistances to integration are also the outcome of the differences in the endowment of the various socio-economic groups and local communities resulting in imbalances of the distribution of costs and benefits of integration within each Member States.

It is not an overstatement that the European Union is built upon an unsolvable, at least for now, conflict of objectives between the European Commission and the Member States. The Commission is given a mandate to build a more integrated Europe, and its policies aim mainly at promoting the single market. National governments and parliaments, however, respond to and are accountable to their fellow citizens. In principle, the EU objectives and the national ones should be aligned, at least in a long-run perspective. In practice, however voters tend to be short-sighted, and care mainly at their own personal/local interests. They might consider that the short term cost of adaptation are hardly written off by the long term benefits of integration. Moreover, since there are winners and losers, the later might form coalitions to resist integration. National politicians are therefore led to take into account these interests groups, and protecting them against/slowing integration might be an easier policy to implement than managing active redistribution and supporting those who have to adapt. These divergences among "national" interests is the *raison d'être* of the European Institutions. They are there to tie the hands of national governments involved in a collective action dilemma. If interests would be aligned on each stake, central/federal levels of government would not be needed, not formed in the first place and the best outcome would be achieved for all parties.⁵⁶

⁵⁵ Member States are *de facto* granted with a veto power both at the decision stage and at the implementation stage.

⁵⁶ This point is closely related to the vast literature of European Union's democracy deficit. See Follesdal and Hix (2006); Scharpf (2010) for more detailed discussions.

The clash of objectives is well illustrated by state aids control, which is a part of the EU competition policy. The competition policy is actually the most effective tool granted to the Commission, which is granted with a mandate of removing barriers to trade and market foreclosures. National governments accepted to relinquish sovereignty on the matter since this was an essential mean to build the single market and to benefit from the expected benefits of a larger, more open market supposed to bring benefits in terms of scale to producers, incentives to the supply side, possible entry for innovators, and finally higher quality and lower prices for customers. Many other dimensions of public policies considered as crucial dimensions of sovereignty — *i.e.* choice of the energy mix, organization of transportation systems, regulation of utilities, local development, etc. — remain in the hands of national and sub-national governments, resulting in numerous biases hindering further economic integration. This led Member States to give authority to the Commission to check whether “State Aids” — *i.e.* any subsidy in the form of grants or tax cut granted to investors and business — would not lead to unfair competitive conditions in a given jurisdiction. Member States are eager to support their own industry, or some specific local interests, while their aids could damage the level playing-field and thus go against the principle of the European single market and related fair competitive conditions. State aids are thus not allowed by the Commission. Major categories of exemptions include aids however to cultural activities, aids to support recession-hit industries, and aids to support local employment. The right to obtain an exemption is not crystal-clear and every case, whether it is an earmarked one or a program, has to be notified to the Commission that approves it or not. Undoubtedly the Commission benefits of discretionary power on the matter and attempts to intervene into any aids that tilts the level playing-field, and may even utilize its authority to achieve some political aims. On the other hand, politicians of the Member State seize any chances to please voters and local/national interests.

Given the limited will of the Member States to grant the Union with too much power, the Commission is not only limited by its bounded delegation of authority in matter of public policies, the exercise of this authority is checked by the Court of Justice of the European Union (hereafter, the Court or CJEU). The later has been established to check whether the Commission decisions are in line with the European treaties. However, the Court is not a political instrument in the hands of national governments that would help them resist the policies of the Commission. It was established as a credible court of justice, and the appointed judges have strong incentives (related

to career concerns) to establish their reputation as independent and skilled judges guaranteeing due process and the rule of law.

On the one hand, the European Commission has been established with a clear mandate to push forward the harmonization and integration among Member States. It is designed as a trustee and not simply as an agent of its stakeholders (Majone, 2001). Member States granted authority to the Commission so as to allow it to impose decisions to Member States in matter of implementation of the European treaties. This trusteeship system results from the necessity for Member States to credibly commit to the integration. The Commission is thus mandated to promote integration, which is not different from extension of authority over national sovereignty. In this context, the Commissioners, tend to be driven by their ability to show to their peers (the politicians and high flyers bureaucrats in the system of transnational governance) their ability to navigate the complex political environment of the EU political game characterized by a persisting tensions between national (sometimes local) interests and the mandate to build a stronger Union. They are indeed concerned by their future appointment in the system of power either at the international level or in their home country. On the other hand, the Court and its judges have incentives to confirm and develop their credibility in establishing and guaranteeing the rule of law. A virtuous loop might therefore be at play: bit by bit the Commission might succeed in expanding its power and the Court might reinforce its independence. These dynamic interactions could reinforce the legitimacy of both organizations, resulting in a reinforced, more credible, EU institutional framework.

The process described above might be largely unintentional. When Schuman launched the process that led to the establishment of the European Union, his idea was to make war not only unthinkable, but also materially impossible. More than 60 years after the EU Steel and Coal agreement that triggered the dialogue of a stronger relationship among European countries, the European Union has evolved and reached a state no one had imagined 50 years ago. Although its success may require a hundred years to be concluded, it has undoubtedly established the basis of stable and strengthening institutions. This is the reason why it is stimulating to study how the process of decision making at the EU level might result into specific institutional dynamics. Despite their careful design and implementation, it is not necessary that institutional systems will perform as forecasted by those who designed and implemented them. In particular the competition between the different components of a power system (Weingast, 2017) and the dynamic through

which their legitimacy is progressively established (Greif and Rubin, 2014) seem to be strong explaining factors of the design and performance of political and economic institutions. Such a dynamic is nicely presented by Greif and Rubin (2014) in his discussion of endogenous political legitimacy. Henry VIII of England empowered the parliament, which limited its political discretion, to benefit in turn from a recognition by the Parliament of the legitimacy of the British Crown. The dynamics went on and the Parliament gradually encroached the power of the Crown and even dethroned two kings in 1640 and 1688. While certainly unplanned by the Tudor's dynasty, this development has contributed to the construction of arguably the most stable and successfully constitutional monarchy in the world's history.

In this paper, we would like to explore whether a similar dynamic is not occurring nowadays in the EU. Indeed, any overreaching of the hand of the Commission into the sovereignty of the Member States should be stopped by the Court. Any fair and independent judgments gradually establish the Court as the respectful arbitrator. Meanwhile, any green light by the Court establishes the Commission's status as the legitimate leader of the European integration. The European Institutions might thus be built through the repeated interactions among the Commission, the Court, Member States, and the private sector. Considering its mandate to favor economic integration, the Commission should be more stringent against the Member States who are less prone to European integration. To the opposite the Court of Justice of the European Union should correct any bias made by the Commission when the later do not comply with the EU laws.

Empirically studying the issue is a challenging task. First, no systematic database is available to analyze the decisions of both the Commission and the Court. Second, there is no identical process of decision across all cases. Several state aid decisions are reversed across different steps, and it takes substantial efforts to track the timeline of each case. Finally, it is not straightforward to establish the connections between Commission's verdicts on state aids and the Court's cases that asked for their judicial reviews. In this work, we did our best to construct a complete dataset covering all state aid programs from 2000 to 2015. We then rely on a Probit model, where the dependent variable is whether the state aid program is given a favorable decision, to estimate the conditional probability of approval at the Commission stage.

We find that the Commission's favorable decisions are negatively correlated with transposition deficit, by which we proxy the resistance towards European integration at the

governmental level. Next, we collect those cases appealed to the Court and find that the Court is more likely to give state aid cases originating from states of higher transposition deficit favorable decisions. Since the Commission acts before the Court, the result is evidence supporting the hypothesis that the Commission is biased while the Court corrects the bias.

To supplement the analysis, we investigate further into the CJEU decision dataset to check if the Court is influenced by the applicants' characteristics. However, financial power and number of employees cannot significantly explain the likelihood of success of the applicants, pointing to the fact that the Court is sufficiently independent when making the judgments.

The paper proceeds as follows. We get back to the dynamic of institutions as it can be explained by games among various stakeholders and discuss how it can be applied to the understanding of the EU institutions building in Section 2. We give an overview of the mechanism of state aid control in the European Union and of the roles of the different players involved in this game in Section 3. The description of the data and the regression results follow in Section 4 and 5, respectively. A discussion of the results and policy implications is presented in Section 6 and the conclusion follows.

2 Institutions and their dynamics: The EU case

2.1 Legitimacy in Institution Building

As pointed out by Greif and Kingston (2011), there are two main approaches of institutions in the literature. According to the first one, institutions are sets of rules designed, for instance by political rulers or economic entrepreneurs, and institutional evolutions are then triggered by the new constraints or opportunities in the political game or in the economic competition. This vision characterizes, for instance, the approaches of North or Acemoglu (*e.g.* (North, 1991; Acemoglu et al., 2005)). In the alternative approach, institutions are understood as self-enforced equilibria of games among those who rely on them to coordinate. Rules are complied with by players because they correspond to the best response to others' (anticipated) behaviors.⁵⁷ In such an approach,

⁵⁷ As explained in (Greif, 2006): *“Each individual, responding to the institutional elements implied by others’ behavior and expected behavior, behaves in a manner that contributes to enabling, guiding and motivating others to*

institutional change occurs when there is a coordinated change in players beliefs/motivations/patterns of behavior leading to a new (self-enforcing) equilibrium. This is the vision of Greif, Aoki or Weingast (*e.g.* (Greif et al., 1994; Greif, 2006; Aoki et al., 2001)).

In both approaches, and especially in the second, legitimacy appears as a central concept to understand emergence and evolutions of institutions through endogenous and dynamic models of institutional change. Legitimacy is a concept meant to capture the beliefs that bolster willing obedience (Levi et al., 2009). It deals with why and how some players might influence others' beliefs to follow mutually recognized roles and rules. Two types of legitimacy can be distinguished: the value-based and the behavioral-based legitimacy. The former represents the sense of obligation to obey authorities that leads to the latter, which is the actual compliance with the norms it promotes. Legitimacy is the basis of every system of authority (Weber, 1964) and has its roots in the observation that rules have been followed and are essential to the perpetuation of coordination (Greif, 2006). It is likely to increase with the effectiveness and trustworthiness of the governing institutions (Levi and Sacks, 2009).

In this perspective, the role of legitimizing agents is central because those who are willing to exercise leadership or authority have to convince a critical mass of players in the social game that they should adopt behaviors conform with the equilibrium and systems of norms preferred by the leader/ruler. Each individual in the society (or in the governing coalitions) is more likely to comply with the order proposed by one given leader if some influential and powerful players recognize the leadership of this given agent. In the medieval Europe, for instance, the Church and the Pope were the legitimizing agents of sovereigns. After the English Crown broke with the Roman Church, the former transformed the British Parliament in its legitimizing agent by guaranteeing it more independence and power. It triggered a (virtuous) loop by which the Crown started to promote policies more in line with the preference of Parliament members to maintain their interests in recognizing its authority. Also, the Parliament progressively eroded the discretionary power of the Crown, in particular because of its adverse effects in terms of taxation and economic freedom. The resulting economic and institutional reforms triggered the UK

behave in the manner that led to institutional elements that generated the individual's behavior, to begin with. Behavior is self-enforcing in that each individual, taken the structure as given, find it best to follow the institutionalized behavior that, in turn, reproduces the institution in the sense that the implied behavior confirms the associated beliefs and regenerates the associated norms."

economic growth but also resulted in a social and political orders more acceptable to a majority of the elite, then of the people. There was a progressive increase in the legitimacy of both branches of the government that contributed to their survival, strength, and stability (Greif and Rubin, 2014). We can conclude from the British case that legitimacy over time is dependent upon the politico-economic outcomes expected first by the legitimizing agents, and second by the other stakeholders involved in the game. Logically, they expect that players in the institutional game act according to the mandates assigned to them and accepted by the other players.

This is in line with the perspective proposed by (Greif and Laitin, 2004), who point self-reinforcement as an essential mechanism for explaining institution persistence and evolution over time. It refers to the set of loops between beliefs, expectations and outcomes that result in stability of the responses mutually adopted by the players involved in the game. In this paper we contribute to such an analysis of the dynamic at play in the building of the European institutional framework in the context of the European economic and political integration. The emergence of credible and stable institutions has been an essential challenge for the European integration project. Ad-hoc intergovernmental organizations have been built to guarantee compliance with the various treaties signed among Member-States since the end of World War II, and coordinate the process of economic, then political integration. Political legitimacy and self-reinforcement are relevant concepts to understand their equilibria. As Moravcsik (2002) already observed, the European institutions are constrained by constitutional checks and balances that successfully maintains the legitimacy of the Union. Even though, some research points to a democratic deficit of the EU institutions that would weaken its legitimacy, member-states, which are entrusted by their people, bestowed legitimacy on the European institutions. Its maintenance depends on the behavior of the EU institutions and member-states that would reinforce or undermine both value-based and behavioral-based legitimacy.

In this paper we aim to document and study how the various players involved in the building of the EU power system interact among each other. According to many, both in the civic-political sphere and in the academia, the European political game is dominated by bargaining between the European bureaucracy, the most powerful governments (*i.e.* those of large countries), and prevalent economic interests. Then alternative views see the European construction as the result of the balance of power between these three categories of agents. We aim at digging deeper

by analyzing the revealed policy preferences of those bodies in charge of making decision within the European Union. Following the approach proposed by Beuve et al. (2017), we study systematically a set of decisions made by the European Union bodies to check their main drivers and conclude from that about their logic of performance. As compared to the case study proposed by (Greif and Rubin, 2014), we face a different case which is not a game between the Parliament and the Executive Branch of the government, but a game involving more parties: two components of the European Institutions, the National Governments, and businesses. Due to the large numbers of players and the heterogeneity of their interests, the formation of stable coalitions over time is of low probability. This is why it can be a relevant and sustainable strategy for some players, in particular the European bodies which have a mandate for that, to try to establish themselves as the drivers of a new equilibrium in which the European Institutions would prevail in the power system. Establishing their legitimacy as efficient and independent rulers is a dominant strategy since they were initially endowed with a very limited authority and weak capabilities. Gaining in legitimacy is the only way to have their authority recognized and accepted by the other players.

With that aim, we study the decision-making of the European Institutions concerning state aids. They are a core source of frictions between the Member States that are eager to preserve their sovereignty in matter of public policies, and the European Institutions, which mandate is to guarantee the enforcement of the integration commitment made by the same Member States. They are also key for businesses as they might cover significant fiscal transfers in their favor and result in rents due to distortion of competition. They could also trigger oppositions among the components of the EU power system since two branches of the government — the Executive and the Judiciary — might be involved. We believe therefore this is a stimulating case for the analysis of the process of EU policymaking, in addition to a significant case for the analysis of the building of supra-national system of Governance. As pointed out by Brousseau and Glachant (2020), transnational governance frameworks do not result only from treaties among governments, but also from the endogenous emergence and evolution of a wide set of governance arrangements of various kinds at different levels, which specific dynamics have to be documented and analyzed.

2.2 The European Commission as a Trustee

The European Commission is a central component of the executive and legislative power of the European Union. Its duties include the ignition of the legislation process, the management and implementation of EU policies and budget, and the enforcement of the EU law. A noteworthy aspect of the Commission attributions is that it has a double role: the legislative one when it proposes new laws and regulations, and the regulatory one when monitoring the implementations of EU policies. Such a broad scope of action is reflected in the profile of those working for the Commission that combines technical staff who are members of the EU civil service with political actors who are the appointed Commissioners.

