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Lisa Kastner

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Lisa Kastner. Restraining regulatory capture: an empirical examination of the power of weak interests in financial reforms. Political science. Institut d'études politiques de paris - Sciences Po; Max-Planck-Institut für Gesellschaftsforschung (Cologne, Allemagne); Universität Köln (1388-..), 2016. English. NNT: 2016IEPP0001 . tel-03499606

HAL Id: tel-03499606

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Institut d'études politiques de Paris

ECOLE DOCTORALE DE SCIENCES PO

**Programme doctoral Science politique, mention Sociologie politique
comparée**

**Max Planck Sciences Po Center on Coping with Instability in Market
Societies (MaxPo) et le centre d'études européennes (CEE)**

Doctorat en science politique

**Convention de cotutelle avec l'IMPRS-SPCE de l'Institut Max Planck et de
l'Université de Cologne**

Restraining Regulatory Capture

*An Empirical Examination of the Power of Weak Interests in
Financial Reforms*

Lisa Verena Kastner

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Soutenue le 13 janvier 2016

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List of Abbreviations

AARP	American Association of Retired Persons
ABA	American Bankers' Association
ABI	Association of British Insurers
AFL-CIO	American Federation of Labor and Congress of Industrial Organizations
AFR	Americans for Financial Reform
AILO	Association of International Life Offices
ALDE	Alliance of Liberals and Democrats for Europe
ALTER-EU	Alliance for Lobbying Transparency and Ethics Regulation
ATTAC	Association for the Taxation of Financial Transactions for the Aid of Citizens
BEUC	European Consumers' Organisation
CDU	Christian-Democratic Union of Germany
CFA	Consumer Federation of America
CFPA	Consumer Financial Protection Agency
CFPB	Consumer Financial Protection Bureau
CI	Consumers International
COP	Congressional Oversight Panel
CPSC	Consumer Product Safety Commission
CRA	Community Reinvestment Act
CRIS	Special Committee on the Financial, Economic and Social Crisis
CSO	Civil Society Organization
CU	Consumers Union
CRL	Center for Responsible Lending
DG	Directorate General
DG TAXUD	Directorate General for Taxation and Customs Union
DG MARKT	Directorate General for Internal Market and Services
EACB	Federation European Association of Cooperative Banks
EAPB	European Association of Public Banks
EBA	European Banking Authority
EBF	European Banking Federation

EBIC	European Banking Industry Committee
ECON	Committee on Economic and Financial Affairs
ECP	Enhanced Co-operation Procedure
ECR	European Conservatives and Reformists
ECRC	European Coalition for Responsible Credit
EFAMA	European Fund and Asset Management Association
EFFR	Europeans for Financial Reform
EFIN	European Financial Inclusion Network
EFRA	European Financial Regulatory Authority
EIOPA	European Insurance and Occupational Pensions Authority
EMF	European Mortgage Federation
EP	European Parliament
EPP	Group of the European People's Party
ESA	European Supervisory Authority
ESBG	European Savings Bank Group
ESMA	European Securities and Markets Authority
ETUC	European Trade Union Confederation
EU	European Union
FFB CFE-CGC	Fédération nationale de la finance et de la banque
FinForum	Financial Forum Ljubljana
FIN-USE	Forum of financial services users
FSCG	Financial Services Consumers Group
FSUG	Financial Services Users Group
FAT	Financial Activities Tax
FTT	Financial Transaction Tax
GFMA	Global Financial Market Association
IFI	International Financial Institution
IMF	International Monetary Fund
ICBA	Independent Community Bankers Association
ITUC	International Trade Union Confederation
KID	Key Information Document
MBA	Mortgage Bankers' Association
MCD	Mortgage Credit Directive
MEP	Member of the European Parliament

MiFID	Markets in Financial Instruments Directive
NACA	National Associations of Consumer Advocates
NAACP	National Association for the Advancement of Colored People
NCL	National Consumers League
NCRC	National Community Reinvestment Coalition
NGO	Non-governmental organization
NNU	National Nurses United
PC	Public Citizen
PRIP	Packaged Retail Investment Products
PSI	Public Services International
S&D	Progressive Alliance of Socialists and Democrats
SPD	Social Democratic Party of Germany
SEIU	Service Employees International Union
SIFMA	Securities Industry and Financial Markets Association
TACD	Transatlantic Consumer Dialogue
UNDP	United Nations Development Programme
US	United States
US PIRG	Federation of State Public Interest Research Groups
VERDI	Vereinte Dienstleistungsgewerkschaft
VÖB	Association of German Public Sector Banks
VZBV	German national consumer organization (Verbraucherzentrale)
WEED	World Economy, Ecology and Development (NGO)

Acknowledgments

First and foremost, I would like to thank my supervisors. At Sciences Po in Paris, Cornelia Woll paved the way for this project. Without her support, I would not have had the confidence to venture into research on politics of financial reforms. At the Max Planck Institute for the Study of Societies (MPIfG), I had the privilege to work under the supervision of Christine Trampusch who gave clear directions to this project.

This dissertation would not have been possible without the financial support of the Max Planck Sciences Po Center on Instability in Market Societies (MaxPo) whose generous fellowship supported three years of my research. Throughout this project I have also benefited from the administrative support of Vincent Morandi and Marina Abelskaia-Graziani at the MaxPo, the Centre d'études européennes (CEE) in Paris and the administrative staff at the Max Planck Institute at Cologne.

During my stay in Washington D.C. in September 2013, I benefited from the logistical support of the Elliott School of George Washington University. Special thanks go to Peter Rollberg, Robert Orttung and Kimberly Morgan who enabled me to stay as a Visiting Fellow at the Institute for European, Russian and Eurasian Studies (IERES). My stay at the American Institute for Contemporary German Studies (AICGS) at Johns Hopkins University in Washington, D.C. in February and March 2014 was sponsored by the German Academic Exchange Service (DAAD) with funds from the German Foreign Office. I thank Susanne Dieper, Kimberly Frank, Jackson Janes, Alexander Privitera and Lily Gardner Feldman for this wonderful opportunity.

Faculty at Sciences Po, the MPI and elsewhere commented generously on my work in a series of graduate conferences, workshops and seminars. I would like to thank Jens Beckert, Sigrid Quack, Martin Höpner, André Kaiser, Marion Fourcade, Olivier Rozenberg, Emiliano Grossman, Nicolas Sauger and Bruno Palier who have all read parts of the manuscript and commented on my research. For advice and stimulating discussions during different stages of the research project, I would also like to thank Olivier Godechot, Jeanne Lazarus, Peter Gourevitch, Cathie Jo Martin, Josh Whitford, Neil Fligstein and Kevin Young.

The core of the dissertation took shape during a series of international conferences and seminars: the MaxPo “Economic Moralities” Graduate Conference in May 2013, the IRIES Roundtable Series at George Washington University in September 2013, the AICGS Seminar in March 2014 and the annual joint Graduate Conference at the University of Columbia in July 2014. I thank all participants for helping me hone my ideas and Pepper Culpepper for

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detailed comments as discussant. I would also like to thank participants in the Doctoral Colloquium of the International Max Planck Research School in December 2014 and the Oberseminar at the University of Cologne in spring 2014 for their valuable comments.

I have benefited greatly from my colleagues at the MaxPo, the CEE and the MPIfG who assisted me with their insights, critiques and support. Special thanks go to Helen Callaghan who kept me afloat as my mentor. I would also like to thank Camille Allé, Rahul Prabhakar, Tom Chevalier, Inga Rademacher, Betsy Carter, Adel Daoud, Charlotte Haberstroh, Alexander Spielau and Agnes Orban for never growing tired of discussing my dissertation topic with me.

Finally, I owe a special debt of gratitude to Helge as well as to my parents who were my emotional mainstays during the last three years.

PART 1 THEORY

1. Introduction

Crisis, Newly Mobilizing Societal Actors and Financial Reforms

Financial reforms in response to the 2007/08 crisis were subject to intense lobbying from concentrated financial industry and diffuse interest groups such as consumer associations and labor unions. This kind of interest group conflict usually results in one side, the financial sector side, “winning” at the expense of the diffuse interest group side. Analyses of the latest financial crisis seemed to confirm this assessment. Regulatory capture, a process whereby narrow industry interests get to be favored at the expense of the more diffuse public interest, has arguably become the most popular theoretical concept to analyze post-crisis financial reform-making (Pagliari 2012, 6).¹

Existing scholarly works suggest that the financial industry successfully vetoed regulatory change in the US, by rolling out “its heavy artillery to fight the relatively moderate reforms proposed” (Johnson and Kwak 2011, 5). This interpretation was echoed by many observers, who argued that national and international reform efforts after the crisis were considerably watered down or scaled back by private-sector lobbies (Bell and Hindmoor 2014; Johnson and Kwak 2011; Engelen et al. 2011; Porter 2014; Helleiner, Pagliari and Zimmermann 2010; Moschella and Tsingou 2013).

According to the Center for Responsive Politics (2009), US financial industry groups spent \$224.6 million on lobbying in the first half of 2009, more than any other sector (except for the health sector which spent \$263.6 million during the same time period). According to a study conducted in 2014 by Corporate Europe Observatory (CEO 2011), a Brussels-based NGO (non-governmental organization) focused on exposing special-interest lobbying, EU financial industry groups spent about €123 million on regulatory reforms per year, thereby outspending civil society groups by a ratio of 30:1. Given the amount of resources invested by the financial sector, it seems hard to avoid the conclusion that it led a highly successful

¹ While regulatory capture theory was initially designed to explain the behavior of regulatory agencies, not legislative decisions, the concept has since been applied more broadly to financial regulatory decision making.

lobbying campaign to block reform. In short, financial regulatory reforms enacted in response to the crisis show all signs of drastic industry capture.

And yet, dynamics are changing. As taxpayers' money was used for expensive bank bailouts, financial regulatory issues became highly politicized and attracted public attention in a way that was most unusual for this highly technical and complex issue. There was much public anger about the perceived unfairness of the international financial system – famously described as a system that privatized gains and socialized losses. “Occupy” and “indignados” protests occurred in numerous cities in the US and Europe, directed against the financial elites held responsible for the devastating social consequences triggered by the financial meltdown. In an attempt to channel the outburst of public anger, numerous civil society organizations, such as consumer NGOs, unions and grass-roots groups started to build transnational alliances to influence the reform outcomes. Even though they were pitched against the fierce opposition of the financial industry, new coalitions “for financial reform” mushroomed.

The involvement of alternative societal actors or “outsider” groups such as NGOs and consumer groups in the financial reform debate was arguably one of the most striking aspects of the crisis. A growing number of scholars have identified societal mobilizations in response to the crisis as new research agenda for political scientists looking for sources of change. Helleiner and Pagliari (2011, 179) have recently noted that there is a need for “more detailed knowledge of how the mobilization of these groups beyond the financial industry can influence the direction of state policy.” Although some studies discuss the importance of increased actor plurality, brought about by newly mobilized civil actors, the role of these outsider groups as a countervailing force to financial industry interests has not yet been systematically tested. More generally, the deficiency in these accounts is that the causal dynamics of how groups outside of finance can move from outside groups to inside groups and become successful change agents confronting the powerful financial industry remain largely black-boxed. This research project fills this gap by focusing on the mechanism by which nonfinancial groups can have their preferences met in regulatory reforms.

This project analyzes the role of nonfinancial groups in political conflicts over financial regulation in four cases. In the US, the reform strategy of a new pro-reform coalition crystallized in the creation of a new federal agency responsible for consumer protection as part of the Dodd-Frank Wall Street and Consumer Protection Act of 2009 (Dodd-Frank Act), the American Wall Street reform (Kirsch and Mayer 2013). This decision marked the end of a highly politicized reform debate in the US Congress, involving lobbying from business associations and civil society groups. Although according to most scholarly accounts,

proponents of the new bureau normally have to be considered to be much weaker than its opponents, an emerging civil society coalition successfully lobbied decision-makers and countered industry attempts aimed at preventing regulatory change. According to a report by the US Institute of Policy Studies “public interest advocates overcame intense Wall Street lobbying to win some important reforms through the Dodd-Frank legislation [...], particularly in the areas of consumer protection” (Anderson 2010).

Although EU reforms were more moderate, pro-reform forces successfully established common European minimal standards in the area of consumer financial protection (including new binding mortgage rules, simplified information sheets or warning labels for certain investment products and enhanced disclosure of fees for retail costumers), despite industry concerns of renewed regulations.

Even more surprising, EU-industry groups were unable to block a European Commission Directive proposing the introduction of a Financial Transaction Tax (FTT) among eleven European countries. Although it seems likely that the proposed EU-11 FTT will be severely watered-down, it has nevertheless survived the first phase of negotiations. Heads of state and government as well as the finance ministers of participating member states repeatedly stated their political commitment to a FTT; this suggests that legislation will pass (KPMG UK 2015). These regulatory shifts, as this analysis suggests, were triggered by lobbying efforts of pro-reform coalitions including nonfinancial groups and legislators that countered industry efforts to stall reforms. So far, the policy result is mixed, with proponents of reform winning a preliminary victory by ensuring the FTT’s survival on the EU’s policy agenda. The analysis of the positive and mixed cases will be complemented by the study of a less successful attempt to introduce a national FTT in the US (negative case).

Taken together, these cases raise questions about the constraints on regulatory capture by concentrated industry interests. Going into greater detail about the role of newly mobilized nonfinancial groups the present research will focus on a simple question: how can interest groups, usually considered as weak and peripheral in the context of finance, such as consumer associations, successfully have their preferences met in financial reforms despite the opposition of the financial industry that sought to preserve the status quo? In other words, how have so-called “diffuse” interests come to be represented in financial regulatory reforms?

To answer these questions, I develop a theoretical framework that stresses the importance of diffuse interests in policymaking. Diffuse interests are generally understood as “collective interests held by large numbers of individuals,” such as consumer protection policies (Pollack 1997, 572). Accordingly, interest groups can be classified as diffuse or

specific, depending on the underlying interests of constituencies they represent. While diffuse interest groups represent a broad, collective interest (such as consumers), specific interest groups represent a narrow self-interest (such as industry groups) (Beyers 2004, 216). As material resources are usually considered a major determinant of political influence, reform outcomes diametrically opposed to the interests of the dominant industry groups are puzzling. So far neither the literature on financial reform-making, dominated by capture theories, nor the literature on organized interests and lobbying (see for example Eising 2007) can provide a satisfactory answer. In order to explain this paradoxical finding, this study advances a causal mechanism of the post-crisis political dynamics that can explain regulatory change that takes into account diffuse interests. To do so, it draws on diverse streams of literature, in particular recent international political economy (IPE) and interest group research as well as social movement theory. I suggest that research on social movements provides tools to explain post-crisis financial reforms by identifying mechanisms that help explain unexpected reform trajectories. This will complement existing approaches to explain post-crisis reforms. Because the social movement literature explicitly focuses on collective action among actors that interest group research usually classifies as “weak” and political opportunities for challengers to engage in successful collective action (McAdam, Tarrow, and Tilly 2001), this study will draw on this perspective. In doing so, the present analysis goes beyond the narrow concept of regulatory capture.

The findings suggest that the capture narrative, where regulatory decisions correspond to the preferences of the industry, misses an important aspect of current reform dynamics. An exclusive focus on financial industry advocacy to dilute reform efforts makes it difficult to see the full scope of regulatory change in the aftermath of the financial crisis and raises the risk of misinterpreting the outcome of interest group conflicts in reform-making. Drawing on literature from social movement research and regulatory politics, the analysis ultimately suggests that researchers seeking to understand the outcome of interest group conflicts must look beyond the variable of material resourcefulness.

Goals of this Study

The principal aim of this research is to ascertain the particular social mechanism by which outsider groups to finance, such as consumer organizations and labor unions, can successfully promote their advocacy aims in the field of financial regulation despite having fewer resources at their disposal than dominant industry groups. The broader goal here is to identify conditions under which diffuse interest groups, such as consumer groups, NGOs and

trade unions, might enjoy greater representation in financial regulatory policymaking. What is the role of organized diffuse interests in influencing and re-directing regulatory reforms?

The research project has two underlying rationales. First, it has theoretical relevance. Capture theories have traditionally focused on the predominance of financial sector groups in financial regulatory decisions. Less attention has been paid to other – nonfinancial – actors, in particular civil society groups and how these groups outside of finance can affect policy change and oppose industry groups. At the most general level, this research thereby seeks to contribute to the ongoing efforts to explain political dynamics of financial reforms in response to the credit crisis, by paying particular attention to different forms of pressure and influence exerted by diffuse interest groups in reform debates. Specifically, the goal of this dissertation is to examine and challenge questions of industry capture of the financial reform process in the US and the EU.

In offering a close empirical analysis of a causal mechanism at work that allows diffuse interest groups to leave their imprint on financial regulatory reforms the account here will be dealing with a side that is less well-known to researchers. So far, scholars have largely neglected to systematically examine cases of regulatory transformation where industry groups did not succeed in their lobbying efforts. By paying “greater attention to the mobilization of nonfinancial industry groups in shaping financial regulatory policies and the impact that this has over the capacity of financial industry groups to shape regulatory policies” (Pagliari and Young 2013a), this study follows the research agenda suggested by scholars of political economy. It thereby adds a crucial dimension – namely the role of citizen groups – to the burgeoning literature on financial reform-making.

By empirically studying the question of how actors usually classified as weak can successfully mobilize against resourceful and dominant actors in a specific context – namely after the 2007/08 financial crisis - this study aims to contribute to broader debates in international political economy. In recent years, a huge bulk of social science literature has emerged that analyzes Dodd-Frank (Clapp and Helleiner 2012a; Pagliari 2013b; Pagliari and Young 2013a; Engelen et al. 2011; Johnson and Kwak 2011; Morgan 2010) as well as the creation of a US consumer bureau in response to the crisis (Woolley and Ziegler 2011; Woolley and Ziegler 2014; Kirsch and Mayer 2013; Mayer 2012). With respect to the European case, the emerging political science literature on EU level regulatory reforms in response to the crisis deals with the reform on hedge funds, derivatives, rating agencies (Helleiner, Pagliari and Zimmermann 2010; Pagliari 2013b; Quaglia 2010; Woll 2013) or bonus caps (Charron 2014). Only rarely do these studies pay any real attention to comparative

material across the Atlantic as a source of insight. A second contribution of this study is therefore the comparative study of financial reforms in transatlantic perspective. It will also make an important contribution to the political science literature on regulatory reform dynamics at EU level with an eye towards new consumer regulation which is considered to be a relatively under-researched field (Moloney 2012, 117).

Finally, this analysis makes a contribution to the recent findings in political economy on how business power can be curbed by diffuse interests (Trumbull 2012). It tries to explain how diffuse interests were translated into post-crisis financial regulatory policy by systematically applying process-tracing to test a hypothesized causal mechanism. It thereby joins recent efforts in political economy to explain how business power can be mitigated (Bell and Hindmoor 2014a; Culpepper 2011).

Secondly, this research has also practical policy relevance. Financial reform issues have not only become a topic of broad public interest but the reform debates also remain important on the policy agenda. Bills proposing to strip the new US consumer regulator of its powers have been repeatedly introduced into Congress since the passage of the reform law. Likewise, in the EU, lobbying of industry groups aimed at watering-down the proposed tax of the financial sector continues since an EU directive has been proposed. By examining reform issues of greater public interest, this research tries to inform and contribute to public discussions. Also, focusing on cases where the financial industry did not win, even if they are few and far between, is crucial because it is the first step to understanding how regulatory capture can be prevented in the future.

Capture Theories of Financial Regulatory Reforms

The sizable literature on interest groups reminds us that interests of the consumers often remain unorganized, inactive and subordinate to the power and influence of business lobbies. More resourceful actors have a much better chance of getting their voice heard than less well-resourced groups (Eising 2007, 356). This is even more so in the field of finance, where financial industry groups enjoy a structurally privileged position due to the rise of finance capitalism (Streeck 2014). According to Olson's (1965) "*Logic of collective action*" this fact is little surprising, because especially large groups are faced with a collective action dilemma when they try to influence policy. The barrier to efficient coordination is higher for large or diffuse groups of individuals than it is for smaller, concentrated groups. Large groups of individuals have difficulties organizing themselves because they lack incentives and face higher organizational costs than smaller groups who share a specialized or particular interest,

which allows them to organize into active lobbies. Diffuse interests have therefore traditionally been considered as politically weak. Olson's view was echoed in the Chicago School "capture" theories of regulation and applied to regulatory behavior by Stigler (1971), Posner (1974) and Peltzman (1989) who argued that interests of small groups (producer groups) consistently prevail over interests of large groups (consumers as voters) with more diffuse interests.

When we look at past developments in financial regulation, Olson's reasoning has held true: concentrated costs and more political leverage for the tightly organized financial industry have generally led to more industry-friendly than consumer-friendly policies. Following the Olsonian interest-group approach to public policy, most research on financial reform-making sees diffuse interest groups at a disadvantage relative to the financial industry lobby. Echoing Olson's presumptions, Hacker and Pierson (2010), for instance, explain striking income inequalities among Americans in terms of the organizational capacity of resourceful private interests to bring public policy in line with their interests. This pattern has been most pronounced in the field of finance, they argue, where the massive political leverage of financial industry lobbyists accounts for overly industry-friendly regulatory politics. From this perspective, American politics needs to be understood as "organized combat" of groups that only the most resourceful ones can win. According to their view, general elections make little difference to politics; they are just "spectacle" (Hacker and Pierson 2010, 154).

In the same vein, most scholarly articles and book chapters evaluating specific aspects of post-crisis financial regulation have linked modest reform efforts despite the magnitude of the crisis to continued private sector influence. Tsingou (2010), for instance, testifies to the persistence of the influence of a transnational policy network of financial experts. Emphasizing "close financial, personal and ideological ties" between policymakers and the banking industry, Johnson and Kwak (2011, 12) have argued in their popular book "*13 Bankers*," that Wall Street returned to "business as usual" after the crisis, with its political influence in Washington as powerful as ever. Admati and Hellwig (2013, 3), two renowned economists, have argued along the same lines that "despite the enormous damage of the financial crisis of 2007-2009, the effort to reform the financial system has been stymied." Similarly, political scientists studying post-crisis reforms in the EU, recorded incremental change with much activity but relatively little change (Quaglia 2010; Moschella and Tsingou 2013; Moschella 2014). Buckley and Howarth (2010, 137), for instance, attribute the incremental nature of reforms largely to successful lobbying of domestic financial industries aimed at preventing regulation.

However, due to the assumption of regulatory capture scholars have neglected to systematically examine reform cases where industry groups did not succeed. As Carpenter and Moss (2014, 3) observe: “All too often, observers are quick to see regulatory capture as the explanation for almost any regulatory problem, making large-scale inference [...] without a careful look at the evidence.” This bias is particularly true for scholarship unfolding in response to the financial crisis. “[W]orks postulating the continuous dominance of financial industry groups,” as Pagliari and Young (2013a) usefully put it, “have arguably paid insignificant attention to changes in the policymaking context since the financial crisis, and the impact these changes had in weakening the capacity of the financial industry to veto regulatory policies.”

Given the actor constellation involved in the financial reform debate, capture theories focused on the ability of actors to have their interests heard based on their resourcefulness would predict clear outcomes. From this perspective, where regulatory change depends upon the means and the power of the financial industry lobby to (re-)shape regulatory reform, we would expect the outcome to reflect domestic financial sector preferences. In the case of the US consumer protection agency, where all “strong” actors representing the financial services industry opposed a new regulator and only “weak” actors, including consumer associations, labor groups and other public interest groups supported the provision, we would expect an easy defeat of the reform proposal. Despite massive protest and considerable investment of lobbying resources by business groups, organized by the US Chamber of Commerce, the new consumer regulator became law and there were only minor modifications to the original proposal. With reference to the consumer protection regulations in the EU case, the situation is less clear-cut. In the case of the Mortgage Credit Directive, for instance, industry groups were generally opposed to new regulations, while consumer groups pushed for reforms. After legislative debate, a new Directive was adopted, harmonizing European mortgage regulations by setting the minimum regulatory requirements in a consistent way across member states, reflecting a compromise solution among the various interests involved. These results suggest that factors other than material resourcefulness may have actually been decisive in these conflicts. A theoretical position that claims massive and ongoing impact of business power appears difficult to reconcile with this empirical evidence.

The Puzzle: Why did Regulatory Change Occur?

The history of the deregulation of financial markets dominated by industry interests raises the highly interesting theoretical puzzle of how special and well-organized interests could successfully be subordinated to diffuse and less-well-organized interests in recent financial reform cases. This research project attempts to specify the conditions and processes by which this occurred in three positive cases: the creation of a new consumer regulator in the US, the strengthening of consumer protection regulation at EU level and the agreement among eleven EU member states to introduce a tax on financial transactions. The analysis of the positive cases will be complemented by the study of a less successful attempt to introduce a national FTT in the US. The positive cases that I have picked to analyze in depth are not the only recent examples of regulatory reforms running counter to concentrated financial industry interests. Other studies include, for example, the regulation of hedge funds (Woll 2013; Pagliari 2013b), agricultural derivatives (Clapp and Helleiner 2012b), over-the-counter (OTC) derivatives (Woolley and Ziegler 2011) or capital requirement rules (Young 2014). The cases I chose to analyze in depth arguably pitted concentrated industry interests even more clearly against diffuse interests. In all cases, policymakers either proposed or enacted legislation that industry groups had opposed.

In the first case studied here, the creation of a new Consumer Financial Protection Bureau (CFPB) in the US, Congress agreed to a new regulatory agency, which had been fiercely opposed by dominant financial sector groups, including the American Bankers' Association (ABA) and the Mortgage Bankers' Association (MBA). The Dodd-Frank Act contained major consumer protection provisions, which fundamentally changed the regulatory landscape for financial services. Under title X, the reform law established the CFPB, a new federal regulator with the sole responsibility of protecting consumers from unfair, deceptive or abusive practices. As title XIV, Dodd-Frank also passed the Mortgage Reform and Anti-Predatory Lending Act which contains new regulations of the residential mortgage market, including new duties on mortgage originators and enhanced consumer protections with a requirement that all lenders must base their loan decisions on the consumers' ability to repay the loan. A third overhaul, the Credit CARD Act passed in 2009, just prior to the Dodd-Frank Act, and included major improvements on consumer protections in relation to credit cards such as limits on rate increases and improved disclosures. Both laws, along with most of the existing consumer protection regulations, fall within the jurisdiction of the new consumer regulator.

Some critics might object that the new regulator for consumer products was merely a fig leaf covering the influence of concentrated interests in the financial overhaul. A reason to think that this was not the case is, as the case study will demonstrate, the amount of resources the industry invested to defeat the new bureau. Industry groups had clearly preferred the status quo and the regulation passed in spite of an enormous industry campaign to block it. Private sector actors were concerned about conflicts that might arise among banking regulators and the new consumer watchdog.² In testimony before the Senate Finance Committee in July 2009, Edward Yingling, the then-President of the ABA complained that the new regulator would “simply complicate our existing financial regulatory structure by adding another extensive layer of regulation” (Yingling 2009). Interviews with industry representatives confirmed that financial services groups had lobbied extensively to prevent the new law from being enacted.³ Those industry pressures failed to dissuade the administration from its course of action. Second, there is wide agreement among regulators, legal scholars, activists and industry representatives that the consumer protection reforms introduced in response to the crisis go beyond “gesture politics” (Buckley and Howarth 2010). Most importantly, from a legal perspective, the array of new measures introduces an alternative regulatory paradigm or “paradigm shift” (Pridgen 2013; Caggiano et al. 2010), based on “a renewed recognition that when the competitive market place suffers from a lack of transparency and fairness, it will not fulfill its proper function” (Pridgen 2013, 30).

New consumer protection regulations at the EU level, the second case study under analysis here, were more moderate, and compromised aimed at the harmonization of consumer protection policies, but they still introduced new binding mortgage rules and improved protection for retail investors through enhanced information and transparency as well as stricter disclosure rules. Industry attempts to block regulatory change remained largely unsuccessful. As a cross-sectional issue, consumer protection was a relevant dimension in several legislative proposals that were brought forward by the Commission in response to the crisis. Similar to US reforms, observers have indicated a paradigm shift of consumer protection regulations at the EU level in response to the crisis. Drawing on Hall’s (1993) distinction among three different levels of policy change (changes in settings of regulations, the institutional structure or – most transformative - the normative nature of regulation or policy), Moloney (2012, 118) concludes that “[...] the financial crisis has reshaped the context in which reform is taking place and is driving innovation in the form of change to the

² Interview 113 with financial industry lobbyist, Washington DC, 25 February 2015.

³ This is based on several interviews conducted in Washington DC between September 2014 and March 2015.

nature and policy goals of market and consumer protection regulation.” This paradigm shift is accompanied by first- and second-order change “in the form of the emergence of product intervention as a retail market regulatory mechanism, at Member State and at EU levels” (Moloney 2012, 168).

Four Directives dealing with consumer finance protection regulation will be analyzed in depth: the European-level agreement to create new European Supervisory Authorities (ESAs), the introduction of new binding mortgage rules in the Mortgage Credit Directive (MCD), stricter regulations of retail investment products through a simplified information sheet (PRIPs/KID) and the introduction of an inducement ban in the Markets in Financial Instruments Directive (MiFID II). The in-depth analyses will demonstrate that mobilized consumer advocates saw important advocacy goals translated into policy and that private sector lobbying was highly circumscribed. Final reform legislations were a compromise with both lobbying sides - industry groups and consumer associations - achieving some of their goals.

The financial transaction tax, with its redistributive effects appears to be a hard case to demonstrate the policy influence of diffuse interest groups. In the case of the FTT, dominant industry groups in the EU and the US overwhelmingly opposed reform proposals. The US Congress subsequently failed to enact legislation and several bills introduced into Congress proposing a FTT stalled. Attempts of newly mobilized civil society coalitions pushing for regulatory change remained unheard by policymakers. While this outcome seems little surprising in the light of the potentially disruptive effects of a transaction tax on a sector that is considered structurally important in capitalist systems, the question arises, why eleven European countries, nevertheless, decided to introduce a FTT in 2013. In February 2013 the Commission adopted a directive proposing a broad-based FTT, in line with preferences of a mobilized civil society network and despite a unified industry that was violently opposed to the FTT. Although the proposed EU FTT has been watered-down since it has initially been proposed, capture theories cannot explain why eleven EU countries agreed to implement a FTT which is likely to be implemented in a scaled-back version by 2017.

The purpose of this dissertation is to solve the puzzle that these cases present. Findings of my case studies are at odds with prevailing capture theories of financial regulatory reforms. How did regulatory change representing diffuse interest come about? The goal is to learn whether and to what extent the success of regulatory change has a common explanation in the cases examined here. By analyzing cases where diffuse interest groups were successful in bringing about regulatory change to cases where groups failed to engage policymakers, I will

try to identify the sources of the pro-reform advocates' political strength in the reform process, as well as differences in this strength among cases. What factors explain the diversity of activism trajectories? Next, this chapter will turn to a discussion of existing accounts of financial regulations demonstrating that capture theories are not well suited to explain the full scope of regulatory reform dynamics after the financial crisis.

Restraining Capture: Salience and Actor Plurality

Accounts based on capture theory have not gone entirely uncontested. New research evaluating industry influence on post-crisis regulatory reforms in more detail is indeed more sophisticated than the narrative of pure capture that preceded it. Recent studies on financial regulation in response to the crisis have found counter-evidence to traditional capture analyses. Literature on post-crisis regulatory change has shown that the lobbying strategies of the financial industry were affected by two factors: political pressures in times of increased salience and increased actor plurality.

Highlighting the role of *public salience*, scholars increasingly emphasize that electoral contingencies and public opinion are causal factors that influence decision-makers. For example, increased public salience is the main explanatory variable in Pagliari's study on post-crisis regulatory reforms enacted despite industry opposition. He suggests that "a shock that triggers a significant and long-lasting increase in the level of public attention on a financial domain is likely to create strong electoral incentives for elected politicians to reform the regulatory framework, even when these reforms run against the preferences of the domestic financial industry groups" (Pagliari 2013). From this perspective, diffuse interests might see their preferences translated into policy not because they are so great at lobbying, but because policymakers take up their cause for electoral reasons. Baker (2010) makes a similar argument, emphasizing populist pressures on policymakers together with an increased awareness of the distributional consequences of regulatory failures due to the crisis as driving factors for more stringent regulation of the financial sector.

A small but growing number of studies testify that the crisis was a catalyst in changing interest groups dynamics in regard to financial regulation. Woll (2012) argues that regulatory reform had become susceptible to public outrage which forced financial industry lobbyists, in this case the hedge fund industry, to adapt their strategies to governments' preferences in order to be successful. Recent research has also shown that altered social relations within the financial policy network considerably weakened the industry's capacity to veto or block reform proposals. Drawing on empirical material gathered from interviews with private sector

associations in the US and the EU during the reform debates in 2011 and 2012, Young (2013) finds that increased issue salience was accompanied by a qualitative shift in policy making with decision-makers becoming more reluctant to exchange information with industry groups and overall communication levels dropping significantly. Adjusting to these shifts the financial industry changed its advocacy strategy putting more emphasis on self-regulatory moves and delaying implementation instead of vetoing policy proposals. Examining the lobbying success of European financial industry groups on global banking regulatory policies as part of Basel III, Young (2014, 368) concludes that their “role is quite circumscribed, with most major advocacy efforts losing more than they succeed when it comes to the setting of global rules since the crisis.” In a study on institutional change of Swiss banking secrecy, Steinlin and Trampusch (2012, 256) find that under political pressure banks were afraid of reputational repercussions and therefore refrained from using their veto possibilities to block change.

Increased *actor plurality*, closely linked to and motivated by heightened issue salience, is a second factor that can account for decreasing industry influence. In their study on post-crisis reforms, Helleiner and Pagliari (2011a, 179) observe that “the politicization of financial regulatory issues during and after the crisis triggered the mobilization of corporate actors outside the financial sector as well as citizens’ groups, who found in the US Congress and European Parliament (EP) new ways to influence US and European positions toward international regulatory reform.” In general, the emergence of new actor coalitions among NGOs, labor groups and consumer associations with a renewed interest in financial issues on both sides of the Atlantic, have made the actor network involved in financial regulatory policy making “more diverse than in the past” (Young 2013, 5). Quantitative analyses confirm that the mobilization of interest groups beyond financial groups in the regulatory debate following the crisis increased in the EU (Eising, Rasch, and Rozbicka 2013a) as well as in the US (Pagliari and Young 2012; Pagliari and Young 2013b). Pagliari and Young (2012, 92) conclude that “the number of trade union organizations, NGOs, and non-financial end users of financial services has increased significantly since the crisis, thus significantly diversifying the sectoral origin of groups which mobilize and limiting the predominance of financial industry groups targeted by regulation.” In a second study on the regulation of OTC derivatives, Pagliari and Young (2013b) confirm that the plurality of actors involved in the financial regulatory debate after the crisis increased, with more end users of financial services, NGOs and consumer organizations participating in the policy process.

So far there is little evaluation of how this increased plurality affected financial reform outcomes. Indeed, the role of newly mobilizing nonfinancial groups in redirecting regulatory reform in response to the crisis has not attracted much attention to date among political scientists who study financial markets. In their review of existing literature on financial regulation Pagliari and Young (2013b, 6) recently noted, that “the IPE literature on financial regulation has so far failed to provide a more systematic assessment of this plurality of private sector actors and its consequences over the design of regulatory policies – a surprising absence given the centrality of finance in contemporary economic life.” Those few scholars who have explored the subject, however, have offered some important insights for how groups beyond financial industry groups matter. This brings us to the small but growing number of studies that analyze the growing mobilization of nonfinancial groups surrounding financial regulation and the effects of this mobilization on regulatory policies in more detail. What is the precise role of those newly mobilized groups beyond finance that occurred in the aftermath of the financial crisis in redirecting regulatory reforms?

The literature identifies two differing effects of increased actor plurality in financial reform debates: increased actor plurality might either allow industry groups to form coalitions with supportive non-industry groups to leverage their influence (Pagliari and Young 2013b, 6) or it might have the opposite effect and reduce industry impact on regulatory politics when outsider groups successfully oppose industry preferences as “countervailing force” (Clapp and Helleiner 2012). Recent insights from political economy suggest that the mobilization of outsider groups as “countervailing force” had significant effects on the regulatory design of reforms. Scholars analyzing the US Dodd-Frank Act have found that a new network of small advocacy groups successfully opposed industry lobby campaigns against stricter regulations. At the same time, these works disagree on the mechanism through which capture of financial regulation can be tempered. Examining the greater strength of regulatory reform efforts in the US in comparison to Europe, Griffith-Jones et al. (2010, 6), for example, conclude that the key explanatory factors for regulatory change are political leadership combined with “a particularly strong coordinated lobbying effort [...] by trade unions, consumer and civil rights advocates, and a wide range of civil society organizations” which could capitalize on the public outrage in response to the crisis. Highlighting two variables, institutional context and interest group coalitions, Clapp and Helleiner (2012, 200) argue that the financial industry power in preventing agricultural derivatives regulation was curbed by “the presence of an alternative coalition of agricultural interest, energy sector groups and NGOs who favored

tougher regulation as well as by the broader political environment that favored financial regulatory reform after the 2008 financial crisis.”

Existing case studies on the creation of a new consumer regulator in the US suggest that ideas as institutional blueprints matter, that are pushed by policy entrepreneurs and newly mobilized interest groups outside of finance (Woolley and Ziegler 2014). Stressing the role of electoral incentives and interest groups dynamics, Woolley and Ziegler suggest that the Dodd-Frank Act is the result of a “creative brokering of elites and grass roots interests” (Woolley and Ziegler 2011, 4). They conclude that, while elected officials in Washington tried to cultivate friendly relations with Wall Street, they also tried to appeal to popular activists. As a result the new consumer protection framework on the US was “a settlement between concentrated industry interests and consumer-oriented advocacy groups” (Woolley and Ziegler 2011, 1). In both accounts, Woolley and Ziegler acknowledge the influential role of a coalition of pro-reform advocates stemming from consumer, labor and civil rights groups under the common banner of “Americans for a Financial Reform,” but the idea of why the power balance among organized interests shifted is largely absent. While the authors provide a compelling narrative, the analyses fall short of a systematic discussion of the role of advocacy groups. The story actually moves away from these groups to explain regulatory change with reference to strong policy entrepreneurs (such as Elizabeth Warren and Timothy Geithner) and key legislators (such as Congressmen Barney Frank and Chris Dodd) as well as new ideas held by those actors. Given this weakness of the existing analyses, the contribution of the study at hand is to specify a clearly circumscribed causal mechanism that can account for the increased policy influence of newly mobilized nonfinancial groups in financial reforms following the crisis. This study also differs in an important way from that of Woolley and Ziegler, because it approaches the question of diffuse interest representation in financial regulatory reforms employing comparative case analysis.

Taken together, then, where does existing scholarship on recent financial reform leave us? Given the public outcry and emerging popular pressures in response to the financial crisis, recent efforts on the part of scholars to explain regulatory change pay surprisingly little attention to newly mobilizing societal groups as change agents. While the above accounts - that represent the State of the Art on IPE literature on Dodd-Frank - have acknowledged that traditional capture dynamics surrounding financial regulatory policymaking were significantly altered by the shock of the credit crisis, the precise role of newly mobilized interest groups beyond the traditional financial groups remains theoretically implicit or at best underdeveloped. Most of the accounts above emphasize changed dynamics within the

financial community (Young 2013) or forms of top-down policymaking (Wooley and Ziegler 2011) with little attention to societal counter-mobilization from the bottom-up. We therefore need a precise account of how diffuse interest groups were able to confront the powerful financial lobby to have their preferences met in regulatory reforms in a more systematic manner. The next section will discuss some explanatory factors for the power of diffuse interests as suggested by the existing literature.

The Power of Diffuse Interests

The puzzle of how diffuse interests can become powerful in public policy making has been addressed by a substantial body of political science and sociological literature. Numerous studies, mostly focused on the American political system, testify to the recurring success of weak interests such as workers, consumer or public interest groups in spite of a conflict with more powerful business groups (Grossmann 2012; Berry 1999; Vogel 1997; Trumbull 2012; Smith 2000). Grossman (2012) finds, for instance, that advocacy groups, including public interest groups, are more often associated with policy change than business groups. These conclusions are consistent with Berry's (1999) findings, in his book "*The New Liberalism*," about the successful advocacy of citizen groups in American politics when it comes to agenda setting. For the European Union, Dür et al. (2013) find that business groups are less influential than citizen groups during the decision making stage and in particular when policy issues are highly conflictual. They conclude: "With business interests mostly defending the status quo and citizen groups together with the European Commission and the European Parliament pushing for policy change, the former tend to be in a defensive position with respect to much legislative activity in the EU" (Dür, Bernhagen, and Marshall 2013, 33). Diffuse interest groups might be able to compensate for their structurally weak position through different mechanisms, by mobilizing and employing framing strategies (Dobusch and Quack 2013), by coalescing with resourceful groups or by the intervention of elected officials who take up their cause (Baumgartner et al. 2009). Scholars have also sought to use network analysis to understand how relationships might lead to policy influence of weak interests (Haunss and Kohlmorgen 2010; Grossmann 2012).

To begin with, weak interests, such as consumer associations, can successfully be translated into public policy by means of coalition-building with industry groups. That meaningful legislation is only enacted when a consumer interest coincides with a powerful producer interest is a common assumption about consumer protection politics (Nadel 1971, 145). In "*Trading Up*," Vogel (1997) argues that a strengthening of consumer protection

standards can generally be driven by domestic producers keen to secure a competitive advantage due to stricter product standards vis-à-vis other jurisdictions. Consumer organizations and producers - which Vogel dubbed “Baptist-bootlegger” coalitions - might act together to promote stricter environmental regulations to raise entry barriers to foreign competitors (Vogel 1997, 20). In their study of a random sample of policy issues, based on more than three hundred interviews, Baumgartner et al. (2009) find that money is not a good predictor of groups’ policy influence, precisely because poor interest groups ally with rich groups in the legislative process. Although material resources matter, these kinds of mixed alliances even out material advantages one group might have vis-à-vis another group and therefore compensate for the weaker stance of public interest groups vis-à-vis business.

A second approach to explain the successful representation of diffuse interests has relied on favorable institutional structures. The successful representation of diffuse interests hinges on two factors, as Vogel (1993, 237) points out: access to the political process and officials’ receptiveness to demands from diffuse interest groups. Transferring this framework to the EU, Pollack (1997) argues that weak actors such as interest groups for women’s rights, environmental protection or consumer protection can prevail over concentrated business groups by taking advantage of political opportunity structures providing access points and receptivity to demands from diffuse interests.

As another set of actors to promote diffuse interests, the literature on the politics of regulation introduces “entrepreneurs”: public officials such as bureaucrats, experts, legislators or judges. Entrepreneurs “know how to mobilize public sentiment by capitalizing on a crisis or failure” and how to involve themselves “in the process of change, offering counsel, logistics, financial and technical expertise, or otherwise empowering poorly resourced societal groups adversely affected by the regulatory status quo” (Mattli and Woods 2009, 28).

Finally, elected officials might be especially inclined to step up for the representation of diffuse interests when political salience is high. As we have learned from Culpepper (2011) and Smith (2000), public salience can severely constrain business power. In particular in situations of high public salience, electoral considerations motivate politicians to listen less to business lobbies and more to the electorate (Culpepper 2011, 7). Similarly, in a study on business group influence, based on an analysis of more than two-thousand policy issues that the U.S. Chamber of Commerce took a policy position on, Smith (2000) finds that businesses may lose if opposed by public opinion. In other words, a united business lobby might still lose because issues they jointly mobilize for are likely to be accompanied by increased public attention and by the counter-mobilization of public interest groups. This in turn amplifies

electoral motives for decisions-makers to act in the public interest rather than pander to business preferences. As Woll (2014, 7) nicely puts it: “The active coordination of business interests faces a paradox: comprehensive organization and coordination requires stakes that are of relevance to all different types of business actors, but these are precisely the types of issues that will diminish the influence corporate groups can have.” Saliency is therefore a strong predictor of interest group influence, as Danielian and Page (1994, 1076) point out: “most interest groups fare best when they can work in the dark, when visibility is low and the scope of conflict is narrow [...]. In contrast, when the spotlight is on and the public gets involved, political equality tends to prevail and special interests lose.” Hence, for highly salient policy decisions, interests of organized diffuse interests are a force to be reckoned with.

In his book “*Strength in Numbers*,” Trumbull (2012) has just recently drawn our attention to processes through which Olson’s logic of collective action can be inverted by consumer groups’ ability to increase policy legitimacy in the public eye. Trumbull offers a compelling explanation for why diffuse interests, such as consumer interests, can win over business interests. Including the role of elected officials under public scrutiny, he argues that diffuse interests have a clear advantage in their ability to seemingly legitimize policy decisions, whereas concentrated interests are viewed with suspicion. As Trumbull (2012, 23) notes, “legislators acting in the interest of the general public may face skepticism that they are pandering to narrow constituencies.” From this perspective, the ability of diffuse groups to make policy appear legitimate accounts for their increased policy influence especially when decision-makers are under public scrutiny. Indeed, skillful allies can be instrumental in bringing about regulatory change reflecting diffuse interests, even “without those interests ever having been mobilized” (Trumbull 2012, 205).

In their extensive study on lobbying success or failure Baumgartner et al. also confirmed the importance of heightened public attention on issues to explain policy change. As they put it, “although students will never compete on an equal footing with bankers, legislation making student loans more attractive to students rather than to bankers can be adopted if attention focuses sufficiently on this issue” (Baumgartner et al. 2009, 241). In a recent study on lobbying in Washington, Baumgartner and Mahoney (2015) show empirically that policymakers do not necessarily respond to the resources of individual lobbying groups, but take into consideration the overall structure of conflict and the likelihood of success of a policy solution. Policymakers are not only passively being lobbied but may become active policy advocates (“legislative allies”) themselves who join the efforts of lobbying groups with

the same policy goals under the “right conditions,” namely “lobbying sides including prominent officials at high levels of the government [such as the president] as well as extensive lobbying resources mobilized by outside groups” (2015, 203). Similarly, for the context of the EU, Dür, Bernhagen, and Marshall (2013) find that business groups will likely lose during conflictual or salient policy episodes and when citizen groups align with the Commission and the EP to bring about policy change.

In the explanation adopted here, I follow the lead of these studies in focusing on factors that enable diffuse interest groups to restrain business power. The various forces are viewed as interrelated, such that causality lies in their combination. Yet while this dissertation builds on prior work, it goes beyond it in carefully specifying the causal mechanism that allows for diffuse interests to confront industry power. With such a perspective, the causes of diffuse interests’ policy impact are found partly on the supply side of regulatory change and partly on the demand side of it.

The Overall Argument in Brief

This study suggests that IPE scholars would benefit from a more nuanced understanding of “politics as organized combat,” as drawn by Hacker and Pierson. This dissertation provides a more “pluralistic” view of financial reform making, taking into account the role of a various nonfinancial actors in shaping regulatory reform. Situating this study in the larger context of interest group research, I argue that the image of politics as exclusively dominated by resourceful business lobbies moves us in the wrong direction. As Haunss and Kohlmorgen (2010, 243) rightly observe, interest group research with its emphasis on strong actors “is not well-suited to explain the occasional success of actors it regards as weak.” The challenge is thus to explain successful lobbying efforts of diffuse interests, traditionally considered as weak, in the context of post-crisis financial reforms. My dissertation does not challenge the notion that “financial industry groups remain important societal actors in shaping financial regulatory reform” (Pagliari and Young 2013a). Rather, it tries to refocus attention on factors that can restrain financial lobby power.

Drawing on insights of existing political and sociological literature, how presumably weak consumer interests can win over concentrated industry interests in the policy process, the main argument of the dissertation is that an alliance of “weak” or “diffuse” interests including small consumer groups, labor unions and community groups as “countervailing force” (Mahoney 2007, 40) has increased actor plurality around financial reform issues and thereby prevented industry groups from dominating the legislative process of financial reform

to the degree that the regulatory capture literature predicts. In line with recent studies on regulatory reforms, I argue that the outcome of regulatory reforms can only be fully understood by reference to diffuse interests and their translation into policy. The mobilization of countervailing interest groups is considered one necessary element in a larger causal chain to explain policy change in response to the financial crisis.

The theoretical contributions developed in Chapter 2 outline an alternative political account, integrating the demand and supply side factors of regulatory change in one causal mechanism and identifying elements that are key for understanding both the “success” and the “failure” of diffuse interest representation. The causal mechanism is set in the post-crisis context which enhanced the capacity of actor groups usually classified as weak to capitalize on the moral outrage caused by the credit crisis as a “legitimacy crisis” and to take advantage of the (temporary) disempowerment of concentrated interests. Following studies by Clapp and Helleiner (2012b) and Pagliari and Young (2013a), I will show that the ability of concentrated industry interests to affect either the policy agenda or the specific content of regulatory rules has been weakened in the context of the financial crisis, giving political leverage to groups traditionally considered as “outsider groups” to finance.

The model suggests four testable propositions derived from IPE research on financial regulation, the social movement and lobbying literature. First, it is hypothesized that a qualitative shift in the institutional context for financial regulation opened up a policy window for diffuse interests in the wake of the crisis in terms of access and responsiveness. The second hypothesis is that perceived political opportunities incentivized the formation of collective action among pro-reform groups and strengthened their collective action capacity. I argue that small advocacy organizations have contributed to policymakers’ quest for more substantial reforms, by acting as transmitters of public opinion, deploying expertise during legislative debates and exploiting splits among industry groups. A third hypothesis is that the policy impact of newly mobilized groups was leveraged by the presence of well positioned policy entrepreneurs promoting the same policy goal. A fourth hypothesis is that legislative allies actively defended diffuse interests on the political stage, working in team-like structures with pro-reform advocates. Specifically, I examine coalition-building efforts among countervailing interest groups as well as between these and policymakers and the influence of these relationships on policy reforms. The outcome is regulatory change that is not captured by industry interests.

Case Selection for Theory-Testing Process-Tracing

In order to explain determinants of the reform shift set in motion by the crisis, this study will engage in qualitative case-oriented research (as opposed to variable oriented qualitative research) (Ragin 2004).⁴ Instead of analyzing a large population of cases as is typical of quantitative research, this study will seek to acquire in-depth knowledge of a limited number of relevant financial areas. Case studies have several advantages over quantitative methods; no least that they “can ‘close-in’ on real-life situations and test views directly in relation to phenomena as they unfold in practice” (Flyvbjerg 2006, 235).

Process-tracing will be used here in order to open the black box of preference attainment of interest groups in order to test causal propositions and identify underlying causal mechanisms to explain policy change. The analysis here closely follows Beach and Pedersen (2013) who recently offered a detailed and comprehensive guide for researchers how to use process-tracing methods in practice. I also follow the guidelines for good process-tracing as suggested by two recent contributions to the subject, one article by Trampusch and Palier (2014) and a book by Checkel and Bennett (2015). My focus in this analysis concerns process-tracing as a method for testing a theory about the presence/absence of a causal mechanism in particular cases. Process-tracing is arguably the only method that allows us to study causal mechanisms (Beach and Pedersen 2013, 1). In other words, process-tracing is “a key technique for capturing causal mechanisms in action” (Bennett and Checkel 2012, 10).

The case selection follows the case selection strategy for theory-testing process-tracing. First and foremost, the ambition here is to select cases “where X and Y are present, along with the relevant scope conditions” in order to test whether a hypothesized causal mechanism linking X and Y is present (Beach and Pedersen 2013, 147). Most importantly, the case studies illuminate the ways weak interests can affect policy outcomes in finance through their engagement in the regulatory process, their capacity to organize, to lobby, provide expertise, to forge coalitions with legislative allies and the institutional setting within which they participate.

The case logic follows a crucial case study based on a “least-likely” design (Levy 2008, 11; Gerring 2007, 116). Although diffuse interest groups have “systematically dominated national policy processes” (Trumbull 2012, 10) in the postwar period and are more likely to succeed under conditions of high salience (Culpepper 2011, Woll 2013), the effect of civic non-state actors is expected to be low in a highly technical policy field such as financial

⁴ Gerring (2007) defines the case study approach as „an intensive study of a single unit or a small number of units (the cases), or the purpose of understanding a larger class of similar units (a population of cases).

regulation dominated by savvy and resourceful financial industry groups. Hence, I am assuming that salience effects in the cases will not trump phenomena (such as technicality and industry opposition) that make advocacy success of consumer groups “least likely.” Consumer protection regulation might be considered not to be a hard case to demonstrate the policy impact of diffuse consumer groups. Indeed, studies have repeatedly provided evidence that consumer activists were successful in achieving legislative victories – in particular in the field of credit regulation (Nadel 1971; Bykerk and Maney 1994; Trumbull 2012; Prasad 2014). However, in both policy debates, consumer protection as well as taxation, diffuse interests were pitched against intense industry opposition to new regulations. Hence, the aim here is to show the policy influence of weak interests under difficult conditions, “since if we are able to find the mechanism in a non-favorable setting, this significantly increases our confidence in the existence of the causal mechanism in a wider population of cases” (Beach and Pedersen 2013, 152). In other words, a theory that succeeds in explaining a case in which it is least likely to apply increases our confidence in its validity. As such, the cases studied here are considered to be “substantively important” (Mahoney and Goertz 2006, 242).

The ambition of theory-testing process-tracing is to generalize aiming at “testing theories beyond the context in which they were developed” (Beach and Pedersen 2013, 51). Hence, in an attempt to generalize processes and findings about causal mechanisms to other cases, this research project will go beyond the case studies - consumer finance protection reforms in the US and the EU - that served to reconstruct the initial process. What findings can be exported to other cases? The cases range from instances where diffuse interests have been successful (especially consumer finance protection regulations passed as part of the financial overhauls) to other cases where diffuse interests’ success was largely confined to the agenda-setting stage or where diffuse interests had to succumb entirely to concentrated industry interests. The latter cases, focused on regulation of speculation through a FTT, provide strongest evidence for capture theories, albeit revealing important limits on industry influence in financial regulatory policymaking. The outcome – regulatory outcomes reflecting diffuse interests - varies across the cases. By asking why and how diffuse interests came to be represented in some policies, but not in others, we can start to single out the underlying mechanisms of diffuse interest representation in financial regulation. As Hall (2008, 315) observes: “Because the object of the inquiry is usually to explain a particular kind of outcome, there is also special value in extending the analysis to cases in which that outcome does not occur, as well as those in which it does, because the explanatory theory being tested implicitly contains important predictions about both types of cases [...]” Hall further suggests:

“Increasing the number and diversity of the cases increases the investigator’s confidence that the causal process observed is not idiosyncratic to one of them” (Ibid.).

My goal is to learn whether and to what extent the success of diffuse interests has a common explanation in the cases studied here. Although the case-specific conglomerate may not be exportable, Beach and Pedersen (2013, 36) acknowledge that individual causal mechanisms can be exported. Therefore, this project engages in parallel theory tests, following iterative within-case analyses. The idea here is to trace analogous mechanisms in multiple cases that contribute to producing the same outcomes (namely policy change reflecting diffuse interests). The literature remains rather vague about the use of comparative process-tracing. When comparing cases, we should keep in mind, that causal mechanisms have case-specific manifestations and can therefore not be strictly compared to one another (Ibid, 153). Indeed, process-tracing with its ambition to reveal the interaction among processes can be understood to be distinctly different to the comparative logic which aims for singling out an explanatory variable (Bennett and Checkel 2014, 6). The type of process-tracing employed here can be thought of as a combination of the theory-testing process-tracing approach and a parallel theory test of several cases.

Empirically, I will focus on Europe and specifically on the EU rather than on member states for a comparison with the US. Many of the crucial decisions regarding financial reforms in response to the crisis were taken in Brussels. Although comparing regulatory reforms in the US with the ones in the EU can be viewed critically from an analytical standpoint given that the former is a state and the latter is an international organization, the problem can be avoided by “compar[ing] processes that - while distinct - can be treated as analytic equivalents, provided the comparison is appropriately contextualized” (Newman and Bach 2004, 389). Also, since they are both federal systems, the two political systems are comparable to one another. More importantly, due to the mere size of their capital markets, the US and the EU are relevant cases whose financial reforms are likely to have a large impact on financial regulation worldwide (Drezner 2007). Insights from these two cases can be considered as quite relevant to the overall international financial architecture (Blatter and Blume 2008).

Plan of the Dissertation

This study analyzes how interest groups traditionally considered as weak, successfully had their preferences met in financial reforms in response to the 2007/08 financial crisis, despite the opposition of powerful private sector groups. The narrative of the following chapters tells the story of how nonfinancial groups were able to tap into public sentiment in

order to bring about policy change in the realm of financial regulation. The empirical part of the study will focus on the policy process itself, and the ways in which diffuse interests have been able to gain access to policymakers and influence policy outcomes after the crisis. The dissertation is organized into eight chapters.

Chapter 2 develops the theoretical framework and derives testable hypotheses for a causal mechanism linking diffuse interests to regulatory change. Chapter 3 deals briefly with the methodological foundations of the research project. The next three chapters 4-6 interpret the policy process by applying the theoretically derived hypotheses to the empirical record of four case studies by employing the method of process-tracing. A preliminary task in each chapter is to establish reforms of the financial regulatory system in the EU and the US as developments characterizing a more nuanced influence of private sector groups than commonly thought. This is important because existing accounts of successes and failure of the financial reform process mainly emphasize the dominance of the financial sector in the decision making process. The positive and mixed case studies attempt to trace social mechanisms linking weak interests to policy change in financial regulation, trying to identify analogous mechanisms in multiple cases that contribute to producing the same outcomes: the creation of a US consumer regulator; the harmonization of EU level consumer protection reforms; and the decision of eleven EU countries to introduce a transaction tax – all reforms proposed despite private sector resistance. Chapter 7 takes the analysis further by extending the process-tracing analysis of the cases where the outcome to be explained occurs to cases in which this outcome does not occur, “because these are instances in which clear and important predictions can be made from the theory about the correspondence between those values and the outcomes” (Hall 2009, 315). By analyzing the failed attempts of mobilized civil society to bring the FTT on the legislative agenda of Congress, we will be able to identify which elements of the mechanism I consider to be systemic and transportable.

My story spans the time period from 2008 to 2014. The starting point is the beginning of the financial crisis and the preliminary policy responses to it in 2008, while the end point is roughly the end of the reform negotiations and the signing into law of reforms. Subsequent research will have to unpack the full implementation process of the financial reforms enacted in response to the crisis. Making inferences from the commonalities among the positive cases and the contrasts with the mixed and negative cases, I attempt in a cross-case analysis in Chapter 8 to explain what made regulatory change corresponding to preferences of diffuse interests possible even though the odds against them seemed high. The conclusion will explain how the argument advances research on lobbying and politics of regulation.

Chapter 2

A Theory of Financial Regulatory Change

Towards a Causal Mechanism of Group-Official Relations

Contrary to the prevailing assumption that financial regulatory outcomes are always geared towards powerful industry preferences, detailed analysis of the cases of post-crisis consumer protection reforms in the US and the EU and taxation reforms in the EU suggests that we should look elsewhere for the precise causal mechanism shaping regulatory reforms in the field of finance. These case studies pose challenges to capture explanations, suggesting that the proverbial “fire power” of the financial industry was much more circumscribed in the post-crisis regulatory environment than commonly assumed. Following the research strategy suggested for theory-testing process-tracing by Beach and Pedersen (2013), this chapter will outline a plausible causal mechanism of group-official relations set in a post-crisis context that can explain reform trajectories representing diffuse interests.

One of the hallmarks of process-tracing as analytical tool is that the researcher does not trace a sequence of empirical events but rather the “underlying theorized causal mechanism itself” (Beach and Pedersen 2013, 15). It is this theorized causal mechanism and a series of theoretically derived propositions to be tested in the case studies that this chapter is devoted to. As pointed out before, the theoretical puzzle of how diffuse interests can become powerful in public policy making has been addressed by a substantial body of political science and sociological literature. To allow for process-tracing, existing theoretical conjectures need, however, to be reformulated into a causal theory. Following Mattli’s and Woods’s (2009) “*The Politics of Global Regulation*,” I suggest to integrate demand and supply side factors into one causal mechanism in order to systematically explain financial regulatory change counter industry preferences and explore the institutional conditions under which diffuse interests can become change agents in times of crises.

Diffuse interests, as the initial condition, are here understood as “collective interests held by large numbers of individuals,” such as, for instance, consumer protection policies (Pollack 1997, 572). The outcome studied here is the degree of influence of diffuse interest groups on regulatory reforms in response to the crisis. For the sake of simplicity, this is conceptualized as a spectrum that goes from relatively low, to moderate and to high influence. A first step is the formulation of a plausible mechanism linking X to Y, as well as of the

contextual conditions in which we expect the mechanism to function. In order to find a plausible causal mechanism for a given theorized causal relationship, I have cast the net widely for finding inspiration in scholarship on the phenomenon itself - the representation of diffuse interests in public policy - but also in literature on social movements, regulation and public policy studies. While this approach is predominantly deductive, it might also entail inductive elements “when we review existing empirical work for ideas about how we can flesh out the logical steps in a mechanism to transform a causal theory ($X \rightarrow Y$) into a causal mechanism” (Beach and Pedersen 2013, 56). Hence, recent studies by sociologists and political scientists on the financial reform process also served as a source of ideas for how a theorized mechanism could work (inductive approach). When can one expect government action to be oriented towards public interest as opposed to special interests (see Levine 1976, 42)? Drawing on existing explanations, I introduce four conditions as suggested by the literature that can explain why diffuse interests see their preferences translated into public policy. The analytical framework employed here combines perspectives of IPE research on financial regulation with insights of the social movement and lobbying literature.

Four necessary conditions, utilizing different theoretical approaches, combining tools from the literatures on regulation, lobbying and social movements are considered as relevant for regulatory change representing diffuse interests. First, it is hypothesized that a qualitative shift in the institutional context for financial regulation opened up a policy window for diffuse interests in the wake of the crisis in terms of access and responsiveness. The second hypothesis is that perceived political opportunities incentivized the formation of collective action among pro-reform groups and strengthened their collective action capacity to serve as transmitters of public opinion, deploy expertise and exploit splitting of the opposition. A third hypothesis postulates that the policy impact of newly mobilized groups was leveraged by the presence of well positioned policy entrepreneurs promoting the same policy goal in response to the perceived policy window. Fourth, taking increased pro-reform mobilization into account, public officials as “government allies” started to actively defend diffuse interests on the political stage, working in team-like structures with pro-reform advocates. The outcome is regulatory change that is not captured by industry interests. The causal mechanism is set in the post-crisis context which enhanced the capacity of weak actors to capitalize on the moral outrage caused by the credit crisis as a “legitimacy crisis” and take advantage of the (temporary) disempowerment of concentrated interests.

A researcher’s first key decision in a process tracing study is to define a starting point (Collier 2011). To define the temporal context in this analysis, the financial crisis that

originated in 2007 provides a clear starting point that sets the causal mechanism in motion. Political reform dynamics addressed as long-term re-regulation proximately started in spring 2009, after a first phase of measures addressed at fire-fighting the ramifications of the bankruptcy of the investment bank Lehman Brothers in September 2008 had been implemented. While the financial crisis can be interpreted as the catalyst for institutional change, the explanation for policy change has to be much more agent-centered, as Baumgartner et al. (2009, 122) suggest: “Crises or focal events might pass by without any policy change. Such crises do offer opportunities for the advocates of change, and if they are ready to seize on them, then major change becomes far more likely.” As Blyth notes, “theoretically, no exogenous factor can in and of itself explain the specific forms that institutional change takes. While the destabilization of existing institutions can be exogenously driven, moving from such a position to a new stable institutional order must be seen as an *endogenous* process.” He thus urges us to analyze, how “agents redesign and rebuild institutional orders, *and the conditions under which these activities take place [...]*” (Blyth 2002, 8; italic in the original).

Any discussion of a hypothesized causal mechanism needs to start with a detailed elaboration of the contextual conditions in which the mechanism is theorized to operate. I will therefore turn to the scope conditions first, before I lay out the different steps of a hypothesized theoretical mechanism - institutional context, diffuse interest coalitions and elite allies on the outside and inside of government - to explain the outcome, “filling in the dots between X and Y to detail the nuts, bolts, wheels, and cogs between them” (Beach and Pedersen 2013, 58). Since most studies might be formulated as series of intervening variables, I will pay particular attention to the causal linkages between the different elements of the mechanism, trying to avoid logical gaps.

Scope Conditions: Crises and Limits of Capture

Social mechanisms operate in specific contexts and so we need to pay close attention to how the crisis altered the contextual conditions for regulatory reforms in order to understand the increased political receptivity to pro-reform demands and sudden (at least partial) redistribution of power away from concentrated industry interests to more diffuse consumer interests. This is a vital part of the conceptualization process as the same mechanism put into a different context might produce a very different outcome. The analysis here will therefore start with a theory-guided specification of the scope conditions in order to identify “what aspects of a context are likely to be relevant to the process and outcome under

study” (Falleti and Lynch 2009, 1153). It should become clear from the discussion of the scope conditions that the outcome of the causal process, which begins with the critical juncture, was influenced by a variety of contextual factors, notably a legitimacy crisis of global finance which subsequently allowed for the opening of a policy window for newly mobilizing actors. The structural power of finance might be considerably weakened by a crisis that constitutes a critical juncture. As Capoccia and Keleman (2007, 343) emphasize: “Critical junctures are characterized by a situation in which the “structural” (that is, economic, cultural, ideological, organizational) influences on political action are significantly relaxed for a relatively short period.”

According to the literature, the recipe for success of diffuse interests in public policy includes processes that render neutral the organizational advantages of clientele groups in reform debates (Patashnik 2008, 21). The retreat of affected industry groups, mobilized in opposition to regulatory change, is also one of the main explanatory factors for the success of diffuse interests in Derthick’s and Quirk’s *“Politics of Deregulation.”* Industry opposition may be weakened by several factors, but in particular, when industry’s political disorganization inhibits it from effectively putting its economic resources to political use (Derthick and Quirk 1985, 245). When faced with an opposed public opinion, groups defending the status quo have two incentives to back down: the first incentive is that lobbying in the face of public opinion opposition is not likely to be successful (Kollman 1998) and second, groups have an incentive not to have their name associated with a publicly unpopular stance which can incur reputational costs (Dür and Mateo 2014, 1204). Negative publicity can therefore strongly affect traditional interest groups dynamics, as Birkland (1998, 57) argues: “The suddenness of an event means that politically disadvantaged groups gain a strategic advantage from the event itself, which illustrates the very problem they seek to address, while the members of the policy monopoly are placed in the position of managing negative publicity and defending the status quo in a highly charged, politically embarrassing environment.” In those situations, groups on the defensive might decide to refrain from active counter lobbying.

According to recent IPE research, the financial crisis had several important effects that at least temporarily neutralized the organizational advantage of financial sector groups. First and foremost, the post-crisis financial regulatory environment was generally marked by increased issue salience and negative publicity for the financial sector. Quaglia (2010) observed that “financial governance has become a matter of interest outside of the restricted circle of policymakers, the stakeholders and the experts involved.” This increased public salience was clearly “linked to the fact that policy failures in this sector directly affect citizens

in the capacity as bank account holders, small investors, insurance holders, pensioners, and so on.” Heightened media attention raised by the financial crisis certainly increased the perception of undue industry influence. Applying his theory of quiet politics to post-crisis politics, Culpepper (2011) predicts “a weakened bargaining position” for organized interests in a “radically changed political environment” and “under intense public scrutiny.”

Various scholars have argued that the financial crisis had thrown the existing neo-liberal order and financial community into a “legitimacy crisis” (Helleiner 2010; Morgan 2010). From this perspective, the global crisis delegitimized the financial industry as well as “measures relying on the capacity of markets self-discipline” which industry groups had advocated for (Pagliari and Young 2013a). Throughout reform debates the legitimacy of the financial industry and its practices were largely contested in the public realm. Industry groups were thereby deprived of a valuable source of power. As a consequence, private interest groups may have become less important participants in the policy process. Several studies stressed how this de-legitimization and increased public attention, in turn, led to a change in lobbying strategies, with industry groups refraining from vetoing policy proposals (Young 2014; Steinlin and Trampusch 2012), focusing their attention on different stages of the policy cycle or on the reversal of legislative decisions during the implementation stage (Young 2013).⁵ Baker (2010, 656) observed that “lobbying capacity and voice of bank lobbies are not what they were prior to the crisis. Their oppositional attitudes to regulation are softening, while regulators are emboldened.”

Recognizing the changed domestic political context, Helleiner and Pagliari (2011a) argue that the crisis also led to a divide among financial sector groups thereby diminishing their collective action capacity. In the aftermath of the crisis, the financial community was highly divided over the desirability of reform and policymakers started to call the expertise of the existing financial epistemic community and their past consensus on light-touch regulation into question. Divisions not only emerged between parts of the financial sector but also among politicians, regulators and industry representatives, thereby reducing the sector’s post-crisis political influence (Helleiner and Pagliari 2011b; Engelen et al. 2011). After the damage the financial crisis had done to the economy and linkages between the financial industry and the political system became publicly denounced, the transnational community of financial experts partly lost its political leverage. As Helleiner and Pagliari (2011b, 182) observe,

⁵ Some authors might object that precisely because governments bailed out the industry, they “gave it the space into which to re-establish itself” (Morgan 2010, 39). Borrowing a concept from the international relations literature, one could argue against that the “social constituency of legitimization” (Reus-Smit 2007, 161) had grown considerably for actor groups favouring re-regulatory reform after the crisis.

“increasingly strong and public disagreements among financial officials from the leading powers eroded the cohesion, and thus the influence, of transgovernmental expert networks.” While financial industry had largely enjoyed privileged access to the technocratic decision making process pre-crisis (Tsingou 2008; Baker 2010), recent works within IPE have illustrated that the regulatory reform context was characterized by increased issues salience accompanied by qualitative shifts in policymaking displaying increasing divisions among policymakers and the private sector (Young 2013, 4). To sum up, the contextual conditions allowing the causal mechanism to operate are marked by a (temporal) de-legitimization of the financial industry after the financial crisis which somewhat neutralized the financial sector’s organizational advantage and led to increasing frictions with policymakers, thereby changing interest group dynamics. How did this crisis context affect the political opportunity structure for diffuse interest groups?

Political Opportunities: Access and Receptivity

The financial crisis and the subsequent industry retreat provide the contextual conditions for the political opportunities that opened up for diffuse interest groups and spurred the formation of collective action in the post-crisis regulatory environment. There is a clear need to be sensitive to the political context and the role of elected officials when we try to determine the policy impact of diffuse interests in public policy. This section will consider qualitative changes in the institutional and procedural context of decisions - the supply side of regulatory change in economic theories.

Research on social movement and political contention’ provides particularly relevant insights for institutional factors that determine weak actors’ role in politics. As Tarrow (1996, 54) writes: “Unlike money or power, this opens the possibility that even weak and disorganized challengers can take advantage of opportunities created by others to organize against powerful opponents.” According to this strand of literature, institutional factors present risks and opportunities for diffuse interest groups (Tilly 1978; Tarrow 2011; McAdam, Tarrow, and Tilly 2001; Kriesi 1989). Drawing on the existing social movement literature, McAdam (1996, 27) defines the formal legal and institutional structure of a political system as one dimension of “political opportunity” that constrains or facilitates the organization of collective action.

“Political opportunity structures,” as a term developed in social movement scholarship, has been defined very differently by various scholars and remains a rather vague concept. It can be broadly defined as a “set of characteristics of a given institution that

determines the relative ability of (outside) groups to influence decision making within that institution” (Princen and Kerremans 2008, 1130). The term, as it will be employed here, refers to changes in the political environment rather than to static opportunity structures. Using a very narrow definition of the concept, political opportunities are understood to encompass the following two dimensions: “The first is a structural aspect, which relates to the openness of a political system and, hence, the ease of access for political actors. The second concerns the receptivity of the political system, to the claims of those political actors” (Princen and Kerremans 2008, 1131). Highlighting the role of institutions, Vogel (1993, 237) makes the same distinction among two different meanings of representation of diffuse interests. First, diffuse interest groups can enjoy access to the policy process. Although it remains unclear whether access will actually translate into influence, access increases the likelihood that influence will occur. Second, government officials might be responsive to demands coming from diffuse collective interests for electoral considerations. Political opportunisms can be a strong motivator for politicians to push for reform, as Tarrow (1996, 60) puts it: “Political elites are most likely to behave in a reformist way when there are political advantages to be gained from it.” According to McAdam’s dimensions of political opportunities the “emergence of new [elite] allies within a previously unresponsive political system” (McAdam 1996, 30) is a key condition for collective action. From this perspective, political opportunity structures offer incentives to the formation of collective action among challenger groups. Indeed, advocacy groups are more likely to mobilize, if a governing party is supportive of an advocacy group’s position (Mahoney and Baumgartner 2008, 1268). Following this conceptualization of opportunity structures, I will argue that two institutional factors - access and receptivity – provided diffuse interest groups with a favorable political opportunity structure⁶ in the context of the financial crisis.

Following the distinction between institutional access and political receptivity, the analysis suggests that qualitative changes in the institutional context in which financial regulatory policies were developed after the crisis granted access to a variety of nonfinancial groups previously excluded from the decision making process. Legislative bodies such as the US Congress and the European Parliament got involved in the debate and directly shaped regulatory reforms. Helleiner and Pagliari (2011b, 178) conclude that “the crisis triggered intensive legislative debates in the United States and Europe on previously obscure topics such as the regulation of credit default swaps or reforms to accounting standards, generating

⁶ Opportunities in the multilevel system of the EU differ of course from the US system of federalism and separation of powers (Mahoney and Baumgartner 2008, 1256).

detailed legislative initiatives.” This involvement, in turn, allowed for better access of interest groups. As Pagliari and Young (2013a) observe, “the deepening of the crisis moved the focal point away from the technocratic policy network and toward the agency of elected politicians. The greater involvement in the design of financial regulatory reform initiatives of bodies such as the US Congress and the European Parliament has opened new access points in the policymaking process to a broader range of stakeholders.” With respect to the reform of agricultural derivatives after the crisis, Clapp and Helleiner (2012a), for instance, observe the importance of the US Congressional Agricultural Committee as locus of reform debate which provided access points to a variety of stakeholder groups. Similarly, Baker (2010, p.656) writes that “dominance of the terrain of the regulatory debate has clearly shifted away from the largest banks towards newly invigorated regulators and policymakers.” In this sense, the openness of the institutional context is considered here to be a necessary condition for diffuse interests’ success.

The second meaning of representation of diffuse interests, namely the receptivity of decision-makers to their concerns and demands, depends on contingent factors, such as shifts in the political mood or public opinion due to focusing events, preferences of government officials or divisions among political elites (Princen and Kerremans 2008, 1131). Public salience in particular affects diffuse groups’ political opportunities. The financial crisis can be interpreted as “a shock that triggers a significant and long-lasting increase in the level of public attention towards a financial domain [...] likely to create strong electoral incentives for elected politicians to reform the regulatory framework, even when these reforms run against the preferences of the domestic financial industry groups” (Pagliari 2013b). As a result of the crisis as focusing event, regulatory reform had become susceptible to public outrage, pushing financial regulatory reform out of the arena of what Culpepper (2011) termed “quiet politics,” where interest group politics are shielded from public debate, into the arena of “noisy politics,” which force elected politicians to react to popular opinion or interest groups representing it. As Culpepper’s distinction among quiet and noisy politics suggests, in particular under conditions of noisy politics when the public pays attention, highly organized business groups oftentimes lose. In both cases, the US and the EU, it should have been clear to decision-makers that there was very little appetite among voters for a soft line on the industry. In other words, by shifting the political mood, the crisis opened a “policy window” (Kingdon 2010, 165) (at least temporarily) increasing political receptivity to alternative societal actors promoting reform. As part of the causal mechanism I expect the following conditions to be present in the case studies: *qualitative changes in the post-crisis institutional*

context in which financial regulatory policies were developed as well as political receptivity allowed for increased access of diffuse interest groups.

Mobilization of Diffuse Interests

Political opportunity structures that incentivize collective action are here theorized as one element of a causal chain to explain policy change and a necessary condition for interest group activities. Focusing on agency of diffuse interest groups, I argue that in the context of the financial crisis, opened-up political opportunity structures provided new prospects for collective action of newly mobilizing interest groups – a second necessary condition to explain the representation of diffuse interests in the regulatory reform outcome. A causal mechanism trying to explain the representation of diffuse interests in public policy needs to go beyond institutional factors and take the agency of diffuse interest groups into account. As Pollack (1997, 588) remarks, “[i]nstitutions do not absolutely determine policy outcomes, they simply present risks and opportunities to various actors, including diffuse interests, who may not take advantage of the opportunities in the system.” In the words of Birkland (1998, 72), “[w]ithout any sort of policy community or advocacy coalition [...] there is no one to take advantage of an event.” The explanation of policy change is therefore much more agency-centered, with the crisis being regarded as catalyst – not a cause for policy change.

Diffuse interests are generally assumed to lose in reform processes because of their organizational disadvantage. Since “[g]aining and using control over political authority requires organization (Hacker and Pierson 2010, 172), the capacity to overcome collective action problems and coordinate with others is at the core of groups’ efforts trying to influence public policy. A necessary condition for regulatory change is therefore the capacity of diffuse interest groups to successfully overcome barriers to collective action. Since Olson’s insight that diffuse interests are notoriously difficult to organize, many political scientists have drawn our attention to the capacity of diffuse interests to mobilize and affect policies despite problems of collective action. Wilson observed about American regulatory politics in the 1980s that “an important organizational change has occurred [...] – the emergence of “watchdog” or “public interest” associations that have devised ways of maintaining themselves without having to recruit and organize people who will be affected by a policy” (Wilson 1980, 369). Keck and Sikkink (1998, 117) ascribe a key role to the activities of advocacy networks including NGOs and consumer organizations in changing human rights practices. Similarly, Trumbull (2012) found that consumer interests prevailed in French and UK credit regulations, as well as in other policy areas including retail, pharmaceutical and

agricultural sectors. He concluded that “despite their large and diffuse constituencies, these groups mobilized around shared pragmatic interests and succeed in having those interests transcribed into public policy” (Trumbull 2012, 4-7).

Crises, in particular, are dramatic events that can facilitate collective action and spur interest group mobilization. The literature converges on the view that “a focusing event can trigger extensive interest group mobilization [...] where public interest is relatively high or easily mobilized” (Birkland 1998, 73). According to Birkland, crises “can be an important tool for groups seeking policy change” because they “serve as important opportunities for politically disadvantaged groups to champion messages that had been effectively suppressed by dominant groups” (Ibid. 54). Crises entail also “demonstration effects” which reveal distributional consequences of regulations, thereby motivating the mobilization of a broader range of societal actors (Mattli and Woods 2009). Meins (2000) argues that by redistributing political leverage from producers to consumers, public outrage helps pressure groups such as consumer associations to overcome the collective action problem that is inherently linked to groups’ efforts at providing a public good, i.e. consumer protection. Public salience raised by dramatic events such as crises has another important effect, namely, that it raises the diversity of groups involved in a political contestation. In turn, business groups’ political influence might be severely restricted, in particular if groups mobilize against their preferences. Smith makes a compelling argument connecting salience to group mobilization. He argues that salience increases the likelihood of counter-mobilization, because it probably addresses issues “of national importance that arouse other parts of society as well” (Smith 2000, 26). In particular, under conditions of public salience, competing interest groups mobilize as broad-based coalitions against business which “changes the balance of forces, but does not equalize them” (Ibid., 26). Indeed, a recent study of Clapp and Helleiner (2012a) on the reform of commodity derivatives as well as research by Pagliari and Young (2012) on consultation participation in regard to financial reforms testify to the role of the crisis as a trigger for interest group mobilization beyond the industry. Crisis-driven mobilization of diffuse interest groups as countervailing force to promote reforms in the public interest is therefore conceptualized here as a next step in the causal chain to explain policy change reflecting diffuse public interests rather than special interests.

Questions of interest group mobilization can again usefully be related to the literature on social movements. Following the dominant political process approach to social movements (McAdam, Tarrow, and Tilly 2001), opened-up political opportunity structures are here conceptualized as a necessary condition for interest group activities. “Political opportunities

are but a necessary prerequisite to action,” as McAdam et al. (1996, 8; italic in orig.) write, “[i]n the absence of sufficient organization – whether formal or informal – such opportunities and organization are not likely to be seized.” Focusing on strategies by diffuse interest groups, the ability of interest groups to succeed is often a function of the identification of new political opportunities (Princen and Kerremans 2008, 1132). Kingdon (2010, 170) suggests that a “window of opportunity” exists in the perception of participants who have to perceive its presence to take advantage of it. Political opportunity structures “are only relevant insofar as they are perceived as opportunities by interest groups” (Princen and Kerremans 2008, 1143). As McAdam et al. (1996, 8; italic in orig.) write, “[n]o matter how momentous a change appears in retrospective, it only becomes an “opportunity” when defined as such by a *group* of actors sufficiently well organized to act on this shared definition of the situation.” Favorable political shifts and the collective action processes they yield are here treated as two separate phenomena (McAdam 1996, 26) that unfold in a temporal sequence. Specifically, collective action organizes in response to (perceived) political opportunities.

Diffuse interest groups can strengthen their collective action capacity by building coalitions that enhance common organizational resources. Organizational resources that allow groups to take advantage of new opportunity structures are a key factor to explain why diffuse interests may be successfully represented in public policy (Princen and Kerremans 2008, 1132). While political opportunity approaches highlight properties of the political environment, “resource mobilization” theory stresses the importance of organizational processes for mobilization (McCarthy and Zald 1977). Drawing on social movement scholarship, Dobusch and Quack (2013, 59) regard organizing capacities as “preconditions and catalysts of mobilizing processes.” According to them, “establishing a formal organization or a mobilizing network of organizations not only strengthens stability and public visibility but also helps in mobilizing financial and human resources.” Accordingly, the ability of activists to establish networks among themselves was one key explanatory factor in Price’s (1998) article on civil society’s successful campaign to ban land mines. Networking among groups considerably reduces transaction costs and facilitates advocacy work. Coalition-building among diffuse interest groups to enhance their collective action capacity can therefore be considered a necessary condition of regulatory change.

The organization as a coalition has another important effect: it can provide sufficient resources to pro-reform groups to channel wide-spread public support and serve as a link between public opinion and decision-makers. Especially in situations of uncertainty generated, for instance, by a financial crisis that turns institutional arrangements or parts of it

upside down, policy makers turn to interest groups as new sources of advice (Haas 1992). It is in these situations that “nonstate actors gain influence by serving as alternate source of information” (Keck and Sikkink 1998). From the perspective of resource exchange theories among legislators and groups, groups can provide necessary information about domestic electoral preferences for legislators pursuing re-election⁷ as well as expert knowledge (Bowen 2004). For Kollman (1998) interest group mobilization serves as a powerful signal to decision-makers about the state of public opinion. Similarly, Hansen (1991, 227) writes: “Interest groups are influential, but not because of their ability to bring pressures to bear on Congress. Rather, interest groups are influential because they direct lawmakers’ attention to some pressures rather than to others.” Interest group mobilization is not just epiphenomena. Dür and Mateo (2014) could show empirically for the campaign against the Anti-Counterfeiting Trade Agreement in the EU that mobilized public interest groups can influence public policy, when they can transmit information to policymakers about public opinion backing their cause. They find that “groups supported by public opinion are more likely to see their preferences reflected in public policy than other groups” (Dür and Mateo 2014, 1205). Especially in the EU, in the absence of a European public sphere, organized civil society can be proxy for public opinion for policymakers. From this perspective, promotional strategies of diffuse interest groups were successful because policymakers became more receptive to these arguments in the context of the crisis and under public pressure.

Mobilized diffuse groups might not only be influential because of public opinion favourable to their cause but also due to another factor, namely fragmentation within the financial sector. Existing literature on the financial crisis found evidence that divisions among different financial sector groups emerged (Helleiner and Pagliari 2011b; Engelen et al. 2011). A splitting of the industry’s opposition can be helpful for diffuse interest groups because it diminishes the sector’s overall political influence. The conventional wisdom predicts that consumer interests win when they coincide with a powerful producer interest and so-called “Baptist-bootlegger” coalitions emerge. A splitting can therefore be particularly helpful if consumer groups find themselves on the same lobbying side with financial sector groups against other financial sector groups. This gives rise to the following causal proposition: *the crisis-induced organization as advocacy coalition spurred by the perception of a window of opportunity allows diffuse interest groups to effectively promote reform goals (A) by serving*

⁷ Interest groups can also serve as information transmitter the other way round, by informing constituencies about policy actions.

as link between public opinion and policymaker and (B) by exploiting a splitting of the opposition.

Policy Entrepreneurs

As with political opportunities and organization resources, powerful allies remain just as important to the fate of diffuse interests in public policy. Diffuse interest groups are dependent on elite allies that act as entrepreneurs on their behalf to actively promote policy change. Policy entrepreneurs are important actors to help diffuse interests in their efforts to identify and exploit opportunities that arise with crises. In general, crises or scandals that evoke antibusiness sentiments are presumed to make the work of policy entrepreneurs trying to defend diffuse interests easier. In his study of agenda-setting in US politics, Kingdon (2010, 166) describes the role of entrepreneurs as crucial “in the coupling at the open policy window, attaching solutions to problems, overcoming the constraints by redrafting proposals, and taking advantage of political propitious events.” In Kingdon’s (2010, 182) words, “any crisis is seized as an opportunity.” When policy windows open, policy entrepreneurs are central actors to promote policy positions as “advocates who are willing to invest their resources – time, energy, reputation, money” (Kingdon 2010, 179). This requires that policy entrepreneurs have developed their ideas or policy proposals well in advance of a crisis that opens a policy window (Ibid. 181). Levine (1976, 58) writes that “economic disruptions often change the distribution of political power and create opportunities for public policy entrepreneurs to rearrange things to their advantage.” Especially in times of crisis or uncertainty⁸ opportunities for entrepreneurs open-up to “exploit uncertainty and engage in speculative acts of creativity” (Sheingate 2003, 187). Entrepreneurs are also instrumental to build coalitions, as Sheingate (2003, 192) observes: “It is during times of crisis or uncertainty when political entrepreneurs can offer alternative or competing narratives that redefine political interests in a manner that open up new coalitional possibilities.”

The role of policy entrepreneur is a factor that resides prominently in the literature on how diffuse interests can be represented in public policy. The importance of policy entrepreneurs to remedy industry capture and facilitate the mobilization of diffuse interests had already occurred to critics of economic theories of regulation. Focusing on the distributional consequences of regulatory policy, James Q. Wilson offered an extension of capture theories of economic regulation arguing that diffuse interests do not necessarily go

⁸ Knightian uncertainty describes a condition in which the probabilities of alternative outcomes cannot be generated (Sheingate 2003, 191).

unrepresented. Wilson ascribed the raise of social regulation in the 1960s and 70s that conferred benefits to society as a whole at the expense of a narrow few to “entrepreneurial politics” in which an entrepreneur “serves as the vicarious representative of groups not directly part of the legislative process” (Wilson 1980, 370). Policy entrepreneurs “mobilize latent public sentiment (by revealing a scandal or capitalizing on a crisis), put the opponents of the plan publicly at the defensive (by accusing them of killing babies or deforming motorists) and associate the legislation with widely shared values (clean air, pure water, health, and safety)” (Ibid.). This kind of “entrepreneurial politics” – that distributes benefits widely and concentrates costs more narrowly - is needed for diffuse interests to be represented in public policy. As one example of how a skilled policy entrepreneurs was instrumental in passing consumer protection legislation serves the role of consumer advocate Ralph Nader in the passage of the Auto Safety Act of 1966.

Entrepreneurs defending diffuse interests also figure prominently in Mattli and Wood’s “*The Politics of Global Regulation.*” According to the authors, “the entrepreneur involves himself or herself to the best of his or her abilities in the process of change, offering counsel, logistics, financial and technical expertise, or otherwise empowering poorly resourced societal groups adversely affected by the regulatory status quo” (Mattli and Woods 2009, 28). In relation to Dodd-Frank, Woolley and Ziegler (2011; 2014) found Elizabeth Warren, a Harvard law professor, to be a crucial figure in their research on consumer finance protection reforms. This evidence from within a case is used in an inductive way here, to develop a hypothesis.⁹ A more precise understanding of political entrepreneur is, however, needed in order to specify entrepreneurial success in defending diffuse interests.

The notion of entrepreneurship or political entrepreneur has been attributed to Schumpeter. Drawing on the Schumpeterian notion of political entrepreneurs, Beckert (1999, 789) considers the strategic agency of an entrepreneur “as the innovator who leaves behind routines” as necessary condition for institutional change. He describes how entrepreneurs have “the capability to take reflective position towards institutionalized practices and can envision alternative modes of getting things done” (Ibid.). While Schumpeter was writing about capitalist entrepreneurs who introduce new products, create new markets, or invent new methods of production in a process he famously described as “creative destruction” (Schumpeter 1934), his ideas bear resemblances to the policy process. Policy entrepreneurs

⁹ Benett and Checkel (2012, 24) remark that „it is not necessary for evidence to come from a different case than that which led to the development of a new hypothesis; it is only necessary that any new evidence from within the case be independent of the evidence that generated the hypothesis.”

can also invest in the development of new ideas to bring about policy change and attack existing power monopolies (Patashnik 2008, 28). In an often-quoted essay on political entrepreneurship Sheingate (2003, 188) finds that political science literature converges on the view of entrepreneurs “as creative, resourceful, and opportunistic leaders whose skillful manipulation of politics somehow results in the creation of a new policy or a new bureaucratic agency [...]” Building on Sheingate, two attributes of entrepreneurs are considered relevant here: first, entrepreneurs shape political debates by defining problems and second, entrepreneurs are a source of innovation, putting forward ideas and building supportive coalitions to get new policies adopted. Entrepreneurial innovation is key to understanding institutional change, as Sheingate (2003, 203; italic in original) put it, “[c]rises *do* precipitate change, but not always.” Instead, entrepreneurial innovation can be an important source of endogenous institutional change.

The specific placement of entrepreneurs will differ among case studies. Political entrepreneurs are here considered separate from the leaders of consumer, labor, civil rights, and other advocacy groups. From the perspective of Salisbury’s “exchange theory of interest groups,” entrepreneurs provide selective benefits to group members and negotiate deals at the political stage, thereby serving as central connectors among two different spheres. In other words, entrepreneurs can organize new forms of collective action and make them politically relevant. Following Wilson (1980) and Salisbury (1969), policy entrepreneurs are here conceptualized as not directly part of the legislative process. Entrepreneurs therefore also differ from government officials. What is more important than the specific placement in the policy process, are the qualities of entrepreneurs: expertise, political connections and willingness. Experts are one category often evoked as important advocates for diffuse interests as policy entrepreneurs” (Mattli and Woods 2009, 32). Expert advice must fit the needs of politicians, as Patashnik (2008, 20) put it, “to be useful in an age of sound bites and thirty-second campaign commercials, expert advice must be responsive to the needs of officeholders for solutions to salient ‘problems’.” Expertise alone will however, not bring about policy change. For entrepreneurs to be heard, they also must have an ability to speak for others (such as an interest group leader) or an authoritative position (such as the presidency or a chairmanship). Entrepreneurs are most influential when they are politically savvy (meaning they have the relevant political connections or negotiating skill). Moreover, entrepreneurs need to be willing to invest a considerable amount of resources (Kingdon 2010, 181). I will test the following claim: *activism of well-positioned entrepreneurs, as source of innovation,*

expertise, institutional resources and political connections to exploit perceived political opportunities leverages diffuse groups' policy influence.

Government Allies

Elected officials are often considered as key actors to promote regulatory change in the public interest (Mattli and Woods 2009, 32). They might not just become more receptive to consumer demands but they might actually turn into active “government allies” to promote the consumer cause in coalitions with interest groups. There are several incentives for elected officials to act on behalf of diffuse interests. Promoting one’s personal interests and career goal can be a strong motivator. Levine (1976, 48) points out that politicians might be “looking for issue labels that will position them clearly and effectively.” In short, politicians promote diffuse interests when they expect electoral benefits. Second, policymakers might want to promote their ideology or values and affect the shape of public policy accordingly (Wilson 1980, 123). In particular when officeholders are in a position of leadership, their actions are publicly visible and command a sense of responsibility. As Derthick and Quirk (1985, 239) argue: “If any officeholders have adequate incentives to prefer diffuse over special interests, leaders do.” In the terminology of social movement scholars, elites (such as government officials or parties) become “influential allies” pushing for the same policy goals (Tarrow 1996, 55; McAdam 1996, 30). In the EU, the Commission and the Parliament have traditionally been allies for diffuse interest groups (Pollack 1997, 579). Although there are no electoral incentives for Commission officials, the Commission trying to expand its competencies in areas such as consumer protection has found an important ally in civil society groups in pushing for pro-integrationist EU policies. In general, diffuse interests figure prominently on the political agenda when the leading role of high-standard countries and lobbying demands for harmonization by producers and consumers are reinforced by the “entrepreneurial role of the Commission eager to increase its substantive competencies” (Ibid. 585). In this view, the Commission and the EP with their pro-integrationist agendas are considered to be champions of diffuse interests “providing a natural ally” (Ibid. 580). In particular, individual Commissioners can become forceful promoters of diffuse interests (Greenwood 2011, 37)

The advancement of public policy - for electoral or ideological reasons - can be a strong incentive for politicians to promote diffuse interests, as Baumgartner et al. (2009, 25) observe, “[i]n order to run for higher office, after all, one must point to a number of policy-related accomplishments, so elected officials are not simply following the dictates of special

interests, but also looking for the opportunity to advance public policy in some direction that they believe will be popular with voters or good for the country.” In their extensive study on lobbying, Baumgartner et al. (2009) highlight the centrality of active policy advocacy of government allies to explain policy change. They conclude: “Policy makers and organized interests frequently work in tandem to advocate policy goals that they both share [...] Government officials are themselves central actors in these questions, not mere receptacles for interest-group influence, as they are sometimes modeled in the interest-group literature. As a result, most lobbying consists of working with allied government officials rather than only trying to convince them to support some policy option” (Ibid. 195).

In a follow-up study, Baumgartner and Mahoney (2015, 203) conceptualize “lobbying groups and government officials as parts of collective efforts to move policy in one direction or another” in so-called insider-outsider coalitions. From this perspective the road to success in Washington is gaining government allies. Successful legislative battles are usually fought by coalitions of insiders (government officials) and outsiders (lobbying groups) with shared policy goals, and not, as many interest group scholars have depicted it, by outsider groups trying to lobby largely inactive government officials. Government officials are most likely to join a coalition or “lobbying side” if other prominent officials (the White House or the party leadership in Congress) associate themselves publicly with the cause and when outside lobby groups have mobilized extensive resources (Ibid. 202). Government officials are likely to invest resources into the promotion of a particular policy goal if they can predict success. They will therefore become active policy advocates - independently of an individual group’s resourcefulness - if they see large resources mobilized by outside lobbying groups collectively. An interest group’s individual material resources are hence not a good predictor of its lobbying success. Policy influence of any individual group cannot be derived from its material resources but depends on context, namely the mobilization of other groups.

This approach shares some similarities with Sabatier’s (1998) “advocacy coalition” or Trumbull’s (2012) “legitimacy coalitions.” Advocacy coalitions consist of governmental and private actors working in tandem to promote a policy solution (Sabatier 1998, 103). Drawing on empirical evidence from several case studies, including the regulation of consumer credit markets, farm supports and pharmaceutical regulation, Trumbull (2012) provides an explanation based less on individual group pressure than on the need to build interest group coalitions and to define policies in the public interest through “legitimizing narratives.” He argues that groups, including industry and consumers compete with one another for a public legitimate articulation of their narrow interest. To overcome this challenge, he introduces the

concept of “legitimacy coalitions” to explain how coalitions are forged between policymakers and activists in order to broaden the societal base of regulatory legitimacy. Trumbull (2012, 24) concludes: “[W]hen state-activist coalitions come to dominate, the concentrated interests of the producers tend to be either ignored or intentionally excluded from the policy process.” By focusing on the role of government allies in pro-reform coalitions, so-called insider-outsider coalitions, this study will build on insights of these studies.

In the sequence of decision making, mobilization of diffuse interests is here considered to be a necessary condition for public officials to become leading advocates of a policy proposal (Mahoney and Baumgartner 2015, 207). Government officials start to actively promote a policy solution as partners in advocacy with outside groups *after* or as a reaction to intense mobilization of interest groups and an assessment of overall political receptivity. Following this, I test the following hypothesis: *intense pro-reform mobilization leads to a bandwagon effect that strengthens that side of the debate and encourages public officials to actively side with the pro-reform coalition as “government allies.”*

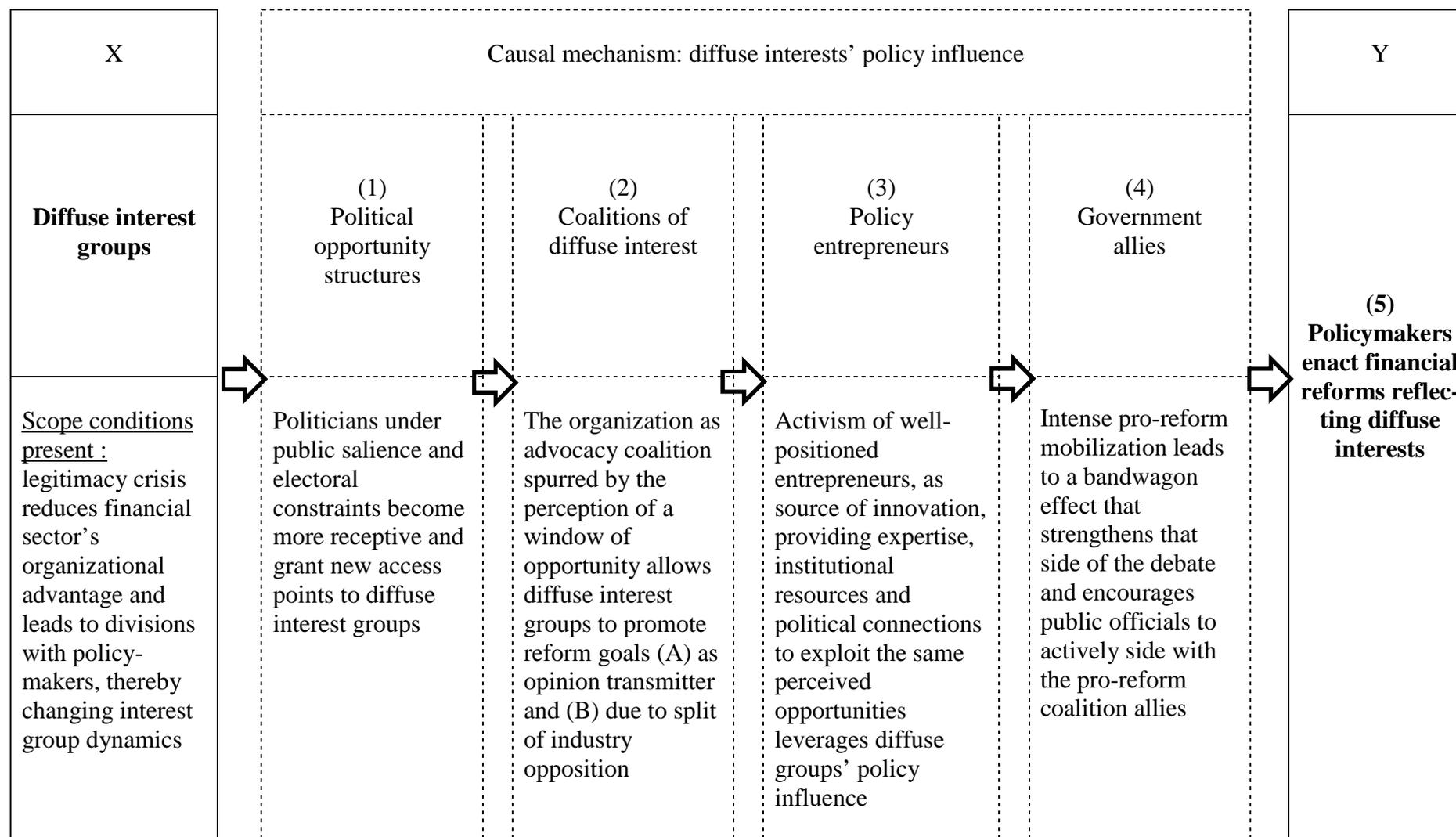
Conceptualization of the Causal Argument

Focusing on the question how diffuse interests were able to have their preference met in financial reforms, a necessary supply side factor such as the opened up institutional context or policy window (in terms of access and receptivity) in times of crisis needs to be combined with the organization of societal groups as a coordinated coalition. This, in turn, provides sufficient resources and allows pro-reform coalitions to channel wide-spread public support, to align themselves with well-positioned elite allies supporting the same policy goal. For process-tracing, Beach and Pedersen suggest, that the causal theory be re-conceptualized into a mechanism “composed of a set of parts (entities engaging in activities) to study the dynamic transmission of causal forces through the mechanism to produce the outcome” (Beach and Pedersen 2013, 110). I therefore re-conceptualize the theory here as a mechanism with five distinct parts: (1) political opportunities open up a policy window for diffuse interests in terms of access and responsiveness, (2) diffuse interest groups form “countervailing force,” channel public opinion, deploy expertise and exploit splitting of the opposition (3) policy entrepreneurs support diffuse interest groups, (4) government allies defend diffuse interests, promoting the same policy goals and (5) financial regulatory reform outcomes reflect diffuse interests. The context in which this mechanism is hypothesized to function is characterized by the presence of a legitimacy crisis that weakens the incumbent industry groups.