Because the European Commission was entrusted to defend the general interests of the EU, the appointment of Commissioners and the process of decisions were designed to keep the independence of the Commission. National governments select the Commissioners who are also subject to the approval of the Parliament for a 5-years mandate. The Commission is not responsible in front of the Parliament. Thus, pressures from partisan, voters or nationally elected politicians tend to fall off.

In the governance structure of the Commission, the bureaucracy supports both their legislative and regulatory tasks. The final decisions, however, are agreed by the college of Commissioners. Such collegial governance avoids that Commissioners pursue their own political interests or act as simple agents of their national governments. We cannot ignore they are political actors that usually account for previous experience in other political positions either at the national level or the supra-national level. In order to be influential within the Commission, they are however constrained by the need to actually contribute to the fulfillment of the mandate of the College. Moreover, they have also to develop their own legitimacy vis-à-vis their bureaucracy made of this specific group of civil servants dedicated to the building of the Union. Last but not least, Commissioners are certainly driven by career concerns and have to consider the next steps: getting a position in the transnational system of governance which certainly request past-records in terms of loyalty to the inter-governmental organizations in which they worked, or in the national political system they came from and in which they have no longer strong position. A record of independent and competent EU ruler is certainly their best asset in this game.

The multiple attributions of the Commission transform it into a powerful actor in the European Union. That said, while an agenda setter, it does not have a hegemonic position in the power system. The policymaking process is also depending upon the Parliament that should approve and might amend the proposal made by the Commission. The final decisions are always made by the European Council, in which all national Governments have a seat. They should compromise and might also amend the decisions proposed by the Council potentially revised by the Parliament. Last but not least, the EU policies are not implemented by the EU bureaucracy, but by each national government who has to transpose EU directives in the national legal framework and manage public policies accordingly. The Commission is however in charge of supervising how the Member States implement these EU policies once finally adopted. It holds a capability of sanctioning Member States, while these sanctions might be submitted to approval by the Council and are eligible to judicial review by the Court of Justice of the European Union.

The central role of the Commission in the development of the EU project caught the attention of many researchers that studied its characteristics, its behavior, and its influence in the institutional development of the European Union. For example, some researchers discuss the preference of the European Commission to favor small states. They regard the Commission as their ally because its supposed independence may help them balancing the influence of the large states. Meanwhile, the Commission needs the support of the small states to put forward reforms that hurt the vested interests of the large ones. However, Bunse et al. (2005) find that the Commission is not always small states' friends by examining the experience of Belgium, Greece, Finland, and Hungary.

Additional literature focuses on the institutional role and profile of the Commission. Some researchers argue that the Commission is a trustee that is more powerful and independent than a "pure" agent, since a trustee is granted with a transfer of decision rights guaranteed through constitutional means. While Majone (2001) affirms upgrading an agent to a trustee allows to complete incomplete contractual arrangements, avoiding then the potential lack of credibility of self-enforcing treaties among sovereign states, Wilks (2005) claims such power allows the Commission to pursue its own agenda and, thus, increases the risk of institutional drift.⁵⁸ In any

⁵⁸ For some authors, the roots of the risk of institutional power lies in the double-hat profile of the Commission that aggregates both regulatory and agenda-setting functions (Pollack, 1997).

case, many authors agree that the Commission will act on behalf of its supranational objectives (Majone, 2002; Pollack, 2003).

It is also relevant to keep in mind that organizations might influence individuals' behavior. In line with the significant tradition initiated by Weber, bureaucracies may well develop procedures and human resources management practices favoring an adhesion of individuals to their goals. Socialization research, focusing on processes of inducing actors into the norms and rules of a given community that results in sustained compliance based on the internalization of these new norms (Checkel, 2005), tends to highlight the success on the matter of the European Union. The Commission's agents seem to act in line with the EU interests, being immune of influences by their national authorities, and developing a European ethos. Abélès and Bellier (1996) affirm that the experience of working in the Commission transforms the agents that progressively replace their national identification by a professional identity built towards the achievement of the collective project. Hooghe (1999) highlights that socialization in the Commission is powerful, and that the longer seniority, the more likely staff members are embracing supra-nationalist values.⁵⁹

Despite extended discussions on the potential biases in the EU decision making process, there is still a gap of empirical research allowing to settle the dispute among conflicting claims (*i.e.* independence of the Commission, drifts of the "Eurocracy", preeminence of large state, of large businesses, etc.), since most of the available evidences rely on case studies that indeed prove that they are tracks of all these potential biases but cannot demonstrate if they are more general trends. Our paper is a contribution to this exploration focusing on a wide set of comparable cases, which allow for controlling many sources of biases in the making of decisions.

2.3 The Court of Justice of the European Union as a check and balance

The Court of Justice of the European Union is the central institution for the enforcement of the EU law. Its mission includes to control the lawfulness of decisions of other institutions of

⁵⁹ In another research, she adds that national political socialization influences how agents embrace supranationalism: individuals originating from countries that are more supportive to the EU project demonstrate higher level of supra-nationalism. (Hooghe, 2005)

the European Union, to assure that Member States will respect their obligations as stated in the EU Treaties, and they will interpret EU law upon the demand of the national courts. The Court and the selection process of judges were carefully designed. Two courts form the Court of Justice of the European Union: The European Court of Justice (ECJ) and the General Court.⁶⁰ While the Court of Justice is made of 28 judges (one from each member state) and 11 general advocates, the General Court has 47 judges (at least one per member state). The appointment of judges is similar in both Courts. The judges must be independent and own the capabilities to exercise the highest jurisdictional functions. Member States appoint them for a 6-year term. The choice of Member States is previously validated by a panel of 7 specialists that assess if the candidates fulfill all the requirements. The President of the Court suggests the composition of the board and the Council approves it.

Courts are often assumed to be independent. Still, they may also be under pressures from various stakeholders. Judges are often dragged by governments (Posner and De Figueiredo, 2005), by policy preference (Voeten, 2008) or by the economic environment (Ichino et al., 2003). The appointment and judgment rules in the Court of Justice of the European Union was designed to guarantee independence. Since the Court has much power in the European arena, its decisionmaking raised the interest of researchers. Carrubba et al. (2008) suggest that the risk of a decision override by the Council or the threat of noncompliance of a Member State may constrain the Court rulings. Sweet and Brunell (2012) contested Carrubba et al. (2008) using the same data and show that the Court is usually aligned with Commission's preferences. However, there is no evidence of the influence of Member States on the Court. Garrett et al. (1998) claim that analysis of the Court decisions should outpace the ideological discussions of the "European Integration theories". They contend that the Court is a strategic actor that enforce the law impartially to develop its reputation. Also, a recent study by Pollack (2017) discusses the legitimacy of the Court

⁶⁰ The General Court was created in 1989 with a twofold mission. Firstly, it would relieve the charge of economic cases that was generating bottlenecks in the European Court of Justice. Secondly, it would offer a second level of decisions where the General Court would be the first instance court whereas the second instance would be the European Court of Justice. This measure would increase the judicial protection of natural and legal persons that decide to appeal. The complexity of the cases will guide the definitions of the number of judges that will determine a case. On average, it ranges from 3 to 5 judges. The European Court of Justice exists since 1952. It deals with requests for preliminary rulings from national courts, some actions for annulments of illegal actions of EU institutions and appeals of cases judged in the General Court. The judgment in the European Court of Justice is very similar to the one of the General Court except by it counts with general advocates that are invited to present their opinion to assist the judgment of some cases.

and concludes that despite much research defending that the it rules according to the rule of law, recently there are many debates about bias and judicial activism in the Court. Our work contributes to this area by exploring state aid control that may involve both the Commission and the Court in the same cases.

3 State Aids and the Single Market Policy

The case of state aids is stimulating to analyze the interactions among the various stakeholders — both internal and external to the EU institutions — involved in the dynamic of the EU system of governance. The Commission is in charge of approving or not the proposed subsidies. Its decision can be scrutinized by the Court. Member states and European firms are also part of the game because they are granters or beneficiaries of the public support. In this scenario, the Commission and the Court are the institutions responsible for the enforcement of the EU treaties. The first has a clear mandate to increase integration. The latter is responsible for litigation resolution. Step by step they shape the ground for further evolution of the integration process.

3.1 The Competition Policy as a central mandate of the European Commission

The European Union is a union of many sovereign states. Moreover, members countries are characterized by very contrasted patterns in terms of economic and social structure, climatic and geographical conditions, cultural and political traditions. The building of the Union has always been characterized by a dialectic. On the one hand, there is a clear will to integrate these heterogeneous Nations into a united political and economic space, because of the expected benefits in terms of peace across the continent, need to unite to face the competition of geopolitical giant or alternative alliances, economic benefits expected from an integration into one of the wealthiest and largest economic space. On the other hand, each national government and their fellow citizens, as well as local communities, may resist the European integration because leaders could lose power, entrepreneurs could lose rents, individuals could lose protection. In addition, integration translate into changes that have a cost, raise uncertainty, and might trigger redistributions from losers to winners. In such a context, the building of the EU has always been resulting into a game

in which national government have been pushing for integration, while trying to keep as much sovereignty they could in their hands. European Institutions are there to tie their hands and make their commitment toward integration credible. In the same time, they were designed to be weak enough to let the national government in the driver seat. This explains both the existence of the Council in parallel to the Commission and the constitutional principle of subsidiarity that result into the fact that many policy domains remain into the sovereign domain of each government and that the national systems of government implement the European policies; depriving the EU from a strong and powerful civil service.

In such a context, the establishment of a single market and the related policy have been constituting a central compromise among the member states. Removing not only barriers to trade, but also establishing a level playing field by removing any distortions to competition, were understood as a necessary condition to achieve economic integration and to enjoy its expected benefits: namely a more efficient productive system, a larger scale to write of fixed cost, a more friendly environment for innovation, as well as the elimination of all kinds of transaction costs due to technical and legal harmonization. Moreover, on several issues like product safety or financial stability the joined forces of the members states together with the one of the European authorities were considered as being able to surpass the capability of each member states, so that it was not a big deal to abandon sovereignty on these issues. In the same time, it was well understood from the decision to launch the single market policy, that in practice many specific interests would be hurt and that each National government would hardly resist them. Hence the decision to grant a significant authority to the Commission in the specific domain of the competition policy.

As compared to other policy domain, economic or not, the Commission benefits of a significant authority in matter of competition policy, with a clear policy mandate: establishing a level playing field. The Commission is empowered to punish unfair market behavior as well as to influence market structure by oversighting mergers and acquisition. Moreover, the Commission has authority to control if public authorities, whether local or national, take actions that distort competition. It ranges from obligation to harmonize regulations, to control of state aids.

The empowerment of the Commission on the matter has been however only progressive. Clearly the mandate to build a single market, that date back from the Single European Act (1986), then reinforced by the Treaty of Maastricht (1992), was relied upon by the Commission (and other

pro-EU-integration forces) to progressively hinder the capability of national governments to protect specific interest, limit economic integration and the free flow of innovation and market incentives in the name of national sovereignty. Progressively the Commission gained autonomy and authority on its decisions and all kind of public decisions are now considered as relevant domain in which it has a say. In that perspective, state aids are a particular sensitive issue because, as in the case of mergers, the Commission is entitled to judge *ex-ante* whether or not, public support would distort competition and should therefore be submitted. From the member states perspective this constitute a very clear encroachment of their sovereignty, and the stakes are very well understood by both parts. This is why the oversight of the Court of Justice of the European Union is also crucial here. Its role is clearly to control for the fact that the Commission is actually ruling according to its mandate.

We thus claim that this policy area is strategic in the European construction. The stakes clearly surpass the amount of public subsidies distributed by the member states and scrutinized by the Commission and the Court. By studying how the distribution of authorization of state aids are granted, we contribute to the understanding of the actual political interactions between the Union and the Member States.

3.2 State Aid Control

Regarding state aids, strict rules⁶¹ define the types and circumstances in which grants are allowed in the European Union, because of the potential distortions of competition. This legislation limits the discretion with which a member state can intervene on a competitive market, and empowers the Commission to investigate and to decide about the lawfulness of any state support. According to the law, the European Commission should allow state aids to deal with social issues and exceptional occurrences, like natural disasters. The Commission can also allow state aids for other purposes, subject that it would not harm competition. Thus, the legislation opens opportunities for issuing several types of supports and, strategically, establishes the Commission as the powerful decision-maker for state aids.

⁶¹ Article 107 and 108 (TFEU) sets the main rules of state aids and Council Regulation 659/1999 descants on its allowing process.

Any member state planning to grant a state aid must notify the European Commission, and no support scheme should enter into force before its authorization. When a state aid lasts for several years, the Commission must periodically assess if it is still compatible with the single market policy. Also, interested parties play a surveillance role in the state aid process because they can notify the Commission about the misuse of authorized aids or the existence of unlawful ones. After being notified, the Commission evaluates it and publish an official decision. The favorable decisions may impose constraints to adequate the aid scheme to the rules of the internal market. If an ongoing aid receives a contrary decision, a recovery aid clause may apply. Between 2000 and 2015, the European Commission department for competition analyzed more than 6000 cases from which only 6% were rejected.

State aid schemes are restricted to selected beneficiaries and, as a consequence, the decisions to approve it or reject it may not please all stakeholders in the market. On the one hand, an adverse ruling from the commission jeopardizes the interests of the undertakings who receive the state support. On the other hand, an affirmative decision may impose obstacles to the performance of their competitors. Both circumstances may result in legal disputes as an attempt to change an official decision in the Court. Figure 29 summarizes the functioning process of state aid in the European Union.

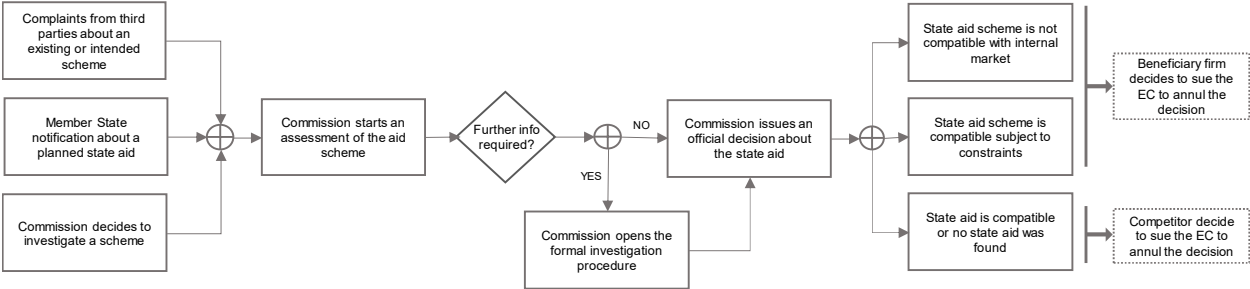


Figure 29 - The whole process of State Aid approval or denial.

The General Court works as the first instance court in the resolution of state aid cases. Cases can be appealed in the Court of Justice, the second instance court. Both applicants and defendants may count with interveners that give support to their claims. However, only parties that prove the case directly affects them are allowed to intervene.