The full mechanism of group-official relations is illustrated in Figure 1. Following Beach and Pedersen (2013, 29) each part of the mechanism is conceptualized “as composed of entities that undertake activities” while only those elements of the mechanism are included that are considered necessary to produce the outcome. According to this approach, a causal mechanism should be conceptualized as follows: $X \rightarrow [(n1 \rightarrow)] * [(n2 \rightarrow)] Y$ (read: X transmits causal forces through the mechanism composed of part 1 (entity 1 and an activity) and part 2 (entity 2 and an activity)) that together contribute to producing outcome Y under specific contextual conditions. Visualizing these relations in a scheme is, of course, only a reductionist way of modeling relationships among factors that are empirically much more complex and do not necessarily unfold in a temporal sequence, but appear in a parallel fashion or create feedback effects. In fact, Beach and Pedersen (2013) acknowledge that this is an ideal typical conceptualization that might not be feasible in practice.

The relation between group behaviour and political opportunities is probably best understood as a dynamic interaction. While social movement studies have traditionally focused on how political opportunities affect collective action, mobilizing groups may as well have an effect on different dimensions of political opportunities, as McAdam (1996, 38) writes: “By reacting to shifts in the broader institutional environment movements become significant change agents in their own right, not only modifying the immediate prospects for action, but potentially remaking features of the system as well.” Similarly, Princen and Kerremans (2008, 1143) argued for a research program that would “arrive at an understanding of the dynamic interaction between effects of opportunity structures of interest group activity and the effects of interest group activity on opportunity structures.” Integrating a more dynamic understanding of the relationship between political structures and collective action, the theoretical conceptualization here proposed the following causal logic: while opened-up institutional access and political receptivity of government officials encouraged initial interest group activities, it is only the extensive mobilization of groups (in combination with the support of other prominent entrepreneurs) that made officials into active government allies advocating for diffuse interests. While diffuse interest groups can take advantage of political opportunities created by political elites, the reverse is also possible: collective action of lobbying groups can create incentives for elites to pursue their own policy goals.

Figure 1 A Causal Mechanism Of Group-Official Relations: How Diffuse Interests Can Influence Financial Regulatory Politics



Chapter 3

Methods

Defining Causal Mechanisms

Any discussion of process-tracing as a method to detect causal mechanisms needs to start with a definition of the latter. Social scientific research today puts “increasing emphasis on causal explanation via reference to hypothesized causal mechanisms” and process-tracing methods are deemed to be “particularly well-suited for measuring and testing hypothesized causal mechanisms” (Bennett and Checkel 2012, 1). There is no shortage in the social sciences of definitions of causal mechanisms. According to Mahoney (2001), one can distinguish among at least 24 different definitions of causal mechanisms. There is neither a unified definition for causality nor is there agreement about how to define causal mechanisms (Marini and Singer 1988; Mayntz 2004; Hedström and Ylikoski 2010). The discussion of causal mechanisms is inherently linked to the underlying understanding of causality in social sciences. The minimal definition of a cause refers to events that “raise the probability of some outcome occurring. X may be considered a cause of Y if (and only if) it raises the probability of Y” (Gerring 2005, 169). What is important for the discussion of causality here is that the kind of causality assumed is clearly defined and that the method employed to detect the causal mechanism fits this definition. I follow Beach and Pedersen’s mechanism-based or “mechanismic” understanding of causality (Beach and Pedersen 2013, 76). A “mechanismic” understanding of causality implies that X and Y are linked by a causal mechanism, a “theoretical process whereby X produces Y and in particular in the transmission of what can be termed causal forces from X to Y” (Beach and Pedersen 2013, 25). This definition of a causal mechanism differs from other authors in that it does not assume a necessary regular association.¹⁰ Causal mechanisms are understood by many authors to be distinctly different to empirical events or intervening variables (Beach and Pedersen 2013; Falleti and Lynch 2009; Mahoney 2001). Instead, we need to pay attention to the causal linkages between the intervening variables. In the context of this theory-centric study, a mechanism will be

¹⁰ Mayntz (2004, 241), for instance, defines causal mechanisms as “sequences of causally linked events that occur repeatedly in reality if certain conditions are given.” According to Mayntz, “mechanisms state how, by what intermediate steps, a certain outcome follows from a set of initial conditions. A mechanism provides a clear causal chain.”

understood as a system “that transmit[s] causal forces from X to Y [...], assuming that the context that allows them to operate is present” (Beach and Pedersen 2013, 34). To underline the focus on interacting causal processes of events within a case, I will subsequently drop the term “intervening variable” and speak of initial conditions and outcomes, instead.

Operationalization of Process-Tracing Tests

The theoretical framework in chapter 1 has outlined a plausible causal mechanism to explain financial reform trajectories after the crisis. In a next step, table 1 tries to operationalize the causal mechanism in case-specific predictions about what evidence we should expect to find for every single part of the mechanism if the hypotheses are valid. This is a crucial step in the research process that allows avoiding what (Hedström and Ylikoski 2010, 54) call “lazy mechanism-based storytelling.”¹¹ Instead of a “narrative empirical presentation of the story of events of the case,” the analysis is “structured as focused empirical tests of each part of a mechanism” (Beach and Pedersen 2013, 34). If empirical evidence confirms the existence of each part of the mechanism, it can be inferred that the mechanism actually exists. The collection of empirical observations for testing the presence of empirical evidence for a hypothesized mechanism is theory-guided. Predicted evidence “translate the theoretical concepts of the causal mechanism into case-specific tests [...] focused on measuring the activities of entities that transmit causal forces” (Beach and Pedersen 2013, 166). The purpose of the following section is hence to design tests “that can measure and evaluate the existence of the different parts of a hypothetical causal mechanism” (Beach and Pedersen 2013, 107). The following section will refer to “unstructured” evidence, as this has “greater exploratory potential and a higher probability of generating observations for alternative hypotheses” (Kreuzer 2015). Instead of stating specific indicators, I will refer to types of evidence, which allows for discovering alternative hypotheses. I will follow Beach and Pedersen in broad contours, albeit refraining from specifying probabilities in mathematical formulas as suggested by the Bayesian logic of process tracing.

¹¹ The evidence for successful interest group lobbying can be one of the following: if a proposal by interest groups actually is translated into regulatory policy or if a regulatory proposal is removed from the agenda due to an interest group’s intervention. Agenda-setting is only qualified as successful lobbying if the policy proposal survives the decision making process. I speak of lobbying failure if an interest group’s policy proposal does not make it into the policy process.

Scope Conditions Present

Researchers analyzing causal mechanisms need to clearly specify the assumed mechanism as well as the contexts in which the causal mechanism is hypothesized to operate. According to Falleti and Lynch (2009, 1151) “the interaction between mechanism and context is what determines the outcome. Given an initial set of conditions, the same mechanism operating in different contexts may lead to different outcomes.” Since outcomes of causal mechanisms depend on the contexts in which they operate, Falleti and Lynch suggest that analysts “specify the operative causal mechanism and [...] delineate the relevant aspects of the surrounding, that is those that allow the mechanism to produce the outcome” (Falleti and Lynch 2009, 1152). Context can be defined as the relevant aspects of a setting where the initial conditions contribute to produce an outcome through the operation of a causal mechanism (Ibid.). For the contextual conditions that allow the causal mechanism to operate, my conjecture is that the de-legitimization of the financial industry due to the crisis (temporarily) neutralized the financial sector’s organizational advantage and led to increasing frictions with policymakers, thereby changing interest group dynamics. Financial industry groups are here understood as “for profit firms and their associations, which organize to formulate positions over, and actively advocate around, different aspects of regulatory reform” (Young 2013, 2).

We would expect the post-crisis financial environment to be characterized by increased issue salience, which can be illustrated by the number of press articles dealing with financial regulation. Increased salience should be accompanied by media reporting about failure of financial regulation due to capture thereof, publicly discrediting the industry and generating a situation of moral outrage. Media reporting can be analyzed by systematically reviewing press articles in major newspapers dealing with regulatory reforms in response to the crisis. As signs of de-legitimization and weakened industry influence, we should expect to see policymakers’ reservation towards industry groups or even divisions among policymakers and financial industry groups with politicians calling industry expertise into question and/or judging industry proposals as not well suited to limit damage. Divisions can be visible if communication levels among industry representatives and policymakers drop with respect to pre-crisis levels and/or if exchanges of information about intended policy change take place at later stages between industry and policymakers. As further signs of de-legitimization, we expect to see industry groups to refrain from blocking the legislative debate by using their veto possibility in order to avoid reputational costs (Steinlin and Trampusch 2012). We

should also expect industry groups to soften their position or diverting their attention to other stages of the policy-process altogether. Testing these hypotheses, we should expect to see account evidence gathered from participants in the legislative debates verifying in interviews that industry groups behaved in the way predicted.

Part 1: Political Opportunity Structures

In this part of the causal mechanism, I theorized the following conditions to be present in the case studies: qualitative changes in the post-crisis institutional context in which financial regulatory policies are developed as well as increased political receptivity that allows for increased access of diffuse interest groups. We should first expect groups to have greater access to the policymaking process due to a qualitative shift in the institutional environment from financial expert committees to governmental agendas, parliamentary debates and committees allowing new access points for consumer groups. This can be measured by monitoring shifts in venues and group invitations to formal or informal hearings, gathered from official government websites. Access of interest groups to the policy process can also be measured using interview data (Binderkrantz 2014, 532). The second expectation is to see increased political receptivity (comparatively to pre-crisis levels) on the part of decision-makers which can be derived from account evidence from press statements as well as from triangulating the interview material gathered from policymakers and interest groups involved in the legislative process. We should also expect to see increased levels of salience of the reform issue analysed. A measure of public salience can be collected by assessing the amount of news coverage from major newspapers such as the New York Times, the Financial Times and the Wall Street Journal. Further, and linked to public salience, we should expect public opinion to be in favour of reform, measured by studying available opinion polls that were produced in relation to financial reform proposals as indicators for public opinion.

Part 2: Diffuse Interest Coalitions

This part theorized the following causal proposition: the crisis-induced organization as advocacy coalition spurred by the perception of a window of opportunity allows diffuse interest groups to effectively promote reform goals (A) by serving as link between public opinion and policymaker and (B) by exploiting a splitting of the opposition. To reiterate, diffuse interest groups - the initial condition in this research project - can be defined as groups

that represent a broad, collective interest (such as consumers), as opposed to specific interest groups that represent a narrow self-interest (such as industry groups) (Beyers 2004, 216). My concern here is with organized interest groups or formal associations which organize to formulate positions over, and actively advocate for, different aspects of regulatory reform. Interest groups can generally be defined as actors that show a minimum level of organization, try to influence policy outcomes and do not compete in elections (see Beyers, Eising, and Maloney 2008, 1106). Trumbull (2012, 10) defines consumer groups as diffuse and pragmatic interests that pursue pragmatic policy outcomes in their collective material interest (as opposed to concentrated interests).

Formal organization is indispensable for the emergence of movements (Rucht 1996, 185). Generally, social movement scholars have pointed to the importance of available “mobilizing structures” of sufficient strength to get the movement off the ground” (McAdam, McCarthy, and Zald 1996, 8). These structures range from the loosely organized grass-roots model to the formally organized interest-group model with its influence on lobbying, to the formally organized party-oriented model with its emphasis on the electoral process (Rucht 1996, 188). Hence, we expect to see networking among groups in a more or less formalized coalition, including the mobilization of common organizational resources (such as financial and human resources). We also expect to see newly mobilized groups that appear on the scene and form coalitions among themselves based on the perception of a “window of opportunity” for reform. Empirical evidence of increased mobilization of a broad range of nonfinancial groups (comparatively to pre-crisis levels) can be gathered through a systematic search of web pages and media sources or can be based on existing IPE studies on financial regulatory politics.

If diffuse interests act as a transmitter of public opinion, as hypothesized, we should expect policymakers to justify policy decisions in light of perceived public pressure. Account evidence to confirm this conjecture can be gathered from media sources, secondary literature as well as interviews with participants. Groups act as transmitter of public opinion, if they organize, for example, telephone or email campaigns in their constituency directly addressed at policymakers. Diffuse interest groups might also become influential due to a split in industry opposition and diminished policy dominance of the financial industry. We expect newly mobilized pro-reform groups to either actively oppose industry interests, thereby acting as a “countervailing force” or cooperate in strange bedfellow coalitions with one lobbying side of financial sector groups against another lobbying side of financial sector groups.

Increased actor plurality will be measured by comparing pre-and post-crisis levels, using systematic media survey of groups involved in debate and secondary IPE literature. Empirical evidence confirming further weakening of the industry (such as refraining from veto capacities, softening of positions, and conflicts or fragmentation among industry groups) can be derived from industry position papers as well as from triangulating interview material with participants in the legislative process.

Part 3: Policy Entrepreneurs

This part theorized the following causal proposition: presence of well-positioned policy entrepreneurs as source of innovation, providing expertise, institutional resources and political connections to exploit opportunities leveraging diffuse groups' policy influence. If the proposition holds, we expect to see active policy entrepreneurs supporting pro-reform groups. To empirically determine acts of entrepreneurship is a difficult task, as Sheingate remarks, "[...] the concept of entrepreneurship presents scholars with an empirical challenge when attempting to understand the process of change: one must endeavor to find evidence that can help adjudicate between mechanisms of change rather than outcomes, between an endogenous process of entrepreneurship, an exogenous crisis or critical juncture, and a self-reinforcing sequence along a particular path" (Sheingate 2003, 201). Following Kingdon (2010), actors are considered policy entrepreneurs when they have expertise, are well-positioned and willing to invest resources. More importantly, entrepreneurs put forward innovative ideas and successfully manage to build coalitions supporting the innovation. Entrepreneurs are here conceptualized as not directly part of the legislative process, but as intermediators between pressure groups and legislators. The presence of policy entrepreneurs can be measured using account evidence from interviews, newspaper articles and secondary sources.

Part 4: Government Allies

I test the following necessary conditions: intense mobilization of diffuse interest groups leads to a bandwagon effect that strengthens that side of the debate, with government officials promoting the same policy solution as "governmental allies." In terms of timing, we expect to see intense mobilization efforts of diffuse interest groups and active support of key allies in government (such as the US President) to happen before officials decide to join the

bandwagon, siding with the pro-reform side in a team-like partnership. The effect of increased group mobilization on decision-makers can be measured by triangulating account and sequence evidence from interviews with government officials and/or their staff, newspaper articles and press statements. Officials are considered government allies when they take “a leading role in trying to push an issue onto the agenda and to get results” (Baumgartner et al. 2009, 209). As empirical evidence for the presence of government allies, we should expect to find examples of interest groups serving as alternate source of expertise to decision-makers, teamwork, division of labor, timely exchanges of information and coordination among advocacy organizations on the outside and government officials at the inside (Mahoney and Baumgartner 2015). This account evidence is relatively easy to gather by triangulating interviews with advocacy organizations, government officials and their staff.

Part 5: Measuring Initial Conditions and Outcome - Preferences and Influence

The outcome studied here - the degree of influence of diffuse interest groups on regulatory reforms - is difficult to measure. It is not easy to quantify and conclusively ascertain the precise achievements of group advocacy in the course of the financial reforms in the US and the EU. Many factors impact the situation simultaneously, making it hard to establish the direct cause and effect of any one factor, like group advocacy, with any degree of certainty. In general, measuring interest group influence is not an easy task for social scientists. According to Grossman (2012, 171) interest group scholars trying to demonstrate group influence in policy, have traditionally faced difficulties. As Hacker and Pierson (2002, 279) put it, “[i]nfluence is an extremely tricky concept.” Two questions arise when trying to measure influence, namely “how political influence is exerted and what kinds of evidence are relevant to judging the extent of a group’s power” (Hacker and Pierson 2002, 279).¹² Studying lobbying influence naturally also raises questions of the counterfactual: would the outcome have been different in the absence of interest group mobilization? It is therefore little surprising that policy influence and lobbying success have been largely under-researched areas (Mahoney 2007, 36; Lowery 2013, 1431).

¹² Hacker and Pierson (2002, 279) identify three methodological traps for researchers analyzing groups’ political influence: (1) the problem of identifying multiple mechanisms of influence, such as the differentiation between structural and instrumental exercise of power (2) the problem of distinguishing actors’ actual preferences from their strategic goals that they deem more feasible given constraining circumstances, and (3) the problem of distinguishing cause and association when trying to infer groups’ influence from ex post correlation between actor preferences and outcomes (accidental correspondence among groups’ preferences and policy outcomes).

Despite difficulties, there are complementary ways of measuring interest group influence in contemporary financial reform processes (Quaglia 2010, 21). Interviewing becomes a very important source of evidence. Interview research, namely “interviewing those involved on all sides, asking them what they were trying to make happen, and then seeing what actually occurred” (Mahoney 2007, 38) is one viable option. Accordingly, I asked actors for concrete actions, what they did, but I also included questions about who they thought were the most influential actors. Influence can also be measured by comparing interest groups’ stated goals (as a proxy for their true policy positions), triangulated with contextual information and interviews with other actors involved in the debate (Mahoney 2007, 37). In the case studies, regulatory change will be systematically gauged against the advocacy goals of diffuse interest groups. Evidence of influence or lobbying success of an interest group would be if “a specific proposal articulated as part of a lobbying effort can be shown to have made its way into actual regulatory policy” (Young 2012, 671). If, for instance, an item survives the policy-agenda in spite of industry lobbying opposed to it, this evidence would be an empirical indicator for failed industry capture. Interest groups could, of course, see their preferences reflected in a policy decision without having done anything to bring about this policy outcome. While we should keep in mind that lobbying success does not mean that a group was influential, “it can give us a sense of who is winning and losing in policy debates, and allow us to get a handle of why this is so” (Mahoney 2007, 44).

Preferences of the main policymakers and interest groups involved can be extrapolated inductively by examining position papers, press statements and consultation documents as well as by more than 100 semi-structured interviews with senior elites. Consultation documents refer to comment letters to policy proposals that are usually subject to formal consultations held, for example, by European Commission Directorate Generals. These sources taken together provide a relatively systematic picture of groups’ mobilization and preferences (Klüver 2009). The initial assumption is that policymakers respond to public pressure from their constituents, in the form of interest groups. But policymakers are not merely on the receiving end of group pressure; they may have strong preferences of their own. One can assume that policymakers are rational actors whose preferences are determined by desires for re-election as well as the “likelihood of success in achieving their policy goals” (Mahoney and Baumgartner 2015, 202).

Table 1 Conceptualization and Operationalization of the Causal Mechanism

Conceptualization	Predicted evidence	Type of evidence (<i>Examples</i>)
<p>Scope conditions present: legitimacy crisis neutralizes financial sector's organizational advantage and leads to divisions with policymakers, thereby changing interest group dynamics</p>	<ul style="list-style-type: none"> - Increased salience of financial reforms - Divisions among policymakers and industry or at least reservation towards industry groups - De-legitimization forces industry to retreat and adapt its lobbying strategies 	<ul style="list-style-type: none"> - <i>Media reporting about policy failure due to undue industry influence measured by systematic press survey as indicator for legitimacy crisis</i> - <i>Number of press articles about financial reforms as a measure of salience</i> - <i>Policymakers call industry groups' expertise into question, find industry's proposals not well suited to limit damage, dropping levels of communication, exchange of information about intended policy change at later stages as a measure of divisions based on account evidence, triangulating interviews with both actor groups and press articles</i> - <i>Softening lobby positions of industry comparatively to pre-crisis level, refraining from veto, diverting attention to other stages in the policy cycle, measured using public position papers</i>
<p>(1) Favorable opportunity structures: politicians under public salience and electoral constraints become more receptive and grant new access points to diffuse interest groups</p>	<ul style="list-style-type: none"> - Increased issue salience of reform measure; favorable public opinion - Increased receptivity of decision-makers to diffuse groups - Qualitative shift in institutional environment for reforms 	<ul style="list-style-type: none"> - <i>Number of articles dealing with the CFPB as a measure of salience</i> - <i>Polls indicating support of CFPB as measure of public opinion</i> - <i>Increased receptivity (in comparison to pre-crisis levels) measured using account evidence from public documents and triangulating interviews with both policymakers and groups</i> - <i>Qualitative shift from expert committees (pre-crisis situation) to governmental agendas, allowing access for consumer groups</i>
<p>(2) Diffuse interest coalitions: due to a perceived policy window, new coalitions mobilize, enhancing collective action capacity of diffuse interests [...]</p>	<ul style="list-style-type: none"> - Policy window triggers mobilization - Coalition-building among diffuse groups as countervailing force - Groups acting as opinion transmitters - Fragmentation among industry groups 	<ul style="list-style-type: none"> - <i>Crisis-induced mobilization measured by comparing pre-and post-crisis levels, using systematic media survey and secondary IPE literature</i> - <i>Networking among groups in more or less formalized coalitions, incl. the mobilization of common organizational (financial, human) resources, measured using account evidence from interviews with advocates</i> - <i>Groups as opinion transmitter measured by group activities (i.e. campaigns addressed at policymakers) and policymakers referring to public pressure</i> - <i>Emergence of Baptist-bootlegger coalitions, measured using interviews</i>

Conceptualization	Predicted evidence	Type of evidence
<p>(3) Policy entrepreneurs: activism of well-positioned entrepreneurs, as source of innovation [...], leverages diffuse groups' policy influence</p>	<ul style="list-style-type: none"> - Coalition-building among pro-reform groups and well-positioned policy entrepreneurs that can provide expertise, institutional resources etc. thereby leveraging advocacy groups' influence 	<ul style="list-style-type: none"> - <i>Political actors are considered entrepreneurs when they have innovative ideas, expertise, are well-positioned and willing to invest resources (Kingdon 2010), measured using account evidence from interviews, newspaper articles and secondary sources</i>
<p>(4) Government allies: Intense pro-reform mobilization leads to a bandwagon effect that strengthens that side of the debate and encourages public officials to actively side with the pro-reform coalition as allies</p>	<ul style="list-style-type: none"> - Elected officials become active allies after initial intense group mobilization and support of other elite allies (Baumgartner and Mahoney 2015) - Diffuse interest groups and their governmental allies cooperate closely and push for the same policy solutions in insider-outsider coalitions 	<ul style="list-style-type: none"> - <i>Effect of increased mobilization on decision-makers can be measured by triangulating account and sequence evidence from interviews, newspaper articles and press statements</i> - <i>Government allies: close cooperation, coordination in team-like structures,, timely exchange of information between policymakers and interest groups which serve as source of expertise, measured triangulating account evidence from interviews with both actor groups</i>
<p>(5) Outcome: Policymakers enact financial reforms reflecting diffuse interests.</p>	<ul style="list-style-type: none"> - Financial regulatory reforms reflecting diffuse consumer interests rather than interests of most resourceful groups 	<ul style="list-style-type: none"> - <i>Lobbying success can be measured by comparing interest groups' stated goals (as a proxy for their true policy positions), triangulated with contextual information (letters, statements, final positions produced) and interviews with actors involved in the debate reporting success or loss in relation to policy outcome</i> - <i>Counter-evidence to capture: if an item survives the policy-agenda in spite of industry lobbying opposed to it</i>

Data Sources

The strategies of data-gathering have been structured around process-tracing tests. Process-tracing requires a critical evaluation of the collected empirical observations for the theory test, so called causal process observations (Mahoney 2001, 571). For this reason, researchers should collect large amounts of data from a variety of sources. I have collected data from three different types of sources: this research uses elite interviews with different participants (as primary source) as well as newspaper articles and academic and professional publications about financial reforms (as publicly available secondary sources). This approach of cross-referencing data by using a broad sample of interviews as well as different types of sources is referred to as “triangulation.” In addition to the interview transcripts, publicly available secondary data including memoirs of participants, newspapers, press releases, position papers, and industry reports in the aftermath of the crisis offered a sizeable amount of data and therefore an excellent opportunity for social scientists to study the politics of financial regulatory reform. The financial press and other journalistic sources represented an important secondary source to reconstruct and assess mobilization strategies and expressed preferences of different actors. Newspapers have provided background material for pattern evidence (e.g. number of articles dealing with a subject as a measure of increased public salience), sequence and account evidence.

Elite interviewing is the key data collection technique employed in this research project, as it is the research tool best suited to the method of process-tracing for reconstructing political events (George and Bennett 2005, 6; Tansey 2007; Beach and Pedersen 2013; Mosley 2013). Elites can be defined as “those with close proximity to power or policymaking,” including elected representatives, executive officers of organizations and senior state employees (Lilleker 2003, 207).

In both cases, Brussels and Washington D.C., lobbying is based on formal procedures as well as on informal decision making. About the American Congress, Beckman and Hall (2013, 208) note that “House-Senate conference committees operate inside a proverbial black box and remain largely impenetrable without systematic interviews.” The same is also true for the policy process in Brussels, where only few systematic records exist about the many important meetings and activities that occur outside of official venues. One exemption is, for instance, lobbying lists published by few MEPs which give an extensive overview of all

lobbying meetings taking place with interest groups.¹³ For getting inside political reform processes that unfolded after the financial crisis, the use of elite interviews as research tool allowed me to investigate motivations and activities of those directly involved.

First and foremost the case study analysis draws on empirical material gathered through 116 semi-structured interviews¹⁴ conducted between May 2011 and March 2014 with representatives from civil society, international organizations, policymakers, industry and regulators mainly in Brussels, London, Paris, Washington DC and New York. 73 interviews were conducted in Europe and 43 in the US, with 26 government officials or employees of public administration, 32 representatives from the financial industry and 53 civil society groups, including, consumer associations, NGOs and trade unions.¹⁵ Most interviews were conducted in person, only sporadically I conducted interviews via phone or Skype when personal meetings were difficult to arrange. For the legislative proposals investigated here, I interviewed senior-level elites that had particular responsibilities for the relevant legislative proposal, as well as detailed knowledge of the negotiations that took place. For the European cases I conducted interviews with Commission officials (often policy officers or heads/deputy heads of unit), Members of the European Parliament, their policy advisors and affected lobbying groups. For the American cases, I conducted interviews with Congressional staffers (often senior advisors), government officials and relevant interest groups. Interviews lasted between thirty-five minutes and two hours, with a mean length of approximately seventy minutes.¹⁶

The interviews provided extremely rich data for constructing the case studies. Interviews were used here as suggested by Beach and Pederson (2013, 134) “to supply account evidence, where we are interested in participants’ recollection of different aspects of a process, and sequence evidence, where we want to gather information about the sequence of events that took place in a process.”¹⁷ The interviews were also used to identify the most

¹³ MEP Sven Giegold is one of a handful of MEPs who published information about meetings with lobbyists on the following website: <http://www.sven-giegold.de/2013/lobbytransparenz/>.

¹⁴ In the semi-structured interview “a general set of questions are determined by the interviewer beforehand, but the questions are virtually all open-ended and provide the interview subject with a substantial amount of leeway in how to answer them” (Leech et al., 210). The set questions ensure that the interview is focused on the theoretical framework of the research project.

¹⁵ A complete interview list can be found in the appendix.

¹⁶ Anonymized transcripts of the conducted interviews will be made available upon request

¹⁷ Beach and Pederson (2013: 99) distinguish between four types of evidence relevant for process-tracing: pattern (statistical patterns), sequence (temporal and spatial chronology of events), trace (existence of evidence), and account (content of empirical material).

important conflict dimensions among stakeholders within the policy debate.¹⁸ Not least due to the timeliness of the subject of investigation, conducting interviews with first-hand participants and witnesses allowed me to gather considerable amounts of information on key political decision making in the aftermath of the financial crisis that I could not have obtained from any other source including other published documents, newspaper articles or secondary literature. The benefit of such an approach is that it adds “greater depth to a scientific analysis of an event” (Lilleker 2003, 208).

To select potential interviewees I followed a non-probability sampling approach, a strategy commonly used by qualitative researchers. There is no need for random sampling in process-tracing studies, since the aim is not to make generalizations from the sample to the broader population but rather “to obtain information about highly specific events and processes” through “the testimony of individuals who were most closely involved in the process of interest” (Tansey 2007, 768 and 769). The underlying principle of purposive sampling is “understanding the process rather than representing a population” (Mason 2002, 97). The key strategy for drawing a sample in process-tracing studies is “to ensure that the most important and influential actors are included, and that testimony concerning the processes is collected from the central players involved” (Tansey 2007, 769).

Following this purposive sampling strategy, I first identified the most important actors involved in the financial reform processes and approached them directly. Specially, following Tansey’s suggestion, I used a combination of positional and reputational approaches to sample interviewees. In a first step, I selected potential interviewees according to positional criteria, identifying an initial subset of respondents due to a particularly important position they held during the reform process which made evident their relevance to answering the research question. In the US case, memoirs of central actors (“insider” accounts such as a recently published book by Elizabeth Warren) as well as detailed book-length journalistic accounts of the financial reform process in response to the crisis helped to identify the key players. For example, in the book “*Act of Congress*,” former Washington Post managing editor Kaiser provides a rich factual account of Congressional actions during the passage of Dodd-Frank. In the book “*Financial justice*,” Mayer and Kirsch (2013) offer a detailed journalistic account of mobilizing efforts on the part of civil society coalitions in favor of a new consumer agency. In the EU case, I relied on publicly available data such as newspaper articles and consultation submissions to identify relevant actors.

¹⁸ The precise question asked respondents to “name the most conflictual issues of the proposal”.

In a second step of the sampling approach, I selected respondents according to the reputational snowball method, “a chain-referral process whereby [...] respondents are then asked to provide a list of people they feel are influential in the same field” (Tansey 2007, 770). This second step in the sampling approach helped me to identify interviewees that I had not initially presumed relevant to the research project. To ensure that the interviews were independent of each other, I have chosen an initial set of interviewees from a wide variety of backgrounds, with only some interviews being linked through the snowball technique (Bleich and Pekkanen 2013, 87). In particular to avoid biased responses and include diversity, I have not only interviewed the “winners” but also the “losers” of the political negotiations.

Although interviews have been acknowledged as being an important source of information about lobbying, interview-based research has been criticized for being subject to misleading incentives (e.g. respondents might overstate their centrality) and for being false or biased as interviewees might not properly recollect past events (Mahoney and Klüver 2012, 2) or express opinions rather than facts (Rathbun 2008, 688). One way to enhance the reliability of interview material is to opt for a large sample. I therefore conducted more than 100 interviews with participants who all enjoyed privileged access to the policy decisions under investigation. It might also have played to my advantage that the interviews with participants did not take place long after the fact, thereby minimizing the problems of lapses of memory and potentially biased observations. For example, first interviews with founding members of the American and European pro-reform coalitions took place only two years after the coalitions had been formed. Specifically acknowledging Washington and Brussels elites’ capabilities and limitations, the interview guides were tailored to the specific interview situations following a suggestion made by Beckmann and Hall (2013, 198; *italic in original*), namely that “interviews with elite informants work best when designed to extract information about practitioners’ *actual behaviors on specific cases in the recent past.*” Accordingly, I asked interviewees for concrete actions, what they did, but I also included questions about their motivations as well as their estimations about causal effects. Given the timeliness of the phenomenon of study and the relative scarceness of reliable alternative sources for judging motivation, interviewing was the only means that allowed for filling the gaps and uncovering details for establishing causation. As Rathbun (2008, 692) writes:

Interviews often involve conversations with individuals in a unique position to gauge the importance of multiple and equally plausible causal factors, which any research

question of interest generally suffers from. [...] Particularly when dealing with elites, respondents are perfectly able to contemplate the broader meaning of their actions just as well as political scientists, although they do so in less self-consciously theoretical terms.”

Nevertheless, in order to address the severe limitations of data collected through interviewing, as mentioned above, the interview material needs to be backed up by additional data sources. In order to enhance the reliability of the collected interview data, I opted for triangulation as an approach (Gallagher 2013, 194). The collected interviews are used as one source among others, thereby allowing for cross-referencing data with other publicly available data such as policy documents, public statements and submissions to public consultations as well as the financial press and other journalistic sources as important secondary source to assess the mobilization strategies and the expressed preferences of different actors. Newspapers have provided background material for pattern evidence (e.g. number of articles dealing with a subject as a measure of increased public salience), sequence as well as account evidence (Beach and Pedersen 2013, 99). The underlying idea was to collect multiple independent observations that would allow for checking of sources against one another in two different ways (Ibid., 128): by collecting observations from different persons representing different sides (e.g., interviews with different participants from civil society, industry and policymakers) and across different types of sources (e.g. interviews, public documents, speeches, newspaper articles etc.). Taken together, a combination of triangulation techniques allowed me to never rely on one interviewee for a key fact that conclusions hinged on.

Almost all interviews were tape-recorded and all of them were transcribed afterwards. If the interviewee preferred not to be recorded, the interview involved written notes which were supplemented immediately following the end of the interview. In few cases, when interviewees were not willing to be recorded, I took notes instead. Interestingly, in the few cases the interview was not recorded, the answers of respondents showed considerable variation from colleagues whose replies were on tape. Particularly, when asked about the usefulness of policy input from civil society coalitions, interviewees who were recorded gave a positive assessment, while interviewees who were not recorded judged slightly more negatively. This kind of socially desirable responding in recorded interviews is of little surprise, since the reform process had just happened or was in some cases still under way at the time of the interviews. At least, awareness of this apparent bias in my interview material

allowed me to acknowledge it during the evaluation and interpretation. Other difficulties during my interview research also stemmed from the sensitivity and topicality of the subject. Some of the financial regulatory reforms in response to the crisis had been highly conflictual and contentious which industry groups strictly opposing regulatory reforms and spending large amounts of money on advocacy campaigns to prevent regulation whose implementation was still ongoing at the time of the interviews. This explains why some industry associations declined to be interviewed on contested issues.

In the research process, the collection of the interview material was followed by a qualitative analysis of the “raw” material (that is, data that contains relevant information about the research question) collected. To “systematically reduce complexity and bring our data in a form that supports pattern recognition” is an indispensable research step “[i]f we want to find explanations linking conditions, effects, and mechanisms” (Gläser and Laudel 2013). After the collection of the interview material, I therefore followed strategies of data reduction in order to systematically analyze textual data qualitatively (Seidman 2006, 117). In a first step, analyzing the interview material collected required cleaning and condensing the raw data contained in the texts – separating data from “noise.” At this stage it is indispensable to familiarize oneself with the collected data in order to identify reoccurring themes (Ritchie, Spencer, and O’Connor 2003, 221). In an effort to link raw data to my research question, I structured the interview data by indexing themes. This means, once I had read the transcripts, I marked passages of interest, and labeled those passages according to categories as a manual operation. The categories attached to the passages could reflect either empirical information in the text or categories derived from the literature. Instead of working with unstructured raw material, indexing allowed me to work with indexed texts instead, which simply showed themes or ideas being mentioned in a particular section of the text with attached codes that list the relevant themes addressed in each part of the text.

PART II THE CASES

Chapter 4

Winner-Take-All Politics and Diffuse Interests: The US Consumer Regulator

Introduction

On July 21, 2010 US president Obama signed the Dodd-Frank Wall Street and Consumer Protection Act (Dodd-Frank Act) into law, including major consumer protection provisions which fundamentally changed the regulatory landscape for financial services. Dodd-Frank's preamble declares one object to be "to protect consumers from abusive financial services practices."¹⁹ Under title X, the reform law established the Consumer Financial Protection Bureau (CFPB), a new federal regulator with the sole responsibility of protecting consumers from unfair, deceptive or abusive practices. There is wide agreement among regulators, activists and industry representatives that the consumer protection reforms introduced in response to the crisis go beyond mere "gesture politics."

The political debate surrounding the creation of the agency was characterized by intense lobbying and mobilization by interest groups from two opposing camps. An emerging coalition of relatively resource-poor civil society actors, including consumer associations, trade unions, NGOs, grass-roots groups and small business groups actively supported the new consumer regulator. They were opposed by a much more powerful financial lobby. Johnson and Kwak (2011, 198) write, that the financial industry and its defenders "closed ranks" against the bureau. Arguably, the new consumer bureau attracted more hostility from industry groups than any other reform proposal after the crisis. Strong opposition came from the American Bankers' Association (ABA), the U.S. Chamber of Commerce and the Mortgage

¹⁹ Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, 124 Stat. 1376 (2010), Preamble (describing the purposes of Dodd-Frank).

Bankers Association (MBA). Against all odds, the civil society coalition as actor group usually classified as weak, managed to win a major victory, when the President signed Dodd-Frank into law – including a powerful new regulator for consumer financial products. In his remarks at the signing ceremony of the Act, the President described the reform bill as “the strongest consumer financial protections in history.”²⁰

Despite the fact that massive industry lobbying had successfully slowed down the implementation process of US financial regulatory reform - with 60 per cent of Dodd-Frank’s rules not being in place by July 1, 2013²¹ - the creation of the CFPB was a unique win for consumer advocates, who saw their main advocacy goals translated into policy. At the 2010 conference of the American Council on Consumer Interests, Ed Mierzwinski (2010, 596), consumer advocate at the U.S. PIRG, celebrated the bureau as a huge victory for the consumer movement: “Over the past year, the traditional consumer movement aligned itself with civil rights, labor, senior and other groups faced off against a phalanx of powerful special interests hell-bent on beating our big idea that consumers deserved an independent agency [...] They lost. We won.” Given the strong opposition from industry groups, the fact that the CFPB came into being was truly a “remarkable event” (Woolley and Ziegler 2011). The outcome is puzzling, as we would normally expect more resourceful groups to have more political influence. In particular, the U.S. banking industry is one of the most resourceful, powerful and politically savvy actor in Washington, winning many of their political battles. The CFPB is therefore a case in point to study the power of weak interests in financial regulation. Why was the U.S. banking industry not able to beat out consumer groups? What explains that actors considered as weak and peripheral prevailed over more resourceful and dominant actors?

In this chapter I look beyond the impact of materially resources in influencing policy-decisions. This chapter offers one of the first scholarly analyses of the successful creation of a new financial regulator with the sole responsibility to protect consumers (for other studies, see Kirsch and Mayer 2013 as well as Woolley and Ziegler 2011 and 2014). Analyzing consumer credit market reforms is particularly interesting because abusive consumer lending practices, in particular in the mortgage market, but also in relation to credit cards and other subprime

²⁰ President Barack H. Obama, Remarks on Signing the Dodd–Frank Wall Street Reform and Consumer Protection Act (July 21, 2010), *available at* <http://www.whitehouse.gov/the-press-office/remarks-president-signing-dodd-frank-wall-street-reform-and-consumer-protection-act>.

²¹ Updated versions of Dodd-Frank Progress Reports by Davis Polk are available at <http://www.davispolk.com/Dodd-Frank-Rulemaking-Progress-Report/>.

consumer credit products, have allegedly contributed to the financial meltdown starting in 2007. In offering a close empirical analysis of a causal mechanism at work that allows diffuses interest groups to leave their imprint on financial regulatory reforms the account here will be dealing with a side that is less well-known to researchers.

This chapter is organized as follows. It starts with a brief discussion of the main characteristics of the new regulatory agency that was established as part of the Dodd-Frank regulation in 2010. A considerable part of the consumer groups' positions is reflected in the consecutive drafts, while this is not the case for the positions taken by the industry groups. It then outlines the political struggles surrounding the creation of the new regulator, highlighting the position of the financial industry and consumer groups on the legislative proposal. The next section will interpret the policy process by applying the theoretically derived hypotheses to the empirical record of the case study by employing the method of process-tracing. The chapter will conclude by reflecting on the implications for our understanding of regulatory capture.

Regulatory Change and Group Influence

Before the Dodd-Frank Act went into effect, the rulemaking authority to implement federal consumer financial protection laws was largely held by the Federal Reserve System. The authority to enforce the federal consumer financial protection laws and regulations, however, was spread among different banking regulators, the Federal Trade Commission (FTC)²² and the Department of Housing and Urban Development (HUD).²³ Prior to the reforms, consumer protection functions were scattered among different banking regulators. The system of consumer finance protection at the eve of the crisis was marked by regulatory gaps, allowing for ruthless lending practices which contributed to increased defaults and eventually to the meltdown of the U.S. housing market. The consequence of lax regulations was a “downward spiral in lending standards” with lenders shopping for the weakest state laws and nondepository institutions trying to escape regulation entirely (Engel and McCoy 2011, 166). In their analysis of the crisis, Cooley et al. (2011, 76) conclude that consumer

²² The FDC had authority over non depository institutions.

²³ The Office of the Comptroller of the Currency (OCC) supervised national banks; the Board of Governors of the Federal Reserve System (FRB) supervised domestic operations of foreign banks and state chartered banks that were members of the FRS; the Federal Deposit Insurance Corporation (FDIC) supervised state-chartered banks and other state-chartered banking institutions that were not members of the FRS; the National Credit Union Administration (NCUA) supervised federally insured credit unions; and the Office of Thrift Supervision (OTS) supervised federal savings and loan associations and thrifts. The five banking regulators were charged with the two pronged mandate of regulating for safety and soundness, as well as consumer compliance.

protection laws which were in place prior to the crisis, were “ineffective.” In their analysis of the root causes of the crisis, they find that “to the extent that more vigilant consumer protection would have dampened demand for housing via its effect on the mortgage markets, the run-up and subsequent decline in house prices might have been less dramatic and the crisis less severe” (Cooley et al. 2011, 75). In sum, federal preemption but also the fragmentation of the U.S. consumer financial protection regulatory system led to loopholes, regulatory arbitrage and lax regulations.

In order to address the regulatory failure of the past, the Dodd-Frank Act centralized consumer protection regulations at one single agency, which operates independently, well-funded and under the leadership of a single director. It thereby translated one of the key demands of consumer groups into policy.²⁴ The Bureau passed as Title X of the reform law as an independent regulatory agency with the sole responsibility of protecting consumers of financial products. CFPB’s mission is to ensure “that all consumers have access to markets for consumer financial products and services [that] are fair, transparent, and competitive.”²⁵ While the CFPB is administratively located within the Federal Reserve System, the Board of Governors cannot interfere. In charging one single agency with consumer protection responsibilities, the reform succeeded in replacing a patchwork of seven different agencies, thereby consolidating and strengthening the regulation of consumer financial products. CFPB not only consolidates consumer protection functions from different agencies but also from different consumer protection statutes (such as the Truth in Lending Act and the CARD Act of 2009). The new bureau also hosts a national consumer complaint hotline as a single toll-free number for consumers to report problems as well as a new Office of Financial Education to promote financial literacy. Funding and powers of the new bureau are comparable to those of other federal financial regulators (Wilmarth 2012, 904; Pridgen 2013, 7).

Some might object that the new regulator for consumer products was “merely a fig leaf covering the raw influence of concentrated interests” (Trumbull 2012a, 28) in the financial overhaul. A reason to think that this was not the case is the amount of resources the industry invested to defeat the new bureau. Industry groups had clearly preferred the status quo and the regulation passed in spite of industry attempts to block it. Moreover, a broad range of experts including consumer lawyers, industry groups and consumer associations have

²⁴ Interviews with consumer advocates in Washington D.C., conducted in September 2013 and in February and March 2014.

²⁵ Dodd-Frank, § 1021(a).

widely acknowledged the CFPB as a powerful new regulator (Pridgen 2013; Caggiano et al. 2010). Taken together, the new bureau should “serve as counterweight within the government to a set of regulatory agencies that have historically seen the world from the perspective of the banks they regulate rather than the costumers served by those banks” (Johnson and Kwak 2011, 200).

In the final bill the pro-reform advocates met their major policy aims: in accordance with activists’ wishes the new bureau has significant authority on rules supervision and enforcement over banks and non-banks, market-wide coverage, a single director, its funds are not subject to the congressional appropriations process and it allows states to adopt stricter consumer protection rules. Table 2 summarizes the main features of the CFPB as signed into law by the President in July 2010. The Dodd-Frank Act delegated three types of authority to the new bureau: the CFPB conducts rule-making, supervision and enforcement for federal consumer financial protection laws. The CFPB is the first federal regulator that not only has the ability to write rules for non-banks, but it also has the ability to supervise and examine non-banks. It is a first in the history of non-banks that they are subject to examination by federal regulators. This makes the CFPB a much powerful regulatory for consumer financial services than the Federal Trade Commission with its sole authority over nonbank entities (Pridgen 2013). Consumer advocates thereby saw a major policy goal reflected in the final legislation.²⁶ With regards to small banks (under \$10 billion), industry lobbyists negotiated a semi-carve-out. The new Bureau has the authority to oversee very large banks, thrifts and credit unions with assets over \$10 billion and nonbank businesses (companies that can offer consumer financial products or services without having a bank, thrift, or credit union charter). Consumer advocates counted the semi-carve as a partial victory, since the CFPB still kept its rule-writing authority over small banks. With a single director as head of the agency (instead of a five-person board), consumer advocates saw another key demand translated into policy. With regards to funding, the agency has independent funding specified as a per centage of the Fed’s budget and is not subject to the appropriations process. The fact that the CFPB receives its funding outside of the appropriations process was an important aspect for consumer advocates, since it avoids “a mechanism for imposing undesirable political pressure” (Cooley 2010: 79).

²⁶ Interview 65a with representative of consumer association, Washington DC, 5 August 2011.

Table 2 Main Features of the CFPB under the Dodd- Frank Act as Signed into Law in 2010

Regulatory Policy	Reform measures in line with consumer groups’ demands
Structure/Head	Single director appointed by the President for 5-year term, agency established within the Federal Reserve System
Funding	Transfer of 10-12% of the Federal Reserve System’s budget
Coverage/Authority	Broad powers over any person, other than those explicitly carved out from the Bureau’s authority, engaged in the provision of a consumer financial product or service
Examination & enforcement power over smaller financial institutions	Smaller financial institutions (with assets of \$10 billion or less) will continue to be subject to the examination & enforcement authority of their current regulators
Relationship to state law (federal preemption)	Would only preempt state laws to the extent of their inconsistency, state laws providing greater consumer protection are not to be considered inconsistent with federal law
Compromises/losses for consumer groups	
Financial Stability Oversight Council oversight	Financial Stability Oversight Council with ability to set aside CFPB regulations if the regulation “would put the safety and soundness of the banking system or the stability of the financial system at risk”
Notable carve outs	Carve out for auto dealers and small business
Authority over consumer laws	CRA exempt from CFPB authority

Source: Assembled by the author.

Another important provision is that the Dodd-Frank Act curbs federal preemption which had previously prevented effective pro-consumer state legislation. The law functions as a federal “floor” (not a ceiling) which allows states to raise the level of consumer protection, one of the key demands of consumer advocates. Title X expands state authority by allowing states to adopt stricter consumer protection laws on top of the federal regulations. The law does, however, preserve the possibility of OCC preemption of state laws for national banks and federal thrifts (Cooley et al. 2011, 79; Engel and McCoy 2011, 255). Preemption was a loss to industry groups that had lobbied for the CFPB to have preemptive authority, arguing that “one rule at the national level is easier to comply with than 50 rules at the state level.”²⁷

²⁷ Interview 100 with financial industry lobbyist, Washington DC, 16 September 2013.

Among the legislative compromises that had to be made by consumer groups, according to one activist, “none materially weakened the bureau”.²⁸ For example, the Bureau’s rulemaking authority is somewhat restricted by the provision that a two-thirds majority of the Financial Stability Oversight Council (FSOC) can set aside CFPB rules if they threaten the safety and soundness of the financial system (Cooley et al. 2011, 78). Moreover, despite lobbying efforts of consumer groups, the CFPB does not have the power to regulate credit insurance or auto-dealers. Another loss, especially to community groups, was that the Community Reinvestment Act (CRA) was not transferred to the CFPB’s authority. The Independent Community Bankers Association argued that a transfer of authority over the CRA to the new agency would risk safety and soundness examinations to be trumped by consumer protection considerations (MacPhee 2009). Despite these compromises, the final legislation was clearly a victory to consumer advocates, who saw their main advocacy goals translated into regulatory reform. The next section will provide a brief overview of how legislative struggle that lead to this outcome unfolded.

The Legislative Struggle for the CFPB

To define the temporal context in this analysis, the financial crisis that originated in 2007 provides a clear starting point that sets the causal mechanism in motion. The case study analysis therefore starts here with a brief chronology of the passage of the reform law starting in early 2009, when legislative debate about post-crisis regulatory reform started to unfold.

In June 2009, the Treasury included a proposal of a new consumer agency in its 90-page White Paper, entitled, “A new foundation: Rebuilding Financial Supervision and Regulation,” which served as a blueprint for financial reform. The White Paper proposed five objectives for financial reform including a “Consumer Financial Protection Agency (CFPA), with the authority and accountability to make sure that consumer protection regulations are written fairly and enforced vigorously” (Department of the Treasury 2009). Subsequently, the legislative debate moved to the House of Representatives in September which passed its bill in early December 2009. The main venue of discussion was the House Financial Services Committee, chaired by Representative Barney Frank. The Senate Banking Committee chaired by Senator Christopher Dodd discussed the bill between February and March 2010. The Conference Committee finalized its report on June 29, 2010. The bill subsequently moved separately to both the House and Senate floors where it was voted on during the last week of

²⁸ Interview 89 with consumer advocate, Washington DC, 16 September 2013.

June by the House and mid-July by the Senate.²⁹ On July 21, President Barack Obama signed the Dodd-Frank Wall Street Reform and Consumer Protection Act into law.

At several stages during the legislative process, passage of the CFPB was at the tipping point. In order to secure a bipartisan deal, Senator Dodd had set out to a compromise that would have strengthened the consumer protection division of an existing federal agency, instead of creating a stand-alone bureau (The Wall Street Journal 2010). According to Senator Bob Corker, the CFPB's creation was "the most contentious issue" and was "the elephant in the room" during the Senate's negotiations that prevented any bipartisan agreement on the bill (Rowley and Lerer 2010). On March 15, 2010, the Senate Committee on Banking, Housing & Urban Affairs proposed a new bill, the "Restoring American Financial Stability Act (RAFSA) of 2010" (S. 3217) including a new independent consumer agency housed at the Federal Reserve, "an idea that had emerged from [Dodd's] failed negotiations with Corker" (Kirsch and Mayer 2013, 93). After the Senate Banking Committee reported the bill, Republicans blocked the legislative proposal before it eventually reached the Senate floor in April. Under Senate rules, the Democrats needed 60 votes to overcome a Republican filibuster and move forward with debate (New York Times 2010b, 2010a). On May 5, Senator Shelby introduced amendment S.3826 on the Senate floor that would have weakened CFPB's powers and removed its independence, by placing the bureau under FDIC's control and barring it from examining or regulating depository institutions (Wilmarth 2012, 888). The amendment was, however, defeated by the Democratic majority in the Senate. Eventually, on May 20, 2010, the Senate, by a vote of 59 to 39, also approved a comprehensive financial reform bill, including title X, a Bureau of Consumer Financial Protection within the Federal Reserve System, which would be provided similar authorities over consumer financial products and services as proposed for the CFPA by the House bill (H.R. 4173). The Senate's vote paved the way to convene the House-Senate "Conference Committee" to reconcile the two different bills and settle on a compromise.