3.3 The role of EU Institutions in the granting of State Aids

State aid control, while being a significant dimension of the EU integration policy did not draw a significant attention from researchers (in economics) so far. Most research on EU state aids focused either on their general impacts on the economy, or on their alignment with the EU law. Less research has been dedicated to the way decisions are made and whether they are biased. Dewatripont and Seabright (2006) argue that political accountability may encourage more wasteful public spending and thus a trans-frontier agency is helpful in stopping excessive state aids. Nicolaidis and Bilal (1999), however, found that the actual practice of the European Commission did not conform with that later view and often acted in a way to accommodate some industries and countries, while Butts et al. (2011) find that most of the Commission's decisions were in line with the State Aid Action Plan (2005-2009).⁶²

Some previous research gave us some clue of the institutional games at play in the EU system of governance. For instance, according to (Majone, 2002; Wilks, 2005), the expansion of the competencies of the Commission concerning competition regulation at the European level has increased the number of judicial reviews as private parties appeal to the Court to seek justice. Thus, the Court has also become an essential actor in the policy-making process responsible for enforcing and to expand the application of the law. Also, Kleiner (2011) points out that during the development of state aid regulation, the Court had a crucial role in limiting its boundaries, either by confirming the Commission's decision, or by restraining them. The Court's judgments contributed to pushing for better framing of the aids allowed. However, some research points to the Commission's discretion concerning state aid decisions.

Furthermore, some research demonstrated that even if the private sector is not a protagonist in the state aid process, they contribute to change the dynamics. The participation of private actors as plaintiffs in the state aid cases has increased since the 90's (Adam, 2016; Smith, 1998). Simultaneously, there was a decrease in the national government's appeals which suggest that private actors develop strategies related to litigation and aimed at influencing governmental practices (Adam, 2016).

⁶² Özbugday and Brouwer (2016) highlighted that cases with multiple objectives tend to have longer duration approved and the more substantial amount of state aids received.

In this research, we propose to explore the institutional dynamics of the EU institutions. Specifically, we argue that political legitimacy and self-reinforcement are necessary for their sustainable development, contributing directly to the achievement of more economic integration. We expect that the EU institutions will act according to the mandate they got from member states. The primary mission of the European Commission is to promote EU integration whereas the European Court of Justice will apply the EU law. By transposing this analysis to the state aid process, we propose that the Commission will use the authorization of the state aids to push for more integration. In practice, it implies that its decisions will be biased to favor countries that are prone to the European integration. In the same rationale, we expect that the European Court of Justice will pursue its mandate of applying the EU law and it will be independent and just on its rulings. It means that if the Commission introduces any bias, the Court will clear it through its fair judgments.

It is relevant to highlight that if these institutions persist over the time and they are increasing their mutual legitimacy, we cannot believe that such bias is strong enough to put in check their reputation. The rejection rate of state aid cases represents only 6%. If there is any bias, it comes from the cases where the absence of a specific jurisprudence could lead to different evaluations. In these cases, the behavior associated with the institutions - to pursue further integration – would prevail and lead to some bias. Nevertheless, a ruling of the Court that gives the correct interpretation of the case would work as feedback that the Commission will abide by and use as inputs in the evaluation of future cases. That is the dynamic of the self-reinforcement process. Because of their interactions, the Commission succeeds in gradually expanding its powers, and Court builds up independence and credibility. As a result of this self-reinforcing behavior, they increase their mutual legitimacy. In the next sections, we present the data and the empirical approach used to test this hypothesis.

4 The Data

To understand the state aid control in the European Union, we have two complementary analysis. The first aggregates the state aid cases subject to the review of the Commission. The second analyzes the cases appealed to the Court in an attempt to change Commission's decisions

about state aids. The next subsections present in more detail the construction process of these datasets and their main variables.

4.1 Dataset of Commission's State Aid Cases

The competition cases in the European Union are registered in the ISEF database where the data is open to the public. Within the Commission, not only the competition department is in charge of the analysis of state aid cases, the agriculture and fisheries teams also evaluate the notifications in their respective sectors. However, in this paper, we limit our sample to cases decided by the competition team from 2000 to 2015. Taking into consideration that agriculture and fisheries sectors are subject to specific policies that may interfere in the granting of state aid, we think it is prudent to disregard these cases. We consider only cases after 2000, because it is the year when the procedural regulation of state aid entered into force.

Our sample of state aid cases contains more than 6200 cases. For each of them, the information available are: the Member State willing to grant the state aid, the instrument (i.e. direct grants or tax exemptions), its type (scheme, individual application or ad hoc cases), its purpose, a brief description of the case, the official decision of the Commission and its date. For each observation, we coded the official decision, presented in legislative terms, in a binary field to identify if the state aid was approved or denied. Some complex cases are subject to many official decisions, and some of them are controversial, for example, a positive decision that changes to a negative decision. In this situation, we classified the aid according to the last decision appearing in the data extraction.

We then enrich the dataset by matching some country-specific variables aligned with the year of the decision date. From the World Bank Indicators, we take GDP per capita and inflation rate. From the Eurostat indicators, we take the unemployment rate. Additionally, we calculate the time length a country is part of the EU as the difference between its entry in the EU and the decision date.

We propose to take transposition deficit as a proxy for the degree of resistance to integration at the governmental level. Transposition deficit is the proportion of directives adopted

by the European Union not yet transposed by the member state.⁶³ It also accounts for directives that were only partially transposed and the ones considered as entirely transposed by the Member States, but for which the Commission has opened an infringement procedures.⁶⁴ This information is available on the Single Market Scoreboard website that provides some performance and governance indicators of the European Union countries. Kaeding (2006) finds that the higher the number of institutional veto players, the greater the delay in transposition. Following his line of thinking, transposition deficit is in effect a good proxy for the degree of resistance to integration. The Commission is a political body, whose decisions are not only economic but also political ones. Thus, we conjecture that the Commission considers the identity and also the behaviors of the Member States when making the decisions and then manipulates the state aid approval to punish or reward "bad students" and "good students" respectively.⁶⁵

Finally, our data include governance indicators borrowed from the Worldwide Governance Indicators survey or the WorldBank as described in Kaufmann et al. (2011). They are calculated from a set of surveys that combines companies, citizens and expert views about governance. There are six indicators named voice and accountability, political stability, government effectiveness, regulatory quality, rule of law, and control of corruption. They range from -2.5 for weak performance to 2.5 to strong performance in matter of governance. Indeed, The approval of the state aids may be influenced by the governance quality of the Member States. According to Dewatripont and Seabright (2006), a more democratic political system may induce more wasteful state aid programs because of politicians' incentive to buy votes. Besides, we may expect the Commission would be less inclined to authorize public subsidies in more corrupted or poorly organized Member States. Besides, the inclusion of governance indicators may capture the effect of the general quality of the applications, *e.g.* supply and verifiability of information and evidence.

⁶³ One criticism against using transposition deficit in statistical analysis is that those directives reported completed may be in fact incorrectly transposed and it takes time for the Commission to verify whether they are correctly transposed. The Commission gives the benefit of the doubt to Member States and excludes those self-reported non-verified completed transpositions from the computation of transposition deficit. However, we believe that the error is small since the cumulative compliance deficits are less than 1 percent for all Member States.

⁶⁴ Legal action against an EU country that fails to implement EU law. Source:

<https://ec.europa.eu/info/law/lawmaking-process/applying-eu-law/infringement-procedureenaccessedon17=08=2018>

⁶⁵ Note that we do not claim that the EU decision makers check the transposition deficit (or any grading system that would be managed internally by the Commission) before reaching a decision. It is a question of relational atmosphere and mindset by those playing a role in the decision. They might be less lenient or open-minded when they face politicians or bureaucrats that are not "cooperative". In that perspective, the potential biases in the decision process might be due to the EU officers involved in the preparation of the decision and in the documentation of the case.

4.2 Dataset of CJEU Cases on State Aid

To investigate the factors explaining the CJEU decisions on state aid cases, we have collected information about all the state aid cases which application dates from 2000 at least and judgment occurred until July 2017. This data is available in InfoCuria, the European Court of Justice official Case-law database. The observations are constructed at the case-level resulting in a dataset with 238 observations where the Commission is the defendant.

We construct a binary variable that indicates whether the state aid program is given a favorable judgment by the Court, which means either the state aid program is approved or given a second chance of review by the Commission. Note that the constructed binary variable does not refer to a favorable decision by the Court. An unfavorable decision on a competitor case means the state aid program is actually given a favorable judgment. To correctly code the outcome, we carefully study all 238 cases and identify the nature of the cases; whether the case is presented by the potential beneficiary (the state aid is not approved or only partially approved), or by a competitor of the beneficiary of the state aid (the state aid is approved by the Commission but the competitor is unsatisfied). To maintain comparability, we include the same set of independent variables, which will further be discussed in next section.

Table 11 displays basic summary statistics of the two samples and shows the unpooled variance t-test to check the equality of two-sample means. Note that it does not reject that the means of transposition deficits are equal at 5 percent significance level.

Table 11 - Basic Summary Statistics of the two samples

Variable	Commission		Court of Justics		2-sample t-test
	Mean	Std. Dev.	Mean	Std. Dev.	
ln GDP pc	.0026964	.1991043	.0283299	.1367361	-2.78
Unemployment	-.4881238	4.145106	.9096487	5.198566	-4.10
Inflation	-.0509695	1.022819	-.193337	.753921	2.82
Decision Year	2007.853	4.815866	2010.718	3.73948	-11.46
Length EU	33.11104	17.77373	39.51681	14.21466	-6.75
Transposition Deficit	1.463561	1.030183	1.583193	1.087079	-1.67
Voice	1.237182	.237881	1.219337	.226122	1.19
Rule of Law	1.325107	.5090314	1.223408	.5415493	2.85
Control of Corruption	1.318299	.6997943	1.172147	.7303675	3.03
Sample size	6268		238		

5 Empirical Strategy and Results

5.1 Empirical Strategy

Briefly speaking, a member state may have to go through two stages to get the state aid approved. Governments first notify the European Commission that will decide whether the state aids meet the exemptions laid by Article 107 and Article 108. If the answer is positive, the beneficiary's competitors possess the legal right to sue the Commission in the Court trying to repeal the decision. If the answer is negative or conditional, the beneficiary can also demand a judicial review by the Court. Therefore, by comparing the decisions of the Commission and the Court, it is possible to detect biases in the decisions. There could be several scenarios categorized into two main types.

5.1.1 The Commission is biased

In principle, the quality of the state aid programs should be independent of any country-specific variables, except some economic indicators. By "quality", we refer to the degree the case fits into the exemptions laid by the legislation. If the Commission's decisions are systematically correlated with some relevant variables, we may conclude that the Commission is deciding cases according to a specific line of thinking. There are two sub-cases. First, the Court is independent and corrects any biases due to the Commission. Thus, we should find the correlation reversed in sign. Second, the Court is also biased and judges according to some other rationale. We will find the judgments by the Court correlated with some explanatory variables, but it does not necessarily correct the bias introduced by the Commission.

5.1.2 The Commission is not biased

If the Commission's decisions are not systematically correlated with any variables, we may conclude that the Commission is in fact fair in its decision making. However, the Court could be biased still. In such scenario, we will find its judgments correlated with some explanatory variables. If we do not observe any systematic correlation between the approval of cases and any

relevant explanatory variables in both stages of the decision-making process, we find no evidence showing any bias in the state aid control process at the European level.

5.2 Empirical Result from the First Stage: The European Commission

We employ a Probit model to estimate the correlations between the approval of state aids and some country-specific variables.

$$\pi_i = \Phi(\alpha + \beta X_i) \quad (1)$$

where π is the conditional approval probability of case i and $\Phi(\cdot)$ follows the normal distribution. The vector X_i are the explanatory variables associated with the case i . Each case is associated with a member state (where the state aid would be approved) and a decision year (when the case is approved or rejected by the Commission). Therefore, most of the explanatory variables are in fact country-year specific. Note that multiple observations are found for a year in a country, and thus the dataset is not a panel. To be precise, we consider the following model:

$$\pi_i = \Phi(\alpha + \beta X_{tc} + \tau t + \gamma_c) \quad (2)$$

where t is a linear time trend and γ_c is the country fixed effect for country c . The reason why we include a linear time trend instead of binary year fixed effects is that we want to keep the analysis comparable with that of the next section where we cannot afford including too many dummies in a regression of a much smaller sample.

Table 12 reports the results. All reported standard errors allow clusterings in countries. In Column 1, we explain the state aids approval, a binary variable, by a linear time trend, the time (number of years) in the past being within EU, the log-difference in GDP per capita, the difference in the unemployment rate, and the difference in inflation rate between the member state who submits the state aid program and the EU-average in the decision year⁶⁶. Since it is argued that the Commission is trying to help economically weaker members to catch up with the stronger through state aids approval, the expected approval rate should be higher for low income, high unemployment, and high inflation countries. We do not reject the hypothesis concerning unemployment.

⁶⁶ It is computed by subtracting the EU-average of the year from the country figure.

In Column 2, we further include transposition deficit into the regression. We find it negative and significant. We then control for country fixed effects, as shown in Column 3. The significant result of unemployment is no longer found, while transposition deficit is still significant. The marginal effect of 1 percent increase in transposition deficit on the probability of being approved is -1.4 percent⁶⁷. Note that the overall acceptance rate is 94 percent.

Table 12 - Dependent Variable: State aids approved by the Commission

	(1)	(2)	(3)	(4)	(5)	(6)	(7)
log diff GDP pc	0.381 (0.320)	0.193 (0.312)	0.425 (1.243)	0.340 (1.251)	-0.129 (1.463)	0.857 (1.274)	0.042 (1.359)
diff unemployment	-0.029*** (0.007)	-0.032*** (0.007)	-0.020 (0.021)	-0.024 (0.024)	-0.017 (0.022)	-0.024 (0.020)	-0.028 (0.022)
diff inflation	-0.042 (0.034)	-0.047 (0.032)	-0.006 (0.039)	-0.005 (0.040)	-0.017 (0.040)	-0.004 (0.039)	-0.023 (0.039)
Trend	0.027*** (0.009)	0.006 (0.007)	-0.008 (0.008)	-0.010 (0.007)	-0.007 (0.008)	-0.016* (0.010)	-0.032*** (0.011)
Length EU	-0.013*** (0.004)	-0.011*** (0.003)	0.008*** (0.002)	0.008*** (0.002)	0.012*** (0.002)	0.010*** (0.002)	0.022*** (0.004)
TD		-0.132*** (0.040)	-0.123** (0.059)	-0.122** (0.058)	-0.114** (0.058)	-0.128** (0.059)	-0.116** (0.053)
Voice				-0.233 (0.520)			-0.449 (0.505)
Rule of law					0.540** (0.243)		1.343*** (0.322)
Control of corruption						-0.351 (0.290)	-0.957*** (0.328)
Country FE	No	No	Yes	Yes	Yes	Yes	Yes
N	6455	6430	6268	6268	6268	6268	6268
Pseudo R2	0.027	0.034	0.053	0.053	0.054	0.054	0.059
log likelihood	-1399.882	-1388.869	-1352.697	-1352.460	-1350.444	-1351.342	-1342.968

Standard errors allowing clusters in countries in parentheses

* $p < .1$, ** $p < .05$, *** $p < .01$

As pointed out above, approval of the state aids may be influenced by the quality of governance of the Member States as proxied by WGI indicators. It is indeed possible that the negative coefficient we find for transposition deficit results from omitting the quality of governance that could impact both on the transposition process and on the application for state aids outcomes. We include three Governance Indicators, namely, Voice and Accountability, Rule

⁶⁷ Obtained from the *margins* command of Stata after the probit estimation.

of Law and Control of Corruption, compiled by the World Bank separately and altogether in Column 4-7. The inclusion does not take away the significance of transposition deficit. A positive and significant coefficient of rule of law may hint that state aids are likely be approved if the applications are filed with care and a fair mind. However, we are surprised that control of corruption enters the equation negatively. Note that the overall correlation between rule of law and control of corruption is 0.9622. The Governance Indicators are themselves of interest to political scientists, though the explanations of the correlation fall outside of our discussion in this paper.⁶⁸ According to the results obtained in Column 3-7, a one percentage point increase in the transposition deficit is approximately associated with 11-12 percent fall in the odds of getting approved.

5.2.1 Robustness Checks

We have not considered the nature or the objectives of the state aids. As we discussed in the introduction, state aids would be approved if they fall into certain exemptions. Although all aid programs have to go through the same approval process, some categories are less disputable. Aids to promote regional or national culture are almost certain given a green light (no rejection in our sample). Programs to promote employment and to reconstruct industries in difficulties are much more difficult to judge. Since we aim to explore the leeway the Commission enjoys, we now turn to those more disputable state aid programs⁶⁹. We first identify all major objectives of the state aid programs and then compute the average approval rates for each category⁷⁰. Only Culture and Energy are associated with 100% approval rate. Next, we keep only those cases involving at least one objective that has an approval rate less than one. In other words, we exclude state aids of solely Culture, solely Energy, and the mix of the two (zero case). We then repeat the regression of Column 5 of Table 2 but limit the sample, as shown in Column 1 of Table 13. We still find

⁶⁸ There is indeed an on-going debate on the relevance of the WGI indicators, in particular because many of the indexes that are relied upon to compute them are highly correlated, while nothing is known on the way the primary measures and indicators are aggregated in synthetic indexes of governance. Moreover, the fact that many of these indicators are built on subjective evaluations by not clearly identified experts cast doubts about the quality and comparability of the resulting indexes. The limits of the WGI indicators is however a constraint shared by many researchers in social science attempting to control for differential in quality of governments and institutional frameworks across countries.

⁶⁹ Note that rejections are in fact rare (6%) in our sample.

⁷⁰ We have identified the following objectives: Culture, Environment, Employment, Energy, Individuals, Innovation, Regional Development, Rescue, Economic Development, Research, Restructuring, Capital and Finance, SME, Sector Development, and Training. There are some other minor objectives that involve fewer than 10 cases each. Since a state aid may involve multiple objectives, the categorization is not mutually exclusive.

significant and negative correlation between transposition deficit and approval rate, while the sample size falls to 5923.

We further check the robustness of the result by using other estimation models. Column 2 and 3 follows the same specification and also deletes all-approved objectives but estimates instead with linear probability model and logit model. The negative correlation is now less significant. In Column 4, we keep the Probit model but bootstrap the standard errors with 278 successful trials. The main result remains, and we conclude that the significant correlation is not driven by outliers. We then divide the observations into two types, namely, Scheme and Non-Scheme. Thirty-nine percent of the state aid applications in our dataset fall into various schemes agreed between Member States and the Commission, and they are more likely be approved. The positive interaction suggest that transposition deficit exerts stronger effect on the approval rate of Non-Scheme applications, implying the bias, if it is, is larger with Non-Scheme cases.

Table 13 - Dependent Variable: State aids approved by the Commission

	(1)	(2)	(3)	(4)	(5)
	Probit	OLS	Logit	Probit	Probit
TD	-0.113* (0.059)	-0.015* (0.008)	-0.221* (0.124)	-0.113*** (0.034)	-0.141** (0.064)
diff ln GDPpc	-0.335 (1.424)	-0.058 (0.137)	-0.694 (3.017)	-0.335 (1.101)	-0.854 (1.340)
diff unemployment	-0.020 (0.021)	-0.003 (0.003)	-0.046 (0.043)	-0.020* (0.011)	-0.019 (0.021)
diff inflation	-0.021 (0.040)	-0.003 (0.003)	-0.053 (0.086)	-0.021 (0.032)	-0.026 (0.043)
Trend	-0.011 (0.008)	-0.001 (0.001)	-0.026 (0.018)	-0.011 (0.014)	-0.003 (0.008)
Length EU	0.012*** (0.002)	0.001*** (0.000)	0.028*** (0.005)	0.012 (0.012)	0.013*** (0.002)
Rule of law	0.533** (0.251)	0.051* (0.027)	1.114** (0.554)	0.533* (0.279)	0.539** (0.240)
Scheme					0.367*** (0.086)
TDxScheme					0.087** (0.038)
Country FE	YES	YES	YES	YES	YES
Bootstrapped	NA	NA	NA	278	NA
N	5923	6074	5923	5923	5923
R2/Pseudo R2	0.053	0.026	0.053	0.053	0.085
log likelihood	-1330.979	89.356	-1331.420	-1330.979	-1286.797

Standard errors clustered in countries in parentheses

* $p < .1$, ** $p < .05$, *** $p < .01$

5.2.2 Instrumental Variable Estimation

Another issue is the possible endogeneity of transposition deficit. Member States may react to the expected decisions of the Commission and adjust their strategies of transposing directives. Another possibility is that both variables are driven by an unknown cofounder. Certain institutional factors may on one hand affect the quality of state aid applications and, on the other hand, the efficiency and the pace of transposing directives. To deal with the endogeneity bias or the omitted-variable bias, we employ the following identification strategy, which has been adopted by Acemoglu et al. (2014); Yeung (2017).

We assume that Member States are influenced by their neighboring countries. They share similar cultures, histories, mentalities, and organizations of bureaucracy. Therefore, they respond

to new directives similarly, causing their transposition deficit converging and moving up and down simultaneously. We divide the European Union into four regions: the North, the South, the East and the Central, compute the average transposition deficit excluding the own country, and call it transposition wave index for each country in a year, which is taken as the instrumental variable⁷¹. Precisely, the wave index of country i of year t in region r is computed as follows:

$$Wave_{it} = \frac{\sum_{j \in r, j \neq i}^n TD_{jt}}{N_r - 1} \quad (3)$$

where r designates the four regions and N_r is the number of countries in region r ⁷². The wave index is taken as the instrumental variable to correct the potential endogenously determined transposition deficit. The exclusion restriction is that the average transposition deficit environment of a region has no direct impact on the Commission's decisions of a country's state aid applications, except through its influence on the country's transposition deficit⁷³. Results are shown in

Table 14, where the lower panel reports the first stage estimation. The first column employs IV-OLS estimation. Transposition deficit remains a significant factor, while the F-test of excluded instruments is 36.6. Column 2 is IV-Probit estimation and we find consistent results. The magnitude is larger than the comparable result in Column 1 of Table 3. Column 3 of Table 4 mirrors Column 5 of Table 3. Transposition deficit remains significant with a correct sign. Note that the interaction term is also endogenously determined, which is in addition instrumented by the interaction of the wave index and the Scheme binary indicator. Transposition deficit becomes less significant but the coefficient rests stably around -0.2.

⁷¹ The North includes Denmark, Estonia, Finland, Latvia, Lithuania and Sweden. The South includes Cyprus, France, Greece, Italy, Malta, Portugal and Spain. The East includes Czech Republic, Bulgaria, Hungary, Poland, Romania, Slovakia and Slovenia. The Central includes Austria, Belgium, Germany, Ireland, Luxembourg, Netherlands, and the UK.

⁷² Since transposition deficit of Member States in 2017 have not yet published, we take those of 2016 as the expected values of 2017.

⁷³ Since cases usually do not take very long to be judged (the average length between notification and decision is 0.876 year) and we do not have a long panel, we do not use the lagged wave index as the instrumental variable as Acemoglu et al. (2014) do.

Table 14 - Dependent Variable: State aids approved by the Commission

	(1) IV-OLS	(2) IV-Probit	(3) IV-Probit
Second Stage: Approval			
TD	-0.026** (0.013)	-0.204* (0.106)	-0.215* (0.115)
diff ln GDP pc	-0.039 (0.144)	-0.340 (1.428)	-0.831 (1.347)
diff unemployment	-0.003 (0.002)	-0.022 (0.021)	-0.021 (0.020)
diff inflation	-0.002 (0.003)	-0.013 (0.039)	-0.018 (0.042)
Trend	-0.002 (0.002)	-0.021 (0.014)	-0.014 (0.014)
Length EU	0.000 (0.000)	0.010*** (0.003)	0.011*** (0.003)
Rule of law	0.045* (0.027)	0.484* (0.259)	0.476** (0.242)
TDxScheme			0.050 (0.083)
Scheme			0.415*** (0.130)
Country FE	Yes	Yes	Yes
<i>N</i>	6068	5923	5923
R-squared	0.025		
log likelihood		-6639.158	-8601.804
First-Stage: Transposition Deficit			
diff ln GDP pc	3.725 (3.120)	4.173 (3.489)	4.163 (3.467)
diff unemployment	0.005 (0.040)	0.008 (0.043)	0.008 (0.043)
diff inflationrate	0.040 (0.040)	0.054 (0.050)	0.053 (0.050)
Trend	-0.006 (0.013)	-0.007 (0.014)	-0.007 (0.014)
Length EU	-0.033*** (0.004)	-0.033*** (0.004)	-0.033*** (0.004)
Rule of law	-1.184* (0.608)	-1.221** (0.595)	-1.209** (0.591)
Wave Index	0.691*** (0.114)	0.682*** (0.112)	0.727*** (0.099)
Scheme			0.036 (0.096)
IVxScheme			-0.064 (0.062)
Country FE	Yes	Yes	Yes
F-test of Excluded	36.6	36.9	NA
Partial R-squared	0.322	0.319	0.379
R-squared	0.675	0.677	0.678

Standard errors clustered in countries in parentheses

* $p < .1$, ** $p < .05$, *** $p < .01$

5.3 Empirical Result from the Second Stage: The Court of Justice of the European Union

The previous section has shown that the Commission seems to make decisions according to transposition deficit, or more plausibly what it proxies: how resistant to European integration the member state is. However, it does not establish that the correlation is actually a bias. If the Court is to correct any bias, an opposite sign of transposition deficit would help establish the claim. We again employ a Probit model but this time to estimate the correlation between favorable judgments about the state aid programs after the Court review, and country-specific variables. The sample size shrinks to 238 of which 62 cases were initiated by either national or local governments. The other appeals are initiated by the private sector. In this later case, there are two types of appeal: the first type — labeled as "beneficiary" in our data — means that the state aid program was denied and the potential beneficiary filed the lawsuit; the second type — qualified as "competitor" — refers to cases where a competitor of the beneficiary of an approved state aid filed a lawsuit. All cases presented by governments are "beneficiary" cases, while 53 of cases filed by the private sector are "competitor" cases. Note that we exclude a small amount of cases initiated by individuals and nonprofit associations as their successful rate (all of them were potential beneficiary) is comparatively low.

Table 15 reports the results. Column 1 shows the probit regression result with explanatory variables including economic indicators, a linear time trend, the length of time being in the EU (all measured in the ending year of the case), a binary variable indicating competitor case and country fixed effects. The length being in the EU is positive and significant, suggesting an exposure effect. More experienced countries tend to receive favorable decisions. This correlation maintains even if we limit the sample to only companies, as shown in Column 5.

As the Commission is supposed to have investigated into the "quality" of the state aid program and accepts or rejects them accordingly, the state aid programs of the competitor cases, in general, are of higher quality and hence, the programs are expected to maintain a higher

probability of favorable judgment after the judicial review⁷⁴. The positive and significant correlation is thus well expected.

Table 15 - Probit Regression: CJEU Stage

	Dep. Variable: State-aids favorable				
	(1)	(2)	(3)	(4)	(5)
log diff GDP pc	13.026* (7.571)	13.301* (7.711)	10.420 (7.949)	10.894 (7.993)	14.530 (11.124)
diff unemployment	0.116* (0.063)	0.117* (0.064)	0.079 (0.072)	0.086 (0.065)	0.090 (0.083)
diff inflation	0.185 (0.158)	0.209 (0.153)	0.115 (0.159)	0.132 (0.146)	-0.051 (0.182)
Trend	-0.061** (0.030)	-0.077*** (0.030)	-0.025 (0.032)	-0.050* (0.029)	-0.049 (0.035)
Length EU	0.063*** (0.022)	0.067*** (0.023)	0.072*** (0.021)	0.094*** (0.025)	0.086*** (0.020)
Competitor	1.817*** (0.286)	1.820*** (0.297)	1.835*** (0.273)	2.841*** (0.568)	3.121*** (0.657)
TD (ending)		-0.171 (0.162)			
TD (starting)			0.251** (0.122)	0.339** (0.158)	0.459** (0.222)
CompXTD				-0.566* (0.291)	-0.692** (0.322)
Country FE	YES	YES	YES	YES	YES
Sample	All	All	All	All	Companies
N	238	238	238	238	176
Pseudo R2	0.268	0.270	0.279	0.295	0.328
log likelihood	-117.983	-117.675	-116.328	-113.727	-81.738

Standard errors in parentheses

* $p < .1$, ** $p < .05$, *** $p < .01$

Next, we include transposition deficit of the ending year into the picture. We do not find a significant correlation, as shown in Column 2. However, we should not measure the deficit in the judgment year because what we want to check is whether the Court corrects the bias made by the Commission at the time the Commission made the decision. Thus, we include instead in the regression, as done in Column 3, the transposition deficit measured in the starting year of the

⁷⁴ By "quality" we refer to how much the application fits into the exemptions listed in the legislation.

lawsuit, which is exactly the year when the Commission decided with a few exceptions since undertakings have only three months to appeal to the Court concerning the Commission’s decision. Transposition deficit is positive and significant. This result is, however, not sufficient for us to conclude that the Court corrected the bias induced by the Commission because of the different nature of the two types of cases. If the Commission is actually biased against countries of high transposition deficit, some of the beneficiary cases coming from those countries might have been approved given no bias. If the court would correct the bias, the correlation of transposition deficit for beneficiary cases should be positive. However, the same logic does not apply to competitor cases. Those cases were approved by the Commission, despite of the existence of the bias, and a favorable judgment by the Court is equivalent to maintaining the decision by the Commission. We delay the discussion on competitor cases for the moment.

The interaction between transposition deficit and competitor binary variable is included in the specification of Column 4-5. To be precise, we consider the following model:

$$\pi_i = \Phi(\alpha + \beta X_{tc} + TD_{tc} + Comp_i + TD_{tc}Comp_i + \tau t + \gamma_c) \quad (4)$$

where TD_{tc} is the transposition deficit for year t for country c , $Comp_i$ is the binary indicator for Competitor case.

As shown in Column 4, the interaction term is negative and significant while transposition deficit and length of time remain significant. Column 5 includes only companies and we find similar results. For easier understanding, we plot the predictive margins of the two types of cases against transposition deficit in Figure 30. The point estimate is the predicted probability of a favorable answer to a state aid program given the type of the case at a certain level of transposition deficit. When transposition deficit is low, beneficiary cases are associated with lower predicted probability because they were very likely poor-quality applications and thus rejected by the Commission. When the transposition deficit increases, aid programs of those beneficiary cases get more chances to be given a favorable answer by the Court. Comparing with the result of Table 12, we find that the coefficient of transposition deficit is reversed. The explanation we put forward is that the Court actually “corrects” the bias induced by the Commission. The Court judges the substance of the case; hence the subsequent correction. The reversal of the sign may be simply because the applicants are more able to present reasons and evidences in an open and fair lawsuit in the Court.