The proposal of an independent consumer regulator pitted two coalitions against each other. From the beginning, business groups – mainly the American Bankers Association, the Mortgage Bankers Association of America and the American Chamber of Commerce – opposed the legislative proposal of a new consumer regulator. These groups are well-organized and possess ample material resources. According to the Center for Responsive

²⁹ The Administration's CFPA Act; H.R. 4173, Title IV, as it passed the House, and S.3217, Title X, as it passed the Senate.

Politics, the financial industry mobilized and spent \$224.6 million on lobbying in 2009, more than any other sector except for the health sector which spent \$263.6 million during the same time period (Mayer 2009). The US Chamber set up a “stoptheCFPA.com” website³⁰ and started an advertising campaign of at least \$2 million aimed at defeating the new bureau. In a testimony before the Senate Committee on Banking, Edward Yingling (2009), president of the ABA complained that the CFPB would undermine innovation, limit consumer choice, and complicate existing regulatory structures and disproportionately burden small banks and credit unions. The Bankers Association’s public outcry against a consumer agency and the appearance of the President of the ABA to testify in front of a Congressional Committee made clear that preventing the enactment of a consumer bureau was of high legislative priority to the industry.

The new consumer regulator was actively promoted by a new pro-reform coalition, acting as a countervailing force to industry interests. About the same time the US administration brought forward its reform proposals, a new coalition of about 250 civil society organizations started to actively support the creation of a consumer regulator. The U.S. Public Interest Research Group (PIRG) together with other NGOs and the largest labor groups including the AFL-CIO and the SEIU established a new and unprecedented coalition of labor, civil rights, small business, and senior organizations, formally announced in May 2009 as “Americans for Financial Reform” (AFR). The formation of such an alliance in the financial services sector, representing “a cohesive non-industry voice,” was a unique event in American history (Woolley and Ziegler 2011, 23). Some scholars refer to the mobilization that took place in response to the crisis as the “fourth wave of consumer activism” (Cohen 2010, 235).

In terms of material resources, the pro-reform coalition was clearly outmatched by the opposing financial industry lobby. Funding for pro-reform groups became available from progressive foundations, with AFR raising about \$1.4 million Dollars in the first year, only a fraction of the financial industry’s lobbying budget.³¹ Nevertheless, consumer and labor groups, representing diffuse interests, saw their preferences translated into public policy, despite of more resourceful and influential opponents. As one consumer activist commented on the legislation: “Compared to a world where we could not make a single advance on

³⁰ The website is no longer operational and redirects to <http://www.cfpbspotlight.com/>.

³¹ Interviews, Washington DC, interview 10 with consumer advocate, 28 September 2013; Interview 2 with trade union representative, 10 February 2014.

consumer regulation for decades, this is a big change.”³² How did diffuse consumer interests come to be reflected in the reform outcome?

Advocacy for a new Consumer Finance Regulator

To respond to this question, I use the theoretical framework as outlined in the theory chapter. Four necessary conditions are considered as relevant for regulatory change representing diffuse interests. First, it is hypothesized that a qualitative shift in the institutional context for financial regulation opened up a policy window for diffuse interests in the wake of the crisis in terms of access and responsiveness. The second hypothesis is that perceived political opportunities incentivized the formation of collective action among pro-reform groups which served as transmitters of public opinion to policymakers. A third hypothesis postulates that the policy impact of newly mobilized groups was leveraged by the presence of well-positioned policy entrepreneurs. Fourth, governmental allies actively defended diffuse interests on the political stage, working in team-like structures with pro-reform advocates. The outcome is regulatory change that reflects diffuse interests. The causal mechanism is set in the post-crisis context caused moral outrage in form of a “legitimacy crisis” and (temporarily) disempowered concentrated interests.

Contextual Conditions: Post-Crisis Financial Regulatory Environment

The post-crisis environment in which regulatory reform was developed was one in which the legitimacy of the financial industry and its practices were largely contested in the public realm. The heightened media attention raised by the crisis increased the perception of undue industry influence. Major newspapers published reports and articles where the financial sector was shown in an extremely unfavorable light. *The New York Times* repeatedly cited the Center for Responsive Politics and the Sunlight Foundation quoting reports on the financial sector’s spending on lobbying (New York Times 2012; Wyatt and Lichtblau 2010; Protes 2011). CNN Money released an article citing PIRG’s statistics as well as a Public Citizen’s report about financial institutions hiring some 1,000 lobbyists since 2009 (Liberto 2010). More information came to light about how bad industry practices were. The non-profit Wall Street Watch project attracted public attention with a critical report on the financial sector’s political influence called “Sold Out.” The non-profit public broadcasting service PBS

³² Interview 3a with consumer advocate, Washington DC, 6 September 2013.

portrayed a similar message in a documentary it released called “The Warning,” which was but one of a whole series on industry malpractices that PBS showed throughout 2009.

Regulatory reform became susceptible to public outrage pushing financial regulatory reform into the arena of “noisy politics,” to use Culpepper’s terminology. As aforementioned, heightened salience is an important dynamic, as it can be a strong motivator for elected officials to act against narrow industry interests. Young (2013) could show empirically that financial regulation became highly salient with the wider public during the early reform period, from mid-2008 till mid-2009 by assessing the amount of news coverage in the general interest press as well as in the regulatory policy community. The subprime mortgage crisis also directed attention to shortcomings of the existing consumer protection framework, bolstering the demands by pro-reform advocates. There is little doubt, that problems with the consumer protection framework, including wide-spread predatory lending practices, were evident at the time of the Obama administration’s reform effort. The pre-crisis regulatory system had largely been criticized by scholars and consumer advocates for being dispersed and putting too little focus on consumer protection. Analysts have pinpointed failures in consumer protection as “the detonators and amplifiers” in the crisis and subsequently demanded more effective consumer protection in provision of financial products and services (Melecky and Rutledge 2011). This analysis was largely based on the experience of the U.S. housing bubble, which was made possible by deteriorating mortgage origination and underwriting standards. Accordingly, the Senate report on the Dodd-Frank Act concluded in April 2010, that “the current system of consumer protection suffers from a number of serious structural flaws that undermine its effectiveness, including a lack of focus resulting from conflicting regulatory missions, fragmentation, and regulatory arbitrage” (US Senate 2010).

In light of the devastating consequences of the financial crisis, policymakers started to call industry groups’ expertise into question, as Representative Brad Miller remarked in a statement in March 2009 about intended mortgage reform: “The political climate has changed. The foreclosure crisis has wreaked havoc on middle-class families and our economy as a whole. The industry’s arguments [...] are not at all convincing” (The Washington Post 2009). Commenting on the legislative proposal of a new consumer agency, Miller argued in favor of stricter consumer protection and against the rationale of increasing access to credit the industry had promoted for years: “Our economy is in a deep hole dug by the financial industry. For years they defended every consumer lending practice, regardless of how predatory the practice appeared on its face, as necessary to make credit available to ordinary

Americans. And the result was eye-popping profits for the industry and millions of middle-class Americans hopelessly in debt, trapped by indefensible fees and penalties explained in legalese in tiny print. We can't let that happen again" (cited in Durbin 2009b).

With their reputation highly damaged in the aftermath of the financial crisis and under the lasting impression of the crisis and moral outrage about banks misbehavior, financial lobby groups had partly lost their political leverage. The financial sector was the culprit of the crisis. The following de-legitimization was clearly felt by those lobbying on its behalf, as one interviewee for this research project put it, "with the crisis the industry was not in a position of strength because we had made mistakes and the policy makers were looking to strengthen the regulatory framework around that. So it is difficult for an industry who is culpable [...] to come in and say here is what we think you should do to fix it."³³

Increased issues salience in the regulatory reform context was accompanied by qualitative shifts in policymaking displaying increasing divisions among policymakers and the private sector. In his Wall Street speech in April 2010, the President made clear that he regarded consumer protection as an essential element of the financial reform, thereby risking "increasingly fractious relations" with the financial industry (Cooper 2010). In April 2010, *The New York Times* highlighted the President's stance against the financial industry:

"Addressing leaders of New York's financial giants, including Goldman Sachs, Mr. Obama described himself as a champion of change battling 'battalions of financial industry lobbyists' and the 'withering forces' of the economic elite. With his poll numbers sagging, the choreographed confrontation seemed aimed at tapping the nation's antiestablishment mood as well as muscling financial regulation legislation through Congress" (Baker and Herszenhorn 2010).

Several examples from my interviews illustrate that the regulatory dialogue among industry groups and government officials had suffered from considerable cracks since the crisis. One indicator of such a crack is that financial groups learned about legislative proposals and intended policy changes much later than in the past, largely excluding industry groups from the agenda-setting phase of the decision making process. Interviews conducted with industry groups in Washington DC corroborate a story that their knowledge of the particular content of the proposed consumer agency prior to the Treasury's blueprint in June

³³ Interview 100 with financial industry lobbyist, Washington DC, 16 September 2013.

2009 was either unknown or extremely fuzzy. Some industry representatives reported that they saw themselves “cut out of the process” during early legislative debates.³⁴ About the Treasury’s White Paper, one industry representative remembered talking to Treasury officials but having “very little impact on the administration’s thinking on the consumer side of the law.” He also described how the regulatory dialogue had noticeably changed after the crisis, saying that regarding the policy proposal of a new consumer watchdog, industry associations “had almost no contact with the administration,” which he characterized as “extremely unusual.” When financial industry participants were invited to the White House, the administration would listen, but not negotiate, as one lobbyist reported: “I was invited to the White House a lot at the beginning. There were people who would always talk to me and we had very good conversations. I can’t say that they wanted to negotiate with us in any way.” Finally, when the White Paper was issued in June 2009 including a detailed provision on the creation of a consumer agency, industry groups were “aghast about what was in it.”³⁵ Another interviewee from the industry side remembered lobbying on regulatory reform to have been “very frustrating” and “difficult.” About the legislative process, he recalled: “We were able to have a little bit of consultation with Barney Frank, while the House was putting together its bill, but not a lot and very little with Chris Dodd, I am not sure we had any.”³⁶ Banking lobbyists’ policy influence was largely curtailed in the immediate aftermath of the crisis. According to this industry lobbyist: “When I was trying to get something done for the biggest banks there was not a lot I could do.”³⁷

A senior level government official, directly involved in the drafting of the White Paper confirmed that relations with industry groups were less cozy than before the crisis: “We did not share our views with [financial sector groups]. Partly that was a response to what many of us thought was an excessive involvement of the financial sector in prior attempts to regulate the market. We had meetings with them all spring on various aspects of reform to solicit their views, but we did not invite them into write anything, to draft anything, or to shape our policy and that was very much a conscious choice.”³⁸ A Senate staffer confirmed that in the context of the crisis and increased public attention, banking lobbyists had lost their political leverage:

³⁴ Interview 113 with banking lobbyist, Washington DC, 25 February 2014.

³⁵ Ibid.

³⁶ Interview 1 with banking lobbyist, Washington DC, 20 September 2013.

³⁷ Interview 113 with banking lobbyist, Washington DC, 25 February 2014.

³⁸ Interview 5 with government official, 10 March 2014.

The banking lobby is not well loved by the public in general, but usually because the issues are not so out front and center as the financial crisis [...]. The public doesn't quite get as engaged on these issues on a normal basis."³⁹ In general, industry views seem to have mattered less to policymakers in the immediate aftermath of the crisis.

Adapting to the new regulatory environment, financial industry groups also changed their lobbying strategies, refraining from outright vetoes. Albeit the banking lobby opposed a new regulatory agency, Edward Yingling, President of the ABA testified in front of the Senate Banking Committee in July 2010, saying that "the banking industry fully supports effective consumer protection." Instead of seeking to veto regulatory change, he also offered "to work with the Administration and Congress to achieve meaningful regulatory reform to improve consumer protection." Given the ABA's long history of strictly opposing regulation, "Yingling did an about-face when he testified before Congress," as one commentator put it (Huffington Post 2010). Recognizing the changed political climate, the ABA had clearly started to soften its lobbying position. These changes in interest group dynamics, as here suggested by anecdotal evidence from interviewees, are significant because they indicate that financial lobbyists saw their views largely ignored and had much less influence during the regulatory reform debate than during pre-crisis times.

Political Opportunities: Access and Receptivity

Under public pressure, policymakers' reluctance to engage with the financial industry in the aftermath of the crisis was accompanied with increased receptivity to pro-reform demands by diffuse interest groups. First and foremost, a qualitative shift in the policymaking environment from previously relatively obscure technocratic bodies to the top legislative agenda of the administration, Congress and its committees opened new access points for a broader range of interest groups. Starting in early 2009, consumer representatives repeatedly testified in front of Congressional committees. Increased access was also accompanied by increased receptiveness of policymakers to demands coming from newly mobilized actors.

Consumer advocates had very limited capacity to push their advocacy goals during the housing boom that pre-dated the crisis, precisely because policymakers were not inclined to listen to their demands. The political environment changed dramatically in the fall of 2008 when public anger about the bailout of the industry as taxpayers' expenses arouse. Overall,

³⁹ Interview 34 with Congressional staffer, Washington DC, 7 March 2014.

political receptivity to consumer demands increased in the wake of the crisis which had brought overwhelming evidence to the fore, so that consumer claims gained credibility and could no longer be ignored by policymakers. Under conditions of public pressure, demands by pro-reform groups attracted attention among policymakers. In March 2009, Sheila Bair, Chair of the U.S. Federal Deposit Insurance Corporation, acknowledged the need for stronger consumer protection: “There can no longer be any doubt about the link between protecting consumers from abusive products and practices and the safety and soundness of the financial system.”⁴⁰ With democratic majorities in both houses, there was a greater receptivity in Congress towards consumer bills in general and consumer groups also found a sympathetic interlocutor in Congress. Democrats in Congress early on decided to endorse regulatory reform. In October 2008, Congressman Delahunt and Senator Durbin picked up the idea and introduced a bill entitled the Consumer Credit Safety Commission Act of 2008, H.R. 7258 and S. 3629, into Congress. The bill created a Consumer Credit Safety Commission with responsibility to promulgate consumer credit safety rules that ban abusive, deceptive, and predatory practices.⁴¹ Although the bill was never enacted into law, it signaled the increased political willingness to enact consumer-friendly legislation in Congress to advocates.

The changing political climate was clearly felt by consumer advocates, as one interviewee reported, “I was a consumer lawyer for many years [...]. We testified for years how bad the lending practice is. We were completely ignored. Suddenly it was a national crisis, more than just poor and minority communities.”⁴² Members of Congress increasingly responded to demands coming from consumer groups to restrict subprime lending and increase consumer protection. Another representative of a consumer association described virtually the identical process: “People had been trying for a long time to bring reforms about with more or less good bills, with no success because there was this political and ideological opposition to regulating the markets which after all were providing such fabulous results for American consumers [...]. Now in the aftermath of the boom there was less confidence that the markets produced fabulous results and there was a much more receptive environment that we have to act on the lessons we have learned through this crisis.”⁴³ This consumer representative from the Consumers Union shared the same view, reporting about spring 2009:

⁴⁰ Statement of Sheila Bair, Chairman of the Federal Deposit Insurance Corporation, on Modernizing Bank Supervision and Regulation before the U.S. Senate Banking Committee on Banking, 19 March 2009.

⁴¹ www.govtrack.us/congress/bills/110/s3629#summary/libraryofcongress

⁴² Interview 82a with consumer lawyer, Washington DC, 18 Sept 2013.

⁴³ Interview 115 with consumer advocate, Washington DC, 18 March 2014.

“For a long time, there were few consumer groups that had seen the inside of the White House or the Treasury. Now sometimes you go to these meetings, and they say, ‘tell us what’s on your mind’. And then *they* start taking notes” (Interview, cited in Kirsch and Mayer 2013, 47; italic in original). A Congress staffer confirmed this interpretation, saying that “consumer things had been raised [by consumer groups] for a decade or so [...] but the government ignored them.” But in the midst of the turmoil of the financial crisis, “it had gotten more difficult to ignore them” - even for members of Congress who had not necessarily been champions of consumer protection issues.⁴⁴ Industry representatives also testified to the increasing receptivity of politicians and regulators to pro-consumer advocacy groups during the legislative process, as one banking lobbyist put it, “as we were at a position of weakness, they had a position of strength.”⁴⁵ Taken together, this anecdotal evidence suggests that the crisis had transformed the political context changing the lack of support of consumer issues or indifference towards consumer finance protection in Congress to a much more receptive environment.

Also regulators became more receptive to consumer demands, as a representative of an US consumer group put it, “consumer groups had been talking to the Federal Reserve about mortgage problems and subprime-lending for 10 years and the Federal Reserve did nothing until the crash came; then politics was right.”⁴⁶ With respect to political receptivity of financial regulators, another advocate recalled: “Up until 2008, folks like me; you sit in a room with them and they just want to get over with this. Now you’re actually meeting with them and they are interested in talking. State regulators and the Fed [became] more consumer-friendly than they ha[d]ever been.”⁴⁷ Industry representatives also testified to the increasing receptivity of politicians and regulators to pro-consumer advocacy groups during the legislative process, as one banking lobbyist put it, “as we were at a position of weakness, they had a position of strength.”⁴⁸

Increased political receptivity of decision-makers to the concerns and demands of consumer groups can be explained in the light of heightened issue salience and public opinion trends clearly favorable to regulatory reform. By way of illustration, the increase in issue

⁴⁴ Interview 14 with Congress staffer, Washington DC, 14 March 2014.

⁴⁵ Interview 100 with financial industry lobbyist, Washington DC, 16 September 2013.

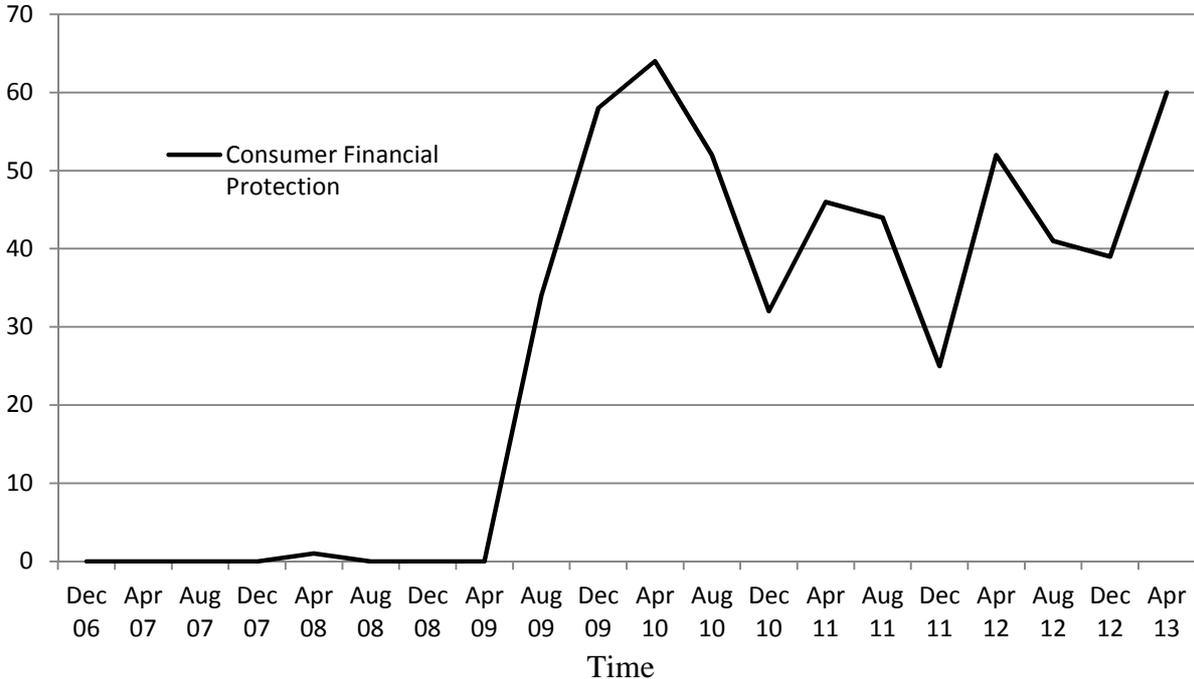
⁴⁶ Interview 3a with consumer representative, Washington DC, 6 September 2013.

⁴⁷ Interview 82a with consumer lawyer, Washington DC, 18 Sept 2013.

⁴⁸ Interview 100 with financial industry lobbyist, Washington DC, 16 September 2013.

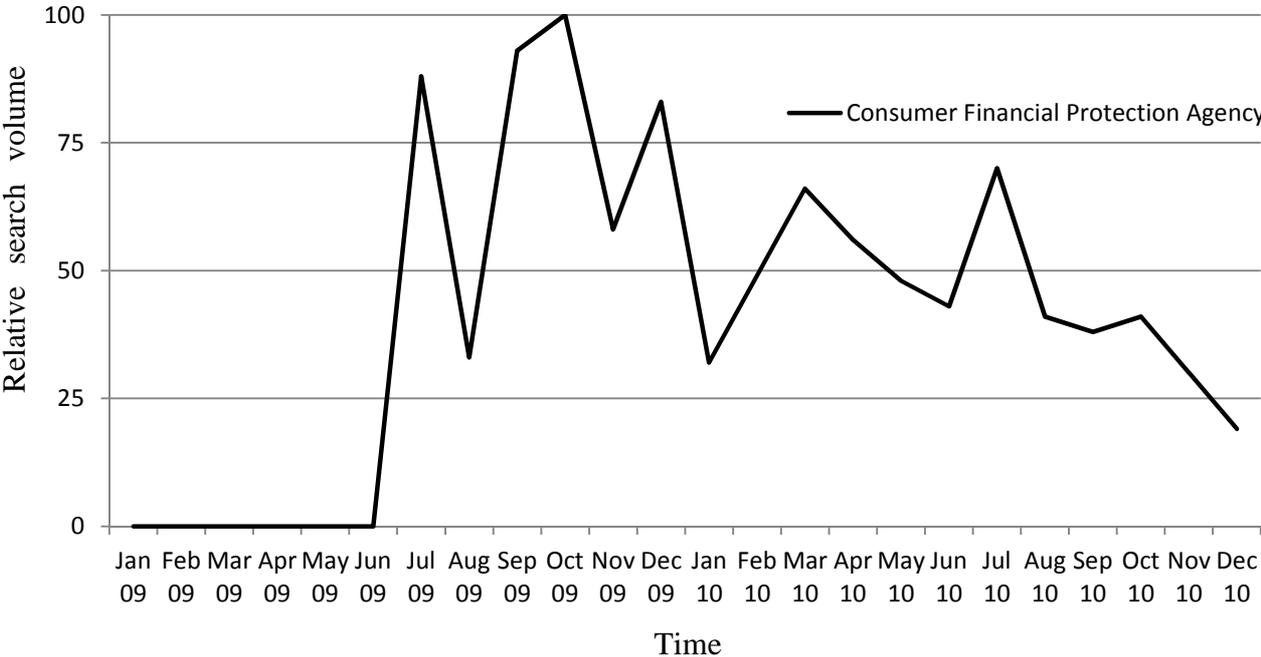
salience is visible by simply tracing the use of the term “consumer financial protection” in the financial press (Figure 2). Although the spike in attention clearly follows the Obama administration’s introduction of the White Paper for financial reform at the beginning of June 2009, with public opinion reflecting the governmental agenda rather than the other way round, the amount of press coverage nevertheless shows the increased publicity generated by financial regulatory reforms.

Figure 2 Number of Articles Mentioning “Consumer Financial Protection” in The Financial Times and The Wall Street Journal (Source: Factiva)



Increased public salience of the issues is also visible in the increase in Internet searches in the US for the term “Consumer Financial Protection Agency” (Figure 3). The number of searches based on google search trends shows that the new consumer agency did generate no public interest until June 2009, when the Treasury included a proposal of a consumer agency in its blueprint for reform. Public interest then fell again, until a brief period of heightened attention between September and December 2009, when the reform legislation was debated in the House of Representatives. A second spike in attention is visible in July 2010, when the President signed Dodd-Frank including the new regulator into law. The increase in google searches indicates the heightened public interest generated by an obscure financial reform issue such as a new regulatory agency.

Figure 3 Internet Search for “Consumer Financial Protection Agency”⁴⁹ (Source: Google trends, available at www.google.com/trends/, accessed 29 April 2015).



Polling data released by the Consumer Federation of America in September 2009 gives us clues about why the topic was very popular with decision-makers in general, with 57 per cent of those polled supporting the idea of creating of a new federal agency to protect consumers. According to the survey, support was highest among adults under 35, blacks, Hispanics and low-income individuals (Limbach 2009). In October 2009, a survey by Lake Research Partners confirmed that even in conservative democratic districts and swing states a majority of voters was in favor of a new agency. And when asked how a vote by their representative on the new consumer regulator would affect their vote, 41 per cent of respondents said that a vote against the agency would make them less likely to re-elect their representative (only 14 per cent said it would make them more likely) (Americans for Financial Reform 2009b). A public opinion poll carried out by Gallup Poll in August 2010 with about 1.000 respondents, offers evidence of public opinion in favor of stricter financial regulation. A majority of Americans (61 per cent) held a positive opinion of the Dodd-Frank Act. Wall Street regulatory reform was in fact the most popular among five pieces of legislation Congress had passed (including the 2009 economic stimulus package and

⁴⁹ The new agency went from being dubbed “Consumer Financial Protection Agency” (and before that, Financial Product Safety Commission) to “Consumer Financial Protection Bureau.” Agency was, however, the predominant terminology used throughout legislative debate.

healthcare reform) (Gallup 2010). Opinion polls also indicated that the public was generally in favor of a new consumer protection agency. Another public opinion poll carried out by Consumers Union in July 2011 with about 1,000 respondents indicated that the CFPB enjoyed support from a large majority of respondents (74 per cent) (Consumers Union 2011). Public opinion likely had an impact on policy choices, as the Wall Street Journal put it in a comment on the US financial reform Act, “the CFPB became a symbol of the legislation, and many Democrats saw it as a way to sell the financial regulatory overhaul to voters” (The Wall Street Journal 2010). To say that public opinion mattered to policy decisions does not mean that the role of interest groups can be neglected or that groups were mere epiphenomena. Interest groups can be an important actor in linking public opinion to decision-makers. The next section will pay closer attention to this hypothesized part of the causal mechanism.

To sum up, as predicted, the crisis had at least partly redistributed political leverage from financial interests to consumer advocates. Qualitative changes in the post-crisis institutional context allowed increased access of consumer groups advocating for reform. This shift was, as predicted by our second expectation, accompanied by increased overall political receptivity for consumer groups’ reform demands in the context of heightened public attention.

Mobilization of Diffuse Interests

Another development that bolstered the influence of diffuse interest groups was their ability to forge coalitions among themselves. The perception of opened-up political opportunities after the subprime mortgage crisis was an important trigger for collective action among diffuse interest groups. The crisis turned out to be a major catalyst for the formation of a new alliance of civil society organizations among about 250 consumer associations, trade unions, NGOs, and grass-roots groups rallying around the notion of a consumer regulator. Although civil society groups had well-established connections among each other, in May 2009 relations were formalized under the umbrella of “Americans for Financial Reform.” Groups pulled together common financial and human resources. Funding for pro-reform groups became available from progressive foundations for a start up like AFR promoting regulatory reform.⁵⁰ Heather Booth, an organizer for progressive issues for over forty years, was brought on board as Director and an office location on Washington’s K Street was

⁵⁰ Interview 10 with consumer advocate, 28 September 2013; interview 2 with trade union representative, 10 February 2014, Washington DC.

established. In February 2009, pro-reform advocates convened a first preliminary meeting in Washington D.C. to form a coalition for financial reform. The meeting among 75 people representing a broad range of public interest groups took place at the AFL-CIO headquarters in Washington (Warren 2014, 132). Once relations were formalized, regular meetings started to take place. Executive committee meetings among core groups would interact twice a week by phone, and members of the steering committee would meet on a weekly basis. Oftentimes groups would interact every day.⁵¹

Early on, consumer groups decided to focus their reform campaign on the establishment of a consumer protection agency. The agency became the rallying point that all groups, despite their different advocacy goals, could agree on as a top legislative priority, as one interviewee put it, “it brought a lot of people together who wouldn’t normally sit down in the same room together.”⁵² To set up a consumer agency that would then be able to subsequently deal with all consumer protection regulations from its unique consumer viewpoint, was also a compelling narrative.⁵³ One of the first actions of the leaders of seven of the country’s leading consumer groups which would later become AFR, was the release of a joint statement in December 2008, giving clear instructions for the reinstatement of an Office of Consumer Affairs in the White House, about one year before the idea was formally introduced into Congress (Consumers Union 2008). The reform agenda was then sent to President-elect Barack Obama. Consumer advocates quickly recognized that the coalition would be more successful if it was broader than the consumer community and started to bring labor unions and civil rights groups on board. In the fall of 2008, then, representatives of consumer groups and labor came together, to talk about putting together a coalition. At a first meeting, Steve Abrecht, a senior official at the SEIU, Gary Kalman, Legislative Director at U.S. PIRG and Ed Mierzwinski, Consumer Program Director at U.S. PIRG decided to take first steps to bring together consumer, investor and community groups to lobby for financial reforms. In July, the AFR issued its first position paper, proposing a new consumer financial product safety agency as well as an Office of Consumer Affairs in the White House to “give consumers a voice in the administration and provide some balance to the influence enjoyed by Wall Street” (Americans for Financial Reform 2009a).

⁵¹ Interview 10 with consumer advocate, Washington DC, 28 September 2013.

⁵² Interview 82a with consumer lawyer, Washington DC, 18 Sept 2013.

⁵³ Ibid.

Table 3 Selection of Actors supporting the CFPB as ‘Americans for Financial Reform’

<i>Name</i>	<i>Founded</i>	<i>N° of members</i>	<i>Type of organization</i>
AARP (American Association of Retired Persons)	1958	37 million	Non-profit membership organization for people age 50 or over
American Federation of Labor and Congress of Industrial Organizations (AFL-CIO)	1955	1.4 million members	Largest US federation of unions
Consumer Federation of America (CFA)	1968	300 non-profit organizations	Association of non-profit consumer organizations to advance the consumer interest
Center for Responsible Lending (CRL)	2002	-	Nonprofit consumer group fighting predatory lending practices
Consumers Union (CU)	1936	8 million subscriptions to newsletters	Independent, nonprofit organization
National Association of Consumer Advocates (NACA)	-	1500 attorneys	Non-profit association of attorneys and consumer advocates
National Consumers League (NCL)	1899	-	Consumer organization
National Community Reinvestment Coalition (NCRC)	1990	600 member organizations	Association that promotes access to basic banking services
Public Citizen	1971	80.000 members	Consumer rights group, nonprofit organization
Service Employees International Union (SEIU)	1921	1,9 million members	Labor union
US Public Interest Research Group (US PIRG)	1970	26 state PIRGS	Federation of state Public Interest Research Groups

Source: Assembled by the author

Table 3 gives an overview of the key groups forming the broad coalition including U.S. PIRG, Public Citizen, community groups such as the National Community Reinvestment Coalition (NCRC), as well as the largest U.S. labor groups including the Service Employees International Union (SEIU) and the American Federation of Labor and Congress of Industrial

Organizations (AFL-CIO). Also joining the groups were important consumer groups such as the Consumer Federation of America (CFA), the Consumers Union (CU) as well as housing groups such as the Center for Responsible Lending (CRL) and a number of NGOs.

Working together as a coalition clearly helped groups to tackle the massive reform load. According to one organizer: “We realized the more people we would have to join in this fight; the easier it would be to divide up the work and to achieve our objectives. No one organization could have done Dodd-Frank all by itself. It was too vast.” Groups started to divide up the work among themselves: “We literally took the bill and organizations signed up to take the lead on the various aspects or titles in the bill. That meant they kept their eye on what was going on, told the other members what amendments were good, which ones were bad. When we had to write a letter for or against a particular provision, the lead organization would generally produce the letter and ask the other organizations to sign on. That is the only way we could have done such a massive bill.”⁵⁴ Lobbyists from the financial industry side attributed the success of consumer groups partly to the fact that “they organized effectively.” To industry lobbyists, it was evident that consumer groups had been influential during the legislative process.”⁵⁵

The broad coalition under the umbrella of AFR enabled consumer advocates to present a united front, including consumer associations, labor and public interest and community groups. Albeit critical moments where the coalition’s cohesion was in jeopardy, the groups did not split. The community reinvestment groups stayed in the coalition after a reform of the Community Reinvestment Act (CRA) was stalled by opposition of community banks. Originally, the Administration’s proposal had included a transferal of the CRA to the authority of the new consumer agency, thereby echoing the wishes of the National Community Reinvestment Coalition (NCRC) (Americans for Financial Reform 2010). The decision to eliminate the CRA from the law was a strategic choice by Chairman Barney Frank in an effort to avoid another layer of opposition. The plan was “have them [small banks] not like it but make them not hate it.”⁵⁶ Despite this setback for community groups, the NCRC decided to stay part of the coalition.⁵⁷

⁵⁴ Interview 3a with consumer representative, Washington DC, 6 September 2013.

⁵⁵ Interview 113 with banking lobbyist, Washington DC, 25 February 2014.

⁵⁶ Interview 114 with Congress staffer Washington DC, 17 March 2014.

⁵⁷ Interview 65b with consumer advocate, Washington DC, 13 February 2014.

The broad coalition among civil society organizations was made possible by the advocates' perception of a policy window, as one coalition member recalled: "We always wanted to do this coalition. The financial collapse created this window. Suddenly it was a national crisis, more than just poor and minority communities."⁵⁸ Advocates realized to win real reforms they had to take advantage of the public anger about costly bank bailouts and political opportunities that presented themselves for regulatory change. One coalition member reported: "Everybody understood the opportunity and that is was a moment to be seized, there was a collective willingness to spend energy and resource."⁵⁹

Pro-reform groups were keenly aware of the fleeting nature of their opportunity to set up a new and powerful consumer agency. They knew that their best opportunity was in the first years of the administration, when the Democratic Party had a majority in Congress. After the midterm elections of 2010, the cushion in Congress would be smaller. The stars were aligned so to speak, and reform advocates had to take advantage. According to one consumer representative: "The politics was right: we had a new presidency who had previously during campaign expressed support for this; I knew Barney Frank and Chris Dodd, the chairs to the committees. That kind of alignment does not happen very often and when it does you got a go for it."⁶⁰ After the 2008 election the Democratic Party enjoyed a comfortable margin in the House to pass reform legislation (with a majority of 51 per cent required). The election also brought a filibuster-proof Democratic majority to the Senate (sixty Democratic votes). If all sixty Senators were to vote for a reform bill, pro-reform advocates could overcome the expected Republican filibuster. Indeed, during the final passage of the Dodd-Frank Act, the sixty votes in the Senate did enable the Democrats to pass the bill with all but three Republicans in opposition.

The perception of opened-up political opportunities after the subprime mortgage crisis as a trigger for collective action among diffuse interest groups was reinforced by the early passage of the Credit Card Accountability, Responsibility and Disclosure Act (short Credit CARD Act) before Dodd-Frank in May 2009. The CARD act had broken the ground as a first success indicating to consumer advocates that a policy window had opened that allowed for the passage of broad consumer-friendly regulations. In response to mounting debt levels and industry malpractices, Congress improved credit card contract regulation in May 2009 by

⁵⁸ Interview 82a with consumer advocate, Washington D.C., 18 September 2013.

⁵⁹ Interview 23 with consumer advocate, Washington DC, 12 September 2013.

⁶⁰ Interview 79 with consumer advocate, Washington D.C., 13 September 2013

passing the CARD Act. The Center for Responsible Lending called the Act “the most significant federal consumer financial reform in decades” (Wolff 2012).⁶¹ With many consumers heavily indebted with credit card fees, it had become clear to policymakers that credit card reform had broad populist appeal. Commenting on the credit card reforms, *The New York Times* wrote: “Members of Congress and the Obama administration have seized on the discontent to push reforms that the industry succeeded in tamping down when the economy was flying high” (Martin 2009). Passing a new regulation of credit cards was also a pragmatic policy response that would legitimize reform actions and follow the path of least-resistance as one policy insider reported: “Early 2009, the financial crisis was still raging, people wanted blood from the banks, and this was just an easy thing to drive through. Other bills that were out there [...] were more controversial [...] for the big banks and so were harder to get through. But credit cards - who could argue against credit cards?”⁶²

To the consumer lobby, the passage of the CARD Act was breakthrough legislation after years of congressional and regulatory inaction. It was a strong signal that the crisis had opened a policy window where it would be easier to push for consumer protection regulations. For many years consumer groups tried to bring unfair and abusive practices of the credit card industry to light. But it was only in the wake of the financial crisis which brought overwhelming evidence to the fore, that consumer claims gained credibility. Groups such as the National Consumer Law Center (NCLC) had lobbied for years for better protection for consumers, among others, from “fee-harvester” credit cards. In midst of the turmoil of the mortgage crisis, advocacy groups tried to use the momentum and intensified their lobbying for fair credit card practices. The groups including U.S. PIRG, ACORN, the CFA, the NCLC, the National Association of Consumer Advocates (NACA) but also labor groups such as the AFL-CIO and civil rights groups came together as an informal coalition. Reflecting on the credit card campaign, a leading consumer advocate remembered that “winning this bill was as big and powerful a victory as we ever have had against a powerful opponent.” Passage of the bill was perceived as “an early warning” that the consumer lobby could win when the industry was vulnerable and when it seized the moment of a democrat majority in both houses in

⁶¹ After passage of Dodd-Frank in July 2010 the CFPB was charged with implementing the Act. The new law mainly deals with four categories where consumer protection provisions were enhanced: provisions affecting rates, billing practices; fees; and protections for young costumers (Pridgen 2013, 24).

⁶² Interview 34 with Congressional staffer, Washington DC, 7 March 2014.

Congress.⁶³ Passage of the CARD Act greatly encouraged pro-reform advocates and the members of the CARD coalition would eventually become the core of AFR.⁶⁴

Further evidence that collective action among diffuse interest groups was spurred by perception of political opportunities following the financial crisis, is provided by the fact that earlier attempts to forge coalitions did not succeed. Shortly before the crisis, in 2007, earlier efforts of coalition building among advocacy groups with similar policy goals under the umbrella of non-profit organization named Americans for Fairness in Lending (AFFIL), had failed. AFFIL was founded with cy pres funds from a class action suit.⁶⁵ The funding that had become available was a good opportunity to found a new coalition and national consumer, civil rights, faith-based, nonpartisan and grassroots organizations were eager to join in. Most of the twenty groups brought together under the AFFIL umbrella would later form the core of AFR: CRL, Consumer Action, CFA, CU, NCLC, and U.S. PIRG. AFFIL launched a national campaign to raise public awareness of predatory lending and the need for stronger consumer protection regulations and fairer lending practices. Ad campaigns framing predatory lending as an “American Tragedy”⁶⁶ were supposed to change the way the public perceived predatory lending.⁶⁷ In 2008, AFFIL also engaged in the credit card campaign that led to the CARD Act. With AFFIL’s funds largely consumed after three and a half years, and the coalition slowly falling apart, the board decided to make its remaining staff available to AFR and so the two organizations merged in September 2009.

Mobilized diffuse groups were influential because of public opinion favourable to their cause. Newly mobilized groups were key actors in transmitting public opinion to decision-makers, as one staffer put it bluntly, “AFR was able to be influential [...] they had a special clout, because they were able to tap into public sentiment.”⁶⁸ One of the first steps of the coalition had been to provide support for local grass-roots groups and their activities, in order to enable those groups to engage with their members of Congress.⁶⁹ The AFR pro-

⁶³ Interview 65b with consumer advocate, Washington DC, 13 February 2014.

⁶⁴ Interview 82a with consumer lawyer, Washington DC, 18 Sept 2013, interview 65b with consumer advocate, Washington DC, 13 February 2014.

⁶⁵ Cy pres are funds in class action cases and some other types of legal proceedings that cannot be distributed to the class members or intended beneficiaries of the fund. Typically, courts can distribute these remaining residual funds to appropriate nonprofit organizations.

⁶⁶ americansforfairnessinlending.wordpress.com/

⁶⁷ Interview 65b with consumer advocate, Washington DC, 13 February 2014.

⁶⁸ Interview 34 with Congress staffer, Washington DC, 7 March 2014.

⁶⁹ Interview 23 with consumer advocate, Washington DC, 12 September 2013.

reform groups were very active in lobbying Congress and top governmental officials throughout the long process that led up to the passage of the Dodd-Frank bill. Members of the coalition regularly gave testimony before Congressional committees pushing for a single regulatory agency. Between March and June 2009 members of the coalition testified in several House and Senate Committee and Subcommittee hearings providing a coherent “causal story” of policy failures in the run-up to the subprime crisis. During the passage of Dodd-Frank at least twelve different AFR members strongly supported the CFPB in testimony before the US House of Representatives and the Senate in hearings between June and September 2009 (Kirsch and Mayer 2013, 74). Pro-reform groups thereby served an important function for pro-reform advocates within the administration, by disseminating information about abusive lending practices in the run up to the crisis, trying to create a momentum for reform. In June 2009, several AFR members gave testimony before the Financial Services House Committee. Ed Mierzwinski of U.S. PIRG and Travis Plunkett of the Consumer Federation of America testified in June 2009 that a “robust, independent, federal Consumer Financial Protection Agency” was needed to address the “failure of federal regulators to stop abusive lending.” The Center for Responsible Lending argued that “[a]n independent consumer protection agency, dedicated and empowered to keep the markets free of abusive financial products, committed to transparency [...] would help to restore consumer trust and confidence, stabilize the markets, and put us back on the road to economic prosperity” (Keest 2009). All witnesses representing AFR agreed that the CFPB would effectively respond to the underlying causes of the crisis. Consumer activists’ goal was to “lay out a convincing narrative about the causes of the mortgage meltdown [...] to show that creating a consumer financial protection agency was the right policy response” (Kirsch and Mayer 2013, 74).

In addition, a database of collected stories about abusive lending served as important source of information for Congress. Groups like the CU and CRL collected testimonies by people wronged by abusive industry practices on their webpage, asking people to share their “horror lending stories.”⁷⁰ One consumer advocate recalled: “What we brought to the table: stories. During the height I got 30 calls a day from the press [saying] ‘I want a story from a person in Baltimore whose home was foreclosed’. We were very good in activating those people and getting them engaged.”⁷¹ Another consumer advocate reported: “I would get a Congressional office asking about stories. We will ask the person who submitted the story if

⁷⁰ The website is available at www.responsiblelending.org/about-us/contact-us/share-story.html.

⁷¹ Interview 82a with consumer lawyer, Washington DC, 18 Sept 2013.

they are comfortable sharing their story with the White House or Congress, and have availability to come to DC and talk about it. That is very effective.” Due to the cumulative actions of interest groups, “these predatory lending stories were coming out all over the place,” in the perception of one Congress staffer.⁷² Another Congressional staffer, directly involved in drafting the legislative language confirmed that consumer groups with their actions fighting for consumer protection and bringing personal stories of wronged consumers to the fore had helped to set the stage for reforming abusive practices.⁷³ A comment of a senior level official involved in drafting the legislation, clearly testifies to the role of pro-reform groups as link between public opinion and policymakers. He reported that newly mobilized groups “helped in bringing attention to the issues and trying to get the public focused on the key questions [...]. It definitely helped shape the debate and helped us to generate enthusiasm for what we were trying to do.” Wide-spread public support in favor of stricter regulation also helped policymakers to overcome the opposition of the industry, as one senior level official put it, “it was harder for the financial services lobbyists to push back against us, because we had on our side more public support.”⁷⁴ Due to this changed political dynamics, industry groups had to refrain from blocking the legislative proposal for a new consumer agency. In the regulatory policymaking process of the crisis, the industry could not act as a straightforward “veto player.” While financial industry groups were strictly opposed to a new regulator, they nevertheless saw stricter consumer regulations as largely inevitable.⁷⁵ A comment by a Congressional staffer about the legislative process in the House confirmed the weakened stance of the industry: “We gave [financial sector groups] the opportunity to constructively draft the bill but not to not do it.”⁷⁶

The influence of mobilized diffuse interests was not only due to favorable public opinion but also due to a split among two central financial sector groups. Deprived of their veto capacity, and although nearly the entire financial industry was opposed to a consumer protection bureau, the united front began crumbling during the passage of the House bill. Barney Frank, Chairman of the House Financial Services Committee, struck a deal with the Independent Community Bankers Association (ICBA), exempting small banks from CFPB

⁷² Interview 34 with Congressional staffer, Washington DC, 7 March 2014.

⁷³ Interview 14 with Congress staffer, Washington DC, 14 March 2014.

⁷⁴ Interview 34 with Congressional staffer, Washington DC, 7 March 2014.

⁷⁵ Interview 1 with banking lobbyist, Washington DC, 20 September 2013.

⁷⁶ Interview 114 with Congressional staffer, Washington DC, 17 March 2014.

oversight. The split of opposition considerably weakened the overall industry's attempt to block passage of the CFPB or promote alternative proposals. "It was a crucial deal," as one consumer advocate reported. "It divided the industry; the smaller independent consumer bankers were neutralized. They did not support the CFPB but they did not oppose it. Had they opposed, it might not have passed."⁷⁷ From the industry groups' point of view, the deal was a huge loss: "The question was really where should it [consumer protection regulation] take place? As a unique bureau or as part of what the prudential regulators do? We would have ended up, probably, with increasing the consumer responsibilities of the prudential regulators [...] but not a new agency. But we weren't united and now we are paying for it." Consumer advocates counted the semi-carve out for small banks under \$10 billion as a partial victory, since the CFPB still had rule-writing authority over small banks. Small banks were only exempted from CFPB supervision and enforcement, which was to be conducted by prudential regulators instead. At the final stage of passage, during the joint conference committee, industry opposition proved unexpectedly weak and no further amendments were offered that would have weakened the CFPB.⁷⁸

To sum up: As predicted, the active involvement of pro-reform groups was spurred by the financial crisis and based on the perception of a "window of opportunity" for reform. Newly mobilized interest groups formed a broad-based pro-reform coalition as "countervailing force" to financial industry interests, restraining the policy influence of the latter. As expected, diffuse interest groups acted as a transmitter of public opinion, putting increasing pressure on policymakers to actively pursue regulatory change, even counter the interests of the more powerful financial lobby. Facing increased actor plurality and changed interest group dynamics, industry groups saw themselves forced to refrain from vetoing the policy process which eventually led to a split of opposition and a further weakening of the sector. The next section will discuss how consumer groups' policy influence was leveraged by another crucial factor: policy entrepreneurship.

Policy Entrepreneurship

Another factor that boosted the influence of diffuse interest groups was the fact that a skilled policy entrepreneur served as source of an innovative idea and subsequently invested time and resources into the reform cause. Pro-change advocates found a strong and well-

⁷⁷ Interview 73 with consumer advocate, Washington DC, 13 March 2013.

⁷⁸ Interview 65b with consumer advocate, Washington DC, 13 February 2014.

positioned policy entrepreneur in Harvard law professor and consumer advocate Elizabeth Warren, who had published the initial idea for a consumer protection agency in articles in 2007 and 2008. With the proposal of a new “Financial Product Safety Commission,” Warren put forward an important innovative idea. In the 2007 article which was published in an obscure journal called “Democracy,” Warren wrote: “Just as the Consumer Product Safety Commission (CPSC) protects buyers of goods and supports a competitive market, we need the same for consumers of financial products - a new regulatory regime, and even a new regulatory body, to protect consumers who use credit cards, home mortgages, car loans, and a host of other products” (Warren 2007).⁷⁹ The article entitled “Unsafe at any rate” made reference Ralph Nader’s book “*Unsafe at any Speed*” which was published in November 1965. Nader identified automobiles as cause for accidents and generated substantial publicity resulting in stronger consumer protection legislation. In a second article, published in November 2008, Warren and her co-author Bar-Gill, laid out their reform solution to problems in the consumer credit market in more detail. They suggested a single federal regulator [...] to be put in charge of consumer credit products” (Bar-Gill and Warren 2008, 98). At the time of publication, wider public attention to Warren’s articles was only moderate.

Warren was not only an innovator, but she also had another attribute indispensable of a successful policy entrepreneur: she was politically savvy. With the relevant political connections, she was able to shape political debate and build coalitions supporting her idea. Warren became a highly visible political figure in November 2008 as Chair of the Troubled Asset Relief Program Congressional Oversight Panel (COP) to review the current state of financial markets and the regulatory system. The first COP “Special Report on Regulatory Reform” issued in January 2009 included Warren’s proposal of a single federal regulator for consumer credit products.⁸⁰ Throughout the reform debate, Warren served as key expert. One Congress staffer remembered “a couple of instances where Warren was in Barney’s office and we talked to her – her acceptance was important, her assessment was important.”⁸¹ Warren was also conceived as influential policy entrepreneur by interviewees from the industry side. One lobbyist reported that Warren was “a very effective” and “articulate” spokesperson which gave the AFR coalition “additional clout.”⁸² In September 2010, Warren became part of the

⁷⁹ Warren’s article in democracy was reprinted in fall 2008 in the Journal of Consumer Affairs entitled Product Safety Regulation as a Model for Financial Services Regulation.

⁸⁰ The full COP report is available at www.un.org/ga/president/63/commission/regulatoryreform.pdf.

⁸¹ Interview 66 with Congressional staffer, Washington DC, 24 March 2014.

⁸² Interview 113 with banking lobbyist, Washington DC, 25 February 2014.

administration as Assistant to the President and Special Advisor to the Secretary of Treasury for the CFPB. In her position as Special Advisor to the Treasury at the CFPB, she became an important public entrepreneur on the political stage who defended the new consumer agency in congressional hearings and various sub-committee meetings of the House of Representatives.⁸³ Warren also repeatedly denounced industry lobbying in TV shows such as John Stewart and the Colbert Report, saying that industry's aim was to "to stick a knife in the ribs" of the new bureau (Warren 2011). Warren made her policy solution match politicians' needs to respond to public pressure. She had introduced the idea of a Consumer Finance Safety Commission with a metaphor comparing safety regulations for toasters to those for consumer financial products. "It is impossible to buy a toaster that has a one-in-five chance of bursting into flames and burning down your house. But it is possible to refinance an existing home with a mortgage that has the same one in-five chance of putting the family out on the street," Warren (2014, 1) wrote. In spring 2009, the metaphor reoccurred in the letter by the three Senators Durbin, Kennedy and Schumer to Treasury Secretary Geithner: "[T]here is no reason for us to have regulations that prevent toasters from exploding into flames, but no protections to prevent mortgages and credit cards from doing the same" (Durbin 2009a). In March, President Obama employed the same metaphor when he appeared on *The Jay Leno Show* clearly indicating presidential support for consumer protection reforms. Due to Warren's entrepreneurship, her policy proposal of a Consumer Finance Safety Commission had slowly moved from the periphery to the center stage of politics.

Most importantly, Warren's idea of a new consumer regulator found its way into the work of a brainstorming group, a small group including experts on financial institutions, law professors and economists, the President had charged with the task to draft a first reform bill in January 2009.⁸⁴ One member of the group, Assistant Secretary of the Treasury Michael Barr, personally knew Warren and was familiar with her academic work. Warren's idea clearly served as important inspiration for the brainstorming group. According to one member of the group: "The president had either read her article or at least knew about it or talked to her about it [...]. So the idea of doing a consumer bureau was not an alien one."⁸⁵ Reforms of the framework for consumer protection regulations, including a new agency, were a central part of the group's discussions throughout spring 2009 and were debated with Secretary

⁸³ Warren gave testimony about the CFPB to Congress in May 2011 and to the House Financial Services Committee in June 2009 and in March 2011.

⁸⁴ The group included Michael Barr, Diana Farrell, Cass Sunstein, Patrick Parkinson, Neal Wolin (Kaiser 2013)

⁸⁵ Interview 5 with government official, Washington DC, 10 March 2014.

Geithner, Larry Summers and eventually with the President all spring long.⁸⁶ Based on their conclusions, the brainstorming group proposed an independent Consumer Financial Protection Bureau and later that year, in June 2009, the Treasury included the proposal of a new agency in the White Paper.

Warren was also instrumental in rallying initial support for a single regulator among consumer, labor and other interest groups. Warren's proposal enjoyed wide-spread support among consumer advocates who had been working with Warren since the 1990s.⁸⁷ Warren also joined the consumer groups' credit card campaign which led to the passage of the CARD Act in May 2009. First discussions among consumer advocates and Warren about the policy proposal of a consumer regulator started to take place in the summer 2008 before Obama was elected President. When pro-reform advocates convened a first preliminary meeting in Washington D.C. to form a coalition for financial reform in February 2009, Warren introduced the idea of a consumer finance protection agency to the audience, knowing that "if the groups represented by the people in this room didn't get behind the proposal, there was zero chance of getting it through Congress" (Warren 2014, 135). In light of the unsuccessful campaign in the 1970s under the leadership of Ralph Nader some civil society groups voiced concern about lobbying for a single consumer agency. But overall, Warren was able to make a good case and get broad-based consensus in favor of the idea.

In March 2009, two years after Warren's first article was published and in the midst of the turmoil caused by the financial crisis, advocates of a consumer agency undertook another attempt to enact legislation. According to Warren's account, she met with Senator Ted Kennedy in early 2009, urging him to push for the agency (Warren 2014, 138). Both had known each other since the fight for bankruptcy law reform in 2005. In March, Senator Ted Kennedy (D-MA), Senator Dick Durbin (D-IL) and Senator Chuck Schumer (D-NY) introduced the Financial Product Safety Commission Act of 2009 into Congress (S. 566) proposing the creation of a regulator with sole responsibility to protect consumers according to Warren's blueprint.⁸⁸ Consumer groups and labor unions supported the bill including the Consumer Federation of America, the Center for Responsible Lending, the Leadership Conference on Civil Rights, NAACP, La Raza, AFL-CIO, SEIU, National Consumer Law Center, Consumers Union, Public Citizen, and US PIRG. Congressman Bill Delahunt from

⁸⁶ Interview 5 with government official, Washington DC, 10 March 2014.

⁸⁷ Interview 65b with consumer advocate, Washington DC, 13 February 2014.

⁸⁸ The full text of the bill is available at: www.govtrack.us/congress/bills/111/s566/text.

Massachusetts and Congressman Brad Miller from North Carolina, a champion of the consumer movement, who had sponsored state mortgage reform legislation that passed in 1999, also championed the consumer agency and became co-sponsors of the bill. In April 2009, Senator Kennedy, Durbin and Schumer wrote a letter to Treasury Secretary Tim Geithner, urging him to include their proposed Financial Product Safety Commission in the Administration's plan for financial reforms (Durbin 2009a). Also in April 2009, Warren, according to her own account, successfully convinced Barney Frank, the influential Chairman of the House Financial Services Committee, that the consumer agency was a political viable idea (Warren 2014).

To sum up: had it not been for this support from a powerful entrepreneur, the consumer agency would most likely not have seen the light of day. The academic work of Harvard professor and credit expert Elizabeth Warren served as important source of innovation, putting forward the idea of a new agency to protect consumers. Warren was not only an expert and innovator on consumer finance and housing issues, but she was also politically well connected, able to successfully build supportive political coalitions for her idea and to exploit opportunities opened by the credit crisis and the excessive industry influence over regulation that it brought to the fore. Warren promoted the proposal of a new consumer regulator in tandem with the newly mobilized reform coalition. She was also an important actor to help diffuse interests in their efforts to organize as pro-reform coalition.

Government Allies

To bring about substantial reforms, consumer groups worked closely with government allies inside the administration and Congress. The Obama administration became an important government ally and played a lead role in promoting the regulatory reform favored by consumer advocates. The White House publicly entered the picture in June 2009 with the White Paper that proposed five objectives for financial reform including a “Consumer Financial Protection Agency (CFPA), with the authority and accountability to make sure that consumer protection regulations are written fairly and enforced vigorously” (Department of the Treasury 2009). Before the White House issued its blueprint for financial reform which included the CFPB, consumer groups (that would later become AFR) had become a central interlocutor for the brainstorming group, the administration and the Treasury Department. Consumer groups had routinely met Treasury officials to give advice and express support for a strong consumer regulator. Individual consumer groups (which were at that point not yet

organized into a coalition) enjoyed access to informal consultations and had effective connections with Treasury staff, such as Eric Stein who had become top deputy of the Assistant Secretary of the Treasury Barr after a career at one of the leading consumer organizations, the Centre for Responsible Lending. Prior to his function at the Treasury, Barr himself had been involved in community development policies where interactions with consumer, housing and community groups had largely shaped his views. Close relations among consumer advocates and policymakers persisted throughout the passage of financial reforms. Barr became responsible for consumer financial protection policy, including the enactment of the Credit CARD Act of 2009, and the CFPB. When in June 2009, the White House published its White Paper, Barr and his top deputy Stein were in charge of drafting the legislation that was implemented from the blueprint. During the legislative process, meetings between the Assistant Secretary of the Treasury and the AFR coalition took place on a regular basis.⁸⁹ Within the administration, Barr and Stein became the “behind-the-scenes heroes” for the consumer advocates in drafting strong language and pushing for the consumer agency (Warren 2014, 162).

From the beginning, the issue of a consumer regulator had strong presidential support. As key government ally to consumer advocates, Obama played a lead role in promoting regulatory reform. Personally enthusiastic about reform, Obama highlighted the new consumer regulatory in several speeches and as a guest on the *The Daily Show with Jon Stewart* and *The Jay Leno Show*, clearly indicating presidential support. In a speech given on October 9, 2009, Obama stated his continuing support for the new agency, actively siding with consumer activists: “We need a Consumer Financial Protection Agency that will stand up not for big banks, not for financial firms, but for hardworking Americans. [...] we need regulatory reform that will reward innovation and competition instead of short-cuts and abuses. [...] we can't let special interests win this fight.” The President called claims made in a campaign ad sponsored by the Chamber of Commerce about the new agency being harmful to small businesses “completely false.” One of the ads claimed that “virtually every business that extends credit to American consumers would be affected – even the local butcher and the credit he extends to his customer.” Mocking the \$2 million ad campaign against the new bureau, the President remarked in his speech: “I don't know how many of your butchers are offering financial services” (Obama 2009).

⁸⁹ Interview 34 with Congressional staffer, Washington DC, 7 March 2014 and interview 65b with consumer advocate, Washington DC, 13 February 2014.

The evidence that the president himself supported the new consumer regulator and was willing to invest in the effort to pass reform certainly made the new consumer regulator more attractive to committee leaders. Recognizing the changed political dynamics, key political leaders joined the bandwagon and became governmental allies to actively push for a single consumer regulator. Most importantly, the Democratic leaders of the committees that handled financial reform - Representative Barney Frank, chairman of the House Financial Services Committee, and Senator Christopher Dodd, chairman of the Senate Banking Committee - both became active allies defending diffuse interests in the policy process. Extensive mobilization of pro-reform groups in combination with support of elite allies, including the President, made elected officials into allies advocating for diffuse interests in financial reforms. Collective material resources mobilized by outside groups in favor of regulatory reform, signaled to policymakers that a strong pro-reform lobby was in place. One Congress staffer testified to the relevance of this outside mobilization, saying that the “united front [...] was quite important. It gave the consumer and civil rights community [...] the ability to expand the battlefield.”⁹⁰ Moreover, strong presidential support for reform had already signaled to the committee leadership that the chances of passage would be good. Another Congress staffer summarized the motivation for elected officials to become an active pro-reform advocate as follows: “The consumer groups rallying the public and the media being just ready for anything on this stuff, and again the president at the height of his authority saying ‘I want this.’”⁹¹ Another respondent from the industry side confirmed this assessment: “The crisis gave [consumer groups] a great atmosphere politically and then they had a White House and Treasury Department that was very sympathetic to them. That combination gave them a lot of clout.”⁹²

Both committee leaders - Frank and Dodd - subsequently became important allies to the pro-reform groups to push for reform. Both stood firm against nearly all weakening amendments and joined in support of strengthening ones. During the advocacy process for the new consumer regulator consumer groups on the outside and officials at the inside worked in tandem. Insider-outsider coalition with the consumer agency as shared policy goal emerged. Several examples illustrate the close working relationships among the AFR coalition and Congressional staff in the key Committees. When legislative action moved to the House

⁹⁰ Interview 66 with Congressional staffer, Washington DC, 24 March 2014

⁹¹ Interview 34 with Congressional staffer, Washington DC, 7 March 2014.

⁹² Interview 113 with banking lobbyist, Washington DC, 25 February 2014.

Financial Services Committee in the fall of 2009, consumer groups under the AFR umbrella started to cooperate with Frank and his staff. Frank became an influential advocate for the consumer cause who expressed his support for the idea of a consumer agency in one of the first meetings with the AFR coalition.⁹³ The following passages stem from interviews with outside lobbying organizations and staff members in Congress. One reform advocate gave an explanation of the degree of cooperation and planning among the administration and consumer groups which testifies to exceptional access of advocates to the policy process: “We had been talking to the Treasury people, then the President came out with his blue print and it included the CFPB. So that summer [2009] we had all these meetings and negotiations with Treasury and then with Frank. We worked with them and advised them on the blue print and then we worked with them on a strategy to draft the legislation that was implemented from the blueprint.”⁹⁴

About the cooperation with Senator Dodd’s staff, another AFR organizer described the groups’ close relation with governmental allies in Congress this way: “We had a big meeting with Dodd and his whole staff, asked for what the relationship would be, who we should work with, how we should work with them. We had three meetings with him and his whole staff in the course of the campaign, once at the start, once before the end and once in the middle. We met with the staff [...] all the time.”⁹⁵

From inside the Congress the advocacy process looked similar. Congress staffers interviewed for this study on the House and Senate side reported that they relied on consumer group’s expertise for drafting legislation. On mortgage reform, Barney Frank’s staff reported that they relied on expertise from the Center for Responsible Lending, saying that they “got language when [they] needed it.”⁹⁶ On the issue of preemption, staffers closely cooperated with the Consumer Federation of America. Within the broad coalition that AFR had brought together, one could find “experts on any given issue [...] with invaluable [knowledge] in technical areas,” as a Congressional staffer reported.⁹⁷ Each of the groups brought a specific area of expertise on consumer financial issues to the table, so that Congressional staffers knew

⁹³ Interview 65b with consumer advocate, Washington DC, 13 February 2014.

⁹⁴ Ibid.

⁹⁵ Interview 10 with consumer advocate, Washington DC, 28 September 2013.

⁹⁶ Interview 66 with Congressional staffer, Washington DC, 24 March 2014

⁹⁷ Interview 114 with Congress staffer Washington DC, 17 March 2014. Cross verification of evidence confirms this fact which may be considered ‘cheap talk’. Information from various members of the Congressional staff, consumer advocates and industry lobbyists who saw themselves “shut out” testifies to the correctness of the assessment.

who to reach out to on the consumer side. As one Senate staffer recalled: “There was somebody who knew about credit cards and debt collection and there was somebody who knew about housing. One or two experts in a couple different organizations would be the folks that we would call up and say ‘hey we’re working on this bill, what do you think needs to be in it, can you take a look, what lawyers, what professors can we talk to?’”⁹⁸

Another member of the Congressional staff reported that groups such as the Center for Responsible Lending and the Consumer Federation of America were “influential” and “credible partners” in drafting mortgage reform legislation, saying that he “could deal with those guys as discretely [...] as with the ABA.”⁹⁹ According to staffers, consumer advocates were not “heavy lobbyists,” but knowledgeable people who could draft legislative language when needed. One Congress staffer saw AFR as “a collection of interest groups, many which lend incredible know how to drafting [legislation] but not [political] muscle. There was no lobby power on the AFR side, but many individuals and organizations within AFR that had the expertise [on consumer financial issues].”¹⁰⁰

To sum up, policymakers and advocates worked in tandem in an insider-outsider coalition, to advocate for a strong consumer regulator. Pro-reform advocates on the outside had well-established working relations with sympathetic government allies at the inside, notably the President as well as the two key Committee chairs Barney Frank and Chris Dodd who pushed the legislation through Congress. Extensive mobilization of pro-reform groups in combination with presidential support was instrumental in making the idea more attractive to committee leaders. Important allies were not only to be found in Congress; they also include people at the inside of the administration like Assistant Secretary of the Treasury Michael Barr and his top deputy. The most accurate depiction of working relations among advocates and friendly policymakers is that of members of a team with advocacy groups serving as an important source of expertise in the drafting phase of the legislation.

Conclusions

What can this episode tell us about the politics of financial reform after the crisis? The puzzle addressed in the case study of the CFPB is that the regulatory change runs counter to the interests of the influential and resourceful financial industry associations. The in-depth

⁹⁸ Interview 34 with Congressional staffer, Washington DC, 7 March 2014.

⁹⁹ Interview 66 with Congressional staffer, Washington DC, 24 March 2014.

¹⁰⁰ Interview 114 with Congress staffer Washington DC, 17 March 2014.

analysis of the creation of a new consumer regulator in the US has shown that diffuse interests can be politically influential, even in a policy field that has been characterized as exclusively dominated by organized industry interests such as financial regulation. While consumer groups gained more access to the national policy making process, industry groups, saw their policy access curtailed. These findings call Olson's logic of collective action into question, which predicts that regulatory outcomes correspond to the preferences of the concentrated and well-organized industry interests, usually putting consumers at a disadvantage. Explanations of post-crisis regulatory policymaking need to go beyond concentrated interest-group pressure and take a closer look at interest group dynamics involving greater actor plurality. Through careful process-tracing I demonstrate that financial reforms are best explained through a theoretical framework which takes into account the role of diffuse interest groups and their relations to legislators.

The results of applying the theoretically derived hypotheses to the empirical record of the case at hand are summarized in table 4. The new consumer regulator in the US supports the thesis that the post-crisis financial reform policies were shaped by the mobilization of nonfinancial industry groups rather than captured by financial industry interests (Helleiner and Pagliari 2011a). This chapter tried to demonstrate that the story of post-crisis regulatory reform in the US was a story of diffuse interest coalitions as a countervailing force to industry interests, policy entrepreneurship and governmental allies, as much as – if not more than – a story of concentrated industry capture. The importance of coalitions is particularly apparent in the formation of the broad-based civil society coalition under the “Americans for Financial Reform” umbrella that came together to advocate for a new consumer regulator, opposing financial industry interests. The engagement of this unprecedented coalition of nonfinancial groups in the reform debate increased actor plurality and reduced industry dominance throughout the legislative process. The pro-reform coalition effectively exploited a split in industry opposition. The cooperation with a well-positioned and savvy policy entrepreneur was another key factor in determining reform outcomes. Harvard law professor and consumer finance expert Elizabeth Warren played a central role as innovator who provided the idea of a new consumer regulator and subsequently build a political coalition in support of reform.

Another important driver of regulator change representing diffuse interests were governmental allies including the President and committee chairmen that pushed the proposal for new consumer watchdog through Congress. Notably, Representative Frank and Senator Dodd, the chairmen of the committees responsible for financial reform, became active

proponents of the consumer cause and cooperated closely in team-like structures with the newly mobilized consumer advocacy coalition. Insider-outsider coalitions with the consumer regulator as shared policy goal emerged. Newly mobilized groups served as an important transmitter of public opinion to policymakers as well as an important source of specialized expertise throughout the drafting process of legislation. The legislative outcome was a winner-take-all result with consumer groups winning the day and only minor carve-outs for small community banks.

Table 4 Summary of Findings

Propositions	Findings
Scope conditions present:	Yes. Financial lobbyists saw their views largely ignored and had much less influence during the regulatory reform debate than during pre-crisis times.
1. Favorable opportunity structures: politicians under public salience and electoral constraints become more receptive and grant new access points to diffuse interest groups.	Yes. Congress and its committees opened new access points for a broader range of interest groups. Under conditions of public pressure, demands by pro-reform groups attracted political attention.
2. Diffuse interest coalitions: the organization as advocacy coalition spurred by the perception of a window of opportunity allows diffuse interest groups to promote reform goals.	Yes. Formation of Americans for Financial Reforms as countervailing force to financial industry, based on the perception of a window of opportunity. AFR as beneficiary of favorable public opinion and of split among industry groups.
3. Policy entrepreneurs: activism of entrepreneurs as source of innovation, expertise, institutional resources etc. thereby leveraging advocacy groups' influence.	Yes. Consumer credit expert Elizabeth Warren plays central role as innovator who introduces the idea of a consumer agency; she is also politically savvy and defends the idea in the reform debate.
4. Government allies: Joining the bandwagon public officials actively side with mobilized diffuse interests to promote same policy solution in team-like structures.	Yes. Insider-outsider coalition with well-established working relations among advocates and key government allies, Committee chairs Barney Frank and Chris Dodd, with advocates as source of expertise.
5. Outcome: Policymakers enact financial reforms reflecting diffuse interests.	Yes. Winner-take-all outcome for consumer groups.

To sum up, regulatory capture theories as the dominant theoretical lens to explain US financial reforms after the 2008 crisis, clearly helped identify the causes for the incrementality of the overall reform law in spite of the major shock the crisis had caused. Rather, my goal has been to show that this is only half of the story, and that diffuse interests did not go unrepresented in the American financial regulatory overhaul. The findings presented here correspond to Trumbull's argument that diffuse interests are commonly represented in public policy, even in the field of financial regulation. Ultimately, the story of the struggle between consumer advocacy groups and financial industry groups in the case of the CFPB suggests that coalition-building among diffuse interest groups and with important elite allies on the outside and the inside of government considerably shapes that group's ability to shape regulatory policy, allowing groups to bear on policy decisions independently of an individual group's material resources. Accordingly, the case study of the CFPB confirms Trumbull's proposition that researchers seeking to understand the outcome of interest group conflicts must look beyond the simple variable of material resourcefulness.

Chapter 5

Policy Compromise and Diffuse Interests in Financial Regulation: EU Consumer Finance Reforms

Introduction

Similarly to the US reaction to the financial crisis of 2008, the EU agreed on a series of reform proposals that significantly altered the regulatory architecture of European financial regulation and deepened the single market in financial services. Although there is no overarching initiative in the EU that would be comparable to the Dodd-Frank Act, the European Commission brought forward more than forty measures to reform its financial architecture in response to the crisis (Moloney 2012, 112). Existing IPE scholarship has largely focused on explaining patterns of incrementalism of EU level regulatory responses. Specifically, IPE scholars have attributed the incremental nature of regulatory reforms at EU level to the influence of financial-sector groups and their lobbying efforts aimed at preventing regulation (Moschella and Tsingou 2013). The literature thereby echoed the popular capture narrative. This narrative has also been fed by media accounts of “extremely vigorous” lobbying pressure from financial service-sector lobbyists during reform debates in Brussels (Hoedeman 2009).

There is no doubt that consumer advocacy groups were largely outnumbered by industry sector lobbyists during reform debates. According to a recent study conducted by a Brussels-based NGO entitled the “The fire power of the financial lobby,” financial industry groups had 7 times more encounters with EU institutions than NGOs, trade unions and consumer organizations taken together (CEO 2011). More than 700 industry organizations lobbied for financial reforms, compared to only about 150 groups from civil society.¹⁰¹ The financial industry clearly also had much more material resources at its disposal than civil

¹⁰¹ Reforms analyzed by the study included the consultations on Mifid II, Market Manipulation and Coherence of Financial Services Regulations.

society groups. In 18 months between its foundation and December 2012, Finance Watch, a newly found Brussels-based NGO lobbying on financial reform spent €330.000 on communications, meetings and research (Finance Watch 2013b). In 2012, the Deutsche Bank alone spent about € 1.990.000 on lobbying of financial reforms at EU level.¹⁰²

The goal of this chapter is to subject claims of regulatory capture in EU financial regulatory decision making to more vigorous empirical scrutiny. In contrast to existing accounts of regulatory change in response to the crisis, this analysis will consider a range of regulatory policy initiatives that do not neatly confirm to capture theories. Four Directives dealing with consumer finance protection regulation will be analyzed in depth: the European-level agreement to create new supervisory authorities, the introduction of new binding mortgage rules in the Mortgage Credit Directive (MCD), stricter regulations of retail investment products through a simplified information sheet (PRIPs/KID) and the introduction of an inducement ban in the Markets in Financial Instruments Directive (MiFID II). I will demonstrate that the influence of private sector industry groups was more circumscribed and that non-financial interest groups saw important parts of their advocacy goals translated into policy.

The chapter is organized as follows. First, it gives an overview of regulatory change that occurred with respect to consumer finance protection at EU level, assessing the extent to which diffuse interest groups saw their preferences met in the reform outcome, based on interview material and relevant policy documents. I demonstrate that private sector groups were not successful in preventing regulatory change despite their lobbying efforts. In the next section, I describe the general post-crisis environment in which interest groups' lobbying took place. Section 3 traces the hypothesized causal mechanism to explain regulatory change with a special focus on the role of non-financial interest groups in the post-crisis reform debate. In section 4, I conduct detailed process-analyses of four regulatory policies enacted at EU level in response to the crisis, examining advocacy efforts of organized diffuse interest groups over the content of the proposed reform policies.

¹⁰² See European Transparency Register, available at: ec.europa.eu/transparencyregister/public/consultation/displaylobbyist.do?id=271912611231-56.

Regulatory Change and Group Influence

After the financial crisis, the Commission markedly stepped up its rhetoric on increasing consumer protection in retail financial services. Michel Barnier, then European Commissioner for Internal Market and Services, has been promoting an extensive legislative agenda. The case studies examined here were selected because they represent positive cases. Other potential case studies were considered and rejected either because the mobilization of diffuse interest groups was very limited or non-existent (UCITS V) or because the legislative process had not advanced far enough at the time of writing which made a judgement of the actual reform outcome difficult (such as for the Directive on reforming Investor Compensation Schemes (ICS) and Deposit Guarantee Schemes (DGS), to compensate consumers or legislation granting access to bank accounts. At the time the field work was conducted for this project, interviewees in Brussels had identified all cases examined here as the most relevant EU level consumer protection legislation.¹⁰³

Table 5 summarizes the regulatory reforms chosen for analysis and lists their content with respect to consumer relevance. In an effort to address failures in supervision revealed by the crisis, one of the first legislative steps of decision-makers was to reform EU level supervisory structures. The Commission put forward a legislative proposal in September 2009, introducing major institutional innovations including a new European Systemic Risk Board (ESRB) in charge of monitoring macro-prudential risk and three new pan-European supervisory agencies in charge of micro-prudential supervision, referred to as the European System of Financial Supervisors (ESFS). Within the new framework, consumer protection falls within the jurisdiction of the three new European Supervisory Authorities (ESAs) that work in tandem with the existing national supervisory authorities. Displeased with the legislative outcome, and after the implementation of the new regulation, consumer groups and NGOs denounced the new ESAs for placing too little importance on consumer protection in their mandate as well as for the unbalanced composition of their stakeholder groups.¹⁰⁴ ALTER-EU, an NGO concerned with the asymmetry in interest representation in the EU, published a report criticizing the composition of the Supervisory Authorities for not adequately representing consumers and for banking representatives largely outweighing

¹⁰³ This information is based on about 70 interviews conducted with senior elites in Brussels between July 2011 and May 2013.

¹⁰⁴ Interview 27a with a representative of an NGO in Brussels, 9 June 2011.

national consumer organizations.¹⁰⁵ In September 2011, BEUC submitted a complaint to the EU Ombudsman about the under-representation of consumer advocates within the stakeholder groups. Despite their continuing criticism, by securing a consumer mandate for the new authorities, consumer advocates had won a little, while industry groups, specifically German banks had not expressed support for regulatory reform at EU level (Buckley and Howarth 2010, 129).

Table 5 Overview of the EU’s Legislative Initiatives (Consumer Finance Protection)

Regulatory Policy	Reform measures in line with consumer groups’ demands
<i>New supervisory structure</i>	
1 Directives on ESRB and ESFS (September 2010), following the de Larosière report	Transformation of level-3 Lamfalussy committees into European Authorities in charge of micro-prudential oversight and limited consumer protection mandate (e.g. right to ban harmful products).
<i>Retail Financial Services</i>	
2 Mortgage Credit Directive 2014/17/EU (February 2014)	Introduces for the first time EU-wide rules in the area of mortgage loans, harmonizing and improving consumer protection regulations across Europe.
3 Regulation for Packaged Retail Investment Products (PRIPs) (December 2014)	Improves investor protection by introducing a standardized key information document (KID) for non-vanilla products which are risky, difficult to compare and complex to understand to increase transparency and comparability of products.
<i>Investment services</i>	
4 Markets in Financial Instruments Directive (MifiD) (May 2014)	Improves investor protection by introducing a partial ban on inducements, prohibiting advisors labeled ‘independent’ from making or receiving third-party payments.

Source: Assembled by the author.

Concerning a second legislative initiative under analysis here, consumer advocates were more pleased: the Mortgage Credit Directive¹⁰⁶ adopted by the Commission in February 2014, which introduced for the first time EU-wide rules in the area of mortgage

¹⁰⁵ ALTER-EU workshop on expert groups in 2011: ‘Big business cannot be the non-state interest category most represented in Commission’s expert groups!’ Available at: www.alter-eu.org/events/2011/05/13/alter-eu-workshop-on-expert-groups, accessed June 1, 2011.

¹⁰⁶ Mortgage Credit Directive 2014/17/EU (former EU Directive on responsible lending and borrowing, also referred to as Directive on credit agreements relating to residential property, short CAARP).

loans.¹⁰⁷ It complemented the Consumer Credit Directive of 2008, aimed at harmonizing consumer protection regulations and promoting market integration for consumer credit, by applying similar measures to mortgage loans. Prior to the crisis, loans for house purchases had largely been regulated by national legislation. No EU-wide legislation for home loans existed, except for a voluntary code of conduct, a self-regulation regime on information requirements, signed by the mortgage-lending industry and consumer groups in 2001. In the final Directive, pro-reform advocates saw important parts of their demands translated into policy. In line with their demands, a general right for consumers to repay loans early, made it into the final Directive. To ensure that borrowers can meet their credit obligations, the legislation also heightens credit worthiness assessment standards. The reform also includes a general ban on tying practices where other financial products are packaged together with a credit agreement affecting consumers negatively, a provision not included in the initial Commission proposal, and pushed for by consumer advocates.¹⁰⁸ The Directive also introduces minimum standard for advice and curbs misleading advertising of mortgage credit and creates an information requirement, in form of a standardized information sheet (ESIS) that can be compared across-borders and facilitates shopping around. Although the new regulation does not ban loans in foreign currencies, as consumer groups had demanded, it introduces additional consumer safeguards in order to protect consumers against exchange rate risk.¹⁰⁹ While the initial Commission proposal only included an information requirement about implications for the consumer with respect to loans in a foreign currency, the final Directive went beyond the provision and - reflecting BEUC's proposition - included a requirement for member states to set up a regulatory framework that allows consumers to convert the credit agreement into an alternative currency.¹¹⁰ Accordingly, the Directive was received positively by consumer groups who considered consumer protection strengthened (BEUC 2013b). In contrast, industry groups interviewed for this research project reported that their lobbying efforts to prevent the Commission from focusing more on consumer protection than on market integration had failed.¹¹¹

¹⁰⁷ Member States will have to transpose its provisions into their national law by March 2016.

¹⁰⁸ Interview 27b with consumer advocate, Brussels, 21 May 2013.

¹⁰⁹ Despite consumer groups demands for an EU-ban on foreign currency loans, "which in particular in Central European transition countries allowed borrowers to choose between a 'more expensive' local currency and 'less expensive' foreign currency loan" (Dübel and Rothmund 2011).

¹¹⁰ Directive 2014/17/EU, Article 23.

¹¹¹ Interview 46 with financial industry lobbyist, Brussels, 13 May 2013.

A third legislative initiative under analysis here is a proposal for a Regulation for Packaged Retail Investment Products (PRIPs) introducing a new key information document (KID) for investors. The Commission introduced the proposal in July 2012, in an effort to further tighten consumer protection and rebuild investor confidence after the financial crisis. PRIPs are, simply put, investment products sold to retail customers. Since the financial crisis had shown that existing legislation did not address the growing complexity of financial products and that investment products were sold to costumers that were “not right for them,” the aim of the legislation was to make risks of retail investment products easier to understand and to increase comparability of different products (European Commission 2012). As of autumn 2016, the regulation requires that investment fund managers, insurers and banks provide consumers with a consumer-friendly information document about the investment product they intend to buy. The “KID” uses clear and plain language to allow retail customers to compare products before they make an investment decision.¹¹² While industry groups complained about more paper work, Finance Watch, a leading civil society advocacy group, praised the legislation as “a win for consumer protection in Europe that could help to reduce mis-selling” (Finance Watch 2014a). Advocates saw a considerable part of their positions reflected in the final legislation, including a wider scope (including certain insurance products), a warning label for certain investment products, enhanced disclosure of financial advisor fees and a provision for product issuers to substantiate claims about environmental and social objectives of an investment product.

As a fourth legislative initiative with an important consumer dimension was the Markets in Financial Instruments Directive (“MiFID”). The financial crisis exposed weaknesses of the existing MiFID Regulation,¹¹³ in particular with respect to investor protection. In an effort to address these shortcomings, the Commission introduced a review of the MiFID Directive in 2011 which enhanced consumer protection, by introducing structural changes to how investment advice has to be conducted.¹¹⁴ In line with the initial Directive, MiFID II aims to “further the integration, competitiveness and efficiency of EU financial

¹¹² The Commission proposal for the KID built on the existing Key Investor Information Document or KIID that had been introduced for retail investors investing in the UCITS Directive, extending it to all types of investment funds, insurance-based investments and retail structured products, and private pensions. The KID regulation focused on increasing transparency must be read alongside MiFID II which mainly tries to improve the quality of investment advice with respect to the sale of retail products.

¹¹³ Adopted in 2007 as part of the European Single Market Program, MiFID aimed at removing barriers to cross border financial services, in order to improve the competitiveness of EU financial markets by creating a single market for investment services and ensure appropriate levels of consumer protections.

¹¹⁴ including a recast Directive (MiFID II) and a new Regulation (Mifir)

markets.” It does, however, add the new objective of “establishing a safer, sounder, more transparent and more responsible financial system working for the economy and society as a whole.” The question whether inducements should be banned EU-wide became one of the most controversial issues in the legislative debate. Retail customers usually buy their investment products from financial advisors who are paid on sales commission or inducements, third-party payments to investment advisors. Consumer advocates argued that this wide-spread commission-based practice raises conflicts of interest for advisors who sell investment products to retail investors if they receive inducements to recommend one product over another (Ford 2014). In line with the initial Commission proposal and the Council’s position, the final regulation included a partial ban on inducements, despite efforts of the EP to water-down the provision (leaving regulation up to national discretion) and industry group’s initial reluctance to regulatory change.¹¹⁵ For observers the new transparency enhancing provisions were “nothing short of a revolution in consumer protection” (Johnson 2014).

Taken together, then, several initiatives were undertaken at the EU level to develop useful standards or benchmarks on consumer protection in financial services. There is also good evidence against the prevailing argument in the IPE literature that financial industry groups massively influenced or “captured” regulatory reform. Although overall consumer protection reforms were rather incremental and compromised solutions, they reflect certain policy alterations prompted by pro-reform advocates. How did diffuse consumer interests come to be reflected in the legislative outcome?

Contextual Conditions Underlying EU Financial Reforms

Any mechanism-based explanation of regulatory change must start with the contextual conditions that allow the hypothesized mechanism to function. The financial crisis had considerably reshaped the context in which regulatory reform was taking place. Increased salience in the post-crisis reform period was accompanied by a deep legitimacy crisis of the financial services industry. There is no shortage of media reporting of policy failure due to industry capture. ATTAC, for instance, launched a YouTube video about malpractices in the banking sector which was viewed over 100.000 times within less than a month in 2008. A number of reports were published – for example, on the one-sided composition of expert groups in favor of the financial business sector (Haar 2009) or on the political influence of

¹¹⁵ Interview 91 with Commission official, Brussels, 21 May 2013.

Goldman Sachs.¹¹⁶ In a publicly appealing event, Brussels-based NGOs under the leadership of Spinwatch, a group mainly campaigning for more lobbying transparency, awarded the “Worst Lobby Awards.” In 2010 the award was given to Goldman Sachs and a derivatives lobby group for their lobbying to promote profits for the financial industry at the expense of the public interest.

The loss of legitimacy in the public eye was clearly felt by industry representatives. One interviewee in Brussels reported: “Even if you have good arguments and even if you say things that are well justified, there is always this [...] crisis of the image.”¹¹⁷ Whereas relations among policymakers and industry groups were previously described as “cozy” or “symbiotic” (see Tsingou 2008), the legitimacy crisis changed this interaction. Relations after the crisis had come under stress, marked by policymakers’ reservation and even mistrust vis-à-vis industry groups. In the perception of many policymakers, financial industry groups were the culprits for the crisis. According to one industry lobbyist: “The way we are perceived by parliamentarians and other policymakers has changed dramatically since the crisis [...]. We are perceived by policy makers as being responsible for the current crisis which puts us in a difficult position.”¹¹⁸ This de-legitimization of the industry made engagements considerably more difficult in the aftermath of the crisis, as one banking lobbyist noted: “You first have to explain, you have to say, we actually did not get involved in the irresponsible activities. First you have to provide this explanation and then you can have a discussion on the content. There is always this mistrust, not only on the side of the Commission but also the European Parliament.”¹¹⁹ These concerns were echoed by another lobbyist: “Immediately, if you say you are representing a bank, you are dead.”¹²⁰

The crisis had drastically changed the lobbying environment in which financial industry groups had to operate. Anecdotal evidence from interviews with industry representatives in Brussels suggests that divisions among decision-makers and financial sector groups occurred with Commission officials and MEPs giving industry lobbyists “a very tough time.”¹²¹ Communication levels seemed to have dropped significantly with industry

¹¹⁶ For instance, a Brussels-based NGO released a report entitled “Doing God’s work. How Goldman Sachs rigs the game”, available at: www.alter-eu.org/sites/default/files/documents/spinwatch_goldman_sachs_march_2011.pdf, accessed June 15, 2011.

¹¹⁷ Interview 53 with financial industry lobbyist, Brussels, 24 June 2013.

¹¹⁸ Interview 44, Brussels, 22 May 2013.

¹¹⁹ Interview 53 with financial industry lobbyist, Brussels, 24 June 2013.

¹²⁰ Interview 22 with bank lobbyist, Brussels, 13 May 2013.

¹²¹ Interview 94 with bank lobbyist, London, 17 June 2013.

representatives reporting that they found it often difficult to get appointments with MEPs.¹²² Industry groups felt that there was considerable stigma notably among MEPs. One industry representative described the context of political debate in the EP as “bashing the banks.”¹²³ In general, industry lobbyists struggled to get access to the policy process, with changes to pre-crisis levels clearly evident, as this interviewee put it, “it is not as nice as it was 15 years ago. It has become more difficult than it was.”¹²⁴

Divisions among decision-makers and industry groups became increasingly visible when Commissioner Barnier asked his staff in December 2013 not to accept any more meetings with financial industry lobbyists for a certain period of time. The instructions were clearly laid out in an email from the Directorate General for Internal Market and Services (DG Markt), saying that “[i]n view of our workload and the sensitivity of our current dossier, until instructed otherwise Market DG employees should not meet with bankers, their representatives or their associations” (CEO 2014). Policymakers generally also started to call the industry’s expertise into question. It had become increasingly difficult to convince decision-makers by making technical arguments, as one lobbyist reported: “The lobbying has been a lot tougher in the last few years, very much so, in relation to all institutions, it’s been a lot more difficult. I would say particularly it has been more difficult in the Parliament but it has been difficult across the board, because a lot of Commission officials say, yes I understand your technical points, but my Commissioner wants something different politically.”¹²⁵

Highlighting public pressure against the banking industry in the post-crisis environment, another industry lobbyist confirmed the difficulties encountered by her colleagues: “With the crisis, it is difficult to lobby [...] as a representative of the banking industry - and nobody really cares whether you are a cooperative bank, a commercial bank, an investment bank [...]. From a political point of view it is not very easy to say, yes, I support the views of the banking industry. Whether or not those views are actually reasonable or not, it is just not very popular at the moment.”¹²⁶ A Commission official confirmed that the interaction with financial industry groups had become “an adversarial relationship” after the

¹²² Interview 95 with consumer advocate, Brussels, 1 June 2013.

¹²³ Interview 9 with bank lobbyist, Brussels, 16 May 2013.

¹²⁴ Interview 22 with bank lobbyist, Brussels, 13 May 2013.

¹²⁵ Interview 94 with financial industry lobbyist, London, 17 June 2013.

¹²⁶ Interview 53 with financial industry lobbyist, Brussels, 24 June 2013.

crisis. He reported that industry groups had become “less a source of information but more of an adversary because [the Commission] want[s] to change the way they do business.”¹²⁷

With their reputation highly damaged in light of the financial meltdown, industry groups were put at the defense and started changing their lobbying strategies. Some private sector participants interviewed for this project noted that they refrained from openly opposing or even vetoing legislative proposals. One lobbyist put it quite bluntly, saying that industry representatives had to “work more in the shadows” and that they could not “go outside and market position papers.”¹²⁸ Another statement of the same industry representative, saying that lobbying “has become less transparent than it was,” confirms the argument that the financial services industry saw itself forced to adapt to the new political environment by changing its strategies.¹²⁹ These qualitative shifts in policymaking, albeit anecdotal, indicate that financial industry groups’ access to the policymaking process was curtailed after the financial crisis, thereby clearly reducing the sectors’ overall political influence. These changes are important, since they suggest that the financial lobby’s political leverage had temporarily decreased. The next section will show that the retreat of the industry opened-up new opportunities for alternative societal actors.

Advocacy for Regulatory Reform

Political Opportunities: Access and Receptivity

While financial industry groups faced a difficult post-regulatory environment to promote their demands, political opportunities for pro-reform demands coming from diffuse interest groups increased. Several qualitative shifts in the policymaking environment from previously relatively obscure technocratic bodies to the top legislative agenda of European Institutions offered new access points for non-financial interest groups. After the crisis both, the Commission and the EP tried to address the imbalances of interest representation in advisory bodies and lobbying at EU level more generally. Starting in 2008, the statements and reports by MEPs and Commission officials reflected the emerging support of the European Institutions for increased participation of civil society organizations in financial regulatory decisions (Prache 2013). In September 2008, MEP Rapporteur Pervenche Berès, declared in an Opinion of the EP’s Committee on Economic and Monetary Affairs (ECON), “the need for

¹²⁷ Interview 45 with Commission official, Brussels, 22 May 2013.

¹²⁸ Interview 22 with bank lobbyist, Brussels, 13 March 2013.

¹²⁹ Ibid.

funding to support consumer and SME organisations in better representing their interests by enabling them to hire experts [...] in the area of financial services” (European Parliament, 2008). Regulatory decisions that had been taken by regulators in the pre-crisis context, moved to legislative debates after the crisis. The greater involvement of elected politicians in the design of financial regulatory reform helped in particular non-industry stakeholders. With the EP getting actively involved in the financial reform debate new access points opened up for diffuse interest groups promoting reform. Asked about lobbying the EP, interviewees from civil society reported that they had a much easier access to the Parliament after the financial crisis than financial industry groups had.¹³⁰

Pro-reform groups also gained better access to the policymaking process when the Commission started to restructure its expert groups which are consulted before the Commission proposes new legislation to Council and EP. Pre-crisis arrangements to guarantee better representation of consumers’ interests in financial regulatory decision making had been repeatedly criticized by consumer groups as one-sided and dominated by industry experts (ALTER-EU 2009). Starting in 2008, the Commission actively promoted the development of consumer advisory groups to provide them with interlocutors in the policymaking process. EU level expert groups that advice the Commission on financial regulation included the Forum of Financial Services Users (FIN-USE) and the Financial Services Consumer Group (FSCG). In July 2010, DG Markt restructured its expert groups and established a new Financial Services User Group (FSUG), merging FIN-USE and the FSCG, in order to ensure “proportionate user representation at all stages of the development of its policy on financial services.”¹³¹ This provided consumer groups with an important source of influence in the initial drafting of Commission proposals regarding consumer finance regulations. In January 2011, members of the FSUG came together for the first time.¹³² The groups’ mission is “to advise the Commission in the context of the preparation of legislative acts or other policy initiatives affecting users of financial services, including consumers, retail investors and micro-enterprises” (European Commission 2014). The group is funded by the Commission, which is only rarely the case for advisory groups. Its funding also includes a small budget for independent research. The group consists of experts on consumer finance from consumer groups, small retail investors, and NGOs. Industry representatives are

¹³⁰ Interview 95 with consumer advocate, Brussels, 1 June 2013.

¹³¹ Commission decision of 20 July 2010 setting up a Financial Services User Group (2010/C 199/02)

¹³² Interview 27b with consumer advocate, Brussels, 21 May 2013.

explicitly not allowed to participate in order to ensure that the users' perspective gets an adequate hearing.

Generally, consumer advocates had a positive assessment of the new advisory group.¹³³ While the FSUG gives consumer associations a forum to supply the Commission with expertise on financial services from a user's perspectives, it also serves as an important vehicle for consumer groups to gain timely access to information about new policy initiatives. Since there is no reporting on which FSUG positions make it into final regulations, it is difficult to assess the advisory group's direct policy impact. The creation of a financing mechanism for the new groups, in order to make it more independent, does however reflect the Commission's ambition to improve consumer representation in the European decision making process in the aftermath of the crisis. A Commission official confirmed the importance of the FSUG to the policymaking process saying that "[i]t is really important for us since we need information and we meet so many people from the financial industry, it is important to aim for some sort of balance." He explained the restructuring of the expert groups as an effort to avoid "negative public perceptions" about industry capture, in light of public salience.¹³⁴

In November 2010, Commissioner Barnier announced that all expert groups would be restructured to end business dominance, stating that "more needs to be done to enhance the active participation of civil society organisations in Internal Market policymaking in order to fully achieve a fair balance on non-industry stakeholders' representation in our consultation process" (Phillips 2010). Although reforms promised at the time did not materialize, with advisory expert groups to DG Markt still reflecting the same composition in 2014,¹³⁵ statements of the Commissioner nevertheless signaled the opening up of a policy window in terms of access to consumer advocates.

A political opportunity structure for pro-reform groups not only opened up in terms of greater access points to the policymaking process, but also via increased receptivity to consumer demands in general. A Brussels-based consumer advocate reported that after the financial crisis political receptivity of DG Markt to demands coming from consumer groups

¹³³ One interviewee in Brussels criticized the merger of the consultative groups, which reduced the number of member organizations from 42 to 20 in total, as "a rationalization of the user group representation, rather than a big change" (interview with a representative of an NGO in Brussels, 9 June 2011).

¹³⁴ Interview 75 with Commission official, Brussels, 22 May 2013.

¹³⁵ The Brussels-based NGO, Corporate Europe Observatory, published a report in May 2014 showing striking imbalances among stakeholder groups advising the Commission on financial regulation. The report is available at : http://corporateeurope.org/sites/default/files/record_captive_commission.pdf.

had changed “as day and night.”¹³⁶ Another consumer advocate called that after the crisis, “the doors [were] always open in the Commission, when we [went] to decision-makers in the financial services area.”¹³⁷ For this consumer representative, the consumer lobby simply benefited from the importance that the Commission gave to financial services right after the economic crisis.¹³⁸ In the words of this interviewee: “It is a lot sexier these day if you talk about consumer protection.”¹³⁹

Increased political receptivity was also displayed by the fact that Commission officials started to attend events organized by consumer groups. Whereas before the crisis, it was “difficult for retail user organizations to get EU officers to participate in their rare events,” the participation of EU officials at events organized by civil society groups increased in the aftermath of it (Prache 2013, 19). High-level EU bureaucrats ranging from the Head of Commissioner Barnier’s Cabinet to the Deputy Director in the Directorate for Financial and Enterprise Affairs participated in events organized by Finance Watch on a regular basis. After the crisis high-level EC officials also started to attend consumer conferences organized by the Transatlantic Consumer Dialogue (TACD) in Ljubljana in May 2010 and Brussels in June 2011.¹⁴⁰ At the TACD financial services conference in June 2011 in Brussels, Commissioner Barnier explicitly said that he needed the input from consumer organizations and civil society.¹⁴¹ This increased political receptivity can be explained in light of public pressure in favor of reform. According to a Eurobarometer survey of the EP conducted in August and September 2010, a clear majority of Europeans (70 per cent) supported stricter financial regulations (Directorate General for Communication 2010). However, the regulatory debate about EU-level consumer protection reforms did not spark a lot of public attention, apart from some media coverage of the specialized financial or European affairs press, such as the Financial Times and EurActive. Popular interest was generally rather moderate, with google trends, for example, not showing any search results for the main European reforms due to the small volume of searchers by its users.

To sum up, as predicted, qualitative changes in the post-crisis institutional context, such as the restructuring of the advisory expert groups to DG Markt as well as the active

¹³⁶ Interview 27a with NGO representative, Brussels 6 June 2011.

¹³⁷ Interview 33 with consumer advocate, 23 May 2013.

¹³⁸ Interview 27a with representatives of NGO in Brussels, 6 June 2011.

¹³⁹ Interview 104, Brussels, 22 May 2013.

¹⁴⁰ Interview 52a with consumer representative, London 6 July 2011.

¹⁴¹ Interview with an NGO, 6 July 2011.

involvement of the EP, allowed increased access of consumer groups advocating for reform. The crisis also led to increased overall political receptivity to demands coming from reform groups. The shift in receptivity was accompanied by a general public in favour of regulatory change, although public interest in specific EU-level reforms remained modest. In particular diffuse interest groups can claim to act in the public interest and become influential if they act as transmitter of a generally favourable public opinion to policymakers. The next section will focus on the role of these newly mobilized diffuse interest groups.

Mobilization of Diffuse Interests

Pro-reform groups at EU level clearly benefited from altered political opportunity structures. Groups that had never been involved in finance before reported that they started working on financial issues after the crisis. Other groups reported that they stepped up their activities or built new coalitions that had not existed prior to the crisis.¹⁴² As one labor representative reported: “We started back in 2009 to work on finance [...] and then it became almost a full-time activity on its own.”¹⁴³ Groups such as the consumer organization BEUC became actively involved in the reform debates. BEUC is currently the only European consumer organization representing consumer interests in the field of financial services in the EU. Being the umbrella group in Brussels for 44 independent consumer organizations from 31 European countries, it channels most of the interests of the national member organizations. As of April, BEUC was reinforced by a new Brussels office of the German national consumer organization Verbraucherzentrale (VZBV), which also actively engaged in financial regulation. Next to the European and national consumer associations lobbying on behalf of financial services users, a third group, the European Financial Inclusion Network (EFIN) was established in 2007 as a Brussels-based NGO that would build a European-wide network including NGO’s, trade unions and consumer organizations to promote financial inclusion.

The formal organization of diffuse interest groups as pro-reform coalition was facilitated by the creation of a new NGO dubbed “Finance Watch.” Contrary to “Americans For Financial Reform” which was a coalition made up exclusively of civil society groups, organized from the bottom-up, Finance Watch was organized in a top-down process, in a politically-motivated initiative by MEPs and the Commission. It was against the background

¹⁴² Information in this paragraph is based in multiple interviews with representatives of NGOs in Brussels, conducted in June 2011.

¹⁴³ Interview 17 with trade union representative, 24 May 2013.

of the crisis and in an effort to create a lobbying environment favorable to civil society input, that MEP Pascal Canfin (Green Party) initiated the creation of the new NGO as a counter-lobby to the financial industry in the summer of 2010. Twenty-two MEPs from five out of seven political parties signed a petition for its creation in June 2010. MEPs called for a more balanced representation of interest groups in financial regulation: “Neither trade unions nor NGOs have developed an expertise capable of countering the banks’ expertise. Therefore, there is currently no sufficient counter-power in civil society. [...] This asymmetry constitutes in our eyes a danger to democracy.”¹⁴⁴ In the following months more than 200 national and European politicians across party lines joined the call. In December 2010, the MEPs funded a six-months project to conduct a feasibility study for creating a new body that would represent a civil society voice in financial regulation. A former banking expert, Thierry Philliponnat, who would later become Secretary General of Finance Watch, was in charge bringing civil society organizations across Europe on board.

Since its creation in 2011, Finance Watch served as important organizational platform for various civil society organizations to get involved into the debate on EU level financial reform. The new NGO provided information to its members and support for drafting position papers on highly complex financial issues in order to increase, for instance, the number of submissions to Commission consultations coming from civil society. EU funding allowed the NGO to have offices in Brussels near the political decision making area, only a stone’s throw away from the European Parliament. According to Walter Mattli at Oxford University, “Finance Watch has quickly become an essential and widely accepted voice in financial matters” (Finance Watch 2013, 44). The NGO consists of 13 staff members in Brussels all of whom have substantial working experience in the financial sector and forty-one member organizations from civil society, including trade unions, housing groups, development NGOs and consumer associations (Table 6). Member organizations of the board are the European Consumer Organization (BEUC), the European Trade Union Confederation (ETUC), Friends of the Earth Europe (FOEE) and UNI Europa. Its declared mission is “to strengthen the voice of society in the reform of financial regulation by conducting advocacy and presenting public interest arguments to lawmakers and the public as a counterweight to the private interest lobbying of the financial industry” (Finance Watch 2013b). Finance Watch also received wide press coverage. It appeared in 21 articles by the Financial Times in 2012 as well as in Europolitics and various national newspapers.