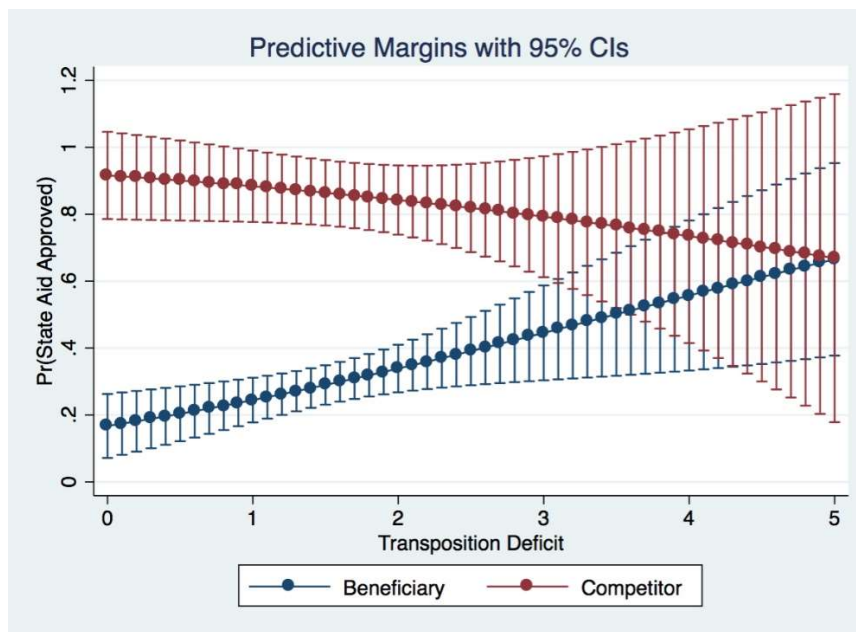


Figure 30 – Predicted Probability Beneficiary vs. Competitor

It shows the predicted probability of being a Beneficiary or a Competitor Case at differential levels of Transposition Deficit, using the estimates of Column 4 of Table 15. When transposition deficit is low, competitor cases are associated with higher probability of approval because they were initially accepted by the Commission, implying that the cases are of higher quality. On the other hand, beneficiary cases are of lower quality because they were initially rejected by the Commission. The decision of the court is consistent with what we expect from a fair screening mechanism by the Commission. When the transposition deficit gets higher, the aids of those beneficiary cases get more chances to be approved. It suggests that the court is correcting the decision by the Commission.

What remains to be explained is the falling predicted probability (with the transposition deficit) of a favorable decision for cases initiated by competitors. Note the the fall (the slope) is not always significantly different from zero, and the confidence intervals at the high values of transposition deficit is large. Following the same logic of over-rejection, one may expect over-acceptance of applications when transposition deficit is low. But if that is true, we should see an upward sloping curve because the Court should repeal some unfairly approved cases when the deficit is low. One explanation for the pattern is that the original decisions were not made on the basis of a detailed and neutral analysis of the specificities of the case (but rather on the basis of its "political context") when the cases were coming from high transposition deficit countries, and therefore the Court was more likely to reverse the decisions or ask for another review. This explanation also applies to beneficiary cases: rejected cases were studied with biases. To reconcile all the results, we propose the following: the Commission was biased when deciding on cases originating from high transposition deficit Member States and likely to limit the number of

approval cases, while do not do the reverse: approving non-eligible applications from low deficit countries.

Table 16 presents some robustness checks. First, we try OLS and logit regression in Column 2-3. Signs are correct, though transposition deficit is less significant. In Column 3, we bootstrap the standard errors (46 successes) and obtain similar results. Again, we check if the significant correlation is due to the omission of a measure of the governance of the Member States. We interact the Competitor binary variable with Voice and Accountability, Rule of Law, and Control of Corruption and include them one by one in the regressions, as shown in Column 4-6. The newly introduced interaction terms are significant, while the governance indicators alone are not. All three are negatively correlated with the expected favorable decision. In other words, for case initiated by competitors, the better the governance, the lower the expected probability of benefitting a favorable answer: approved cases originating from countries characterized by a better governance are more likely to be reversed. Since it is not our focus, we prefer not to infer too much. In any case, transposition deficit and its interaction term with competitor binary variable are significant for all three specifications. Finally, we divide cases into Scheme and Non-Scheme (Ad-hoc cases). Figure 31 shows the predictive margins of Scheme and Ad-hoc cases given that they are initiated by potential beneficiaries. We find that the slope of Ad-hoc cases is steeper, suggesting the correction is stronger, which is consistent with the finding that the bias is stronger towards Ad-hoc cases, given that the Court corrects the bias fairly towards two types of cases.

Table 16 - Robustness checks

	Dep. Variable: State-aids approved						
	(1)	(2)	(3)	(4)	(5)	(6)	(7)
diff ln GDP pc	2.889 (2.091)	17.107 (14.195)	10.894* (6.382)	10.259 (7.936)	9.391 (8.404)	9.613 (8.304)	15.480* (8.896)
diff unemployment	0.026 (0.019)	0.132 (0.113)	0.086 (0.064)	0.100 (0.066)	0.075 (0.070)	0.077 (0.066)	0.101 (0.067)
diff inflation	0.047 (0.044)	0.198 (0.248)	0.132 (0.203)	0.092 (0.122)	0.067 (0.130)	0.092 (0.142)	-0.003 (0.178)
Trend	-0.007 (0.008)	-0.089* (0.053)	-0.050 (0.063)	-0.050 (0.036)	-0.073* (0.038)	-0.063 (0.044)	-0.076* (0.040)
Length EU	0.020*** (0.002)	0.166*** (0.046)	0.094 (0.062)	0.104*** (0.030)	0.125*** (0.037)	0.118*** (0.034)	0.143*** (0.037)
Competitor	0.722*** (0.129)	4.801*** (0.970)	2.841*** (0.891)	6.806*** (2.082)	5.253*** (0.644)	4.490*** (0.672)	4.126*** (0.927)
TD	0.101* (0.050)	0.588** (0.275)	0.339** (0.169)	0.316* (0.178)	0.392** (0.162)	0.382** (0.165)	0.468*** (0.156)
CompxTD	-0.131 (0.082)	-0.967* (0.501)	-0.566 (0.361)	-0.546** (0.243)	-0.706*** (0.217)	-0.641*** (0.243)	-1.009*** (0.339)
VA				2.091 (1.615)			
CompxVA				-3.103* (1.677)			
Rule of law					0.709 (1.114)		
CompxRL					-1.509*** (0.351)		
Control of corruption						0.467 (0.891)	
CompxCC						-1.062*** (0.276)	
Scheme							-0.443 (0.565)
TDxScheme							-0.209 (0.190)
ComxScheme							-1.371 (1.120)
TDxComxScheme							0.561 (0.417)
N	255	238	238	238	238	238	238
R2/Pseudo R2	0.366	0.293	0.295	0.310	0.310	0.309	0.341
log likelihood	-120.971	-114.022	-113.727	-111.325	-111.197	-111.492	-106.284
Bootstraps			46				

Standard errors in parentheses

* $p < .1$, ** $p < .05$, *** $p < .01$

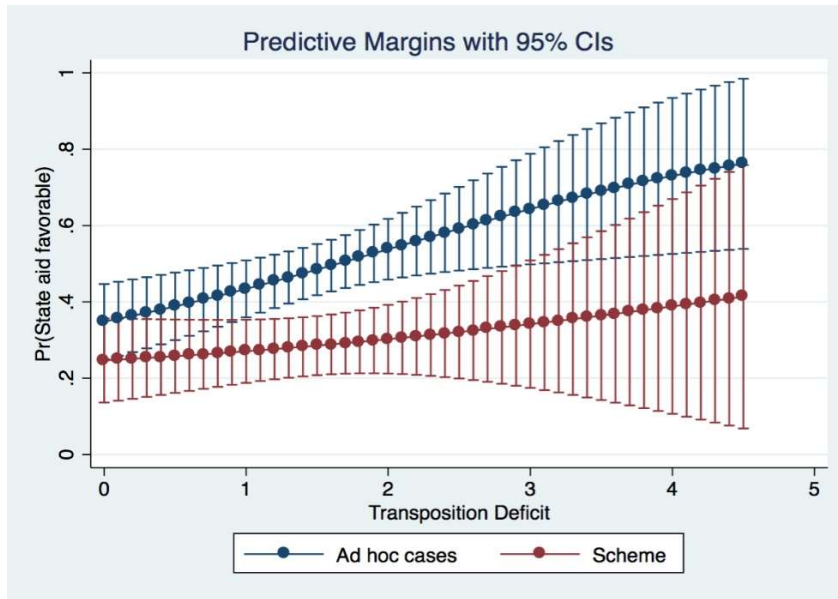


Figure 31 – Predicted Probability Scheme vs. Ad-hoc cases

It shows the predicted probability of Scheme and Non-Scheme (Ad-hoc cases) beneficiary cases. We find that, though the difference is not statistically significant, the expected favorable rate of Ad-hoc cases lies above that of Scheme cases. The correction of the bias is stronger in Ad-hoc cases.

6 Discussion

6.1 Is the Court influenced by the Private Sector?

The previous section investigates whether the Court corrects any bias induced by the preference of the Commission but does not lead us to the conclusion that the Court is, in fact, independent and solid. It may bow to the financial influence of the applicants. In this section, we modify our regression. First, the dependent variable is now a binary variable equal to one if the applicants obtain a favorable decision by the Court, and equal to zero otherwise. For instance, a favorable decision by the Court refers to a rejection or partial rejection of the state aid program. We consider only the final decision by the Court as some cases are appealed to the second instance. Second, we change the observation's country from where the state aid would have been implemented to where the applicants belong. It is not uncommon that competitors from one

country are complaining about a state aid program in another country. Therefore, all country-year specific variables refer to the parameters of the applicants' countries. Third, we expand the dataset to case-applicant level but due to the lack of some applicant-specific information the sample shrinks to at most 192 observations.

Table 17 - Is CJEU sufficiently independent?

	Dep. Var.: The Applicant obtains favorable decision				
	(1)	(2)	(3)	(4)	(5)
ln Asset	0.024 (0.059)	0.036 (0.060)	0.031 (0.060)	0.025 (0.063)	0.057 (0.083)
ln Employee	0.009 (0.063)	0.018 (0.063)	0.023 (0.064)	0.022 (0.064)	-0.023 (0.080)
Competitor	-0.647** (0.262)	-0.716** (0.278)	-0.606* (0.348)	-0.511 (0.352)	-0.388 (0.385)
Trend	-0.092*** (0.032)	-0.095*** (0.034)	-0.089*** (0.034)	-0.094*** (0.034)	-0.119*** (0.041)
Total Applicants		0.118 (0.105)	0.118 (0.265)	0.127 (0.105)	0.336** (0.136)
Cases before		-0.057 (0.053)	-0.057 (0.287)	-0.060 (0.054)	-0.075 (0.065)
Support.neutral			0.333 (0.365)	0.333 (0.368)	0.385 (0.425)
Support.positive			0.158 (0.420)	0.400 (0.417)	0.676 (0.487)
Lobbying				0.119 (0.320)	0.330 (0.374)
Country FE	YES	YES	YES	YES	YES
Industry FE	NO	NO	NO	NO	YES
<i>N</i>	192	192	192	192	173
Pseudo R2	0.132	0.143	0.143	0.148	0.246
log likelihood	-103.546	-102.174	-101.623	-101.653	-83.708

Standard errors in parentheses
* $p < .1$, ** $p < .05$, *** $p < .01$

Table 17 reports the regression results. All regressions reported include a binary variable that discerns competitor cases, a linear time trend and country fixed effects. In Column 1, we test if financially more powerful applicants are likely to win the lawsuits. But the log of total assets and the log of the number of employees do not explain the success rate. In Column 2, we also

include the number of total applicants of the case and how many CJEU cases the applicants have experienced by the time of the observation into the regression to capture any size and experience effects. Again, we do not find a significant correlation. In Column 3, we further include a categorical variable that indicates either negative, neutral or positive support from a member state. No significant result is found. In Column 4, a binary variable that indicates if the applicant is registered in the Transparency Register of the EU is included in the regression, which is also insignificant. In Column 5, we include nine sectoral fixed effects, and now we find that the number of total applicants is positively and significantly correlated with the success rate⁷⁵. In short, we find evidence showing that cases with more applicants are more likely to win, but the inclusion of many fixed effects casts doubt on the robustness of the correlation.

6.2 Selection Bias

A frequent, and very reasonable, challenge to the empirical finding is selection bias. After the Commission has made its decision, the stakeholders may or may not appeal the decision in the CJEU. Who are they? We test the equalities of variables of the two samples, as shown in Table 1. Although many variables show significant differences between two samples, some of them are well expected. The increases in decision year and in length within EU are logical because cases must first be presented to the Commission. Besides, the slight increase in transposition deficit (only significant at $\alpha = 0.1$) is consistent with the finding that cases originating from high transposition deficit countries are more likely to be denied by the Commission. It is intuitive to assume that those who believe they tend to win the lawsuits would be more eager to move on to the second stage, but the incentive to sue and transposition deficit are hardly related. The only thinkable reason is our finding: they feel unfairly treated by the Commission and thus hold the belief that they are more likely to win, which is correlated with the hidden bias against more resistant countries.

⁷⁵ We follow the NACE definitions of sectors.

6.3 Does information availability matter?

Another criticism is that, the Commission may not have sufficient information to judge and thus rejects a state aid program but, when information is unfolded over time, the Court is able to make a better and fairer decision. If transposition deficit is positively correlated with the incentive or ability to provide accurate and sufficient information in the beginning of the process, we will find a negative correlation between approval rate and transposition deficit. The positive correlation found in the CJEU stage is thus not a correction of the bias, but simply implies better decisions with more information.

This criticism is however not valid. First, national governments are well-motivated to provide all the "favorable" information before the Commission makes any decisions. The nature of the information unfolded over time should be in general "less favorable" or "unfavorable" to the state aid application. Furthermore, the Commission often asks for further information and communicates with the national governments before they make any decisions. Lack of relevant information seems not a plausible explanation.

Some may argue that the national governments or stakeholders may not know what information is favorable in the Commission stage, but somehow learn that along the process and successfully persuade the Court to revoke the decision. It may be true in a one-shot game but is very shaky in a repeated-game setting. To capture this possibility, we have included the length within EU as a control variable in the regression and found it positively correlated with favorable decision. The effect we find on transposition deficit, therefore, has been isolated from the experience effect.