¹⁴⁴ See the website of Finance Watch, available at: www.finance-watch.org/about-us/why-finance-watch.

Table 6 Selection of Members of Finance Watch

<i>Name</i>	<i>Founded</i>	<i>N° of members</i>	<i>Type of organization</i>
Bureau Européen des Unions de Consommateurs (BEUC)	1962	44 independent consumer organizations	Independent nonprofit EU consumer organization
European Trade Union Confederation (ETUC)	1973	83 trade unions	Independent nonprofit EU consumer organization
Oxfam	1942	17 member organizations	International Organization
Solidar	1948	56 member organizations	European network of NGOs
Transparency International	1993	100 local, independent organizations	International NGO
UNI Europa	2000	320 affiliated trade union organizations	European trade union federation
ATTAC France	1998	90.000 members	French NGO
Fédération nationale de la finance et de la banque (FFB CFE-CGC)	1944	257 member organizations	French trade union federation
Institut Veblen pour les réformes économiques	-	17 member organizations	Independent think tank
VERDI (Vereinte Dienstleistungsgesellschaft)	2001	2.2 million	German trade union
WEED (World Economy, Ecology and Development)	1990	-	German NGO

Source: Author

Diffuse interest groups also benefited from increased Commission funding in the post-crisis period. As table 7 shows, Commission funding for European civil society organizations involved in financial regulatory policy has increased in the years following the crisis. In December 2011, the Commission published a call to fund a “Pilot Project – Capacity building of end-users and non-industry stakeholders in Union policy making in the area of financial services” aimed at enhancing the capacity of end-users and non-industry associations “to participate in Union policymaking in the area of financial services, with the objective of providing policymakers with other views than those expressed by the financial sector industry.” This analysis was largely based on an earlier assessment that “a major obstacle remains that hinders end-users and non-industry stakeholders’ participation in the Union

policy making particularly in the area of financial services, namely the scarcity of resources and specialized expertise. Consumer bodies as well as civil society organizations do not have adequate resources to properly cover a wide range of often highly technical topics and develop the expertise to take a more proactive role in the Union financial services policy making” (European Commission 2011f). In May 2012, two NGOs representing a users’ perspective were awarded the Pilot Project grant over €1.25 million: Finance Watch for 1.025.000¹⁴⁵ and EuroFinUse¹⁴⁶ for €225.000. The call has been renewed for the third year in a row for 2014. According to Prache (2013), vice chair of the FSUG, the funding is “modest compared to the lobbying power of the financial industry” and “a historical move” at the same time.

Table 7 Commission Funding of European Civil Society Organizations Involved in Financial Regulatory Policy (in €)

	2010	2012	2013	2014
The European Trade Union Confederation (ETUC)	1.722.937	4.225.352	4.982.205	2.982.457
UNI Europa	1.377.329	1.477.054	1.086.262	930.637
European Consumer Organization (BEUC)	2.567.591	1.352.069	2.071.212	832.575
Friends of the Earth Europe	947.983	733.162	1.934.015	1.137.388
EuroFinuse ¹⁴⁷	0	225.000	287.000	396.000
Finance Watch	Not applicable	1.025.000	1.213.000	1.604.000

Source: European Commission Financial Transparency System (FTS)

Taken together, increased funding and organizational support coming from the European Institutions, helped diffuse interest groups to overcome collective action problems and organize effectively to participate in financial reform debates. According to one member of Finance Watch: “Today many believe that we should be invited. Finance Watch is part in the debate. There was one official hearing with bankers and there will be one official hearing with civil society groups. The fact that we are in the game, we’re playing a role, is the

¹⁴⁵ This Commission grant accounts for about 50 per cent of the Finance Watch budget.

¹⁴⁶ EuroFinUse created in 2012 represents about 50 European organizations of financial services users.

¹⁴⁷ EuroFinUse changed its name to Better Finance in 2014.

success.”¹⁴⁸ In interviews conducted in Brussels, industry representatives testified to the increased influence of consumer advocates. According to one financial sector lobbyist, consumer groups were “much more active, much more influential than they were before in the overall policy process” and “well connected” to the Commission, the EP and the regulators.¹⁴⁹ Contrary to “Americans For Financial Reform” which was a coalition made up exclusively of civil society groups, the organization of the EU-based civil society response to the crisis was more of a top-down process, initiated by the European Institutions to ensure adequate interest representation in the reform process, by making new funds available for diffuse interest groups and by initiating the formation of Finance Watch as counter-lobby to the financial sector.

Governmental Allies

In the wake of the financial crisis, Commissioner Barnier became a strong ally, promoting policy change on behalf of diffuse consumer interests. Before the crisis, and under previous Internal Market Commissioner McCreevey who had been Single Market Commissioner until 2010, the Commission’s philosophy was largely non-interventionist with its actions largely being restricted to establishing working groups and producing studies on the European mortgage market with no follow-up legislative proposals. The situation changed with the crisis and Commissioner Barnier taking office. While it is fair to say that the financial crisis spurred legislative action, the entrepreneurship of Commissioner Barnier was instrumental to bring about policy change. One of his first acts in office in early 2010 was to tell his staff that “a consumer voice had to be taken on board.”¹⁵⁰ On April 26, 2010, in a speech at the European Financial Services Conference, Barnier (2010), called for “consideration of what needs to be done to increase consumer protection across the board.” Under the banner of “restoring consumer confidence” the Commission subsequently tried to play a leading role in the promotion of financial consumer protection. Shortly after, DG Market started to restructure its advisory expert groups and provided a funding mechanism for its new Financial Services User Group (FSUG), which solely represents non-industry voices. Consumer advocates considered themselves “lucky that Commission Barnier [was] really very consumer-friendly.”¹⁵¹ A leading civil society advocate testified to the good working

¹⁴⁸ Interview 71 with NGO representative, Brussels, 15 May 2013.

¹⁴⁹ Interview 91 with Commission official, Brussels, 21 May 2013.

¹⁵⁰ Interview 75 with European Commission official, Brussels, 22 May 2013.

¹⁵¹ Interview 77 with civil society representative, Paris, 1 February 2013.

relations with the Commissioner.¹⁵² One consumer representative reported that she had been in three to four bilateral meetings with Commissioner Barnier per year during reform debates, while she had not been in a single bilateral meeting with Commissioner McCreevy.¹⁵³ Throughout the reform debate systematic meetings also took place among Finance Watch and Commission officials once or twice a day. For a trade union representative, Barnier was “part of the good guys.” He reported that with the Commissioner taking office, regular meetings among Commission officials and labor representatives were organized to establish a permanent link of cooperation and exchange.¹⁵⁴

Consumer organizations also found an important ally in the EP which has traditionally supported consumer protection policies (Greenwood 2011, 164). The creation of Finance Watch as a new NGO already signaled the support of MEPs to pro-reform advocates. Throughout financial reform debates a strong pro-reform alliance between MEPs and civil society groups emerged. According to EP staffers, cooperation among MEPs of the Green Party and the S&D with experts from Finance Watch was very close throughout the reform process.¹⁵⁵ So-called “group briefings” took place at the EP where Finance Watch staff met with MEPs, their assistance and the advisors to the political groups to explain technical details of regulations.¹⁵⁶ The EP as well as national parliaments (including the House of Lords, the German Bundestag, the French Assemblée Nationale and the US Senate) invited experts from Finance Watch to testify on a regular basis on financial reform issues. In 2012, Finance Watch staff had more than a hundred meetings with policymakers and participated in six formal parliamentary hearings in Brussels, Paris, London and Washington (Ford 2012). In the wake of the financial crisis, consumer representatives reported that they have been able to use the EP as a route to insert amendments. In interviews, EP staffers confirmed that they could cooperate well with civil society groups throughout the legislative process.¹⁵⁷ Consumer representatives reported that EP staffers would call to ask for input.¹⁵⁸ An EP staffer interviewed for this research project used the term “reversed lobbying” to describe how he calls representatives of consumer groups in order to ask for their input about specific financial

¹⁵² Interview 77 with civil society representative, Paris, 1 February 2013.

¹⁵³ Interview 33 with consumer advocate, 23 May 2013.

¹⁵⁴ Interview 69 with trade union representative, 24 January 2013.

¹⁵⁵ Interview 29, with parliamentary staffer, Brussels, 15 May 2013.

¹⁵⁶ Interview 71 with NGO representative, Brussels, 15 May 2013.

¹⁵⁷ Interviews 29 and 51 with parliamentary staffers, Brussels, 15 and 17 May 2013.

¹⁵⁸ Interview 95 with consumer advocate, Brussels, 1 June 2013.

reform legislation.¹⁵⁹ This evidence suggests that pro-reform advocates on the outside had well-established working relations with sympathetic governmental allies at the inside of the European Institutions.

Diffuse Interests, Allies and Consumer Protection Reforms

How did diffuse interests come to be successfully reflected in the regulation? In what follows I describe some of the advocacy activities of diffuse interest groups surrounding each of the four policies under analysis, and document which of these were successful and which were not. The focus here is on EU based diffuse interest groups, the way they mobilized and build pro-reform coalitions with governmental allies to induce desired changes in the content of consumer finance protection reforms. The in-depth case analyses will highlight different elements of the theoretical causal mechanism.

Legislative Initiative 1: New European Supervisory Authorities (ESAs)

Following agreement by all member states in June 2010, the EP voted through the new supervisory framework for financial regulation in the EU in September 2010 which came into force in January 2011. The new supervisory authorities - European Banking Authority (EBA), the European Insurance and Occupational Pensions Authority (EIOPA) and the European Securities and Markets Authority (ESMA) - transformed and upgraded the existing supervisory structure of three so-called Lamfalussy level 3 advisory committees into “bodies with greater supervisory, rule-setting, and coordinating powers” (Eising, Rasch, and Rozbicka 2013b). The ESAs have a mandate to protect consumers against abusive practices, with consultative “Stakeholder Groups” representing consumer associations in all three organizations.¹⁶⁰ Overall, the consumer protection mandate of the ESAs remained limited. Staffing levels are low and the ESAs have no competence to impose binding rules on national regulators in the field of consumer protection (BEUC 2013a).

A European supervisory framework was opposed by parts of the financial industry, notably the German LBs, savings and cooperative banks, which reportedly influenced the German position. German LBs tried to preserve their competitive advantage under national supervision which provided a degree of protection from increased competition under a single European supervisory framework (Buckley and Howarth 2010, 128). Industry opposition to

¹⁵⁹ Interview 51 with parliamentary staffer, Brussels, 17 May 2013.

¹⁶⁰ Regulation (EU) No 1092/2010

regulatory change was however not unanimous. Consumer demands in favor of a move towards strengthened EU supervision were echoed by the European fund industry who supported a harmonized European supervisory framework with strong authorities (EurActive 2010b) as well as large German commercial banks who expected lower compliance costs. During negotiations, neither the German nor the French government could maintain their opposition to EU level supervision and had to soften their position (Buckley and Howarth 2010, 128).

Consumer groups, including Consumers International, FIN-USE, BEUC, the Federation of German Consumer Organizations, Which? and trade unions such as Uni Finance, got actively engaged in the debate about reforming the EU supervisory structure.¹⁶¹ The mobilization of diffuse interests and their participation in the legislative process remained, however, limited with only 12 consumer groups and trade unions participating in the public consultation, representing only about 13 per cent of consultation submissions. Consumer groups generally argued in favor of one single European Authority in lieu of three different agencies to replace the Lamfalussy committees to ensure strong cooperation among national regulators (BEUC 2009). Consumer advocates preferred a single centralized European Financial Regulatory Authority to set prudential standards, act as coordinator-supervisor for larger EU wide financial institutions that represent systemic risk to the financial system of the EU, and set standards for valuing financial assets (FIN-USE 2009). Modeled after the US Dodd-Frank Bill, advocates also proposed to set up a pan-EU Consumer Protection Agency along-side the new supervisory authorities. In response to the Commission consultation, FIN-USE argued in favor of the creation of a consumer regulator (a “European Financial Users Authority”) with the objective of protecting consumers of financial services. The Federation of German Consumer Organizations quoted the example of the American Consumer Agency, asking the Commission “to consider the creation of an authority of that kind” (VZBV 2009). Along the same lines, Re-Define, a Brussels-based think tank suggested a consumer regulator “with additional powers to enforce high levels of disclosure, good faith transactions and strong and robust recourse against wrongdoers” to “enforce high but minimum (national authorities are free to enforce tighter standards) standards across the EU” (Kapoor 2010). However, during the negotiations, consumer groups had to soften their

¹⁶¹ See public submissions to the Commission consultation on European Financial Supervision in July 2009, available at: http://ec.europa.eu/internal_market/consultations/2009/fin_supervision_en.htm.

position to advocate for a strong consumer mandate of the ESAs instead of an independent consumer regulator (BEUC 2010).

The debate about the new ESAs illustrates the strong cooperation among mobilized consumer advocates and MEPs as allies who supported strong investor and consumer protection rights to be granted to the authorities.¹⁶² The EP became an important “agent of change,” in support of strong supervisory authorities with adequate financial and human resources (Quaglia 2013, 59). While member states had considerably weakened the legislation, MEPs tried to restore the initial Commission proposal and to further strengthen the statutory powers of the new authorities (Brunsden 2010). Member states in the Council, in particular the UK, France and Germany, were rather reluctant about transferring supervisory powers to supranational authorities (Buckley and Howarth 2010, 127). The EP, on the contrary, envisaged the new authorities as “watchdogs with a bite,” with the ability to write regulatory standards, to temporarily ban harmful products, to make legally binding decisions for national financial institutions and to require a review from the Commission every three years that could potentially strengthen the supervisors even more by integrating them into one supervisory body (European Parliament 2015). In plenary debate in Strasbourg in September 2010, MEPs repeatedly warned against Council efforts to water down legislation and highlighted their support for a strong consumer protection mandate for the new institutions. In particular, Green MEP Sven Giegold (German) became an important ally for consumer groups pushing consumer-friendly legislation through the ECON Committee as rapporteur for the legislation.¹⁶³ Giegold added amendments reinforcing consumer protection, notably by granting the ESAs the right to prohibit certain financial products. In line with demands of consumer groups, the EP also insisted on representatives from civil society in consultative stakeholder groups. Despite initial reluctance of member states to transfer regulatory powers to the supranational level, the EP successfully pushed for strengthened supervisory authorities in the final legislation (Quaglia 2012, 187). In line with preferences of the member states, national regulators, however, mainly retained their regulatory functions with regards to day-to-day supervision. The final regulatory outcome was a compromise, reflecting interests of stakeholders from both the consumer and industry side.

¹⁶² See plenary debate in Strasbourg on July 6, 2010, available at: www.europarl.europa.eu/sides/getDoc.do?type=CRE&reference=20100706&secondRef=ITEM-011&language=EN&ring=A7-2010-0170.

¹⁶³ Interview 52a with NGO representative, London, 6 July 2011.

Legislative Initiative 2: European Mortgage Credit Directive (MCD)

The MDC's objective was "to create a Union-wide mortgage credit market with a high level of consumer protection."¹⁶⁴ Following the co-decision procedure, the legislative process was lengthy and controversial with major disagreements arising between the EP and the Council - due to the specificity of national mortgage markets - with the Commission adopting the final Directive about three years after its initial proposal. The new Directive consolidates legislation on EU level, essentially harmonizing European mortgage regulations by setting the minimum regulatory requirements in a consistent way across member states. Some provisions follow a maximum harmonization approach, leading, for instance, to more standardizing in the way the costumer is informed before the sale.¹⁶⁵

While consumer advocates actively supported regulatory change, banks and mortgage lenders considered themselves lucky for having avoided a Directive for so long and were rather reluctant to accept new regulations. In response to a Commission's consultation in 2009, industry groups strictly opposed new EU level mortgage regulations. Major European level financial industry associations including the European Banking Industry Committee (EBIC), the European Mortgage Federation (EMF), and the European Association of Cooperative Banks (EACB), as well as national associations such as the Association of German Public Sector Banks (VÖB) started lobbying the Commission on the Directive proposal before its issuance in March 2011.

From industry perspective the Commission' proposal marked a "conspicuous" shift in regulatory focus "from internal market integration towards more consumer protection issues" (Deutsche Bank Research 2011). Industry lobbyists reported that their lobbying efforts to prevent the Commission from focusing more on consumer protection than on market integration had failed and that they "certainly didn't agree with this switch."¹⁶⁶ In an effort to avoid legislative action, banks and mortgage lenders tried to lay out a different narrative arguing that the mortgage crisis was specific to the US securitization system, a system of funding of the mortgages not wide-spread in Europe.¹⁶⁷ Industry groups argued that irresponsible lending did not occur in the EU to the same extent as it did in the US subprime market and that "the Commission should not attempt to create EU solutions for a US

¹⁶⁴ See http://ec.europa.eu/finance/finservices-retail/credit/mortgage/index_en.htm.

¹⁶⁵ Interview 104, Brussels, 22 May 2013.

¹⁶⁶ Interview 46 with financial industry lobbyist, Brussels, 13 May 2013.

¹⁶⁷ Interview 53 with financial industry lobbyist, Brussels, 24 June 2013.

problem” (European Commission 2011b). Industry complained about a regulatory overload, arguing that new legislation would put even more strain on lenders in times of crisis.¹⁶⁸ It insisted on waiting for the impact of the new Consumer Credit Directive of 2008 which had just been implemented and - by a number of member states - applied to mortgages (Dübel and Rothmund 2011, 1).¹⁶⁹ Despite industry opposition, lobbying efforts failed to prevent the Commission from introducing new binding rules for mortgage regulations.

Throughout the reform process, actor plurality was considerably increased compared to pre-crisis levels with civil society groups actively engaged in legislative debates. About 30 per cent of groups that participated in the Commission’s public pre-legislative consultation in June 2009 came from consumer advocacy groups, consumer and user organizations as well as trade unions, about 20 per cent more groups than participated in financial sector consultations during pre-crisis times.¹⁷⁰ National consumer associations served as an important information transmitter about abusive practices in relation to mortgage loans. The Commission noted that consumer advocates, consumer and user organizations [...] provided examples of practices of unfair advertising and marketing (European Commission 2009). A range of consumer and end user organizations as well as trade unions got actively involved in reform debates, including EU level associations such as BEUC but also national organizations such as the Financial Inclusion Center, a British think tank defending consumer interests in financial markets or national consumer associations, including the British consumer association Which?, the Danish Consumer Council, the Spanish ADICAE and the German VZBV.

DG Markt under Commissioner Barnier became an important ally for diffuse interest groups in pushing for reform despite objections of banks and mortgage lenders. The Commission had discussed reforms related to mortgage integration well before the financial crisis, but DG Markt had refrained from introducing EU level legislation. Issues that were in the Proposal for the Directive on Mortgage Credit had already been discussed in a White Paper on the Integration of EU Mortgage Credit Markets, published in 2007 in light of first signs of a sub-prime turmoil in the US.¹⁷¹ The White Paper did, however, refrain from proposing any “hard” legislation (Reuters 2007). Under the leadership of Commissioner

¹⁶⁸ Interview 46 with financial industry lobbyist, Brussels, 13 May 2013.

¹⁶⁹ Many credit agreements, notably mortgage credit and loans smaller than €200 or larger than €20.000 were formally excluded from the scope of the Directive, but several member states had gone beyond the formal requirements (Franken 2009, 134).

¹⁷⁰ In a study on the sectoral origin of groups mobilizing on financial sector consultations, Young and Pagliari (2012, 91) found that prior to the crisis less than 10 per cent of respondents represented non-financial groups.

¹⁷¹ COM(2007) 807.

Barnier, the Commission came up with a new proposal for a Directive on credit agreements relating to residential property, short CAARP, addressing “irresponsible lending and borrowing practices” (European Commission 2011a). The objectives of the Commission proposal, officially tabled in March 2011, were twofold. It tried fostering consumer confidence by enhancing consumer protection and drive cross-border lending by introducing a maximum harmonization approach (Tait 2011). The proposal focused on enhancing consumer protection without actually putting internal market provisions aside.¹⁷² Consumer groups, who generally favored a broad scope of the Directive and a minimum harmonization approach in order to preserve “already existing national consumer-friendly legislation” (BEUC 2011b) saw their demands largely reflected in the Commission proposal.

During subsequent negotiations, consumer groups also found important allies in the S&D and Green groups in the EP. In April 2011 legislative debate moved to the EP, where in particular MEPs of the S&D and the Green Party became important channels through which consumer groups could articulate their policy preferences. Before the Commission issued its proposal for a Directive, officials had toured the EP in order to assess whether there would be support among key MEPs across party lines for a proposal on mortgage reform and MEPs had clearly displayed their political appetite for reform.¹⁷³ In July 2011 the ECON Rapporteur, Spanish MEP Sánchez Presedo (S&D) issued his draft report which mainly differed in scope to the Commission proposal. The report introduced several new articles to the Commission’s initial proposal.¹⁷⁴ Whereas the Commission proposal focused on the loan origination stage, the rapporteur tried to introduce more flexibility for consumers after the loan had been granted.¹⁷⁵ Despite disagreements about details of the legislation, working relations among consumer advocates and rapporteur were close throughout the legislative process. The socialist rapporteur relied heavily on expertise provided by consumer advocates who he regarded as close “allies” during reform debates.¹⁷⁶

The ECON draft report was met with substantial criticism. Consumer and industry groups agreed that the rapporteur addressed specific deficits of the Spanish mortgage market

¹⁷² Interview 75 with Commission official, Brussels, 22 May 2013.

¹⁷³ Ibid.

¹⁷⁴ New provisions included i.a. (1) portability, meaning that borrowers shall keep the same loan agreement when moving house, (2) that a foreign currency loan can be converted into the currency of the Member State, (3) transfer to another creditor if it is not of detriment to the consumer or (4) transfer by the borrower to another borrower (European Association of Public Banks 2012).

¹⁷⁵ Interview 53 with financial industry lobbyist, Brussels, 24 June 2013.

¹⁷⁶ Interview 27b, Brussels, 21 May 2013.

that were hardly transferable to the European level.¹⁷⁷ Industry groups argued that the draft included “far-fetched” ideas that had not been subject to the Commission’s impact assessment.¹⁷⁸ In a comment to the ECON report, mortgage lenders complained that the proposal “seeks to widen the scope of proposed regulation in Europe in a range of ways that are inappropriate and unhelpful. Many of the proposals would have far-reaching and unforeseen consequences on firms, consumers, the availability of credit and even the supply of housing” (Council of Mortgage Lenders 2011). Eventually, under pressure from the ECON shadow rapporteurs as well as industry groups, the rapporteur reduced the scope of the proposal. Subsequently, a “compromise mid-way” between the “big-bang-approach” of the rapporteur and the “step-by-step approach” of the Commission was forged.¹⁷⁹ In the compromise position of the EP, provisions introduced by the ECON report had either been deleted (such as the provision on portability of loans) or watered-down by industry lobbying. Provisions that creditors should identify products that are not unsuitable for the consumer and that EBA should develop guidelines for creditworthiness assessments that were supported by the S&D and the Green Party had been deleted, in line with industry preferences and after pressure of the EPP, ALDE and ECR groups (Giegold 2012a).

While consumer advocates found support from the Commission and rapporteurs in the EP, industry groups successfully lobbied their member states in the Council as well as the national MEPs to water down reform proposals. When the legislative debate moved to trialogue stage in June 2012, member states pushed for even greater watering down of the new articles added by the EP. The final text of the Directive had largely been reduced to its narrow scope with the rapporteur’s added articles deleted or watered down.¹⁸⁰ Although industry groups managed to water-down legislation, they were not successful in preventing legislative action. The reform outcome was a settlement among the various stakeholder groups involved. According to interviews with Commission officials, views of consumer groups and industry associations diverged, in particular on two issues: whether consumers should be able to exit credit contracts before the end of the term (the early repayment

¹⁷⁷ One provision introduced by the rapporteur concerned the transferability of credit agreements when moving houses which would not work in jurisdictions with strict ownership rules on property such as in Germany (Interview 46 with financial industry lobbyist, Brussels, 13 May 2013).

¹⁷⁸ Interview 46 with financial industry lobbyist, Brussels, 13 May 2013.

¹⁷⁹ Interview 75 with Commission official, Brussels, 22 May 2013.

¹⁸⁰ Interview 46 with financial industry lobbyist, Brussels, 13 May 2013.

provision) and the obligation for a credit worthiness test. Both controversial issues were settled as a compromise in the final legislation.

The early repayment provision required member states to ensure that consumers have a right to repay their credit before the expiry of the credit agreement. Whereas consumer groups favored a general right to early repayment with a low level of compensation, the banking industry supported a more restricted right to early repayment with appropriate levels of compensation for creditors in the event of early repayment.¹⁸¹ As it clashed with industry practices in Germany, the German industry pushed back particularly forcefully.¹⁸² The final text included a compromise, with consumers being granted a general right to early repayment but lenders being entitled to a compensation fee (European Commission 2013b).

The second sticking point in negotiations concerned the introduction of credit worthiness tests. The Commission proposal required the creditor to assess the consumer's ability to repay the credit. The initial proposal also introduced a legal requirement for lenders to deny the credit in the event of a negative credit worthiness assessment.¹⁸³ Consumer groups supported such a mandatory credit worthiness assessment. Industry groups argued against, saying that this would create a right to credit in the event of a positive credit worthiness assessment and give an opportunity to borrowers to oppose the decision. Industry did not agree with this "shift of responsibility away from the borrower to the lender."¹⁸⁴ In response to the Commission' public consultation in 2009, financial industry groups had initially rejected a community-wide harmonization of creditworthiness assessments, arguing that national specificities would prevent meaningful standards. In the subsequent legislative debate, industry groups had to soften their position and focus on a compromise solution. In line with industry preferences, the legal requirement was finally watered down in negotiations (European Banking Industry Committee 2012). The final Directive introduced Europe-wide standards for assessing the credit worthiness of mortgage applicants, but the text of the initial proposal suggesting an obligation for lenders to deny credit was deleted.¹⁸⁵ Industry lobbyists

¹⁸¹ Interview 84 with Commission official, Brussels, 6 June 2013 and interview 53 with financial industry lobbyist, Brussels, 24 June 2013.

¹⁸² For member states, like Germany, with no rights to repay loans early, the risk was that capping compensations in cases of early repayment would lead to a transformation of the market and drive it to variable-rate loans instead of fixed-rate loans (Interview 75 with Commission official, Brussels, 22 May 2013).

¹⁸³ Interview 75 with Commission official, Brussels, 22 May 2013.

¹⁸⁴ Interview 46 with financial industry lobbyist, Brussels, 13 May 2013.

¹⁸⁵ COM(2011) 142 final, Article 14 suggested a "duty for the creditor to refuse to grant the credit where the results of the creditworthiness assessment are negative."

were pleased that the shift [of responsibility away from the borrower to the lender] was “brought back to the middle.”¹⁸⁶ Consumer groups considered the obligation for lenders to assess the creditworthiness as a win.¹⁸⁷ Again, both lobbying camps saw some of their preferences translated into policy. According to another industry representative, the outcome was a compromise that they “could live with.”¹⁸⁸ Commissioner Barnier commented on the final legislation, saying that “consumer will finally get the protection they deserve” and that the Directive “will also benefit mortgage credit providers” (European Commission 2013b).

Legislative Initiative 3: Retail Investment Products (PRIIPS/KID)

The European Institutions varied significantly in their initial negotiating positions on the KID regulation (Costermans 2014, 16). The scope of the regulation was one of the most controversially discussed items, with the EP promoting a wider scope and the Council trying to reduce the scope, largely echoing the Commission proposal.¹⁸⁹ The EP’s compromise position adopted in plenary in November 2013, extending the initial Commission text, thereby echoing advocacy groups’ demands. In April 2014, EP and Council agreed the final text which came into force in December 2014.¹⁹⁰ From a consumer point of view, the Council’s compromise adopted in June 2013 was less ambitious than the Commission proposal (Finance Watch 2014b, 20). The agreement in trilogue largely followed the EP’s consumer-friendly position, despite opposition of segments of the financial services industry. While pension funds had successfully lobbied for an exemption, certain insurance products do fall within the scope of the KID. Reflecting these changes to the initial Commission proposal, the final regulation was named PRIIPs, including not only “packaged retail,” but also “insurance-based investment products.”

Opposition to the Commission proposal and subsequent EP amendments came from the savings and cooperative banks that were not eager to implement another key information document and complained about an obligation to provide more paper work when selling services. Insurance companies and pension funds lobbied member states in the Council to be

¹⁸⁶ Interview with industry lobbyist, Brussels, May 2013.

¹⁸⁷ Interview 27b with consumer advocate, Brussels, 21 May 2013.

¹⁸⁸ Interview 64 with financial industry representative, 14 May 2013.

¹⁸⁹ Interview 71 with NGO representative, Brussels, 15 May 2013.

¹⁹⁰ At the time of writing, the ESAs are developing draft Regulatory Technical Standards (RTS) on the content and presentation of the KIDs for PRIIPs.

excluded from the scope of the new PRIPS regulation. The Association of British Insurers (ABI), for instance, lobbied to exclude occupational pensions from the regulation “to avoid any negative disruption to pension savings” in the EU (Johnson 2013). These industry groups were clearly not in favor of the EP’s ambitious amendments and extension of scope for the Directive, describing the parliamentary debate as “highly political,” “dangerous” and marked by “miscomprehension of what the Commission idea was.” Industry was afraid that the EP’s amendments would make the regulation into a “swiss army knife,” saying that “it is going to create inherent contradictions, inconsistencies, and duplicates with other legislation.”¹⁹¹

The reform debate surrounding the PRIPS regulation illustrates how the policy influence of diffuse interest groups can be boosted by powerful industry interests when the two find themselves on the same lobbying side. Industry groups were not united in their opposition to new regulations. The insurance sector was split, with British and Dutch insurance companies supporting the creation of a level-playing field through new legislation and French and German companies strongly resisting the inclusion of insurance products. “Baptist-bootlegger” coalitions emerged among consumer groups and the European fund industry against parts of the insurance sector. The larger scope of the Directive was in line with the European fund industry which lobbied for more regulation of the growing sector of retail structured products, in order to address a lack of level playing field across retail investment products.¹⁹² The European fund industry was also supportive of the introduction of a KID covering a wide range of investment products, including pension funds and was largely aligned with consumer representatives in their support for the Commission’s proposal to enhance investor protection.¹⁹³ A broad range of groups ranging from European Investors and Users of Financial Services including EuroFinuse (European Federation of Financial Services Users) to Financial Advisers, Asset Managers and Life Insurance Companies, including Efama (the European fund industry body), and the Association of International Life Offices (AILO), was in favor of the Commission’s proposal. In a joint press release of end users and asset management industry in July 2012, groups expressed their full support. They argued in favor of a broad scope of investment products covered by the regulation, saying it would otherwise “miss its objective of enabling investors to easily compare one product with another” and not bring “real efficiency to the Single Market” (CFA Institute 2012).

¹⁹¹ Interview 104 with industry representative, Brussels, 22 May 2013.

¹⁹² Interview 91 with Commission official, Brussels, 21 May 2013.

¹⁹³ Interview 44 with industry representative, Brussels, 22 May 2013.

Although the legislative proposal generated very little interest from the broader public with few articles in *The Financial Times* in fall 2013 reporting about the parliamentary debate, pro-reform groups likely benefited from general increased public attention on financial reform issues. Representing consumer and small investor interests, BEUC, Finance Watch, EuroFinUse and FSUG pushed for reform. In-depth discussions had already taken place among Finance Watch and Commission officials before the Commission published its legislative proposal in July 2012.¹⁹⁴ In October 2012, Finance Watch published a 40-page position paper entitled “Towards suitable investment decisions? Improving information disclosure for retail investors” (Finance Watch 2012b). Pro-reform groups generally supported the Commission’s proposal aimed at enhancing investor protection by making the provision of an information document about investment products mandatory. With respect to the scope of the new regulation, they advocated for widening the scope, making the KID mandatory for all saving and investment products. Advocates argued that life insurance and pensions should also be within the scope of the proposal so that consumers would be able to compare products across asset classes as well as within the same asset class.¹⁹⁵

Reform advocates worked closely together and stepped up their lobbying efforts targeted at MEPs before the vote in plenary in November 2013. In May and June 2013, Finance Watch circulated mock-up Key Information Documents showing how their reform suggestions could work in practice. Finance Watch suggested amending the Commission proposal by introducing a social usefulness dimension through disclosing amongst the ESG (environmental, social and corporate governance) objectives. It also suggested an exclusion of investment with adverse societal consequences from eligible assets and introduced the idea of attaching a “complexity label” to information documents that would warn consumers when investment products are difficult to understand (Finance Watch 2013a). In November, BEUC, EuroFinUse and Finance Watch joined forces to write a letter to members of the ECON Committee advocating for a wide scope of the new regulation. The letter was followed with emails of the advocacy groups to all MEPs, urging them to defend complexity labels. BEUC issued a press release, promoting a wide scope of the regulation, saying that “pensions and life-insurance are top of the list of those wanting and needing to set money aside for the future” and that “it would be a huge setback if there would be no information document to compare such different products” (BEUC 2013c).

¹⁹⁴ Interview 71 with civil society representative, Brussels, 15 May 2013.

¹⁹⁵ Ibid.

The reform debate surrounding PRIPs illustrated the emergence of insider-outsider coalitions with consumer advocates and MEPs pushing for the same policy solutions. In the fall of 2012, meetings among Finance Watch staff and the shadow rapporteurs for the PRIPs dossier took place, where advocates pushed for a warning label and a wider scope. Rapporteur Bères (S&D) became an important ally for advocacy groups promoting the consumer cause in the ECON Committee. As a result of the team-like preparation of the legislation with MEPs and advocacy groups collaborating, all of the recommendations that had been brought to the table by Finance Watch were either taken up by the rapporteur's draft report published in December 2012 or were presented as amendments by MEPs.

Following consumer advocates proposals, the rapporteur's draft report included a wide scope of the regulation, including stocks, bonds and bank deposits as well as additional product rules.¹⁹⁶ Echoing the suggestion by Finance Watch, the rapporteur also included a provision on information about environmental, social and governance (ESG) criteria in the KID. MEP Sharon Bowles (ALDE, UK), then chairwoman of the ECON Committee, included a complexity label (or warning label) as suggested by Finance Watch (Flood 2013b). Although the EP had been deeply divided over the PRIPs regulation, and despite opposition of the EPP to extending the scope (Flood 2013a), MEPs finally adopted the new regulation introducing a range of amendments to the initial Commission draft. Advocates also saw a considerable part of their positions reflected in the final legislation, including a wider scope (including certain insurance products), a warning label for certain investment products, enhanced disclosure of financial advisor fees and a provision for product issuers to substantiate claims about environmental and social objectives of an investment product.¹⁹⁷

Legislative Initiative 4: Markets in Financial Instruments Directive (MiFID II)

Following a public consultation among stakeholders, the Commission officially tabled the MiFID II proposal in October 2011. One year later, and after more than 2.000 amendments, the EP adopted its report. After EP and Council reached an inter-institutional agreement in January 2014, the directive was adopted in May after almost four years of legislative debate.¹⁹⁸ Among the most contentious issues during negotiations and a key

¹⁹⁶ Interview 71 with civil society representative, Brussels, 15 May 2013.

¹⁹⁷ Regulation (EU) No 1286/2014

¹⁹⁸ At the time of writing, MiFID II is being transposed by EU governments. The final legislation is expected to take effect in 2017. Since May 2014, the European Securities and Markets Authority (ESMA) has been occupied with drafting rules for implementing MiFID II, the level 2 phase of the legislation

concern to consumer groups was the question whether inducements should be banned EU-wide. Inducements are third-party payments or sales commissions to advisors who sell investment products to retail investors. Consumer advocates argued that inducements raise conflicts of interest, providing incentives for advisors to recommend one product over another. During the legislative debate, consumer advocates found allies in DG Markt under Commissioner Barnier, parliamentarians from the S&D and the Greens as well as member state governments. In line with the initial Commission proposal and the Council's position, the final regulation includes a partial ban on inducements, despite efforts of the EP to water-down the provision (leaving regulation up to national discretion) and industry group's initial reluctance to regulatory change.¹⁹⁹

Early on, consumer groups became involved in the reform debate, promoting a general ban on commission-based investment advice. Finance Watch, BEUC, Better Finance and Uni Europa cooperated closely with each other.²⁰⁰ In response to the Commission's public consultation in 2011, BEUC strongly supported "strengthening all measures regarding the prevention of conflicts of interests, including a ban on inducements for all advice services" (BEUC 2011a). One day before the Commission officially introduced its legislative proposal, in October 2011, BEUC issued a press release urging policymakers to consider the "prevention of conflicts of interest between the investment product sellers and their clients." In a position paper responding to the Directive proposal, BEUC reiterated its support for a general ban on commissions and inducements for advisors and intermediaries who recommend financial instruments (BEUC 2012a). The Secretary General of Finance Watch testified at a public hearing of the EP in December 2011 (European Parliament 2011b). In January 2012, Finance Watch submitted a 15-page document to the EPP rapporteur detailing its technical recommendations (Finance Watch 2013b). The NGO urged the Commission to maintain a ban on inducements in case of independent advice (Finance Watch 2012a).

The Commission became an important ally for diffuse interests. Following consumer groups' demands, the initial Commission proposal explicitly addressed conflicts of interests, thereby taking up a concern raised by consumer groups. The Commission introduced a partial ban on inducements, prohibiting advisors labeled 'independent' from receiving third-party payments. The proposal ran counter the preferences of the financial industry who resisted regulatory change arguing that existing MiFID requirements were adequate to regulate

¹⁹⁹ Interview 91 with Commission official, Brussels, 21 May 2013.

²⁰⁰ Interview 71 with NGO representative, Brussels, 15 May 2013.

conflicts of interest (The British Bankers' Association 2011). The European fund industry strictly opposed a ban on inducements for advice "provided on an independent basis" as suggested by the Commission, arguing that it would reduce access to advice for retail investors (EFAMA 2012). The European Association of Public Banks argued that there is "no reason why commission-based advice should deliver less investor protection than other forms of advice investment advice" (EAPB 2011). During the subsequent legislative debate, industry groups had to soften their position. Instead of opposing regulatory change addressing conflicts of interest altogether, industry groups declared that they would favor increased disclosure to a strict ban on inducements. The EBF, for example, maintained the position that a "potential conflict of interests could be better solved by higher disclosure requirements of inducements rather than an outright ban" (European Banking Federation 2013a). Despite this opposition, Commissioner Barnier also defended the proposed inducement ban in plenary against efforts of the EP to remove the ban, saying "mere disclosure of the commissions received by intermediaries would not make it possible [...] to ensure the proper level of investor protection."²⁰¹

Following the Commission proposal, legislative debate moved to the EP which followed a less consumer-friendly path than the Commission. While consumer groups found allies in the S&D and Green groups, the EPP and its rapporteur largely reflected the preferences of the (German) financial industry. The ECON draft report from March 2012 prepared by German Rapporteur MEP Ferber (PPE) suggested a disclosure obligation rather than an outright ban, thereby following the industry line. This position was supported by most members of the EBF which argued that enhanced transparency and disclosure of inducements would "enable clients to choose a less costly advice" (European Banking Federation 2013b). Especially the German financial industry which defended the German commission-based model of investment advising played an influential role in shaping the EP's position to refrain from an outright ban and to support enhanced disclosure. Before the EP adopted amendments proposed by the ECON Committee on October 26, 2012, industry groups had massively lobbied parliamentarians. On October 22, the European Banking Associations (EACB, EAPB, EBF and ESBG) sent a letter to MEPs urging them to oppose an amendment that would ban inducements, arguing that such a ban would "disadvantage smaller investors who cannot afford anymore to take advice" (Giegold 2012b). *The Financial Times* reported that consumer

²⁰¹ See Barnier's statement at the plenary debate in Strasbourg on October 25, 2012, available at: www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+CRE+20121025+ITEM-017+DOC+XML+V0//EN&lan guage=EN.

advocates were “aggrieved about the lobbying that went on” in the run-up to the EP’s plenary vote in October 2012, accusing “German banks of ‘browbeating’ politicians to back policies that will not disrupt the profits their high-margin asset management businesses generate” (Kelleher 2012). Although consumer groups had lobbied MEPs as well, urging them to vote for an “EU-wide ban on commissions and inducements for financial advisors (not only for independent advisors)” (Giegold 2012b), the compromise position of the EP eventually followed the industry line by refraining from an outright ban on inducements and promoting more transparency in form of enhanced disclosure instead.

The final text represents a compromise among consumer and industry groups. BEUC criticized the directive, lamenting that “legislators failed to completely ban commissions for financial advice” (BEUC 2014). Finance Watch called MiFID II “a missed opportunity to introduce an EU-wide ban on inducements paid out to financial intermediaries, meaning that some consumers will continue to be exposed to biased financial investment advice” (Finance Watch 2013b). Although they left the debate somewhat displeased, objectively, consumer groups had won a little. Although the Directive does not introduce an outright ban on inducements, it includes a ban on inducements for independent advisors, which had no support from industry groups but was welcomed by consumer groups. In line with consumer groups’ demands the regulatory framework for investor protection was generally strengthened with the updated MiFID II regulation, including increased disclosure of costs and new regulatory powers for ESMA to suspend harmful financial products. By preventing an EU-wide ban, as debated in the EP, industry groups also won a little.

The final Directive also includes two provisions introduced by the EP in line with consumer preferences. First, member states do have the discretion to go beyond the minimum standard of MiFID II, including the inducement ban (meaning that they can introduce or maintain national inducement bans), which was criticized by industry groups on the grounds that it would lead to a fragmentation of the single market.²⁰² Second, firms that classify themselves as independent will have to pass on any received commissions or fees to the retail customer.²⁰³ The amendment by shadow rapporteur Giegold (Green Party, German) largely reflected BEUC’s requests, but was strictly opposed by the German Banking Industry Committee (Tagesschau 2012). Both amendments were included in the text of the final Directive, despite industry opposition.

²⁰² Interview 44, Brussels, 22 May 2013.

²⁰³ Interview 51 with parliamentary staffer, Brussels, 17 May 2013.

The reform debate surrounding MiFID illustrates the close working relations among individual MEPs and pro-reform advocates, mainly Finance Watch, in insider-outsider coalitions. Consumer groups found some allies in the S&D group who promoted a ban on inducements.²⁰⁴ In a plenary speech British socialist MEP Arlene McCarthy, for instance, echoed consumer groups' viewpoints that "a ban is the only way to remove this conflict of interest and give strong protection to the investor."²⁰⁵ In particular before the plenary debate of the EP in October 2012, three conferences on MiFID II organized in close cooperation among MEPs and Finance Watch took place in Brussels. An event at the EP in September brought reform-advocates together with MEPs from all political groups. The event was followed by a public conference in early October, where the EPP rapporteur as well as high-ranking Commission officials attended. One day after, Finance Watch met with a range of MEPs from various political groups at a private event at the EP. A MifID working group was set up, which allowed MEPs and NGO staff to work together via regular conference calls throughout the legislative debate in the EP (Finance Watch 2013b). In parallel, meetings also took place among national member organizations and their respective MEPs.²⁰⁶ Pro-reform groups served as important source of expertise. One lobbyist from the consumer side reported that EP staffers regularly asked for input. According to interviews with pro-reform groups, the fact that the plenary debate on MiFID II in October 2012 focused on investor protection testified to their lobbying of the political groups.²⁰⁷ Between June and September 2013, Finance Watch reportedly had "daily contact with relevant MEPs and their staff, Member State representatives, the Lithuanian Presidency and Commission staff, and organized weekly conference calls with Members to coordinate actions" (Finance Watch 2014b).

During Council negotiations, consumer advocates also found support by various member states, such as the UK and the Netherlands, both of which tried to use the MiFID II Directive as a vehicle to expand their existing national inducement bans to the rest of the EU.²⁰⁸ In line with consumer demands and echoing the Commission proposal, the Council maintained the ban on inducements for independent advisors.

²⁰⁴ Interviews 51 and 29 with parliamentary staffers, Brussels, 15 and 17 May 2013.

²⁰⁵ available at www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+CRE+20121025+ITEM-017+DOC+XML+V0//EN&language=EN.

²⁰⁶ Interview 71 with consumer advocate, Brussels, 15 May 2013.

²⁰⁷ Interview 95 with consumer advocate, Brussels, 1 June 2013.

²⁰⁸ Interview 75 with Commission official, Brussels, 22 May 2013.

Pro-reform groups had also been able to successfully push amendments through the EP and subsequent triologue negotiations with respect to other issues related to investor protection. In line with trade union demands, the EP, and notably the S&D groups included (1) a provision to ensure an appropriate level of knowledge among staff about products sold to clients, (2) a provision that an employer should not set up remuneration structures in ways that could incentivize staff to recommend a particular financial product to a retail client when a different product would better meet that client's needs, as well as (3) a provision on protection of employees reporting infringements within their own institution (whistle blower protection) – none of which had been part of the initial Commission proposal (UNI Global Union 2014). All of the provisions survived triologue negotiations and made it into the final Directive.²⁰⁹

It is worth noting, that pro-reform advocates had also been able to successfully push amendments through the EP and subsequent triologue negotiations with respect to other key issues not specifically related consumer protection (such as high-frequency trading and position limits on commodity derivatives) which made Finance Watch conclude on a rather positive note in January 2014: “When civil society works together, we can, step by step, make improvements in the EU’s financial regulation. [...] we now have a [...] text that includes some rules that are stronger than we expected two years ago when the original Commission proposal was published” (Ford 2014). Taken together, then, the review of the MiFID Regulation was a compromise which reflected the interests of the various stakeholders involved. To portray the regulatory outcome as captured by industry interests would be a clear misinterpretation.

Conclusions

Careful empirical studies of interest group influence in the regulatory process provided a more nuanced picture of capture in the field of EU financial regulatory policymaking. The process-tracing analysis of four different legislative initiatives at EU level suggests that private sector lobbying did not always result in blockage of reform or weakening of regulatory standards with respect to consumer protection. Table 8 summarizes the findings from the reform initiatives studied above.

²⁰⁹ Internal email from November 9, 2012, provided by an interviewee in Brussels.

In the first study, diffuse interest groups had moderate success in pushing for a consumer mandate under the remit of new EU level Supervisory Authorities, but saw their demands ignored concerning a consumer regulator modeled after the American consumer agency along-side new authorities or to integrate the authorities under a strong centralized EU level supervisory body. Analyzing the introduction of new binding mortgage rules in the Mortgage Credit Directive as a second legislative initiative, the analysis demonstrates that private sector lobbying efforts aimed at preventing legislative action failed. The final reform legislation was a compromise with both lobbying sides - consumer associations and industry groups - achieving some of their goals. In the third study on the stricter regulations of retail investment products, I showed that consumer groups were able to successfully push amendments through the EP and subsequent trialogue negotiations, including warning labels for certain investment products and enhanced disclosure of fees. The fourth study of the political battles surrounding the introduction of an inducement ban in the MifiD Directive illustrated that mobilized consumer advocates saw important advocacy goals translated into policy concerning a ban on inducements for independent advisors. In none of these initiatives is there evidence of regulatory capture as it has been portrayed in the existing literature on financial reforms after the crisis.

The empirical evidence suggests that in the post-crisis institutional context marked by increased suspicion of policymakers vis-à-vis the financial sector and limited access for private sector groups to the policymaking process, private sector groups' political influence was at least temporarily curtailed. In this context, political opportunities to pro-reform demands coming from diffuse interest groups increased in terms of greater access points to the policymaking process, but also via increased receptivity to consumer demands in general. The transatlantic comparison of reform processes reveals an interesting difference among group organization in the US and the EU. While the organization of diffuse interests in the US was a strict bottom-up movement, civil society organizations in the EU benefited greatly from organizational and financial support of the European Institutions. Without the impetus from the EP as well as the Commission, the new NGO Finance Watch would not exist.

Table 8 Summary of Findings

Proposition	ESAs	MCD	PRIPs	MiFID
<i>Scope conditions present</i>	Yes. Drastically changed regulatory environment, mistrust of policymakers; perception of industry groups as culprits for the crisis; atmosphere of “bashing the banks”			
1 <i>Favorable opportunity structures</i>	Yes. Perception of “change as day and night” among consumer groups; easier access for diffuse groups than for industry groups to EP; Commission reaches out to consumer groups by restructuring its expert groups advising on financial regulation; public opinion generally favorably to reform			
2 <i>Diffuse interest coalitions</i>	Yes. i.a. BEUC, Consumers International, FIN-USE, VZBV, Which?, Uni Finance	Yes. i.a. BEUC, Financial Inclusion Center, Danish Consumer Council, ADICAE, VZBV	Yes. i.a. Finance Watch, BEUC, EuroFinUse and FSUG; consumer groups as beneficiary of split among industry groups.	Yes. i.a. Finance Watch, BEUC, Better Finance, Uni Europa
3 <i>Policy entrepreneurs</i>	No. Due to the existence of public funding schemes of interest groups, policy entrepreneurs that are well-connected and politically savvy seem to matter less in EU policymaking.			
4 <i>Governmental allies</i>	Yes. Commission, rapporteur Giegold (Greens)	Yes. Commission, rapporteur Sánchez Presedo (S&D)	Yes. Commission, rapporteur Bères (S&D)	Yes. Commission, S&D and Greens, UK and Netherlands
5 <i>Policy outcome</i>	Mixed: Single consumer bureau did not materialize, ESAs with weak consumer protection mandate	Mixed: Policy came about in spite of industry opposition. Strengthened consumer protection, increased harmonization	Mixed: Policy came about. Broad scope of the KID but exemption for pension funds and certain insurers	Mixed: Policy came about in spite of industry opposition. Partial inducement ban, received commissions have to be passed on to costumer, MS discretion to go beyond EU minimal standard

Specifically, the Commission and EP allowed for consumer interests to bear upon the regulatory reform agenda. The Commission, and in particular Commissioner Barnier, responsible for financial services regulation, became an important advocate for diffuse consumer interests. For instance, concerning the MifID Regulation, the initial Commission proposal explicitly addressed conflicts of interests that arise in selling as a key issue. The proposal thereby included an issue that had been raised by consumer groups in their submissions to the public consultation preceding the legislative proposal. Also, with respect to new mortgage regulations, Barnier pushed through the legislative initiative aimed at enhanced consumer protection, despite industry opposition.

The EP was also sympathetic to the preferences put forward by consumer groups and amended significantly the main directives according to groups' demands. MEPs were generally accessible and willing to articulate a consumer viewpoint as highlighted during several interviews conducted for this project. In general, MEPs support for consumer protection policies can be explained by their motivation to portray the EP as the institution representing citizens' interests and ally of the general public. In particular the S&D and the Green party proved to be receptive to the preferences put forward by pro-reform groups, while MEPs of the EPP group were more industry-friendly. Findings of the case studies suggest that diffuse interests' success mainly hinges on the rapporteur in the EP. Because they have to steer the legislative proposals through the ECON Committee and the plenary vote, the role of the rapporteurs proved to be instrumental in achieving consumer-friendly outcomes. Examples are the part played by Sven Giegold (Greens) in securing amendments to strengthen the new European Supervisory Authorities by granting them the right to prohibit certain financial products and the work of Pervenche Bères (S&D) in pushing through the amendments to the KID Regulation as suggested by pro-reform advocates. With respect to the reform of mortgage credit regulations, the rapporteur Sánchez Presedo (S&D) prevented a watering-down of the Commission proposal. Consumer groups had a much harder time getting their advocacy goals translated into policy when the rapporteur came from the EPP groups, as in the case of the MifID regulation.

In the insider-outsider coalition among Commission officials or MEPs on the one hand and advocates on the other hand, consumer groups served as important source of expertise. Due to the lack of issue salience of the financial services dossiers, pro-reform groups acted less of a transmitter of public opinion than as alternate source of information.

The consumer voice can also be translated into policy when it coincides with member states' concerns for leveling the playing field as in the case of the support of the UK and Dutch government for a community-wide ban on inducements. Both governments tried to use the MifID II Directive as a vehicle to expand their existing national inducement bans to the rest of the EU and became important governmental allies for consumer groups. In the final legislative compromise, decision-makers agreed on a partial ban on inducements. Consumer protection measures were also strengthened when industry opposition split and strange bedfellow coalitions emerged among consumer advocates and financial services industry, as in the case of the KID Regulation, when user representatives and European fund industry supported stricter EU regulations, against the opposition of other industry groups.

Interestingly, diffuse interest groups saw their preferences reflected even without the helping hand of a policy entrepreneur. A reason why EU-based diffuse interest groups do not necessarily need a policy entrepreneur to succeed at EU-level policy can be found in the EU-level organization of civil society access to the policy process. The participation of EU-based diffuse interest groups in the EU policy process is organized top-down by the European Institutions which provide resources to help diffuse interest groups in their mobilization efforts. Due to the existence of public funding schemes of interest groups, policy entrepreneurs that are well-connected and politically savvy seem to matter less in EU policymaking.

Chapter 6

Diffuse Interests and the Limits of Lobbying: Case Study of the Financial Transaction Tax in the US

Introduction

The 2008 financial crisis also triggered a debate about new taxes on the financial sector in the United States, including proposals for a financial transaction tax (FTT), a tax on bonuses, and taxes on financial institutions (Shackelford, Shaviro, and Slemrod 2010). This chapter will focus on the US FTT debate in the aftermath of the crisis which shows clear signs of regulatory capture by powerful industry interests. The financial services industry visibly tried to exert policy influence in order to stifle the idea of taxing financial transactions in the US at birth. A report by Public Citizen found that between January 2011 and June 2013, industry lobbyists opposing an US FTT outnumbered pro-tax reform lobbyists by a 5-to-1 ratio.²¹⁰ Through generous contributions to election campaigns and political action committees (PACs), lobbying of the financial services industry amounted to considerable resources. In the 2012 election cycle, 40 PACs aligned with industry interests, according to the report, donated nearly \$20 million to their preferred candidates. These numbers led Public Citizen to conclude that “[c]urrently, it’s good to be a member of corporate America [...] industry is exploiting its advantages by deploying an overwhelming numbers of lobbyists and distributing campaign contributions that far outweigh the resources available to pro-reform advocates” (Public Citizen 2015).

A broad coalition of pro-reform advocates, including the Occupy Wall Street movement that emerged in response to the financial crisis had initially resurfaced the debate on a FTT in the US in an effort to capitalize on the post-crisis reform momentum. For those

²¹⁰ Lobbying concerned the Wall Street Trading and Speculators Tax Act (FTT) first introduced as S. 1787; H.R. 3313 in the 112th Congress and re-introduced as S. 410; H.R. 880 in the 113th Congress.

groups, a tax on financial transactions represented an important means to raise funds to cure economic inequalities, exacerbated by the financial crisis. Pro-reform campaign groups, under the leadership of National Nurses United (NNU), successfully brought the issue to the US Congress. All in all, about 20 FTT bills containing a financial transaction tax - in one form or another – have been introduced to Congress since 2009. In November 2011, a press article concluded on an enthusiastic note about civil society activism: “The nurses aren’t just making noise. It looks like they’re changing the debate, altering the policies of the most powerful players in Washington” (Nichols 2011). This prediction did, however, not materialize. Despite considerable mobilization efforts of civil society organizations, including labor unions, nongovernmental organizations and civil rights groups, lobbying efforts aimed at introducing a US FTT were not successful. After initial signs of White House support for a FTT in 2009 (The Huffington Post 2011), the reform momentum soon died away. Apart from a group of progressive democrats, none of the proposed legislation did receive broader political support in Congress.

This series of failed legislation is a clear manifestation of unmitigated defeat for diffuse interests in financial regulatory reform politics. The main question addressed in this chapter is, how to explain why mobilized diffuse interests lose, even under contextual conditions conducive to their policy influence – such as a legitimation crisis caused by the financial meltdown of 2008. The question of why a FTT was not introduced to the US, despite the mobilization of a broad pro-reform coalition in response to a major crisis, is a difficult one, since “the causes of ‘nonevents’ are notoriously difficult to pin down” (Tannenwald 1999, 438). Studying negative cases may still be a very fruitful endeavor. Focusing more critical attention on cases where diffuse interests go unrepresented despite committing efforts and funds to the legislative proposal, might actually reveal other explanatory factors, beyond the diffuseness of the underlying interest.

This chapter is organized as follows. The first section gives a brief overview of the legislative proposals containing a FTT that were introduced to Congress but did not make it into law despite considerable mobilization of pro-reform advocates and initial high-level political support. I start the analysis with a brief timeline of failed attempts to bring about regulatory change starting in 2009, when ideas about the introduction of a fee on speculation started to float in Congressional debates. Following the method of theory-testing process-tracing, I will, in a second step, carefully trace where mechanisms failed that would have

allowed for diffuse interest representation in financial regulation. As noted above, there may be some value in noting the absence of necessary conditions for the success of diffuse interests in public policy. These conditions may be summarized as unforged alliances, lack of policy entrepreneurship and weak governmental allies.

Group Influence: From Forbidden Topic to Parliamentary Agenda

Since the 1980s, each time a financial crisis has hit, interest in a tax on financial transactions resurfaced in the United States and died out again shortly after. Pro-reform campaigns, such as the Tobin Tax Initiative USA, a project of the Center for the Environmental Economic Development (CEED), repeatedly brought the topic to the US Congress (Patomäki 2001, 184). The idea of a financial transaction tax or “Tobin tax” was debated as revenue-raising measure, first in 1987 with Congress debating a 0.5 per cent tax on stock transfers. The idea gained traction again in the 1990s, with the United Nations trying to find sources of revenue for international development. In 1995, the Senate Finance Committee held various hearings on proposals containing a tax mechanism (Bartlett 2011). The numerous debates did, however, not amount to legislative action. Strict opposition usually came from financial industry lobby organizations and state bureaucracies, notably the finance ministry, which declared a tax on financial activities “a practically forbidden topic” in the US (Patomäki 2001, 179). US governments also actively opposed any international efforts aimed at introducing a tax on financial activities. In 1996 the Helms-Dole bill, introduced into Congress, explicitly prohibited the United Nations from endorsing any sort of global taxation (Ibid. 176). The financial crisis of 2008, once again, triggered the debate about a tax on financial transactions on national and international level. Since 2009, several legislative proposals containing a financial transaction mechanism have been introduced to the US Congress.

Table 9 gives an overview of the most important bills containing a FTT that have been introduced to Congress since 2009. The proposed legislations mainly differed with respect to tax size, tax base and revenue purpose. The bills in the House of Representatives introducing a small tax on financial transactions have been sponsored by Democratic Representatives including Peter DeFazio, John Conyers (HR 870), Peter Stark (HR 755), Keith Ellison (HR 6411) and others. Bills introduced in the Senate were co-sponsored by Tom Harkin (S2927), Bernie Sanders (S915) and Sheldon Whitehouse (S. 277). Most promising to reform

advocates was the bill titled “Let Wall Street Pay for the Restoration of Main Street Act of 2009”, first introduced by Representative DeFazio in December 2009, which received a number of co-sponsors in the Senate and in the House. The bill has been reintroduced several times without gaining broader political support. So far the proposed FTT bills have found only few co-sponsors in the Senate, none of them ultimately made it into law.

In the aftermath of the crisis, the idea of a tax on Wall Street gained some support in the US, as a revenue-raising measure (Krugman 2011), as a means to discourage risky speculative trading or as punitive tax to make Wall Street “pay its fair share” (Public Citizen 2014). Supportive words came, for instance, from the editors of the *New York Times* (2010c). A range of respected economists also expressed their backing of such a tax, including Nobel Prize-winning economists like Joseph Stiglitz and Paul Krugman. In November 2011, Krugman (2011) reiterated his support in a column for the *New York Times*. The pro-reform camp was also joined by prominent allies including former US Vice-President Al Gore, prominent business leaders such as Warren Buffet and Microsoft founder Bill Gates as well as a group of academics.

Proponents of a FTT also included civil society campaign groups that had come together after the financial crisis to push for financial reform. Starting with the Occupy Wall Street movement in 2009, a broad range of civil society organizations actively mobilized in support of a FTT. Under the leadership of labor groups such as NNU, one set of US advocates started the US Robin Hood campaign, rallying members of Occupy Wall Street, environmental groups, faith-based organizations and AIDS activists. The US campaign was also partly inspired by parallel developments in Europe. There, a major pro-reform network of civil society organizations had come together for a Robin Hood Tax campaign and key political leaders had expressed support for the idea. This had generated wide-spread public attention which did not go unnoticed in the US.²¹¹

²¹¹ Information in this paragraph is based on interviews conducted with advocates in Washington DC in fall 2013 and spring 2014.

Table 9 Overview of Most Important FTT Bills Introduced in Congress since 2009

	Sponsor	Tax imposed	Tax purpose
House bills			
HR 4191, Let Wall Street Pay for the Restoration of Main Street Act of 2009 (Dec 2009)	Rep. DeFazio	0.25% on stock transactions, 0.02% futures contracts, 0.02% swaps	Job creation
HR 3313, Wall Street Trading and Speculators Tax Act (Nov 2011, bill reintroduced in Feb 2013, as HR 880)	Rep. DeFazio (co-sponsored by Sen. Harkin)	0.03% on financial transactions	Job creation
HR 870, 21st Century Full Employment and Training Act (Mar 2011)	Rep. Conyers	small tax on stock and bond transactions	Full employment
H.R. 755, Investing in Our Future Act (Feb 2011)	Rep. Stark	0.005% on currency transactions	Health care, climate change i.a.
HR 676, Expand & Improve Medicare For All Act (Feb 2011)	Rep. Conyers	small tax on stock and bond transactions	Health care
HR 6411, Inclusive Prosperity Act (September 2012), bill reintroduced in April 2013 (HR 579) and March 2015 (<i>HR 1464</i>)	Rep. Ellison	0.5% tax on stocks, a 0.1% tax on bonds, and a 0.005% tax on derivatives	Health care, climate change i.a.
Senate bills			
S 915, American Health Security Act (May 2011)	Sen. Sanders	0.25% tax on stock and 0.02% on credit default swaps	Health system
S 1787, the Wall Street Trading and Speculators Tax (Nov 2011)	Sen. Harkin	0.03% on trading transactions including stocks, bonds, treasuries, and derivatives	Infrastructure
S 2252, Rebuild America Act (March 2012)	Sen. Harkin	0.03% tax on stocks, bonds, treasuries, and derivatives.	Infrastructure
S 3272, Comprehensive Dental Reform Act (June 2012)	Sen. Sanders	0.025% tax on stocks, bonds, and treasuries	Dental health care
S 277, Job Preservation and Economic Certainty Act (Feb 2013)	Sen. Whitehouse	0.03% financial transaction tax	Job creation

Source: Assembled by the author.

US advocates mainly supported the tax for its huge revenue potential. Labor groups like the nurses' union and the AFL-CIO saw in the tax an important means to finance job creation programs and to fight unemployment. For health activists, revenues raised by such a transaction tax may help to stop spread HIV/AIDS and for environmentalists, they may contribute to combatting climate change. In mid-2009, under the umbrella of "Americans for Financial Reform" (AFR), a second set of groups started to actively promote the FTT as one of their advocacy goals for financial reform after the crisis. FTT proponents argued that "beyond the revenues to be raised, even a small financial transaction tax would have the salutary effect of discouraging the kind of high frequency trading that has increased harmful volatility in financial markets" (AFR 2011b).

After the initial campaign goal to include the FTT into the Dodd-Frank reform law had failed, advocates started to support other legislative proposals. Out of the numerous bills containing a FTT that had been proposed in Congress since 2009, pro-reform advocates focused their lobbying efforts mainly on two bills: "The Let Wall Street Pay for the Restoration of Main Street Bill" initially introduced by Representative DeFazio in 2009, and the Inclusive Prosperity Act or "Robin Hood Tax bill" introduced by Representative Ellison in September 2012. Both bills had been reintroduced into Congress several times, but did not find enough co-sponsors. The pro-reform group AFR actively supported a bill introduced by Representative DeFazio in December 2009. The "Let Wall Street Pay for the Restoration of Main Street Act of 2009," proposed a small tax on stock transactions, futures contracts and swaps. Its purpose was "to fund job creation and deficit reduction." According to DeFazio's estimates, the bill would have raised \$150 billion a year, with half of the annual revenue going to a job creation reserve fund. The bill was cosponsored by twenty-five members of the House of Representative. DeFazio's tax proposal also received backing from Nancy Pelosi, at the time Speaker of the House, who supported a transaction tax in cooperation with the G-20 nations. Broader political support for the proposed bill failed to appear even among the Democratic Party, with other House Democrats opposing the bill in a "Dear Colleague" letter (Cover 2009). In November 2011, DeFazio introduced an updated version of the bill, this time co-sponsored by Senator Harkin, suggesting a 0.03 per cent fee on financial transactions. In February 2013, Senator Tom Harkin and Representative Peter DeFazio reintroduced a FTT bill with the "Wall Street Trading and Speculators Tax Act" (HR 880), which would impose a tax of 0.03 per cent on trades of stocks, bonds and derivatives (3 cents per \$100 traded).

While the previous proposal set a higher tax rate, but included carve-outs for small investors and pension funds, the second proposal included a lower tax rate to release the burden on long-term investors and target traders instead (Grim 2011). According to an estimate by the bipartisan Joint Committee on Taxation, the bill would raise approximately \$350 billion of revenue over 10 years.

Another bill proposing a small FTT, mainly drafted by the Robin Hood Tax campaign groups, was proposed by Democratic Representative Ellison in September 2012. The legislation, the Inclusive Prosperity Act or “Robin Hood Tax bill” (HR 6411) was symbolically introduced on the eve of the one year anniversary of the Occupy Wall Street movement. It would establish a small tax on certain Wall Street transactions such as a 0.5 per cent tax on stocks, a 0.1 per cent tax on bonds, and a 0.005 per cent tax on derivatives. The bill suggested that collected tax revenues would go to improving health care, including the fight against AIDS as well as to combating climate change.²¹² Congressman Ellison reintroduced the Robin Hood tax bill in April 2013 and in March 2015. In early 2015, the idea was again put on the political agenda by the Democratic Party. In an Action Plan to the new Congress in January 2015, the top-ranking member of the House Budget Committee, Representative Van Hollen proposed a small “financial market trading fee” to curb financial speculation. The plan was again backed by Democratic Minority Leader Nancy Pelosi. The “action plan” calls for a 0.1 per cent tax on transactions by high-volume traders generating an anticipated \$800 billion in revenues over 10 years (Nichols 2015). Chances of policy success remained, however, rather limited, with Republicans in control of both Chambers of Congress, largely in opposition to the idea of a FTT.

From the beginning, financial industry groups criticized the tax proposals. The Securities Industry and Financial Market Association, the Financial Services Round Table and the U.S. Chamber of Commerce, released a statement in 2009, saying that “a day-by-day financial transaction tax is not something we are prepared to support”. In an open letter to Treasury Secretary Geithner in September 2011, the groups reiterated its opposition to a FTT, arguing that “a transaction tax will cycle through the entire U.S. economy, harming both investors and businesses” (SIFMA 2011). Largely reflecting the industry’s stance, the Obama administration officially opposed a FTT throughout reform debates. Treasury Secretary Timothy Geithner strictly opposed the idea and tried to undercut international efforts to

²¹² The full text of the bill is available at www.govtrack.us/congress/bills/112/hr6411/text.

establish a global tax between 2009 and 2011 (Eisinger 2014). Jack Lew, who succeeded Geithner as Treasury Secretary in 2013, reiterated the administration's opposition to such a tax (Reuters 2013). No policy change occurred, despite considerable civil society activism. How can we explain why mobilized diffuse interests lose, even under contextual conditions conducive to their policy influence – such as a legitimation crisis caused by the financial meltdown of 2008?

Advocacy for a FTT

Contextual Conditions

Compared to the pre-crisis situation, the post-crisis context for regulatory reform was much less conducive to industry influence and much more permeable for diffuse interest groups agitating for change. As discussed in length beforehand, the “normal” regulatory environment characterized by low salience and little public attention had turned into a highly salient debate with the global financial crisis constituting a crisis of meaning and legitimation. Public moral outrage was clearly visible in the spread of the Occupy Wall Street movements spreading across major US cities. A Robin Hood Tax was also among the demands of Occupy Wall Street Protesters who marched in the streets of New York, which gave the policy idea an initial “boost” (Grim 2011).

Political Opportunities: Access and Receptivity

In this post-crisis context, political opportunities had started to open up, with receptivity of policymakers for reform ideas increasing in the context of somewhat heightened issue salience, not least due to the attention that the Occupy Wall Street protests had spurred. In the words of one campaigner, “before [the crisis], when we went to talk to a Congress member about a FTT, literally people would laugh. After Occupy Wall Street people started to listen to the idea. There was a sea change.”²¹³ Under conditions of public pressure, advocates enjoyed somewhat increased access to the policy process and their calls for the introduction of a tax on Wall Street attracted attention among policymakers. In 2011 personal meetings took place among AFL-CIO President and tax proponent Richard Trumka and key administration aides (Nichols 2011). Congressional committee hearings on financial sector

²¹³ Interview 28 with civil society representative, Washington DC, 12 September 2013.

reform also allowed increased policy access for pro-reform groups. In testimony before a Senate subcommittee in September 2012, Public Citizen argued in favor of a 0.03 per cent financial speculation tax to both, raise revenue and slow down high-frequency trading (Hauptman 2012). Numerous meetings took place among legislators and advocates. Since 2009, advocacy groups continuously lobbied Congress to promote the introduction of a FTT, as one campaigner reported: “Every week, when Congress is in, a team of 2, 3 or 4 people go in, who meet with a staffer who works for a Senator or a Representative and they have a 20 minute discussion about what are the merits of a financial transaction tax.”²¹⁴ Overall, however, access of advocates to the policy process remained somewhat limited, with numerous Senate Finance Committee hearing on tax reform between 2010 and 2015 taking place without the participation of proponents of a FTT.²¹⁵

For tax proponents, a political opportunity seemed to open up when President Obama expressed vague support for taxing the financial sector during campaign speeches in 2009 (Anderson 2009). In testimony before the House Financial Services Committee in September 2009, Paul Volcker, former US Federal Reserve Chairman and then advisor to the White House, had expressed interest in ideas for a tax on transactions between banks while also pointing to the problem of driving transactions to other countries (Braithwaite 2009). The Harkin/DeFazio bill introduced in Congress in November 2011, suggesting a tax of 0.3 per cent on financial transactions, reportedly generated interest in the White House. Observers commented at the time that “despite some internal opposition within the administration - most notably from Treasury Secretary Timothy Geithner and key economic advisor to the Obama administration Larry Summers - the tax may be an idea whose time has come” (The Huffington Post 2011). Despite official reporting of Treasury Secretary Geithner’s strict opposition to a transaction fee, Minority Speaker of the House, Nancy Pelosi, reported after a personal conversation with the Geithner, that “he was more open to some such fee than had been reported” (Rogers 2009). Based on interviews with key players within the administration as well as internal documents, Ron Suskind reported in his detailed journalistic account of the first two years of the Obama administration, that the White House strongly supported a FTT in 2009 (Marketplace 2011), with budget director Peter Orszag being in favor and the

²¹⁴ Interview 40 with civil society representative, Washington DC, 11 September 2013.

²¹⁵ A full list of hearings conducted by the Senate Finance Committee can be accessed at: www.finance.senate.gov/hearings/?maxrows=all.

President himself even saying at one meeting, “we are going to do this!” (Suskind 2011, cited in The Huffington Post 2011). In January 2010, the Obama administration eventually proposed a Financial Crisis Responsibility Fee or bank fee, characterized as a way to make the financial sector pay back the benefits received through the TARP bailout. The fee would only apply to firms which received the TARP subsidies and with more than \$50 billion in consolidated assets (The White House 2010). But neither a bank fee, nor a transactions tax gained political traction.

Overall, political receptivity remained rather restrained. One advocate described political receptivity in Congress as “polite rejection.”²¹⁶ The New York Times called the Obama administration’s support of the FTT by the end of 2011 “lukewarm”, “expressing sympathy but saying it would be hard to execute, could drive trading overseas and would hurt pension funds and individual investors in addition to banks” (New York Times 2011). Pleas coming from the AFR pro-reform coalition in November 2011, requesting that President Obama and Treasury Secretary Geithner “urge the Joint Select Committee on Deficit Reduction to examine a small levy on financial speculation as a revenue-raising measure”, went unheard (AFR 2011b).

In February 2013, a new opportunity seemingly opened up, with Timothy Geithner and Larry Summers, two main FTT opponents leaving the White House after a staff turnover. Despite the official opposing stance of the government towards a FTT, Senator Harkin reported that the new Treasury secretary, Jack Lew, had been much more open to the idea of a FTT (Zornick 2013). A pro-reform advocate interviewed in fall 2013 confirmed the increased political receptivity of Treasury officials after the leadership change, saying that “whenever we met with Treasury, they had good questions, which shows that they are interested. But recently they are becoming more open to the idea. Last time we met, they said, we are not saying no.”²¹⁷

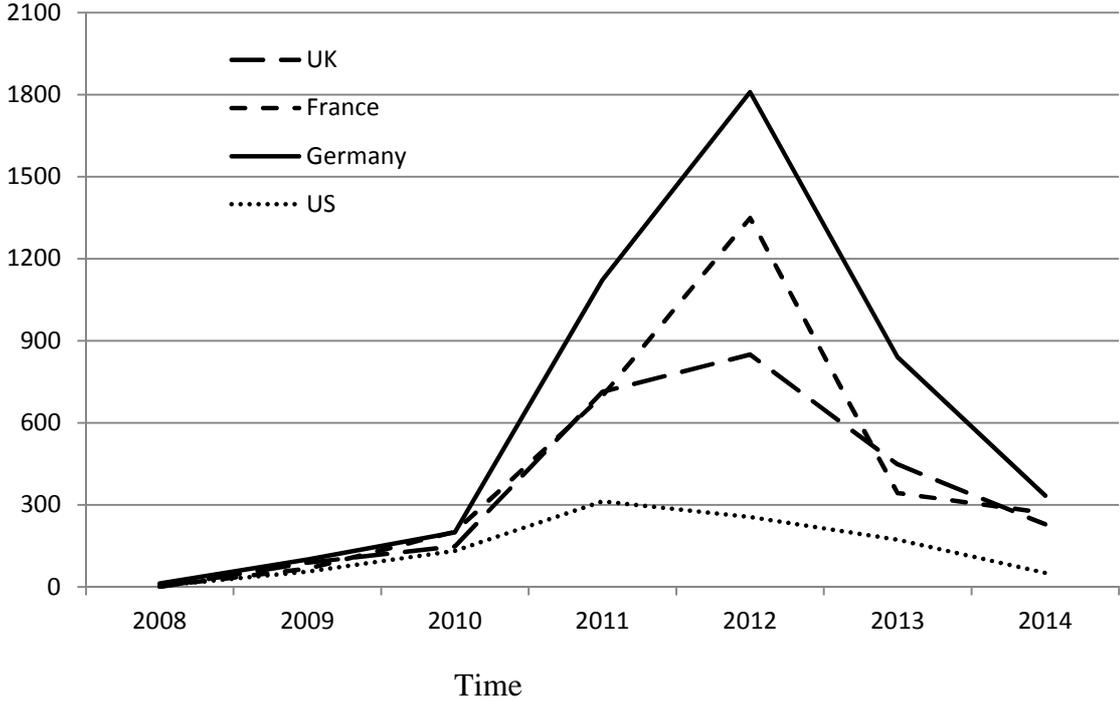
On the whole, the lack of political enthusiasm might be explained by a closer look at public salience generated by the proposed FTT. A closer analysis of the media coverage of the FTT across the Atlantic reveals a clear disparity (Figure 4). By tracing the use of the word “financial transaction tax” in newspapers, the increase in issues salience becomes evident in Germany, France and the UK. Unlike in Europe, where the FTT received substantial media

²¹⁶ Interview 72 with civil society representative, Washington DC, 6 September 2013.

²¹⁷ Interview 40 with civil society representative, Washington DC, 11 September 2013.

attention, even in countries where it was not enacted, the FTT never turned into a high salience issue in the US. Although it is noteworthy that salience somewhat increased in 2011, with the FTT raising to the political agenda of the G-20 meeting in Cannes in November that year, media attention in the US remained at a relatively low level.

Figure 4 News Coverage of the Financial Transaction Tax (Source: Factiva)²¹⁸



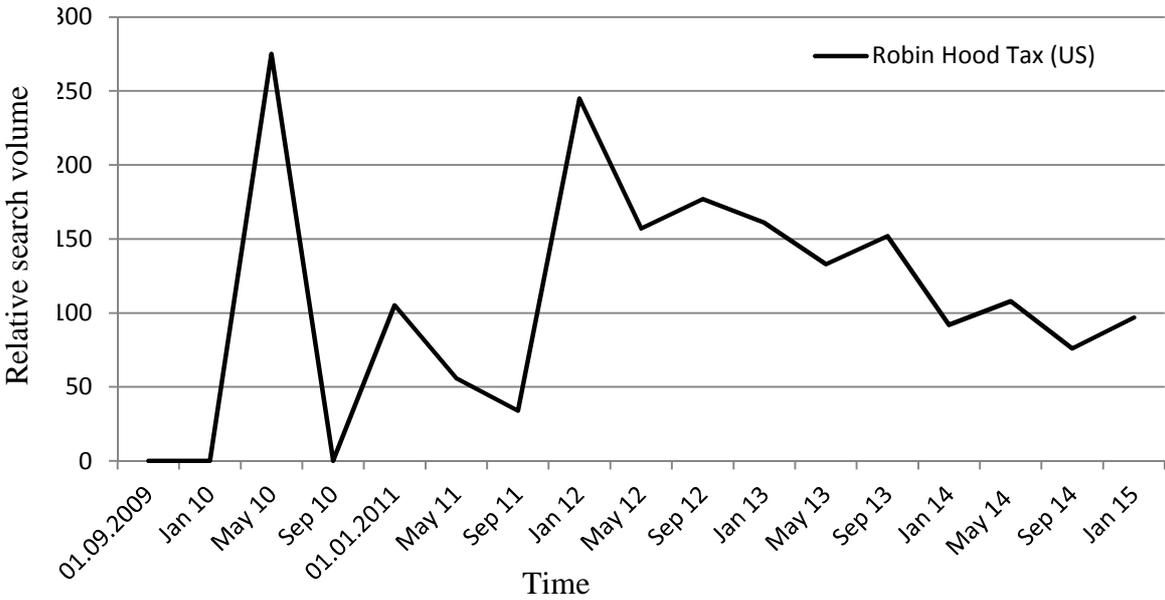
Given the severity of the social repercussions caused by the financial crisis, one might expect that the public would rally around the general idea of regulatory reform and the more specific notion of a Wall Street tax dedicated to raising revenue for deficit reduction. A closer look at opinion polls in the US reveals that public opinion was generally sympathetic to the idea of a FTT, but that it remained relatively unknown to a wider audience. An opinion poll conducted by the International Trade Union Confederation (ITUC) in June 2012 offers further evidence of the low salience of the issue in the US. The polling numbers show that public opinion was generally sympathetic to the idea of a Robin Hood Tax, but that general awareness among US citizens was relatively low. Only 17 per cent of respondents in the US

²¹⁸ Notes: Articles containing the search term ‘financial transaction tax’ in British newspapers, “taxe sur les transactions financières” in the French language press and “Finanztransaktionssteuer” in the German language press, which refer to the relevant groupings of major publications proposed by Factiva.

indicated that they had heard of a tax on financial transactions before. After the concept of taxing financial transactions had been explained to respondents, a large majority of Americans (63 per cent) indicated that they would support such a tax. In comparison, familiarity with the Robin Hood Tax was much higher in European countries with 88 per cent of respondents in France, 67 per cent of respondents in Germany and 37 per cent of respondents in the UK indicating that they had heard about the tax before. France had the strongest support with 88 per cent in favor of the tax, followed by 82 per cent in Germany and 76 per cent in the UK (International Trade Union Confederation 2012).

Measuring public salience based on the google search data confirms that the American public was rather unaware of a financial transaction or “Robin Hood” tax. Figure 5 relies on Google search data to show the relative importance of the topic in internet searches. The term “Robin Hood Tax” did almost not occur as a google search term in 2009. Public attention only slightly increased when legislation was introduced in Congress in spring 2010 with the first FTT-bill, introduced by Representative DeFazio. Another smaller spike in public interest followed in fall 2011 with the second introduction of the Harkin/DeFazio tax bill. It then fell again, until a brief period of attention in the summer of 2012, coinciding with the introduction of a FTT in France.

Figure 5 Internet Search for “Robin Hood Tax” (Source: Google trends, available at www.google.com/trends/, accessed 29 April 2015).



To sum up, political receptivity to a FTT in the aftermath of the crisis had somewhat increased, but remained “lukewarm”. Public salience of the issue remained rather low, with Americans being largely unaware of the idea. Nevertheless, the policy proposal of a Robin Hood Tax floated in Congress and was debated in the White House. Pro-reform advocates discussed their reform ideas with Congress as well as Treasury officials.

Mobilization of Diffuse Interests and Coalitions Not Forged

Based on the perception of the opening of a policy window, albeit small, pro-reform advocates started to build coalitions among themselves. The financial crisis had spurred a reform momentum with “more and more groups joining in,” as one organizer remembered.²¹⁹ The introduction of a national FTT found strong grass-roots support in the US. The FTT became a rallying point for a broad range of civil society organizations, including labor unions, nongovernmental organizations. As one advocate put it, “unique about this is, we have meetings of the endorsing organizations, typically people who haven’t even met each other before.”²²⁰ Starting in the spring of 2009, the broad-based civil society coalition “Americans for Financial Reform” including more than 250 organizations ranging from labor and consumer groups, to civil rights organizations and small businesses, started to mobilize for an inclusion of a FTT into the Dodd-Frank reform law. Initially created in May 2009, the tax became one of several advocacy goals for AFR. Public Citizen, a Washington-based public interest group, officially took over the FTT taskforce within the coalition. When it became clear that the FTT would not be part of the Dodd-Frank Act, advocates started to give priority to other issues (such as the passage of a new consumer regulator). But, the idea of a tax on Wall Street nevertheless “built up speed [...] and increased peoples’ interest in it,” as one organizer reported.²²¹

A second group, the U.S. Robin Hood Tax Campaign, joined the pledge for reform. Modeled after the existing European campaign, the US coalition was formally launched in June 2012, with 174 member organizations including labor unions, consumer groups, environmental groups, faith-based organizations, housing activists, AIDS activists and small

²¹⁹ Interview 10 with civil society representative, Washington DC, 28 September 2013.

²²⁰ Interview 116 with civil society representative, Washington DC, 4 September 2013.

²²¹ Interview 10 with civil society representative, Washington DC, 28 September 2013.

businesses. First meetings among groups were convened in Washington DC in 2009. As part of a steering committee, the nurses' union NNU and two Washington-based NGOs, Health GAP and National Peoples' Action took over an initial leadership role. Prominent consumer advocacy groups, such as Public Citizen and the largest US trade unions, such as the AFL-CIO joined the meeting and became part of the broad coalition.²²² The idea mainly gained support because of its huge revenue potential for easing global problems. Advocates mobilized in support of a tax on Wall Street as a mechanism to explicitly raise revenue “to protect American schools, housing, local governments and hospitals, to pay for lifesaving AIDS medicines, to support people and communities around the world, and to deal with the climate challenges”.²²³ According to the campaign, the tax would impose a small sales tax of 0.5 per cent (or 50 cents per \$100) on Wall Street transactions, generating \$300 billion, according to the campaign. Initially branded “the nurses campaign to heal America,” the campaign was officially rebranded in June 2012, into “Robin Hood Tax” campaign and close working relations were established with the UK led European tax campaign to support the US campaign.²²⁴ While the FTT was one lobbying priority among many for AFR, the Robin Hood Tax group focused on the FTT in a single-issue campaign.

In late 2011 and early 2012 pro-reform groups engaged in an outside lobbying campaign, using demonstrations, information events, press releases and petitions to spread their message to the broader public. In a transnationally coordinated campaign, staffers of the European campaign spent several months in Washington DC to set up the American campaign and facebook website to align it with the European advocacy goals. Common campaign meetings started to take place in the UK and the US.²²⁵ Their campaign website (Robinhoodtax) presented the main arguments in favor of a FTT featuring all member organizations and supporters of the pro-reform campaign.

Although AFR and the Robin Hood Tax campaign had several member organizations in common, the two pro-reform coalitions stayed separate, instead of building a strong alliance. Early on, tensions among organizers had emerged with the groups deciding to split into two different campaigns. Despite loose working relations, cooperation among the two US

²²² Interview 28 with civil society representative, Washington DC, 12 September 2013.

²²³ Further information about the campaign can be retrieved from: www.robinhoodtax.org.

²²⁴ Interview 116 with civil society representative, Washington DC, 4 September 2013.

²²⁵ Interview 28 with civil society representative, Washington DC, 12 September 2013.

advocacy groups remained limited, and divisions among campaign groups became visible, as one advocate reported: “At global meetings there are often weird moments, why are US people fighting with each other?”²²⁶ The two campaign groups were divided over the size of the tax and the question whether tax revenues should be specified in the reform proposal or not. While the international NGOs of the Robin Hood Tax campaign focused on a high tax rate and the purpose of the tax revenue, such as the fight for global climate change, the AFR campaign aimed for the introduction of a small tax rate fighting speculation in general without specifying the revenue purpose. In the words of one AFR advocate: “We felt we should not even discuss how the money is going to be spent, because you divide over how it is going to be spent and we don’t have the money yet.”²²⁷ Disagreement among the two coalitions also emerged about how to brand the campaign. Eventually, AFR refrained from adopting the populist term “Robin Hood Tax” and decided to lobby for a more neutral “Wall Street Speculation Tax” instead.²²⁸

Both campaign groups targeted their lobbying efforts at Congress. Numerous meetings took place among legislators and both campaign groups. Reflecting the divide between them, the campaign groups focused on two different bills, the “Let Wall Street Pay for the Restoration of Main Street Act” introduced by Representative DeFazio and later co-sponsored by Senator Harkin of 2009 and the Inclusive Prosperity Act or “Robin Hood Tax bill” introduced by Representative Keith Ellison in September 2012. What mattered most to campaigners was that both bills were stand-alone bills, “explicitly speaking about introducing a FTT mechanism, not attached to anything else.”²²⁹ While the Robin Hood Tax coalition mainly supported the Ellison bill with its higher tax rate and explicit revenue purposes, the AFR coalition was more supportive of the lower tax rate in the Harkin/DeFazio bill. One advocate of the Robin Hood Tax campaign reported about the divisions among the two groups: “We want them to be more supportive of higher rate, the 0.5 per cent rate that is in the Allison bill that we are pushing. They would like us to be more supportive of the

²²⁶ Interview 81 with civil society representative, Washington DC, 11 September 2013.

²²⁷ Interview 10 with civil society representative, Washington DC, 28 September 2013.

²²⁸ Ibid.

²²⁹ Interview 81 with civil society representative, Washington DC, 11 September 2013.

DeFazio/Harkin. [...] We had never been happy with Harkin/DeFazio bill, the rate is too low, it doesn't generate enough money, no commitment to where the money will go.”²³⁰

While AFR focused on legislative lobbying, the Robin Hood Tax campaign tried to generate more grass-roots support aimed at raising public attention. First public stunts were organized in the US by NNU under the campaign header of “Heal America, Tax Wall Street.” Numerous public demonstrations in close cooperation with Occupy Wall Street Movement’s “Tax Wall Street” campaign followed with activists demanding “that the 1% pay the 99% back for taking our homes, jobs and money” (Robin Hood Tax Campaign 2010). In June 2011, the nurses’ union organized first public demonstrations, bringing 1500 nurses together with labor and health activists to campaign for the FTT and against austerity. Protests took place outside of the New York Stock exchange and in front of the US Chamber of Commerce in Washington DC. In October 2011, members of Occupy Wall Street, together with members of the Robin Hood Tax Campaign organized another “Wall Street March,” rallying thousands of activists to march from Zuccotti Park to Wall Street, pressuring policymakers for a tax on financial transactions (Greenhouse and Bowley 2011). Organizers were trying to exploit the fact that nurses as care-givers with no self-interest were effective messengers, generally perceived as a very trust-worthy source of information.²³¹ When the US Robin Hood campaign was officially launched on 22 June 2012, protesters demonstrated in front of JPMorgan Chase branches in 16 cities, including Boston, Chicago, Los Angeles and Washington (Cohn 2012).

In an effort to circumvent domestic opposition, US pro-reform groups also targeted the international political process, advocating a global FTT. Both US groups also became actively involved in a growing international coalition. Both groups joined an existing network of international campaigners. The Institute for Policy Studies, a Washington-based think tank, started to host one hour conference calls every three weeks and weekly telephone calls to coordinate actions of international FTT campaigners around the globe.²³² In November 2011, NNU, in cooperation with the Robin Hood Tax campaign, organized a press event at the G20 summit in Cannes bringing in famous endorsement of UK Oxfam spokesman and actor Bill Nighy. At a staged event, nurses from Australia, Ireland, France, South Korea and the US

²³⁰ Interview 28 with civil society representative, Washington DC, 12 September 2013.

²³¹ Interview 116 with civil society representative, Washington DC, 4 September 2013.

²³² Ibid.

symbolically injected a FTT as emergency measure to resuscitate the “sick” global economy (National Nurses United 2011). As one organizer remembered: “We were big in the street theater, [showing] how the globe is sick. So the nurses’ campaign to heal America became the nurses’ campaign to heal the world.”²³³ The event in Cannes was followed by another protest on 18 May 2012, aimed at G8 leaders meeting in Camp David. NNU organized a protest in Chicago with an estimated 1.000 people, including nurses, community groups, health activists and members of the Occupy Movement participating. Protesters wore green Robin Hood hats, demanding a “Robin Hood tax” (The Guardian 2012). Other international meetings took place among groups. NNU, national and international trade unions federations, including ITUC and Public Services International (PSI) together with international NGOs including Stamp Out Poverty and Oxfam, organized a first international meeting in London in January 2012 that brought together more than 40 activists from all over the world to discuss joined actions and decide on a common long-term agenda. A series of follow-up meetings at international stage were convened in Chicago and at the World Social Forum in Tunis in 2013.²³⁴

To sum up, the financial crisis seemingly opened a policy window for progressive reform demands and led to the mobilization of pro-reform advocates demanding the introduction of a FTT to raise revenue for pressing social problems. Although newly mobilized interest groups formed a broad-based pro-reform coalition, they could hardly act as transmitter of public opinion. Interest in a FTT remained relatively low among the broader US population and pro-reform groups were not successful in rallying the public behind the Robin Hood Tax. On top of that, the two US campaign groups failed to adequately cooperate with each other and organize their lobbying efforts in concert. The fact that there was no real partnership among the two pro-reform coalitions and that pro-reform advocates were divided among themselves about the appropriate tax proposal might partly explain the ineffectiveness of the campaigns to rally broader public and political support.

Weak Governmental Allies

Advocacy groups reached out to Congress starting in mid-2009, to identify supportive political actors. Albeit only few, pro-reform advocates were able to recruit policymakers to

²³³ Ibid.

²³⁴ Ibid.

become active proponents of a FTT among the members of the Congressional Progressive Caucus, a group including one Senator and seventy five members of the House of Representatives. In April 2011, the Congressional Progressive Caucus proposed a “People's Budget” for the fiscal year 2012, suggesting a “Wall Street gaming tax” on certain financial transactions (US House of Representatives 2012). The main legislative proposals including a tax were subsequently introduced by members of the Progressive Caucus, including the proposed bills by DeFazio, Grijalva, Conyers, Ellison and Sanders. Advocates successfully recruited legislators to join their cause, as one interviewee reported: “In essence we know the people in Congress, who are placed well and will take up progressive ideas, but aren't too radical, so it is not like, ‘oh no that guy again’. AFL-CIO and Public Citizen reached out to progressive Democrats such as Congressmen DeFazio and Harkin, both on committees related to tax policy. [...] Ellison [...] is a progressive champion and that is how people identified those offices.”²³⁵ Subsequently, alliances among insiders and outsiders emerged that pushed for the introduction of a FTT in numerous bills introduced into Congress. The main legislative initiatives developed in close cooperation among progressive Congressmen and pro-reform advocates. Tight links existed, for instance, among AFR, Senator Harkin and Congressmen DeFazio who have introduced several bills containing a FTT since 2009. One advocate remembered a meeting convened by the Congressmen a few months after Dodd-Frank had passed in July 2010 with more than 50 pro-reform advocates present and at least 30 different organizations who worked on the FTT.²³⁶ Insiders also worked hand in hand with groups on the outside, with respect to an Inclusive Prosperity Act or as the Robin Hood Tax introduced by Democratic Representative Keith Ellison in September 2012. In accordance with the Robin Hood Tax campaigners, the bill suggested that collected tax revenues would go to improving health care, including the fight against AIDS as well as to combating climate change.²³⁷ With 0.5 per cent, the bill also suggested a slightly higher tax rate than the Harkin/Defazio bill. One of the pro-reform advocates explained the degree of cooperation in terms of legislation: “We helped write the Ellison bill. [...] We wanted someone to champion it and Ellison was willing

²³⁵ Interview 81 with civil society representative, Washington DC, 11 September 2013.

²³⁶ Interview 10 with civil society representative, Washington DC, 28 September 2013.

²³⁷ The full text of the bill is available at: www.govtrack.us/congress/bills/112/hr6411/text.

to do so. NNU met with Ellison, they had the relationship; National People's Action backed up a little bit. The [Robin Hood Tax] coalition [...] helped draft legislation."²³⁸

The AFR coalition was more supportive of the bill introduced by Representative DeFazio and Senator Harkin. The two Congressmen worked hand in hand with advocates of the AFR coalition to develop legislation. A member of the AFR coalition discussed not only his key allies, but also how those allies helped to mobilize support within Congress: "Both offices [Harkin, Defazio] had been leading advocates on FTT for a while and so we have been working with them very closely. We have a track record with them, they are champions of the legislation, it helps that they are also talking to colleagues, getting the word out."²³⁹ The AFR coalition also organized meetings among the Congressional offices and external financial experts, as one advocate recalled about their cooperation in early 2013: "We put them in touch with other experts. They are interested in people with financial industry background to hear some criticism and want to know what Wall Street thinks. They love to hear when people on Wall Street have good things to say about the FTT. We helped coordinate the meeting. We put them in touch with Avinash Persaud, Wallace Turbeville and John Fullerton - all former JP Morgan."²⁴⁰

Although legislation stalled, pro-reform advocates and their governmental allies successfully raised the FTT on the agenda of Congress, as one advocate put it, "just having someone to introduce legislation on FTT is huge domestically."²⁴¹ After legislation had been introduced, advocates tried to rally support among members of Congress to co-sponsor the bills. When Ellison reintroduced the Inclusive Prosperity Act (H.R. 6411) in Congress in September 2012, campaign groups launched a campaign asking supporters to urge other members of Congress to co-sponsor the bill (Nichols 2012). In April 2014, a print ad of the Robin Hood Tax Campaign appeared in the *New York Times* featuring a casino floor table urging voters to call their members in Congress to support the Inclusive Prosperity Act (HR 1579) to "stop Wall Street's high-speed gamblers."²⁴² Similarly, the AFR coalition through its weight behind the bill proposed by DeFazio and Harkin in November 2011, with a letter

²³⁸ Interview 28 with civil society representative, Washington DC, 12 September 2013.

²³⁹ Interview 40 with civil society representative, Washington DC, 11 September 2013.

²⁴⁰ Ibid.

²⁴¹ Interview 81 with civil society representative, Washington DC, 11 September 2013.

²⁴² The full text of the add is available at: http://nurses.3cdn.net/16e1bdbd6705192175_x8m6vqhh8.pdf.

urging the Joint Select Committee on Deficit Reduction to support a small levy on financial speculation (AFR 2011a). Overall lobbying success remained, however, limited, with pro-reform advocates being able to only recruit a handful of policymakers, mainly from the Congressional Progressive Caucus leaders.

More prominent officials decided not to become advocates for a FTT. None of the sponsors of the various bills introduced in Congress had a comparable standing to the chairmen of the committees, Representative Frank and Senator Dodd, who pushed the consumer agency through Congress. Despite his general support for the idea of a FTT, the influential House Financial Services Committee Chairman Barney Frank considered the FTT in 2009 as a deal breaker for the Dodd-Frank legislation.²⁴³ One advocate described how the FTT debate in Congress following the passage of Dodd-Frank came to nothing between 2011 and 2013, because, to the displeasure of advocates, they could not count the chairmen of the House Financial Services Committee, Republican Representative Bacchus among their allies: “This bill is going nowhere until a chairman says, he likes it, and Bacchus is not going to say that.” The lack of support of a chairman meant that the bandwagon effect of other policymakers joining the pro-reform coalition failed to appear. In the words of one advocate, the motivation of political actors in Congress to support the FTT bill without the chairman’s backing was diminished: “It is not appropriate for me to sponsor a bill and tell people on the finance committee what to do; or I am on the finance committee and I am holding my fire; I don’t want to do something the chairman isn’t already doing and this isn’t one of those things. So this is why we got pretty much no co-sponsors for Harkin/DeFazio.”²⁴⁴

Despite the shock of the financial crisis and considerable mobilization of civil society groups in favor of taxing Wall Street, the FTT did not become a politically viable idea in the US. Likelihood of success in the policy process of bills containing a FTT was considered to be so low, that various banking associations did not even start to actively lobby against. One industry lobbyist interviewed for this project reported that his association refrained from explicit counter-lobbying to proposed legislation by Harkin and DeFazio, saying “there is no real support behind it” and that proposed bills in Congress “just don’t go anywhere.” He also reported that the association was preparing arguments in case the bill would go anywhere.²⁴⁵

²⁴³ Interview 114 with Congress staffer, Washington DC, 17 March 2014.

²⁴⁴ Interview 72 with civil society representative, Washington DC, 6 September 2013.

²⁴⁵ Interview 1 with financial services lobbyist, Washington DC, 20 September 2013.

Commenting on the likelihood of policy success, another industry representative confirmed that from the industry's point of view, "reality is, it is not going anywhere," saying that his organization only "lobbied for a while."²⁴⁶ For banking lobbyists the momentum of the proposed bills was so low that there was simply no need to actively oppose it.

To sum up, although advocates found a few members in Congress with enough interest in the FTT to raise it on the political agenda, the pro-reform side could not rally enough co-sponsors for the proposed bills. With no prominent government ally leading the way on the FTT - neither the leadership of a powerful chairman, nor presidential support - and therefore diminished likelihood of policy success, outside lobbying could not rally Congressional support for a FTT. Despite close cooperation in insider-outsider coalitions among pro-reform advocates and individual policymakers on numerous bills introducing a FTT, there was no bandwagon to join for other members of Congress. As a result, this reform wagon never left the station.

Conclusions

This chapter suggests that the advocacy function of mobilized diffuse interests in the realm of finance is tightly constrained. In the case of the transaction tax in the US, activists, albeit organized in pro-reform campaign groups, only had limited success in altering government preferences. None of the numerous bills that have floated in Congress since 2009 did receive sufficient political support, despite changes in the post-crisis institutional context in which financial regulatory policies were developed with signs of increased political receptivity as well as access of pro-reform groups to the policy making process. What, then, explains the failure of diffuse interests' advocacy efforts?

Table 10 summarizes the main findings. Findings suggest that elements contributing to the shortcomings of the campaign by labor unions, consumer groups, environmental groups and health activists on a transaction tax included a lack of efficient mobilization among pro-reform groups. Despite extensive lobbying resources mobilized by outside groups as broad-based pro-reform coalitions, political support for a US FTT remained weak, in the face of strict financial industry opposition and in the absence of prominent government allies in defense of diffuse interest groups. Neither were advocates able to forge coalitions with well-

²⁴⁶ Interview 100 with financial services lobbyist, Washington DC, 16 September 2013.

positioned policy entrepreneurs, nor with potent governmental allies who would push their cause through Congress.

Although a number of academic and private sector economists such as Paul Krugman, Joseph Stiglitz and Avinash Persaud and development economists such as Jose Ocampo and Stephanie Griffith-Jones, made important contributions to support a tax including reports detailing technical feasibility, economic utility and social desirability, none of the prominent voices could rally enough public and political support. Despite attempts, policy entrepreneurship defending diffuse interests largely failed at the national political stage.

Table 10 Summary of Findings

Propositions	Findings
Scope conditions present:	Yes. Boost of idea for FTT through Occupy Wall Street marches.
1. Favorable opportunity structures: politicians under public salience and electoral constraints become more receptive and grant new access points to diffuse interest groups.	Mixed. “Sea change” in political receptivity in the perception of advocates; initial signs of support from the White House; low public attention.
2. Diffuse interest coalitions: the organization as advocacy coalition spurred by the perception of a window of opportunity allows diffuse interest groups to promote reform goals.	Mixed. Broad-based advocacy efforts, i.e. Robin Hood Tax Campaign, Americans for Financial Reform, but little success in mobilizing public.
3. Policy entrepreneurs: activism of entrepreneurs as source of innovation, expertise, institutional resources etc. thereby leveraging advocacy groups’ influence.	No. Failed entrepreneurship of experts such as Columbia professor Griffith-Jones or financial expert Persaud to make viable political connections.
4. Government allies: Joining the bandwagon public officials actively side with mobilized diffuse interests to promote same policy solution.	Mixed. Insider-outsider coalitions only with low-level allies, such as progressive Members of Congress introduced bills, but no support from high-level allies (such as committee leaders or the President).
5. Outcome: Policymakers enact financial reforms reflecting diffuse interests.	No. FTT on Congressional agenda (several bills introduced), but no legislative success.