6.4 Estimation of the Cost of the Bias

Although it is not the main focus of this work, we estimate by our model the economic cost of the bias induced by the Commission. Since we do not have the actual amounts of state aids of all cases presented to the Commission, we cannot pin down exactly the economic values of all rejected cases. Moreover, it is not possible to tell which cases are in fact rejected due to the bias. A simple way to estimate the cost is to input the country-specific characteristics of Member States

into the model to obtain a predicted probability of acceptance of those Member States in a year. The model we choose is the one of Column 7 of Table 12. Next, we assume that the transposition deficit dimension does not exist and recompute the predicted probability of acceptance using the same coefficients. The predicted values can be interpreted as the expected acceptance probability given no bias. The difference, together with the amounts of state aids (except aids to railways and agriculture) actually distributed by each member state each year, allows us to estimate the economic cost of bias by the following formula:

$$\text{Bias} = \text{Actual State Aids Distributed} - \frac{\text{Actual State Aids Distributed}}{1 - \text{Difference in Predicted Probability}} \quad (5)$$

The total state aids without railways and agriculture of 24 Member States from 2009 to 2015 and the estimations of the bias are shown in Table 18 and Table 19 respectively.⁷⁶

Table 18 - Total State aids in a year without railways and agriculture (in million of euro)

	2009	2010	2011	2012	2013	2014	2015	Average
Belgium	2399.60	2368.03	1768.72	1589.86	1596.52	1760.14	1961.02	1920.55
Bulgaria	29.09	18.89	22.92	31.17	46.48	158.97	240.42	78.28
Cyprus	69.72	94.94	140.93	107.10	130.05	119.23	125.26	112.46
Czech Republic	844.55	1000.71	1259.92	1431.42	1606.36	1598.66	1938.89	1382.93
Denmark	2159.36	2089.34	2260.24	2542.62	2545.65	2498.77	3311.69	2486.81
Estonia	11.49	14.79	19	31.41	84.77	155.31	193.86	72.95
Finland	988.92	946.84	1743.67	1269.12	1469.9	1625.36	1543.04	1369.55
France	13489.12	13930.70	12567.25	14015.27	12417.05	14421.58	13381.17	13460.31
Germany	17722.90	15402.50	12642.01	12480.41	12814.50	36980.84	36520.65	20651.97
Greece	2173.12	1739.38	2230.27	1707.67	2675.59	1677.58	2205.22	2058.41
Hungary	1291.30	2019.19	959.14	925.23	1219.27	1495.44	1335.33	1320.70
Ireland	785.90	953.38	674.94	554.04	905.00	691.64	444.90	715.69
Italy	4895.90	3250.02	2924.60	3560.90	2782.91	3194.93	3981.40	3512.95
Luxembourg	95.90	77.24	84.29	73.90	129.71	134.16	147.32	106.08
Malta	101.3	78.51	97.78	126.83	187.13	96.62	131.61	117.11
Netherlands	1984.14	2221.46	2331.55	2107.32	1998.79	2074.48	1998.89	2102.37
Poland	2574.80	2894.30	2211.22	2347.13	2218.84	4874.00	3192.86	2901.88
Portugal	1631.66	1528.05	1539.60	876.32	461.37	737.90	773.05	1078.28
Romania	195.74	199.06	387.65	619.13	886.43	1046.52	1224.21	651.25
Slovakia	271.67	253.86	160.85	136.83	181.54	298.8	403.11	243.81
Slovenia	306.46	301.47	430.83	392.30	419.51	411.92	422.57	383.58
Spain	5076.77	4494.39	3924.43	3308.99	2694.48	2903.39	2052.16	3493.51
Sweden	2712.03	3054.93	3211.34	3387.65	3507.05	3415.09	3320.17	3229.75
UK	4177.75	4923.55	4536.55	5636.87	6039.16	8154.43	8731.18	6028.50

⁷⁶ Although we can retrieve all applications of state aids over the years, we do not know the value of the state aid of each application. Some of them were tax rebates or allowance, making it impossible to estimate the amount. What we have is the actual state aids of a year. But we only know roughly the components of the total amounts and do not have the information of the approval year of each aid. Some approved programs may last for years. The estimation is thus based on a strong assumption that the total approved amount of state aid applications of a Member State in a year is equal to the total amount of state aids distributed.

Table 19 - Estimation of economic cost of the bias (in million of euro)

Country	2009	2010	2011	2012	2013	2014	2015	Average
Belgium	39.10	38.18	87.46	73.13	45.00	20.89	47.42	50.17
Bulgaria	0.15	0.15	0.51	0.36	0.59	2.31	2.57	0.95
Cyprus	0.05	0.18	0.62	0.43	1.39	0.57	0.38	0.52
Czech Republic	1.65	1.67	2.79	0.22	0.31	0.31	1.41	1.20
Denmark	2.91	3.59	5.12	5.56	2.41	0.83	2.05	3.21
Estonia	0.10	0.29	0.22	0.04	0.41	0.28	1.42	0.39
Finland	2.52	3.11	11.91	5.02	4.79	1.01	3.83	4.60
France	149.76	88.86	155.00	45.11	70.28	76.09	150.18	105.04
Germany	108.08	161.81	146.83	77.57	81.70	155.69	288.25	140.70
Greece	27.66	14.72	28.23	11.86	13.79	6.12	39.71	20.30
Hungary	8.48	47.50	22.32	9.10	174.87	11.38	8.51	17.45
Ireland	7.61	5.17	1.39	0	4.33	1.81	0.87	3.03
Italy	141.64	120.67	108.62	47.84	77.57	27.59	79.24	86.17
Luxembourg	3.81	2.25	4.43	1.59	3.22	3.05	7.74	3.73
Malta	0.29	0.12	0.19	0.29	0.89	0.26	0.91	0.42
Netherlands	9.80	14.69	32.95	8.42	12.34	5.06	7.23	12.93
Poland	20.56	25.85	23.60	25.92	8.11	13.58	21.41	19.86
Portugal	25.35	20.32	52.16	13.64	3.05	4.80	2.58	17.42
Romania	0.76	1.30	6.15	2.42	9.93	12.00	19.67	7.46
Slovakia	0.55	0.67	0.52	0.21	0.35	0.31	0.84	0.49
Slovenia	0.53	0.94	2.17	0.95	1.85	1.59	1.70	1.39
Spain	36.44	62.85	66.42	49.46	37.63	29.23	11.76	41.97
Sweden	9.56	25.19	14.87	3.17	9.06	4.44	9.69	10.85
UK	6.11	7.64	15.86	13.90	10.91	6.64	10.56	10.23

Take France as an example. The average bias is €105 million per year and is roughly 0.78 percent of the total state aids distributed. However, we cannot tell if it is inefficient because state aid programs could be inefficient and also non-distortionary. Over-rejection may or may not be suboptimal from social welfare point of view.

6.5 Policy Implications

During the whole research process, we reckon a lack of transparency in the Commissions' decision-making. The private sector is very often put aside in the process of the decision. However, companies are responsible for initiating the majority of legal proceedings against the Commission, implying that the private sector plays an essential role in the oversight of state aids distribution. The discussion between the EC and the Member States concerning state aids is mostly behind closed doors. The private sector is not officially involved during the process, unless the

Commission calls for a formal investigation. Would it be a more accountable system if the private sector would be invited to discuss at the first stage? For those 11 percent of cases that were open to formal investigation, and hence involved the private sector, a quarter of them were subject to judicial review. It clearly shows the power of information. During a formal investigation, individuals and firms are more informed of the details of the scheme, of the logic behind the decision, and of their rights. A more transparent environment would allow the Commission to build more informed decision, and all stakeholders to anticipate potential decision by the the Court in case of appeal, resulting in a lower degree of uncertainty for all. Public scrutiny would on the one hand weaken the Commission ability to "punish" high transposition deficit countries but would on the other hand decrease the likelihood of decision made by the Commission reversed by the Court. This later effect should improve the credibility of the Commission.

To improve the state aids control, we propose to involve the private sector right from the beginning so that beneficiaries and competitors will access enough information to act as an observer and thus improve the internal control of the state aids before appealing to a judicial review. This measure will undoubtedly upgrade the credibility of the Commission. The only obstacle is that the Commission may not be willing to lose the benefit of its discretion in the political allocation of state aids.

7 Conclusion

Conflicts of objectives between the European Commission and the Member States are frequent but state aid control has long been neglected, which actually occupies the core position of the interactions among the Commission, the Court of Justice and the Member States. This work takes the view that the European institutions are continuously evolving and striving for both power and legitimacy. The Commission pursues its own political aims through competition policy and state aids control. Meanwhile, the Court check the Commissions decisions and balance its power to establish its credibility by guaranteeing the rule of law applies. We thus argue that the Commission may bias its decision over state aid programs to achieve its goals, leading the Commission and the Court to go against each other over some cases. In particular, we hypothesize that the Commission tends to reject programs originating from countries who are resistant to the integration of internal market, which is proxied by the transposition deficit. We find that the higher

the transposition deficit, the lower the expected approval rate of the state aid program by the Commission, suggesting that the Commission is biased. On the other hand, we find that the expected approval rate is positively correlated with the transposition deficit for those cases presented to the Court. This is an evidence showing that the Commission is actually biased against countries with greater resistance to European integration while the Court is independent and corrects the bias induced by the Commission during the game of dynamic institutional building. The repeated play of this game demonstrates that EU institutions are self-reinforcing over the time, which is an important mechanism to ensure their strength and to increase their mutual legitimacy. This ongoing process contributes to achieve more economic integration on the basis of a process of establishing a level playing field throughout the European Union.

Conclusion

The main goal of this dissertation is to extend the knowledge about Corporate Political Activity (CPA) in the European Union through the exploration of new avenues in the development of empirical research. Therefore, the following research questions have been proposed: “*How do firms deploy their corporate political strategies in the EU? What are the factors that impact on the firms’ expected outcomes?*” To answer these questions, I have conducted three research projects, with each one corresponding to one chapter of this thesis. The chapters have individually analyzed both lobbying and litigation strategies in European institutions.

Chapter 2 investigates the determinants of access to the European Commission. Through the analysis of the institutional characteristics of the Commission, as well as currently available research on lobbying in the EU, I hypothesize that companies that accumulate political knowledge in its two dimensions—firm-specific and institution-specific knowledge—have better access to the representatives of the Commission. The quantitative analysis supports this hypothesis, confirming that firms operating in a priority sector for the EC’s political agenda as well as their lobbying experience within the EU institutions have a significant impact on their degree of access. Moreover, the analysis also corroborates the importance of additional factors that have already been extensively discussed in the literature, such firms’ size, holding a representative office in Brussels and the use of outsourced lobbyists to complement their direct lobbying strategy.

In Chapter 3, I analyze the policymaking process of wholesale roaming regulation in the EU. The purpose is to understand the organization of lobbying in a political market characterized by profound divergence and competition among the business sector’s stakeholders. The investigation has relied on an in-depth analysis of their replies to public consultation, and is complemented by additional information on lobbying efforts, sectoral characteristics and market positioning. The results suggest that in a scenario of intense competition and facing a resolute policymaker, firms tend to lobby individually and choose their policy preferences according to their market characteristics and ambitions. This leads to a fragmentation in the demand side of the political market where individual lobbying efforts vanishes. In this situation, the policymaker finds fewer barriers to advance its agenda.

Chapter 4 focuses on litigation in the EU arena through the study of state aid cases, where firms have appealed to the European Court of Justice to overturn a decision from the European Commission. Contrary to initial expectations, I did not find indications that certain tactics would lead to positive outcomes in the Court. In reality, the findings suggest that state aid cases are relevant to European integration matters, and the dynamics within the European institutions would impact the decision-making. This means that while the European Commission tends to deny state aid grants for countries that are more resistant to the integration of EU policies, the European Court of Justice clears any bias introduced by the European Commission decision-making process. Such interaction creates a positive effect in the EU institutional environment and strengthens the legitimacy of the Commission and the Court.

In the following sections, I examine the main contributions of this dissertation and, more specifically, how these findings contribute to the research on strategic management and new institutional theory. Then, I present some limitations of this research and a possible future research agenda. Finally, I discuss some practical implications of this research.

1 Contributions to the research on strategic management

From a strategic management perspective, the research on corporate political activities aims to clarify under which circumstances firms may obtain positive regulatory outcomes. In this context, they should be aware of the most effective tactics to employ, which resources they should invest in and which capabilities they need to develop in order to deploy successful strategies in the political arena.

In this manner, Hillman & Hitt (1999) affirmed that the choices of firms' strategies should depend on their resources and characteristics of the institutional environment. Additionally, Bonardi, Hillman and Keim (2005) claimed that the characteristics of the political markets would impact results in the political arena and, according to the profile of both the supply and the demand side, it would be more or less attractive for firms to participate actively in the policymaking process.

This research has empirically demonstrated that, through the analysis of lobbying in the European Commission, the characteristics of the institutional environment affect the deployment

of CPA, and that its results also depend on the structure of the political market. There are many ways in which the Commission differs from other traditional political actors. It is a supranational institution whereby members are appointed by the member states. Therefore, it is not directly accountable to EU citizens, and there is no financial campaign contribution at stake. This different institutional framework obliges active stakeholders in the political arena to invest in adapted political resources and capabilities so as to obtain favorable outcomes.

In this regard, this research has contributed by demonstrating that an essential resource in the EU political arena is the political knowledge that has the potential to increase access to target political representatives and propitiate the development of the competitive advantages in the political arena. Firms that accumulate political knowledge can respond to the European Commission's demand for external expertise. Currently, the internal staff of the Commission is not sufficient to generate all of the required information to conduct policymaking in a complex environment of 28 countries. Therefore, they rely on the inputs of firms able to contribute to the policymaking process. In this context, institution-specific knowledge is crucial so as to be able to approach representatives, whereas firm-specific knowledge is a key resource in enhancing the policymaking process. Indeed, it is the external expertise requested by the Commission.

The political knowledge framework was proposed by Bonardi and Vanden Bergh (2015) based on previous research that emphasized the importance of knowledge on the development of political strategies. However, no empirical research has tested its relevance to the deployment of CPA to the extent of my knowledge. Thus, this research has filled an empirical gap by providing evidence on the value of political knowledge in accessing policymakers.

This framework is sufficient to understand the interaction between firms and political representatives in institutions such as the Commission where lobbying is mainly expertise-driven. Therefore, it is plausible that political knowledge is equally relevant to be able to study other political environments, such as those involving regulatory agencies in the US. Similar to the Commission, they have a high demand for external expertise and are detached from major partisan influences.

Another contribution of this research is the further exploration of competition in political markets. Previous research has already discussed competition in the political arena decreasing the chance of successful political strategies, and has also demonstrated that in a scenario of

competition, larger firms would be in advantageous position because they have more resources and can better structure their strategies. Nevertheless, the development of lobbying strategies and their outcomes when the firms are competing between themselves remains to be explored, and was the primary goal of the research on the case of the EU wholesale roaming regulation.

This research could deepen the analysis of the rivalry between stakeholders of the same nature—in this case, business actors in the telecommunications sector—because the wholesale roaming regulation mainly concerns businesses. The impact on consumers was previously defined in the regulation of the retail market. In this scenario, individual lobbying strategies are weakened, and the chances of obtaining the desired policy outcome decreases.

An additional contribution from this research is derived from the analysis of state aid processes in the European Union. Many firms engage in political activities at the national level in order to obtain subsidies from the government. For the most part, countries have the autonomy to concede these benefits, which are linked to their industrial policies. Nevertheless, in the EU, they depend on the approval of the Commission so as to avoid any damage to competition in the internal market. The analysis of the decision-making process has indicated a bias of the Commission in granting state aid related to the member state's level of European integration. Therefore, a consequence for firms is that the effectiveness of their political strategies in a complex environment with multiple institutions depends on the relationship between these institutions.

Moreover, the research into state aid cases has also enabled further investigation of political strategies in courts. Compared to the research on lobbying strategies, the research on the use of litigation in political arenas is minimal. Despite being a costly and time-consuming strategy, it can result in favorable outcomes that shape the regulatory environment. Within the observations, it was possible to identify some tactics employed by firms, such as coordinating with competitors to initiate a case and requesting the support of a member state to testify in their defense. However, none of the tactics identified were a determinant factor for the result of the judgment of the process.

2 Contributions to the research on institutions

Considering that the deployment and effectiveness of corporate political activities are firmly connected to the characteristics of the institutional environment, it is a challenge to

disentangle the contributions of this thesis to the strategic management literature from that of institutional theory. Each research project has evidenced the weight of the institutional environment on firms' nonmarket performance. Indeed, this finding does not represent a novelty. Instead, a more interesting contribution is the characterization of the European Commission's behavior, which is one of the main institutions in the European Union and the central target for corporate political activities.

The *raison d'être* of the European Commission is to promote further EU integration and construction of the EU single market. Through its regulatory and policymaking powers, it has the main tools to accomplish its mandate. In this research, it is noted that within different settings, the Commission's mandate has influenced its interaction with other stakeholders in the EU environment.

For instance, from the study of firms' access to lobby the Commission (see Chapter 2), we show that the Commission is seeking external expertise to give legitimacy to their policymaking. Therefore, it will grant access to stakeholders that can better supply it. In Chapter 3, the analysis of the policymaking of the wholesale roaming regulation also converges with the view that the Commission is undertaking considerable efforts to build the single market. It has opted for a regulation that favors both further integration in the regulatory environment and more competition in the market by enhancing the potential of new entrants and small operators to survive in the market. In this context, the public consultation process was an important tool used to disclose stakeholders' views and to acknowledge the situation in order to give legitimacy to its decision. In this specific scenario, the fragmentation of stakeholders' opinions decreased the resistance of opposing stakeholders and facilitated the design of a policy in accordance with its integration ambitions.

Finally, Chapter 4 provides a relevant contribution to understanding the dynamics of the EU institutions through the analysis of the granting of state aid and the resulting interactions among the institutions involved in the process. It is demonstrated that while the European Commission is following its mandate of seeking further EU integration, the European Court of Justice is following its mandate, which is the rule of law. To achieve its goal, the Commission will use state aid to "punish" countries less prone to EU integration, but the European Court of Justice will correct any bias introduced by the Commission's decision-making. Thus, each institution is following its

mandate and the interactions between them are evidence of this. Because of this interplay, they reinforce their institutional roles and enhance their legitimacy, which is fundamental to the expansion of power and ensures their survival.

3 Limitations

Despite the indisputable contributions of this research to the improvement of empirical research in CPA at the EU level, this dissertation presents some limitations that are worthy of discussion. First, it is important to highlight that, similar to most of the research dedicated to the relationship between firms and the political actors, it lacks information on what happens behind the scenes. There is a relevant proportion of lobbying activities that are not officially recorded; the effects of which are, thus, not measurable.

Within the portion of lobbying that is visible, there are also many limitations. First, transparency initiatives are quite recent in the European Union. Consequently, the time length of data available for performing the empirical analysis is considerably short. Also, the Transparency Register is not mature enough, thus leading to data quality problems that can lead to some minor impacts in the analysis. Some examples are the incorrect categorization of some interest groups and inconsistent data inputs in fields, such as the number of employees or lobbying expenditure. These minor issues have been managed with a strict pre-processing of data to eliminate possible errors. While the Transparency Register already represents much progress that has enabled research in this area, it is still very limited in the type of information available.

Furthermore, it is challenging to locate additional databases to complement the information provided in the TR due to the substantial number of companies registered and their heterogeneity. Thus, none of our analysis has included detailed variables related to financial performance, internal characteristics or the organizational structure of firms. It is an important constraint that prevents more sophisticated analysis, and imposes some limitations, for example, on the choice of variables used to measure political knowledge.

The data availability limitation also concerns the information available on lobbying meetings. Only a few details are disclosed, which is not enough to identify for which policy an

interest group is lobbying. As a result, it is not possible to establish a connection between lobbying access and lobbying outcomes.

In this research, the focus is on lobbying within the European Commission. Even if the Commission is the primary target for corporate lobbying, we cannot ignore lobbying in the other institutions participating in the policymaking process. EU lobbying occurs across multiple institutions. Interest groups also target the European Parliament and the Council. An analysis of corporate lobbying in other institutions would contribute to a broader picture of the deployment of CPA at the EU level. It is worth mentioning that, even within the Commission, only the lobbying occurring at the highest level of the hierarchy is disclosed. However, lobbying is also intense at the staff level, even if no data are available. This research has also dismissed the relationships and connections between the lobbying activities in the national and supranational level.

In what concerns the deployment of the political activities in the policymaking process, I acknowledge that studying only one regulatory case precludes the generalization of the findings. To achieve more generalizable conclusions, a broader scope of analysis—including numerous regulations—is necessary.

Finally, the research on the use of litigation to change the regulatory environment has suggested that there is no bias in the judgments from the European Court of Justice. However, certain relevant information was not available at the time of structuring the dataset, such as who the judges were in charge of the cases, and the costs involved in the process. Additionally, an extensive analysis of litigation in the EU should encompass cases of other nature rather than state aid cases only. A more comprehensive analysis could reveal some patterns that have not been identified in the current sample.

4 Avenues for Future Research

As the European Union presents an attractive political environment for the study of CPA, and, to date, has barely been explored, there are many research options available so as to continue this work. For instance, new possibilities to extend this research will emerge as the European institutions approve stricter rules on the transparency of interest groups' activities. In this context,

the approval of an inter-institutional transparency register—that also includes the Council—will allow a broadening of the research within multiple institutions at the EU level by comparing activities of interest groups in different institutions.

Moreover, recent regulation that will benefit the continuity of this research is the extension of the obligation to disclose information of lobbying meetings to some members of the European Parliament.⁷⁷ From the beginning of the next mandate of MEPs, the members of the Parliament that act as rapporteurs, shadow rapporteurs or committee chairs must publish the information of their meetings with interest groups. The regulation is not mandatory for other MEPs, but this new regulation attempts to incentivize a voluntary disclosure, and may help to explain how firms plan their strategies in the political arena. For example, we can observe if they target only the Parliament, only the Commission or both. In case they target both institutions, at which moment of the policymaking process will they approach each of them? This is a possible departure point for empirical research comprising both institutions.

New research perspectives will also emerge from a longer time period data availability of the presently accessible information used in this dissertation. Currently, the information on lobbying meetings includes only a short period that refers to the same College of Commissioners. A new mandate of the College of Commissioners will start in November 2019. Thence, we can further explore patterns of access in the Commission in the event of a new group of political actors. Are firms able to maintain their political capital after a change of the College of Commissioners? In this context, the implementation of Brexit will be another interesting phenomenon to observe. The UK is currently among the countries that have the most firms registered for interest representation in the EU. Indeed, how will Brexit impact the access of UK firms?

The currently available data can also be explored by means of other methodologies in order to provide further knowledge. For example, a project currently under development—which is an extension of this dissertation—is an EU lobbying network analysis, in which I use information about lobbying meetings to build a network in an attempt to understand its dynamics. An advantage of network analysis is the possibility of understanding the match of the two sides by analyzing characteristics of both firms and Commission officeholders. Among the interesting possibilities of

⁷⁷ Announcement of new transparency regulation in the EP: <http://www.europarl.europa.eu/news/en/headlines/eu-affairs/20190124STO24226/transparency-key-meps-to-declare-meetings-with-lobbyists> accessed in May, 2019.

using networks, it may shed light on how lobbying networks evolve. I provide further information about this project in the Appendix.

Concerning the effects of political activities in the policymaking process, further research is required in order to understand in what circumstances firms will be successful (or not) in influencing policymaking processes. There is much speculation on how corporate interests drive the European Commission, but more comprehensive research that provides more robust methodologies is necessary to draw useful conclusions. Conceivably, the improvement in transparency and the standardization of public consultation will enable more sophisticated research designs in this field.

Finally, research in litigation strategies can be more comprehensively explored, such as by studying cases of differing natures. Another type of case representing a significant sample to study is that of competition cases related to illegal practices in the single market. Many firms appeal to the Court to annul or, at least, lessen the punishments established by the Commission. In contrast to the state aid cases, these competition cases are not related to European integration and may be more suitable for studying strategies in the Court.

5 Practical Implications

5.1 Managerial implications

The EU is a political arena characterized by a strong demand for expertise. Therefore, firms that accumulate more political knowledge are in a better position to deploy their political strategies. Some possibilities towards investing in political knowledge accumulation in the EU political arena include the following: the establishment of a representative office in Brussels to be closer to the EU institutions; the use of an outsourced lobbyist to help firms integrate into the EU political environment and provide valuable information to propitiate the development of firms' own knowledge; and last, the possibility of participating in expert groups in order to be more active in the political environment and develop more institution-specific knowledge.

In the policymaking process, the rivalry amongst interest groups can increase competition in political markets. In this situation, firms should be aware that intense competition can annul individual lobbying efforts. They have more chances to reach the expected outcomes if most of the interest groups also have the same policy preference.

Finally, we should highlight that within the EU political environment, the interplay between the EU institutions is critical and can result in consequences for firms' strategies, as in the case of granting state aid whereby the dynamic of institutions prevails over the tactics employed by firms to obtain a favorable decision.

5.2 Policy implications

A key policy implication of this dissertation is that transparency enhances the quality of decision-making, and is a first step to equilibrate participation of the diverse categories of interest groups seeking representation in Brussels.

Lobbying is a necessary practice that can improve the policymaking process. However, when only one stakeholders' category can lobby, it creates a disequilibrium that can harm the policy outcomes. In Chapter 3, it is demonstrated that the rivalry amongst interest groups has been beneficial in order to give more freedom for the European Commission to rule. In this context, the initiatives used to increase more interest group participation in public consultations have been positive for the EU policymaking process. In addition, the disclosure of information on meetings between the leadership of the European Commission and interest groups is a useful governance tool that will allow interest groups to ask for greater attention (where they currently have less attention) from the Commission leadership.

Finally, in Chapter 4, I have discussed that more transparency in the state aid process would allow less discretion in the decision-making of the European Commission and, thus, contribute to eliminating biased decisions that can be harmful to some firms or sectors.

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Appendix

A. Topic modeling

A.1 Pre-processing of Data

Processing large collections of documents is a complex and challenging task for text mining algorithms. The first step of all is text preprocessing where essentially the text is turned into data for further analysis. The output from this stage has big impact on the analysis stage as shown by the authors in (Uysal and Gunal, 2014) for the specific field of text classification. Natural language processing, statistical and analytical techniques are the main actors for this step. The tasks of preprocessing are mainly tokenization, filtering, stemming and lemmatization, which prepare the input to generate a vector space representation.

Cleaning, Filtering and Tokenization Cleaning consists of removing all special characters from the original text, such as delimiters from html or urls, etc. Blank spaces and line breaks are also removed. In order to avoid any problems related to the encoding of characters, we decoded the text to 'utf8' as the most standard text encoding format and fixed unicode problems. For filtering, we used a pre-compiled stop-words list for English. We also defined a new list of domain-specific terms that could be removed (e.g. answer, question, response, explain). This is a good practice to avoid those frequent terms but not very important for defining the semantics of a given domain. The stream of text is then broken into pieces to generate a list of tokens. We generated bi-grams (sequences of two words that appear more than a fixed threshold) to better capture the semantics of text classes.

Stemming Stemming aims at reducing inflectional forms of a word to a common base form (Manning et al., 2008). It is used to reduce words to their root by deleting prefixes and suffixes. In this study, we used the Porter's stemming algorithm (Porter, 1980). For example, two stakeholders A and B who wrote "regulation" and "regulatory" respectively. Stemming prepares the input texts by grouping the two words together, and therefore "regul" as an output appears two times. When talking about regulation in general, stemming values well the concept for later analysis (clustering stakeholders or predicting position).

Word counts and tf-idf After pre-processing, the text is turned into data by computing the tf-idf (term frequency - inverse document frequency) weight for each term. Tf-idf is a statistical measure that evaluates how a term is important to a document in a collection, computed as : $tf-idf_{t,d} = tf_{t,d} \times idf_t$ where $idf_t = \log(n_{documents}/df_t)$ and $df_t =$ number of documents containing t.

A.2 Topic modeling

Having a large volume of unstructured textual data collected from the answers of stakeholders, our objective in a first stage is to discover hidden topics that occur in this collection. Topic modeling, an unsupervised statistical machine learning technique, provides us with appropriate methods to achieve this goal. It allows to have insight of what a corpus is talking about by transforming the word space of documents into "topic" space, much more smaller and easily interpretable by humans. We focus here on Latent Dirichlet Allocation (LDA) proposed by ? as it is the most popular model used in social sciences (Sukhija et al., 2016).

Process First a document is presented as a bag of words (BOW) that is described as a word-document matrix which values w_{ij} represent the frequency of word i in document j. Then the model is trained using the vocabulary matrix as input. The LDA model assumes that a document is a mixture of topics and that a topic is a coherent cluster of correlated words. It outputs two matrices, one presents document probability distribution over the topics (per-document topic distribution), the other presents topic probability distribution over words (per-topic word distribution). The algorithm does not attach labels to describe topics, a good topic should be individually interpretable.

Algorithm parameters To generate a more understandable result, we delete some very frequent and infrequent terms. Those tokens appearing on more than 90% of the documents and those appearing fewer than five times are deleted. In order to get accurate topics estimate that guarantees good topics interpretability, training parameters should be carefully set. In our case, we considered 20 passes through the entire corpus after each of which the model is updated and used small chunks (sub-corpora) for updates, so that the model estimation converges faster. The model

is trained until the topics converge or the maximum number of iterations (we fixed at 400) is reached.

We do not appeal to the topic coherence to judge the optimal number of topics because those charts sometimes give us inconsistent conclusion. However, we find that fixing the number of topics to two always gives interpretable clusters of terms and stakeholders, and also consistent with topic coherence for most of the time.

Visualization of the Result We use a web-based interactive topic model visualization to help us interpret the topics in the fitted model (Sievert and Shirley, 2014). Figure 32 and Figure 33 show the distribution of topics over the vocabulary of the roaming corpus with $K = 2$. The left part of the figure displays topics as circles (two topics are generated), the right part shows the top 30 most relevant terms for topic one. The blue and red bars give the overall term frequency and the estimated term frequency within the selected topic respectively.

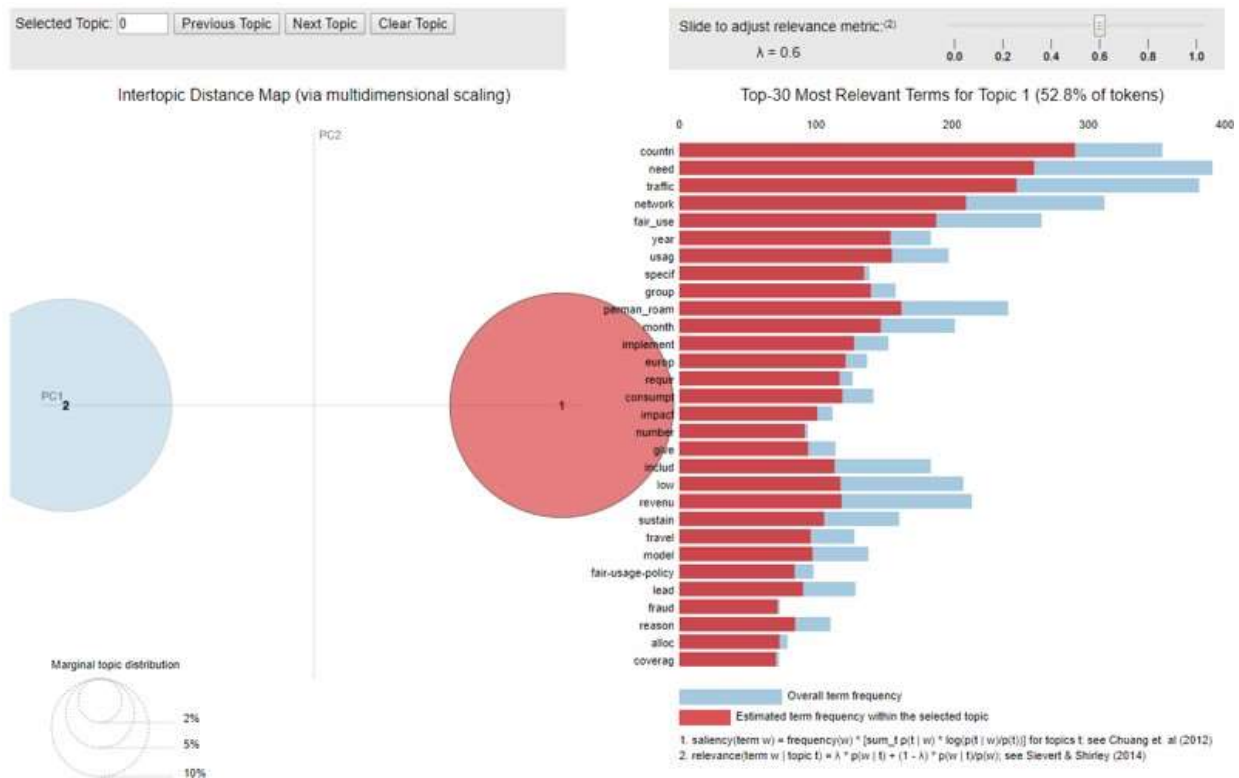


Figure 32 - Topic-term distribution of Topic 1 generated with $K = 2$

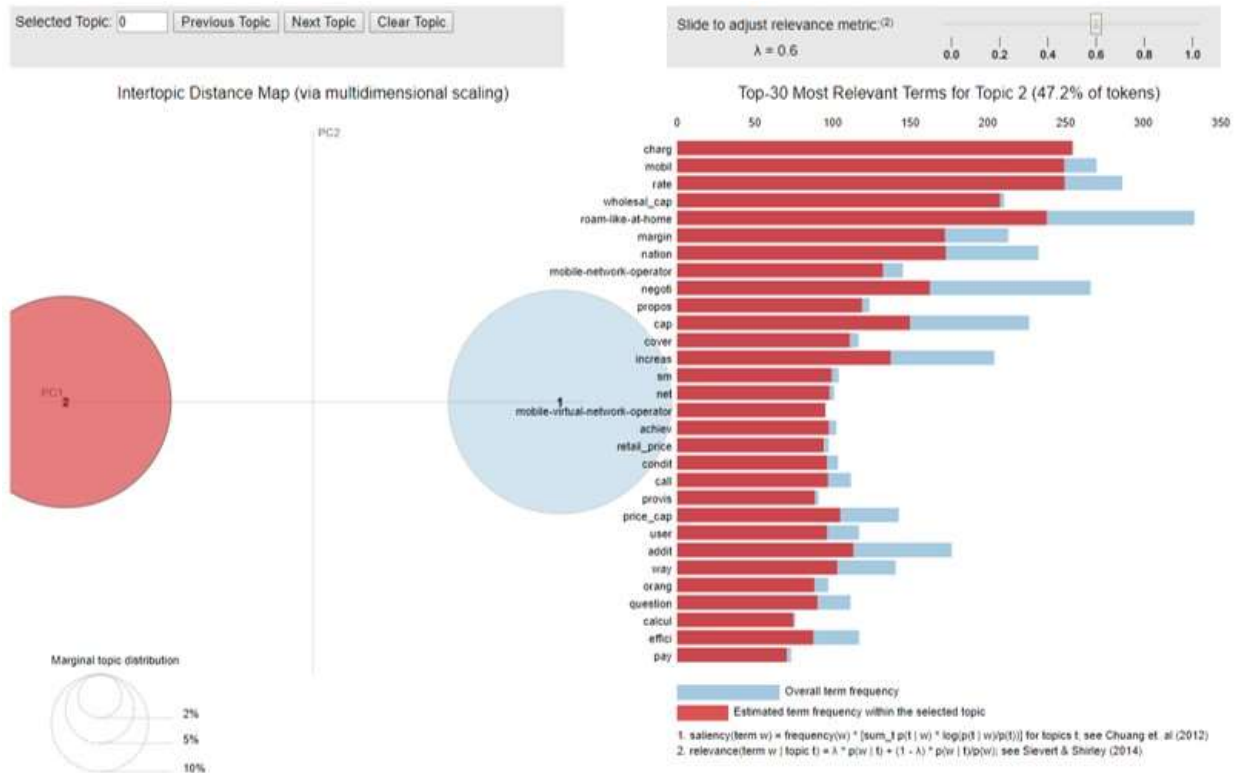


Figure 33 - Topic-term distribution of Topic 2 generated with K = 2

B. The Four Selected Questions

We briefly discuss the four questions.

Question 20: Do you consider that the functioning of the national wholesale roaming markets absent [of] regulation would be capable of delivering RLAH at the retail level in accordance with the domestic charging model?

Options:

- Yes
- No
- It depends on the Member State
- don't know

Question 20 is arguably the leading question as it explicitly asked the stakeholders if they think if RLAH could be achieved without any regulation, currently a price cap on the wholesale price. Providers who sell services at the cap, or close to the cap, would support the idea of removing any regulations since they would be able to charge a higher price. Still, they were asked to explain and justify their position. Meanwhile, those paying at a high price were very likely to say no.

Question 25: What would be the most appropriate of the following options at wholesale level to enable the provision of retail roaming services at domestic prices in the EU, subject to any fair use policy to prevent anomalous or abusive use?

Options:

- lift any wholesale roaming regulation
- keep current roaming regulation (Regulation No 531/2012) unchanged, i.e. maintain current wholesale roaming price caps
- lower current wholesale roaming price caps
- other (please specify below)
- don't know

Question 25 touches the core of the public consultation. Stakeholders are asked to choose an option that would facilitate the implementation of RLAH. Ex-post, we know that the Commission proposed to reduce the cap.

Question 26: If you consider that new wholesale roaming price caps should be defined, should these caps be:

Options:

- EU-wide: the level of the wholesale roaming price cap is the same in all Member States
- country-specific: the level of the wholesale roaming price cap is different in each Member State, reflecting the differences in the costs of providing mobile communications services in each Member State

- other (please specify below)
- don't know

Questions 26 concerns the level at which the regulation is imposed. As costs of providing wholesale roaming services vary across Member States, it would be natural to think that price caps should be set differently. However, heterogeneous caps may delay the European integration process and the determination of the caps is complex and perhaps arbitrary.

Question 27: In case of EU-wide new wholesale roaming price caps, should these caps be set:

Options:

- by reference to the costs of providing wholesale roaming services across the EU by a hypothetical efficient operator (i.e. an operator using the most efficient technologies and optimal operations commercially available)
- by reference to the actual costs of providing wholesale roaming services across the EU by existing operators
- other (please specify below)
- don't know

Question 27 concerns the method of cost estimation and the determination of the caps. Making reference to a hypothetical efficient operator means the estimated cost will be the lower bound. Less efficient service producers may then not be able to recover the costs if the cap is too low. In the Commission Staff Working Document published on 15 June 2016, the Commission disagrees with the idea of referring to the actual costs because making reference to actual costs imply compensating inefficient operators (Commission, 2016a).

C. Lobbying Networks in the European Commission

One underdevelopment project that represents the continuation of this dissertation is the development of a project based on network analysis to investigate the strategies used by firms that

decide to become politically active in the European level to build and to maintain their political network.

Social networks are relational structures that represent ties between social actors. Networks are important in many settings such as politics, trade or job markets. The structure found in such networks may explain interesting phenomena and behavior. For instance, some interesting characteristics that can be observed in such networks are: homophily (the tendency to create a tie when a common feature matches), clustering trends (meaning that if A is connected to B and B is connected to C, then A is connected to C), and centrality that represents the degrees of connections of a node (Snijders, 2011).

Some researchers have already advised the value of the employment of social networks. For instance, Powell and Oberg (2017) state that the study of the relationship between individuals and organizations is helpful to understand their embeddedness in networks and the way information is spread through a network. Moreover, Granovetter (1973, 1983) explored the power of networks. He calls attention to the value of weak ties for the diffusion of information. Such relationships work as bridges putting in contact individuals that otherwise would be isolated and, then, they have a unique role in broadening information accessibility. They could be particularly useful to find a job or to increase the adherence to social movements.

In management, a stream named Strategic Network Perspective (SNP) also advanced the importance of networks. They argue that the networks in which firms are embedded can provide access to strategic resources, information, and technologies. They can be a source of sustainable competitive advantage due to the uniqueness of the structural pattern of a firms' network. (Gulati et al., 2000; McEvily and Zaheer, 1999).

Being aware of the relevance of network analysis, we expect that networks are suitable to study lobbying dynamics and enrich the knowledge about corporate political strategies. The lobbying network structure can shed some light on how business and political actors are connected, how the information flows through the network and explain differences of firms' performance in the political arena.

Our research is focused on corporate lobbying in the European Commission. A requisite for successful lobbying is to be sure the proper information will reach the right targets. Taking into consideration the governance of the European Commission where the college of the commissioners decides on legislation proposals, it is crucial to ensure the information will reach

as many commissioners as possible for successful lobbying. Also, lobbyists will also focus on the directorates-general (DGs) which are a kind of European ministries working on the policymaking process. In this institutional setting, not only the frequency of contacts between a firm and commissioners but also the diversity of connections within the different actors within the Commission are relevant to ensure successful lobbying.

Furthermore, the different roles and motivations of the political actors may impact their behavior and, consequently, influencing the lobbying network structure. For instance, the commissioners are appointed by the Member States. We can describe them as politicians motivated by their own political and career interests. The directors-general, the heads of the DGs, are usually part of the EU civil service meaning that they are bureaucrats supposed to be neutral to any political influence beyond the interest of EU. The cabinet members are appointed by and accountable to the commissioners. Therefore, the interactions of these political actors with businesses' representatives can bring interesting insights about corporate political strategies.

Hence, network analysis has the potential to give a clearer picture of lobbying in the European Commission. The network dynamics would be embedded with valuable information about lobbying strategies, such as calculated choices of meeting partners and the sequence of moves. Moreover, the lobbying network structure is crucial for efficient information diffusion and thus, is essential for successful lobbying.

Network Design

The proposed network is composed of two types of nodes. From the political side, a node may represent a commissioner, a member of the commissioner cabinet or a director-general. From the business side, a node may represent either a firm, a trade and business association or a professional lobbyist. These nodes create a connection (an edge) every time these nodes held a meeting together as illustrated in Figure 34. In the sequence, we present the source of data and additional details for each element of this network.

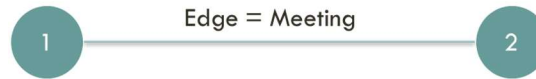


Figure 34 - Basic network representation

European Commission Meetings information (edges of the network):

This information can be retrieved from the official web pages of the European Commission. The available information includes the date, local, subject and participants of the meetings. We collected all the information about the meetings that occurred from 2015 to 2018.

Interest groups information (network's node 1):

Our primary data source is the Transparency Register database. We can differentiate the type of interest groups according to their categories: firms, NGOs, think tanks and so on. Additionally, the database provides information about interest groups headquarters, lobbying expenditures, and dedicated resources. We complement this information with a dummy to identify large companies and sectoral information.

European Commission Representatives information (network's node 2):

We rely on different data sources to obtain information from the European Commission representatives because there is no EU official database or public website that we can retrieve data from all representatives that participate in the meetings. Hence, for the European Commissioners and directorates-general, their CVs are available in their official webpages. However, it contains no official information for the members of the cabinets. So, our strategy was to search for their CVs on the internet. In this regard, our principal source of information was professional social networks such as LinkedIn. At the first stage, we are primarily interested in information about gender and nationality.

Challenges. limitations and next steps

Although the network approach seems interesting to explore lobbying in the EU and our dataset has interesting information, we are facing many challenges to progress in this research project. At first, the network represents the meetings, but we do not know what the outcomes of

meetings are to understand what the dynamics of networks could help to achieve results in the political arena.

Another pathway is to study the network structure to understand how it evolves. However, we only have access to meeting information from 2015, and we know that lobbying networks started to take shape much time before. Then, we performed some exploratory analysis to a reduced sample that registered from 2015 on, and we could observe the trajectory of these firms since their first move in the network. This approach seems to be more promising, but, currently, there are still some econometric challenges related to the analysis to overcome. Moreover, another possibility is to explore the impact of some exogenous shocks in the network structure. After the Brexit, the UK Commissioner resigned, and there was a reshuffle of Commissioners that might have consequences for the network.

Independent of the direction to continue the exploratory analysis, the next steps of this research include analyzing the possibility to build an inter-politician network structure and (or) the inter-firm network structure to complement the ego networks (firm-commissioner networks). Also, a more in-depth analysis of the literature is necessary at this stage of the project to guide the empirical analysis, better understand the results, and give some clues of how this research project could contribute to organizational theory.

RÉSUMÉ

L'environnement politique dans lequel une entreprise exerce ses activités peut imposer plusieurs défis à sa performance, tels que de nouvelles taxes et législations qui encourageront leur engagement aux actions politiques (traduction du terme américain *Corporate Political Activity* – CPA). Ces actions ciblent les acteurs politiques et ont pour objectifs d'obtenir des avantages concurrentiels ou d'éviter des risques institutionnels liés à leur activité. Ces actions peuvent prendre la forme de lobbying, de contributions aux campagnes électorales et de poursuites judiciaires. Plusieurs résultats positifs des CPA sont documentés dans la littérature, mais la plupart d'entre eux font référence à l'environnement américain. Considérant que l'environnement institutionnel est essentiel pour le déploiement et les résultats des CPA, l'objectif principal de cette thèse est d'élargir l'analyse en étudiant l'environnement institutionnel européen. Dans ce but, cette thèse s'appuie sur trois axes de recherche liés au lobbying et aux poursuites judiciaires en utilisant une approche empirique dont l'objectif est d'explorer la dynamique de CPA et son impact sur l'environnement institutionnel européen. Le premier examine les facteurs déterminants de l'accès des entreprises aux représentants de la Commission européenne pour faire du lobbying. Le deuxième étudie l'élaboration de la réglementation du marché de gros d'itinérance afin de comprendre le déploiement des stratégies de lobbying et leurs résultats. Le troisième porte sur le processus décisionnel de la Commission européenne et de la Cour de Justice dans l'octroi des aides d'État dans l'Union européenne.

MOTS CLÉS

Action Politique des Entreprises, Lobbying, Union Européenne, Stratégie

ABSTRACT

The political environment where a firm operates can impose several challenges to its performance such as new taxes or legislation that will incentivize their engagement on Corporate Political Activities (CPA). These activities target political actors and intend to capture advantages or to avoid institutional risks in their own business environments. They can be deployed in the form of lobbying, campaign contributions, and litigation. The positive outcomes have been already documented in the literature, but most of them refer to the US environment. Taking into consideration that the institutional environment is essential for the deployment and outcomes of CPA, the main goal of this dissertation is to investigate CPA in the European Union level further using an empirical approach. Through three research projects related to lobbying and litigation in the EU, this dissertation explores the dynamics of CPA and how the institutional environment impacts on it. The first project examines the determinants of firms' access to the European Commission representatives. The second project studies the making of the wholesale roaming regulation to understand the deployment of lobbying strategies and their outcomes. The third project investigates the decision-making of the European Commission and the Court of the Justice in the processes of granting state aids in the European Union.

KEYWORDS

Corporate Political Activity, Lobbying, European Union, Strategy