Findings also suggests that much of the success of diffuse interests in Congress hinges on the support of the President or party leaders in Congress who have an incentive to respond to broad interests as political leaders with “collective responsibility” (Derthick and Quirk 1985, 142). In case of the FTT, political leaders did not endorse the reform policy. Prominent political actors failed to actively promote the FTT in Congress as governmental allies. While the influential chairmen of the committees responsible for financial reform, Barney Frank and Chris Dodd actively backed the consumer agency as key governmental allies, lobbying efforts of diffuse interest groups failed to recruit prominent officials as governmental allies in the case of the US FTT. Pro-reform advocates found only a handful of relatively weak governmental allies in progressive legislators who were willing to take up the reform cause and actively promote an US FTT. Given the lack of presidential support for the introduction of a FTT, as well as the lack of support of prominent political actors such as the influential chairmen of the committees dealing with financial reform, a bandwagon effect for reform failed to appear.

The reform issue was also of moderate salience among the broader public and so incentives to act in the public interests remained relatively low. The pro-reform campaigns were not successful in their mobilization efforts that could make a transactions tax salient and appealing for broader audiences. Other issues regarding a transactions tax also constrained and complicated reform advocacy. In the context of the crisis, conventional mechanisms that account for its lobbying influence, such as revolving-doors between members of the industry and the regulatory agencies traditionally granting industry lobbyists privileged access, were at least temporarily undermined. One possible explanation for why financial industry dominance would persist even in a situation of severe financial crisis is, hence, the structural power of financial industry groups. Research evolving around the concept of “financialization” has identified the growing centrality of the financial industry in the US economy as a major trend in socioeconomic developments (Aalbers 2008; Krippner 2011; van der Zwan 2014). Due to the central position of finance in capitalist systems, policymakers “are wary of introducing policies that may disrupt the ‘golden goose’ of financial sector accumulation and they are more likely to listen to the concerns of financial industry groups [...]” (Pagliari and Young 2013b). The structural importance of finance might therefore explain why a FTT with potential distorting effects on market efficiency and capital flows has not gained wide-spread political support and has been met with reluctance by a majority of policymakers.

Chapter 7

Diffuse Interests and the Limits of Capture: Case Study of the EU Financial Transaction Tax

Introduction

In January 2013, eleven euro zone states, including France, Germany, and Italy, decided to introduce a financial transaction tax (FTT) with the goal of making the financial sector contribute to the cost of economic recovery after the 2008 financial crisis as well as creating disincentives for transactions in certain kinds of financial instruments considered contributors to the crisis.²⁴⁷

The case of the EU FTT shows all signs of drastic industry capture. The political debate about an EU FTT was the subject of vocal and wide-spread campaigns by civil society activists who have put a FTT at the center of reform demands in response to the crisis. Pro-tax campaigns, promoting a small tax on the financial sector with its revenue attributed to public finances as well as global development assistance, mobilized to pressure policymakers. The initial Commission proposal of September 2011 included a broad-based FTT, with very few exemptions – very much in line with demands from pro-reform advocates. However, as a consequence of massive industry lobbying, exacerbating differences among member states during subsequent negotiations, the Commission proposal was considerably watered-down (Zimmermann 2014; Schulmeister 2014). The initial start date for a FTT of January 2014 had to be repeatedly postponed. Despite continued statements of support for a FTT by heads of state and government as well as finance ministers of participating member states renewing their political commitment to a FTT, market participants are now anticipating a start date of January 2017. There is wide-spread agreement among financial experts, market participants and academics that the final version of the FTT will differ substantially from the initial

²⁴⁷ Council decision 22 January 2013 authorizing enhanced cooperation in the area of FTT (2013/52/EU).

proposal, resembling a narrow tax with many exemptions for various financial instruments (KPMG UK 2015; PWC 2013; Financial Times 2014a).

From the beginning, the financial sector rallied its troops against the proposed reform. Ahead of a G20 Summit in Cannes in November 2011, the Global Financial Market Association (GFMA), which speaks for the leading financial firms, sent an open letter to policymakers, urging them “to reject any FTT proposal that might be raised and discussed at the upcoming G20 Finance Ministers and Leaders meetings” (GFMA 2011). Financial industry groups were unified in their opposition with “nobody in the industry in favor of a FTT.”²⁴⁸ Surprisingly, despite their unified opposition to a FTT, industry groups’ initial attempts to block legislative action in the early phases of agenda-setting clearly failed., industry efforts to water-down legislation as well as its advocacy for exemption were much more successful during later stages of the policy process, once legislation introducing a broad-based FTT had been officially proposed. For pro-reform groups, the proposed Directive was “nevertheless a great success,” as Peter Wahl (2014), the German pro-tax campaign leader, concluded. Given unified industry opposition, “it is a real surprise,” as another pro-tax advocate put it “that the idea of a general FTT made it up to an official proposal of the European Commission” (Schulmeister 2014, 28).

Regulatory change discussed in this chapter differs substantially from the reforms analyzed in previous chapters, since, at the time of writing the Commission’s draft proposal is still being discussed in working group meetings. Although no policy change has occurred yet, I argue that a dismissal of the pro-tax campaigns organized by European civil society as marginal phenomenon would be liable to miss important contributions to policy formation of these nonfinancial groups during the early agenda-setting phase. Focusing on lobbying success during the agenda-setting phase of the policy process instead of actual policy change at EU level is interesting because the likelihood of eventual passage and implementation is relatively high. Notably, Mahoney (2008, 64) finds that policy initiatives at EU level have a passage rate of more than 80 per cent, in comparison to only 11 per cent in the US. EU interest groups that see their advocacy goal reflected on the EU agenda have therefore already won more than half the battle. Moreover, to see a policy proposal on the EU’s agenda that has been bitterly opposed by the financial industry is puzzling itself. Especially due to the structural power of finance, scholars have usually assumed that industry interests dominate

²⁴⁸ Interview 16 with financial industry representative, London, 18 June 2013.

the policy process in its early stages, able to block policy change even before the agenda is set (Young 2014, 372).

Hence, this raises questions about constraints on regulatory capture by concentrated industry interests. If the financial industry lobby was able to massively water-down the proposed FTT during negotiations, why was it not more successful in preventing the political decision to introduce a FTT among eleven member states during the agenda-setting stage? Conversely, why were newly mobilized interest groups successful in pushing for substantial reform in the initial agenda-setting phase but not beyond? It is these questions that this chapter attempts to address.

Much of the answer lies in the contextual conditions that the post-crisis regulatory environment representing opportunities for nonfinancial interest groups in terms of access to the reform process and receptivity of decision makers to their reform demands. The mobilization of diffuse interest groups in coalitions and their cooperation with governmental allies backing the introduction of a FTT during a period of high salience serves as an explanation for weakened financial industry groups' capacity to veto reform proposals and the initial success of diffuse interests in getting their advocacy goals reflected on the policy agenda of regulatory reform. The chapter will present empirical evidence for the conjectures set out in the theoretical framework in chapter 2, based on interviews with financial lobbyists, policymakers and leading advocates of the Robin Hood Tax campaigns at EU level and in five different European countries (Austria, France, Germany, Italy and UK). I will show that interest groups dynamics changed in the aftermath of the financial crisis with financial industry groups temporarily losing their privileged access to the policymaking process, even with regards to core matters to their interests, such as taxation.

The chapter offers one of the first scholarly analyses of broad-based Robin Hood Tax campaigns that emerged in Europe in response to the 2008 financial crisis. Providing such an analysis is an important aim given that this political episode is of high interest: not only was it highly publicly salient but also the debate of taxing the financial sector remains an important issue on the political agenda. It proceeds as follows: I will first outline the main characteristics of the proposed legislation as presented by the European Commission in two different draft Directives (in September 2011 and in February 2013). After a brief description of the chronological order of events in the policy debate, the first section of the chapter attempts to trace the causal mechanism whereby concerted advocacy campaigns of diffuse

interest groups were able to push for regulatory reform in tandem with active governmental allies at very early stages of the policymaking process. The story highlights how the process of policy change was driven diffuse interest groups that were able to take advantage of a temporary policy window and increased issue salience. The ability of industry groups to forge broad-based coalitions with business groups beyond the financial sector and to refocus their lobbying strategy on the policy formulation stage will serve as an explanation of why the success of diffuse interests was largely restricted to the agenda-setting phase of the legislative process. The final section briefly summarizes the main findings and concludes.

Regulatory Change and Group Influence

In September 2011, the Commission adopted a proposal for a Council directive on a common system of financial transaction tax to be implemented by 1 January 2014 across the 27 member states.²⁴⁹ The objectives of this initial proposal were: (1) to avoid a fragmentation of the internal market due to uncoordinated national financial taxes being introduced, (2) to ensure that the financial sector makes a fair contribution to recover the costs of the financial crisis, as well as to compensate for the “under-taxation” of the financial sector due to the VAT exemption and recover a new resources for the EU, (3) to create disincentives for transactions that do not enhance the efficiency of financial markets, such as high-frequency trading (HFT), and (4) to enable the development of a FTT at global level. With its intention to deter short-term trading “to dis-incentivize excessively risky activities by financial institutions,” the EU proposal follows in spirit the tax proposal as it was originally presented by James Tobin, an American Nobel Prize-winning macroeconomist, with the objective to “throw sand in the wheels of our excessively efficient international money markets” (Tobin 1978). The proposed tax essentially aimed at “limiting undesirable market behavior” by rendering transactions considered risky to market stability much more costly. Unlike the tax on inter-currency transactions to stabilize financial markets as envisioned by Tobin, the EU-FTT would, however, exclude spot currency transactions from its scope.

After an EU-wide introduction of a FTT as advocated for by civil society groups and proposed by the Commission in its initial draft Directive in September 2011 was rejected by a majority of member states, including the UK, Sweden and Luxembourg, a sub-group of

²⁴⁹ Proposal for a Council Directive on a common system of financial transaction tax and amending Directive 2008/7/EC, Brussels, 28 September 2011.

eleven member states, spearheaded by France and Germany, decided to go ahead by introducing the FTT on a smaller geographical scale. In February 2013 the Commission adopted a second proposal for a Council Directive to implement a FTT through the enhanced co-operation procedure (ECP).²⁵⁰ The ECP allows a group of member states, with a minimum threshold of nine member states required, to proceed with the implementation of a transaction tax that would only bind participating member states. After the EP had given its consent, the Council adopted a decision in January 2013, authorizing eleven member states (Belgium, Germany, Estonia, Greece, Spain, France, Italy, Austria, Portugal, Slovenia and Slovakia) to go ahead with enhanced cooperation.

Table 11 summarizes the main legislative characteristics of the proposed FTT. The Commission's comprehensive tax proposals following an "all institutions, all markets, all instruments" approach (Schulmeister 2014) reflected important advocacy demands of pro-tax activists. Largely in line with activists' preferences, the proposed tax had a wide scope, including derivatives and pension funds.²⁵¹ The tax would be levied on all financial transactions between financial institutions when at least one party to the transaction is located in the EU ("residence principle"). The tax proposal only included a few exemptions. To avoid individual citizens being negatively affected, the scope of the proposal excluded most consumer products, such as insurance contracts, mortgage lending and consumer credit. The proposal included a harmonized minimum 0.1 per cent tax rate on shares and bonds and of 0.01 per cent on derivatives with revenues generated being shared between the EU and member states. The Commission estimated that the tax would raise between €57 billion every year (European Commission 2011e). The Commission's second proposal for eleven countries mirrored the scope and objectives of its original FTT proposal. After lobbying of pro-tax activists for an anti-avoidance measure to prevent relocation of financial activities, the second Commission proposal complemented the residence principle with an "issuance principle" - the principle whereby the tax would also be levied on financial institutions based in non - FTT jurisdictions when they trade in financial instruments that are issued in FTT jurisdictions (Grahl and Lysandrou 2013). Although pro-tax group' demands for an even higher tax rate of 0.5 per cent as well as for using revenues generated by the FTT to fund international

²⁵⁰ Proposal for a Council Directive implementing enhanced cooperation in the area of financial transaction tax, Brussels, 14 February 2013.

²⁵¹ Interview 68 with an NGO representative, 13 September 2013.

development, were not reflected in the Commission proposal, the draft Directives were very close to their advocacy goals (Wahl 2014).

Table 11 The Commission’s Proposed FTT for Enhanced Cooperation (as of Feb. 2013)

Policy	Measures in line with civil society groups’ demands
Financial instruments subject to tax	Range covers all instruments which are negotiable on the capital market, money market instruments including repurchase agreements (repos), units or shares in collective investment undertakings (including undertakings for collective investment in transferable securities (UCITS) and alternative investment funds) and derivatives contracts.
Financial institutions subject to tax	Banks, markets, credit institutions, insurers and reinsurers, collective investment funds and their managers, pension funds and their managers, leasing companies and special purpose companies
Residence principle	The FTT would apply to financial transactions where at least one of the parties is established in an EU Member State and either that party or another party is a financial institution
Issuance principle	The FTT would also apply to financial institutions based in non-FTT jurisdictions when they trade in financial instruments that are issued in FTT jurisdictions
Compromises/losses for civil society groups	
Tax rate	Minimum rate of 0.1% for securities, minimum rate of 0.01% for derivatives
Use of revenue	Use of tax revenue for international development no included
Participants	Participating member states restricted to 11, via enhanced cooperation procedure

Source: Assembled by the author, adapted from Grahl and Lysandrou (2013).

After the initial victory of civil society groups, member states made little progress towards implementation. Negotiations on the FTT in the Commission’s formal indirect taxation working party amongst the EU 27 as well as in informal meetings amongst the participating eleven member states were subject to massive lobbying of the financial services industry which led to political gridlock and made the introduction of a broad-based FTT increasingly unlikely (Zimmermann 2014, 3). Disagreement about key elements of the tax emerged among participating member states, including whether the residence or issuance principle should be adopted, the scope of any exemptions, maximum and minimum tax rates, and revenue allocation as well as collection mechanisms. The German government was known to advocate a broad scope with few exemptions, while France and Italy advocated for

a smaller scope with an exemption for bonds, certain types of derivatives, and repos.²⁵² Having introduced their national FTT in 2012 and 2013 respectively, France and Italy started to promote their versions of the tax at EU level.

In June 2013, Commission officials privately stated that due to differences among member states, the Commission was considering the implementation of a more limited tax that would initially be limited to shares and then be expanded to bonds and derivatives in a step-by-step approach.²⁵³ In May 2014, then, ten participating Eurozone countries announced in a joint declaration the progressive introduction of a scaled back version of the original FTT proposal, that would “first focus on the taxation of shares and some derivatives” (Financial Times 2014b). In the eyes of MEP Sven Giegold, pro-reform advocate and co-founder of ATTAC Germany, the new proposal was “false labelling” and “window dressing” (Giegold 2014). Despite the official rhetoric of the participating member states in January 2015, “that the tax should be based on the principle of the widest possible base and low rates” (ECOFIN Council 2015), it now seems likely that the draft Directive will be significantly less ambitious than the original Commission proposal and end up as a narrow-based FTT, similar to the 0.5 per cent UK Stamp Duty Reserve Tax on a limited number of transactions. Instead of the “all institutions, all markets, all instruments” approach, the FTT has largely been emptied of its critical elements is now likely to miss the mark of effectively tackling speculative trading (Schulmeister 2014; Zimmerman 2014).

The Policy Debate

As a foundation for process-tracing, a short description of how events unfolded chronologically leading up to the decision among EU-11 is in order. In case of the EU FTT, political reform dynamics started shortly after emergency bailout packages had been brought on their way that marked the initial response to the sub-prime crisis. The crisis generated a debate about various proposals for imposing new taxes on the financial sector to contribute to economic recovery. Starting in 2009, the IMF, G20 and European Commission explored alternative forms that a contribution of the financial sector could take, including a resolution fund which would pay for future bank bailouts, a value-added tax on financial services, a Financial Activities Tax (FAT) on the profits and wages in the financial sector and a FTT.

²⁵² Internal and non-official paper provided by financial lobbyist, June 2013.

²⁵³ Ibid.

First official statements of support for a FTT were voiced by the German chancellor Angela Merkel and the French president Nicolas Sarkozy in 2009. Both political leaders called for a debate on the FTT at the G20 Pittsburgh summit in September 2009 in order to recoup some of the costs incurred by the crisis. In the final communiqué, political leaders at the G20 called on the IMF to review “the range of options countries have adopted or are considering as to how the financial sector could make a fair and substantial contribution toward paying for any burdens associated with government interventions to repair the banking system.” In a Resolution of June 2010 the European Council stated that “the EU should lead efforts to set a global approach for introducing systems for levies and taxes on financial institutions with a view to maintaining a world-wide level playing field and will strongly defend this position with its G20 partners. The introduction of a global financial transaction tax should be explored and developed further in that context.”²⁵⁴ After it had become clear at the subsequent G20 meeting in Toronto in June 2010 that there would be no consensus in favor of a global FTT, Germany and France pushed for an EU-wide FTT on the agenda of the European Council.

The Commission initially took a critical stance, favoring a financial activities tax (FAT) levied on profits and wages in the financial sector. Algirdas Šemeta, at the time Commissioner for Taxation and Customs Union, Audit, and Anti-Fraud, stated in October 2010 that he supported the idea of a FTT at global level, but that a FAT would be the preferable option at the EU level (European Commission 2010). Strong political pressure came from member state governments, mainly driven by France and Germany, in favor of a FTT. An EU-FTT also received broad political support in the EP. In March 2011, parliamentarians voted in favor of an EU-wide tax on financial transactions with an overwhelming majority (with 529 votes in favor, 127 against and 19 abstentions). Although the EP has only consultation rights on the issue of a FTT, the political weight of a large cross-party majority among MEPs in favor of the tax sent a clear signal of broad political support for policy change to the Council and the Commission.²⁵⁵ The EP reiterated its support in subsequent resolutions.

In light of the political pressure from key member states, strong public support of a FTT, as well as civil society advocacy, the Commission changed its position. The first person to succumb to the pressure of the Franco-German alliance was Commission President

²⁵⁴ European Council. Resolution of June 17, 2010.

²⁵⁵ Interview 21 with Commission official, Brussels, 12 May 2013.

Barroso, who “pushed the Commission services to draw up a FTT proposal” (Van Vooren 2012). By June 2011, the Commission announced its proposal for an EU-wide FTT for financing the EU budget in the context of the Multiannual Financial Framework. The proposal identifies such a tax as base for a new own resource system giving extra room for maneuver to national governments and contributing to general budgetary consolidation efforts.²⁵⁶ In September 2011, then, the Commission presented a first draft Directive for an EU-wide FTT. After the Commission proposal was met with resistance from some member states, notably the UK, the Netherlands and Sweden, a sub-group of eleven member states, led by France and Germany, decided to proceed with the implementation of a transaction tax via “enhanced cooperation” binding only participating member states to introduce the tax. Following requests from member states, the Commission adopted a new proposal for a Council Directive in February 2013 implementing enhanced cooperation in the area of a FTT. An attempt by the UK to challenge the legality of the FTT on the basis that it is extra-territorial and thereby undermines the European free market was rejected by the European Court of Justice in April 2014.

From the beginning, individual public interest groups supported a FTT. A network of development NGOs had been campaigning for a “Tobin tax” on currency trading for decades, since the idea first gained political traction as part of the anti-globalization movement in the 1990s to raise money for developing countries (Brassett 2013; Patomäki 2001). In September 2009, a group of NGOs sent a letter to the G20 urging heads of state and government to implement an International Financial Transactions Tax “to pay for the cost of the crisis in the north,” “to assist countries in the South to meet their development objectives,” and to “contribute to a reduction in speculation” (WEED 2009). By late 2009 to early 2010 groups, supporting a FTT became more organized. Several national campaigns in support of a FTT – dubbed a “Robin Hood Tax,” spanning not only currency transactions but all sorts of financial instruments – were initiated by civil society groups, which were successful in gathering widespread political support in Germany, Italy, and the UK. Campaign groups promoted a tax with 50 per cent of the revenue spent domestically and 50 per cent spent internationally.²⁵⁷ When prospects for the introduction of a global or EU-wide tax faded, groups mobilized for a FTT via enhanced cooperation with revenues to be shared between international development,

²⁵⁶ Communication from the European Commission, A Budget for Europe 2020.

²⁵⁷ Interview 43 with NGO representative, London, 12 June 2013.

member states, and the EU institutions. The political decision to introduce a FTT among a sub-group of EU member states, with support of the European Commission and the European Parliament, was a major success for the mobilized civil society coalition.

Conversely, and unsurprisingly, tremendous opposition to the proposal came from the banking industry. From the very beginning, financial industry groups were unified in their opposition to a FTT. In the words of one interviewee: “All [...] financial institutions agreed that we completely disagree.”²⁵⁸ The day the Commission presented its proposal for the introduction of an EU-wide FTT in September 2011, the *Financial Times* headline read: “Business attacks transaction tax plan.” According to the article, “the proposal has been fiercely resisted by financial and business interests in Europe, pointing to a fierce political battle that lies ahead” (Financial Times 2011). After it had become clear that eleven member states were going ahead with its implementation and the likelihood of legislative success increased, industry groups intensified their lobbying against the legislative proposal to implement a FTT.²⁵⁹ The proposal was subsequently substantially watered down during negotiations among the eleven participating member states, which started in February 2013. Nevertheless, the decision to introduce a policy directed at punishing the financial sector speaks to the inability of industry groups to influence the policy agenda in line with their preferences. At the same time, the civil society campaigns in favor of a FTT were successful in channeling public support and influence the initial agenda-setting phase.

How, can we explain the initial victory of diffuse interest groups who saw their preferences largely reflected on the policy agenda? Reversely, how can we explain the initial failure of industry groups to derail an EU-FTT, despite their unified opposition, as well as their success in watering-down proposed legislation once legislative debate had moved to the policy formulation stage? In what follows I will trace the advocacy activities of concerted advocacy campaigns by civil society groups, their ability to capitalize on the crisis and to forge coalitions with important governmental allies pushing for the same policy solution, leading to the decision among eleven European countries to introduce a FTT in January 2013. Subsequently, I will also explore reasons for failure of advocacy and shed light on the strength of the banking lobby during the policy-formulation phase. This is an important part of process-tracing, as Bennet and Checkel (2012, 30) remark: “[F]airness to alternative

²⁵⁸ Interview 104 with industry representative, Brussels, 22 May 2013.

²⁵⁹ Interview 21 with Commission official, Brussels, 12 May 2013.

explanations requires that we fully consider evidence that fails to fit the explanation that interests us most, as well as evidence that fits the explanation that initially interest or convince us the least.”

Advocacy for a Financial Transaction Tax

Contextual Conditions: Post-Crisis Financial Regulatory Environment

In the midst of a crisis of legitimation caused by the financial crisis, the dialogue among policymakers and private sector groups was generally more adversarial than during pre-crisis times. Increased issue salience of financial reform made the regulatory dialogue also less conducive to private sector influence. Expressing frustration about heightened public attention regarding the proposed tax on financial transactions, one industry lobbyist complained that it was “difficult to have reasonable discussions if it becomes so much politicized.”²⁶⁰ The context for regulatory debate had noticeably changed for private sector groups and the mood-swing in public opinion was clearly felt by industry lobbyists. This industry representative complained: “If there are behaviors which should be prohibited, let’s prohibit them. But pretending to introduce a tax to regulate is an argument which uses the fact that there is a political opinion shared by citizens that banks are bad.”²⁶¹ Public outrage and de-legitimization of the industry was clearly felt by financial sector lobbyists who perceived the FTT as retribution for wrongdoings that led to the crisis. In the words of one interviewee: “We are the ones to be punished.”²⁶²

The increase in issue salience in the regulatory reform context was accompanied by divisions among policymakers and the private sector. One important way in which the regulatory environment has changed is that policymakers started to call industry groups’ expertise into question. The salience of financial debates had clearly weakened incentives for elected officials and politicians to openly heed demands coming from the financial sector. Wolfgang Schäuble, the German finance minister, for example, dismissed arguments from the opposing camp in November 2011: “The objections made by some who claim it would mean a substantial drop in employment and in the economy generally seem to rest on exaggerated and sharply challenged projections – and, more important, ignore the potential of such a tax to

²⁶⁰ Interview 104 with industry representative, Brussels, 22 May 2013.

²⁶¹ Interview 47 with industry representative, Brussels, 14 May 2013.

²⁶² Interview 104 with industry representative, Brussels, 22 May 2013.

stabilize currency markets in a way to boost rather than damage the real economy” (The Telegraph 2011).

Interviews conducted with industry groups in Brussels and London corroborate a story that their influence on the particular content of the proposed FTT prior to the publication of the Commission’s first draft Directive in September 2011 was rather limited. Before the financial crisis, industry groups were used to exchanging information with Commission officials at early stages of the legislative process, even before the publication of draft Directives. In the post-crisis regulatory environment, the financial sector had temporarily lost its privileged access to the policy making process. One industry representative complained that, apart from the Commission’s public consultation between February and April 2011, there had been no pre-legislative discussion among financial industry groups and Commission officials before the first FTT draft proposal was published in September 2011.²⁶³ In the perception of one industry representative, the Commission worked on the draft Directive “in complete isolation, not with the industry.”²⁶⁴ Another industry lobbyist reported that information exchange was difficult, with the Commission “shying away” from working with industry groups.²⁶⁵ Other commentaries from financial lobbyists confirm that despite “a lot of talk about the lobbying machine of the financial sector working its magic,” it was “difficult to have constructive discussions” with the European Commission and the European Parliament on the FTT.²⁶⁶ This interviewee stated that his association was “having a very tough time” when trying to engage in discussions with policymakers about the FTT.²⁶⁷ Financial sector participants were generally frustrated by the policy process and their inability to exert influence.²⁶⁸

In the post-crisis context, industry groups realized that their arguments seemed to matter less to policymakers. For industry lobbyists who reported having meetings with the responsible Commissioner Šemeta as well as with Commission officials, discussions “did not have a significant impact on the direction the Commission was traveling.” One disgruntled

²⁶³ Interview 57 with industry representative, London, 20 June 2013.

²⁶⁴ Interview 16 with financial industry representative, London, 18 June 2013.

²⁶⁵ Interview 57 with industry representative, London, 20 June 2013.

²⁶⁶ Interviews 47 and 70 with industry representative, Brussels, 14 May 2013; London, 20 June 2013.

²⁶⁷ Interview 94 with industry lobbyists, London, 24 June 2013.

²⁶⁸ Interview 70 with industry representative, London, 20 June 2013.

lobbyist reported that the Commission was generally “dismissive” about industry concerns.²⁶⁹ Another industry representative reported: “I know that the financial sector has spoken of its frustration that the Commission has such entrenched views. [...] To all the complaining the financial sector is doing, it is kind of irrelevant to them.” In his view the Commission proposals did not reflect any interaction with industry.²⁷⁰ This explains why industry representatives were irritated when they read the first Commission draft. Private sector lobbyists reported that they thought the Commission draft, once proposed, was “that bad, you have to restart from scratch,” that “not a single measure [was] acceptable,” that it did not “accurately reflect how the financial markets work,” and that the design of the tax was “fundamentally flawed.”²⁷¹ Taken together, then, there is good evidence that the financial industry was not able to exercise effective influence over the agenda-setting phase of the regulatory policy process.

Changes to the post-crisis financial regulatory environment also forced financial industry groups to adapt their advocacy strategies. From the beginning, financial industry groups saw their advocacy efforts directed at blocking or vetoing any legislative proposal regarding a FTT largely curtailed. This industry representative complained that financial sector groups “couldn’t do anything for political reasons,” saying that in the context of the crisis they “were not in a position to take action” to affect policy decisions.²⁷² Aware of the potentially negative consequences for their reputation, financial sector groups did, for example, employ only limited outside lobbying strategies opposing a FTT. In the context of huge bailout costs using taxpayer’s money, the financial services industry was facing serious reputational problems, and saw itself deprived of the usual lobbying repertoire, as one financial lobbyist reported: “It is very difficult for the banking sector for example to go all out and oppose a FTT when they are beneficiaries of government bailouts [...] The financial sector has found it very difficult to publicly articulate their opposition to the FTT without seeming to be just serving their own interest. [...] the financial services sector has such a bad

²⁶⁹ Interview 57 with industry representative, London, 20 June 2013.

²⁷⁰ Interview 70 with industry representative, London, 20 June 2013.

²⁷¹ Interviews 47, 57 and 70 with industry representatives, Brussels 14 May 2013; London, 20 June 2013.

²⁷² Ibid.

reputation.”²⁷³ Private sector groups also refrained from publishing position papers opposed to the FTT.²⁷⁴

These findings based on anecdotal evidence from interviews with industry lobbyists in the aftermath of the crisis are important because they suggests that the direct leverage of financial industry groups over the agenda-setting phase of the policymaking process was more constrained than in the past.

Political Opportunities: Access and Receptivity

In the context of “noisy” politics, with financial reform decisions under public scrutiny, policymakers’ reservation towards industry lobbying was accompanied by new political opportunities for diffuse interest groups, in terms of access to the policymaking process and increased receptivity to pro-reform demands. First, new access points opened up for groups representing diffuse interests to actively participate in the policy process via the “national route.” In the wake of the crisis, access to policymakers on national level who were sympathetic to the reform cause allowed advocates to press governments to champion the FTT in the Council of Ministers or the European Council. In particular, the support of the French and German governments, two key member states responsive to reform demands, created pressures to adopt EU level reform. High-level contacts with national governments were key to campaigners, as one leading advocate reported: “In the German campaign, they have some informal but high level relations with people in ministries. [...] Because we are small we don’t have the capacity to make blunt action, we have to make the action pinpoint and that depends on good intel and contacts. We have good high level contacts especially in Germany and France.”²⁷⁵ German pro-tax activists, and their organizer Jörg Alt, a Jesuit priest, gained particular access to the Christian-Democratic Party (Schulmeister 2014, 15).

Simultaneously, diffuse interest groups had access to EU level decision making via the “Brussels route” by lobbying the European Institutions. About access to the European Commission, one advocate reported that the responsible directorate-general, the Directorate General for Taxation and Customs Union (DG Taxud) was “one of the most accessible units”

²⁷³ Interview 70 with industry representative, London, 20 June 2013.

²⁷⁴ Interview 47 with industry representative, Brussels, 14 May 2013.

²⁷⁵ Interview 43 with NGO representative, London, 12 June 2013.

and that they had a dialogue she wished on other dossiers as well.²⁷⁶ The involvement of the European Parliament in the consultation procedure also opened new opportunities for influence for civil society groups. The EP, which had already demonstrated considerable sympathy to the idea of a transactions tax in 2000 following the Asian financial crisis (see Patomäki 2001, 178), provided diffuse interest groups with points of access which they used effectively to secure the adoption of a pro-reform stance. The EP demonstrated considerable sympathy with the demands of diffuse interests, especially within the relevant parliamentary committees, such as the Special Committee on the Financial, Economic and Social Crisis (CRIS) established in October 2009 which led to the first EP resolution indicating support of a FTT. Civil society groups had also been consulted by the rapporteur, Social Democrat MEP Podimata, in preparation of an “own initiative report” on innovative financing, including a proposal for an EU-wide FTT. In March 2011 the EP adopted the Podimata report favoring the introduction of an EU-wide FTT.

Finally, the move to the G20 as agenda setter for global financial reform offered another access point for diffuse interest groups. In parallel to the G20 meetings, Labour 20 and Civil 20 meetings were set up in 2010, representing the interests of workers as well as civil society at G20 level - an unprecedented move in global financial governance. At the London G20 in April 2009, a civil society delegation, including environmental groups, labor unions and NGOs, which would later mobilize as Robin Hood Tax Campaign, met with finance ministers and Treasury officials, urging them to propose a global FTT. One advocate reported about regular meetings with G20 leaders at the various summits dealing with financial market reform: “For the first time there was an L20 and the leaders of the trade union movements do what they call speed dating, groups will talk to heads of state. They were pushing the FTT in those meetings.”²⁷⁷

Increased access of nonfinancial groups to the decision making process was also accompanied by increased political receptivity of policymakers to pro-reform demands. Civil society groups advocating for a Tobin tax to curb speculation had existed for over a decade, with little or no political receptivity to their demands. Despite the considerable mobilization of pro-reform groups after the Asian financial crisis in 1997/98, interests groups were unable to gain traction. According to one organizer who had been involved in the policy debate since

²⁷⁶ Interview 17 with trade union representative, Brussels, 24 May 2013.

²⁷⁷ Interview 103 with trade union representative, London, 18 June 2013.

the 1990s, the campaign for a global Tobin tax following the Asian financial crisis hit a “brick wall.” He reported that “a lot of momentum built up, a sense that maybe something could happen here” which was “absolutely hold below the water line.”²⁷⁸ After the 2008 crisis, “high-level people in different countries were interested in what we were saying.”²⁷⁹ In the post-crisis context, political receptivity to pro-reform demands had clearly increased “compared to 2007 when we were those obscure socialist groups in Europe and people would have laughed at our prospects,” as one advocate put it.²⁸⁰ With MEPs concerned about re-election, it is little surprising that political receptivity was particularly high in the EP. In the context of the crisis it was “not popular for any political group [to be] against the FTT and defending the financial services industry,” in the words of one interviewee in Brussels.²⁸¹

Most importantly, governments displayed a clear pro-reform orientation. France and Germany were publicly supportive of a FTT. French president Nicholas Sarkozy and German chancellor Angela Merkel called for a debate on the FTT at the G20 Pittsburgh summit in September 2009. After it had become clear at the G20 meeting in Toronto in June 2010 that there would be no consensus in favor of a global FTT, France and Germany pushed even harder for an EU-wide tax. In a joint letter to the Belgian EU Presidency in July 2010, France and Germany's finance ministers, Christine Lagarde and Wolfgang Schäuble, stated their support for an EU-wide FTT, saying that the EU “shall pursue its efforts towards the setting up of such a tax that is both feasible and necessary” (EurActive 2010a). With national election looming in April 2012, the FTT presumably became “a pet project to woo voters” for French president Sarkozy (Van Vooren 2012). In Germany, the Social Democratic Party (SPD) pushed for an inclusion of the FTT in the coalition agreement with the Christian-democrats (CDU) in exchange for its support to the eurozone's fiscal compact, the new budget discipline treaty in early 2012 addressed at the Euro crisis (Financial Times 2012b).

Political receptivity towards pro-reform demands can be explained in light of increased issue salience and public pressure in favor of reform. Figure 6 provides empirical evidence for increased issue salience across different member states. By tracing the use of the word “financial transaction tax” in newspapers the increase in issues salience is clearly visible

²⁷⁸ Ibid.

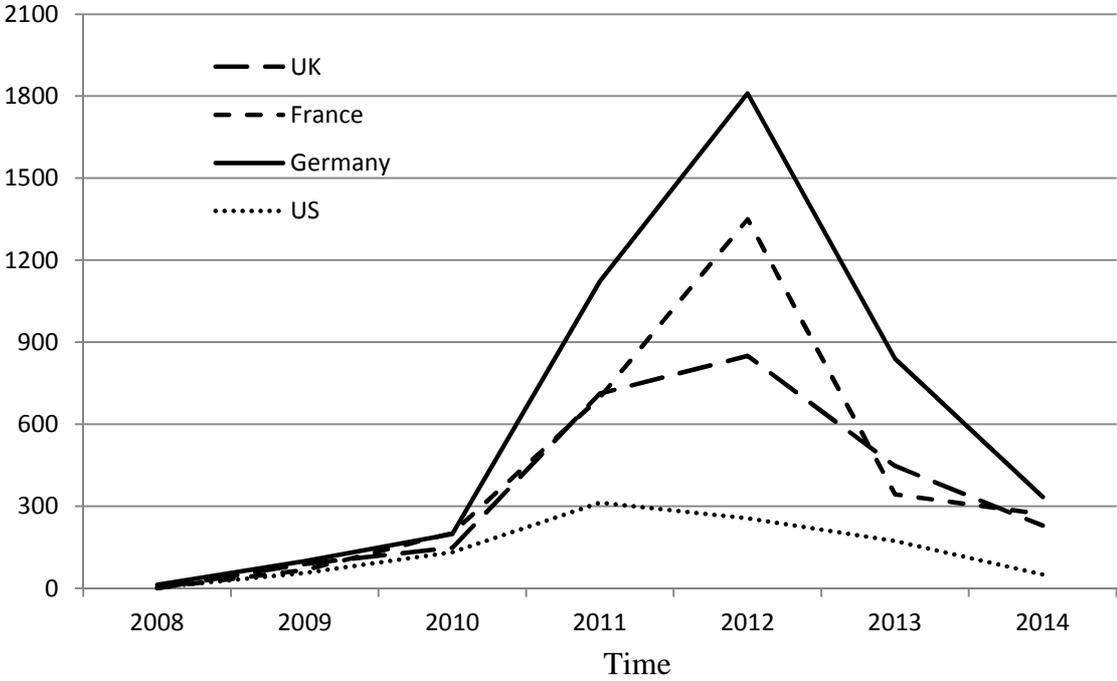
²⁷⁹ Interview 43 with NGO representative, London, 12 June 2013.

²⁸⁰ Interview 15 with NGO representative, London, 17 June 2013.

²⁸¹ Interview 29 with parliamentary staffer, Brussels, 15 May 2013.

in Germany, France and the UK. The FTT received substantial media attention, even in the UK, a country that opted out of the coalition of 11 countries proceeding with the introduction of a FTT. Media attention notably increased in 2011 with the FTT raising to the political agenda of the G20 meeting in Cannes in November that year. This was followed by a spike in attention in 2012, with the EP voting in favor of an EU-wide FTT in May 2012 and eleven member states announcing their commitment to introduce a FTT via enhanced cooperation in June 2012, after failed Council negotiations for an EU-wide solution.

Figure 6 News Coverage of the Financial Transaction Tax (Source: Factiva)²⁸²



A public opinion poll carried out by ITUC in June 2012 offers further evidence of the high salience of the FTT debate in Europe. Only 12 per cent of respondents in France indicated that they had never heard of a tax on financial transactions. About 30 per cent of respondents in Belgium, Greece and Germany, and 37 per cent of respondents in the UK answered that they were not familiar with the idea (International Trade Union Confederation

²⁸² Notes: Articles containing the search term “financial transaction tax” in British as well as US newspapers, “taxe sur les transactions financières” in the French language press and “Finanztransaktionssteuer” in the German language press, which refer to the relevant groupings of major publications proposed by Factiva (incl. The Financial Times, The Guardian, The Economist, CNN, The New York Times, Washington Post, Le Monde, Le Figaro, Agence France Presse, Frankfurter Allgemeine Zeitung, Süddeutsche Zeitung, Reuters, Spiegel Online).

2012). The vast majority of respondents in EU countries, therefore, were able to take a position on a rather opaque financial regulatory issue. Early on, polling data found indications of widespread public support. In October 2010, a European Parliament Eurobarometer survey with 1.000 respondents found that 47 per cent of Europeans supported a banking tax or a tax on financial transactions. Only 32 per cent were opposed and another 21 per cent answered ‘don’t know’ to the question whether they support a banking tax or a tax on financial transactions (Directorate General for Communication 2010). Remarks by Commissioner Šemeta in a speech in October 2010 also testify to the increased issue salience of the topic: “In recent months, there has been very wide public debate on this issue. Many different opinions have been voiced on whether and how to introduce a new bank tax, and indeed it is a subject that attracts a lot of popular attention” (Šemeta 2010). In a second Eurobarometer poll from 2011, when asked whether they are in favor of the principle of a taxation tax, a majority 61 per cent of the respondents (with some variation among member states) answered that they supported the principle of a FTT. A staggering 81 per cent of the respondents supported the idea of introducing such a tax in the EU, if international agreement cannot be reached (European Parliament 2011a).

To sum up, the crisis had at least partly redistributed political leverage from financial to diffuse interest groups. Qualitative changes in the post-crisis institutional context allowed increased access of diffuse interest groups advocating for reform. This shift was accompanied by increased overall political receptivity for pro-reform demands in the context of heightened public attention. With the FTT becoming a high-profile issue in regulatory reform debates, and media coverage increasing, voters started to pay attention to the issue and electoral considerations became important to policymakers. The next section will discuss how these opened-up political opportunity structures incentivized the formation of collective action among pro-reform interest groups.

Mobilization of Diffuse Interests

The context of the financial crisis and notably the political opportunity structures it opened up was an important trigger for interest group mobilization beyond financial industry groups. As one advocate put it, “the FTT is a brilliant case of trade unions and civil society

coming together and pushing for the same thing.”²⁸³ In the perception of another advocate, “cooperation [among NGOs and trade unions] has rarely been as smooth as in this case.”²⁸⁴ As such, the crisis turned out to be a major catalyst for the mobilization of diffuse interests groups and the formation of new transnational alliances among trade unions, NGOs, and grass-roots groups pushing for a FTT.

The mobilization of diffuse interest groups into an efficient network of closely coordinated national and European-level campaign groups was facilitated by pre-existing campaigns. Core ideas related to a Tobin tax had been developed before the 2008 crisis by a number of economists and campaign groups who then played an important role as advocates for reform when the crisis hit. The crisis spurred renewed collective action among pre-existing advocacy groups and brought the FTT back to the top of the agenda for those groups who had made the FTT one advocacy goal among others. European civil society groups “revitalised and expanded the old network” (Wahl 2014, 4). The idea of a Tobin tax had first been put on the international agenda by the United Nations Development Programme (UNDP) in 1996 as an instrument for innovative financing for development. A first transnational political movement taking up the idea of a Tobin tax as part of a new global financial architecture emerged after the Asian financial crisis in 1997/98, notably with the creation of ATTAC, Association pour une Taxe sur les Transactions financières pour l’Aide aux Citoyens (Association for the Taxation of Financial Transactions for the Benefit of the Citizens) in Paris (Patomäki 2001; Wahl 2014). Dozens of other organizations have since included the Tobin tax into their reform demands, including development NGOs, such as the UK-based War on Want campaign against poverty which in 2002 turned into the Tobin Tax Network and in 2005 into Stamp Out Poverty. In subsequent years, the institutional framework of the “Leading Group on Innovating Financing for Development,” which brings civil society representatives and international organizations together, provided a platform to continue discussions on financial transaction taxes.²⁸⁵

What is important here is that when the financial crisis hit in 2008, European groups lobbying for a “Tobin tax” had a long history of campaigning that they could build on, as one advocate put it, “[...] because we had done a lot of the work, we weren’t starting from

²⁸³ Interview 17 with trade union representative, Brussels, 24 May 2013.

²⁸⁴ Interview 11 with trade union representative, Brussels, 10 April 2013.

²⁸⁵ Interview 43 with NGO representative, London, 12 June 2013.

scratch. We actually knew how to take advantage of that particular situation.”²⁸⁶ By the end of 2009, beginning of 2010, proponents of the FTT had their common position and arguments in favour of a tax as well as counter-arguments to industry objections clearly laid out in a paper produced by NGOs that had been involved in discussions surrounding a Tobin tax for more than a decade, including the Halifax Initiative, a Canadian coalition of NGOs, ATTAC and the faith-based network Cidse.²⁸⁷

According to interviews with advocates, renewed broad pro-reform coalitions were made possible by a wide-spread perception among interest groups of a policy window for pro-reform demands. In the words of one NGO representative: “This wasn’t something were there was policy space until the financial crisis happened [...]. Since the end of 2008 and the financial crisis, a political space had opened up that was questioning the role of the banks and how they had been operating and looking both at reregulation of the sector and potentially greater taxation of the sector.”²⁸⁸ Another advocate reported that “with the crisis, the tide had turned and all of a sudden the FTT was part of political debates.”²⁸⁹ Pro-reform groups were keen to take advantage of the policy window the crisis had opened, as this interviewee put it, “when the campaign started, it was pure political opportunity; it could benefit from a very popular wave; there was political space to exploit and that is what NGOs did [...]. There was a real boulevard, from a political point of view, to exploit.”²⁹⁰

Groups pulled together common organizational resources. In a first step, groups established a loose European level network among themselves to coordinate campaign strategies. In January 2009, several NGOs including the European ATTAC groups, Friends of the Earth and the Seattle to Brussels Network organized a first “network meeting” among European civil society actors in Paris to organize a campaign for comprehensive financial reform and decreasing the influence of financial institutions. A network of sub-groups emerged which decided to start campaigning for the introduction of a FTT at EU level. As a first common action, groups set up the campaign website “Make Finance Work.” Table 12

²⁸⁶ Interview 43 with NGO representative, London, 12 June 2013.

²⁸⁷ Unofficial, non-public document provided by interviewee, Brussels.

²⁸⁸ Interview 43 with NGO representative, London, 12 June 2013.

²⁸⁹ Interview 99 with NGO representative, 29 February 2013.

²⁹⁰ Interview 73 with NGO representative, Paris, 14 November 2012.

gives an overview of the main national and EU level civil society coalitions advocating for a FTT.

Table 12 Main National and EU level Civil Society Coalitions Advocating for a FTT

<i>Name</i>	<i>Founded</i>	<i>N° of members</i>	<i>Leading member organizations</i>
Steuer gegen Armut (Germany)	2009	98 organizations	WEED, DGB
Steuer gegen Armut (Austria)	2009	--	ATTAC Austria
ZeroZeroCinque (Italy)	2009	50 organizations	ATTAC Italy, Action Aid
La Tasa Robin Hood (Spain)	2009	--	Oxfam
Make Finance Work (EU)	2009	--	ATTAC Austria
Robin Hood Tax Campaign (UK)	2010	125 organizations	Stamp Out Poverty, Oxfam, TUC, Comic Relief
Don't Let the Big Fortunes Escape (Belgium)	2010	30 organizations	Le Réseau pour la Justice Fiscale (RJF), ATTAC Wallonie-Bruxelles
Robin Hood Tax Campaign (Netherlands)	2011	--	Oxfam Novid
FTT campaign (France)	2011	21 organization	ATTAC France, Oxfam, Coalition Plus, CGT

Source: Assembled by the author

Following the creation of the European network, groups started to organize national-level campaigns, launching their own campaign websites by the end of 2009, such as the Italian “ZeroZeroCinque” campaign comprising 50 different civil society organizations or the German “Steuer gegen Armut” (“Tax against poverty”) campaign including 98 labor groups, NGOs and faith-based organizations. In France, the “Taxe sur les transactions financières” campaign led by ATTAC also stepped up its advocacy efforts. In the UK, the “Robin Hood Tax Campaign” was officially launched in February 2010, bringing together about 125

organizations, including labor unions, development NGOs, faith-based organizations and AIDS advocates. First meetings among key organizations forging the coalition including Stamp Out Poverty and Oxfam, two UK-based development NGOs and the Trade Union Confederation (TUC) started to take place in November 2009.²⁹¹ Follow-up meetings among NGOs took place to further coordinate national campaign actions at European level.²⁹² Weekly steering group meetings and videoconferences started to take place to coordinate national and European campaign efforts.²⁹³ The conferences bringing together the European groups were also echoed on the international level with regular calls organized by the Washington-based Institute for Policy Studies, bringing organizations worldwide together to push for a global FTT at the G20 summits.²⁹⁴ International meetings were convened twice per year. The campaign groups also prepared briefings for journalists, especially at important meetings such as French-German Summits.²⁹⁵

Pro-reform groups played an important role in transmitting the public opinion to decision-makers, adopting campaigning methods designed to demonstrate that their policy demands have broad popular support. Groups launched, for example, an online petition targeting the European Commission. In response to the Commission's public consultation on taxation of the financial sector launched by the Commission in February 2011, citizens could sign up for an online petition supporting a FTT which was sent directly as a citizen response to the Commission. According to organizers, 400,000 emails had been sent to Commissioner Šemeta, Commission President Barroso and the national Commissioner requesting the introduction of a FTT.²⁹⁶ In its summary report of the consultation, the Commission noted that they had received "a very large number of petitions," with citizens being "generally in favor of a broad-based FTT" (European Commission 2011c). The pro-reform coalition organized another successful online petition targeting MEPs urging them to vote in favor of a report on a common financial transaction tax system, including a FTT, prepared by rapporteur socialist MEP Podimata. A proposal for an EU level FTT had been deleted from the report following a

²⁹¹ Interviews 43 and 103 with civil society representatives, London, 12 and 18 June 2013.

²⁹² Interview 99 with NGO representative, 29 February 2013.

²⁹³ Interview 43 with NGO representative, London, 12 June 2013.

²⁹⁴ Interview 99 with NGO representative, 29 February 2013.

²⁹⁵ Interview 73 with NGO representative, Paris, 14 November 2012.

²⁹⁶ The petition could be accessed online at Europeansforfinancialreform.org

close ECON committee vote on the report with opposition to the proposed FTT coming from liberal and conservative MEPs. Following the ECON vote, the petition launched by pro-reform groups gathered several hundred thousand signatures within a week. In plenary in March 2011, although Liberals and Conservatives were much less enthusiastic about the proposed FTT than Greens and Social Democrats, a large majority of parliamentarians across national and party lines voted in favor of the Podimata report including an EU-wide tax on financial transactions. Finally, advocates launched a third online petition targeted at member states' governments, ahead of a European Council meeting in June 2011. Again, hundreds of thousands of petitions were sent to decision-makers sending a clear signal for reform. Action at European level was also complemented with actions on national levels. In November 2009 the German campaign, for example, gave a petition that gathered 66.000 signatures within six weeks to parliamentarians in the German Bundestag which was followed by a hearing in the petition committee.²⁹⁷ Between 2010 and 2012, members of the campaign were invited to give testimony on the FTT in front of four different expert hearings of the Bundestag. The role as transmitter of public pressure was also strategically employed by pro-reform groups in the lobbying efforts. After meeting Commissioner Šemeta in April 2012, a statement by the Robin Hood Tax Campaign, reads: "This week EC Tax Commissioner, Algirdas Šemeta, received a civil society delegation representing FTT campaigns from France, Germany, Italy, Spain, Austria, Belgium, Denmark and the UK, as well as representation from the trade unions and green groups. [...] The delegation sent him a clear message that many millions of European citizens are now behind a Robin Hood Tax" (Stamp Out Poverty Campaign 2012). Industry representatives testified in interviews that civil society efforts to mobilize public support were quite successful in the policy debate. According to one industry lobbyist, pro-reform advocates "substantially influenced" the positions of the MEPs and the final report on innovative financing at a global and European level.²⁹⁸ According to another lobbyist from the financial industry side, civil society groups played an important part in the debate.²⁹⁹

Public opinion clearly mattered in the regulatory process. Campaign websites set-up by pro-reform groups aimed at mobilizing a broader public, by providing comprehensible summaries of transaction tax debate and catchy slogans, such as, for example, on the website

²⁹⁷ Interview 99 with NGO representative, 29 February 2013.

²⁹⁸ Interview 109 with industry representative, 14 May 2013.

²⁹⁹ Interview 112 with industry representative, Brussels, 21 May 2013.

of the UK campaign: *In a nutshell, the big idea behind the Robin Hood Tax is to generate billions of pounds – hopefully even hundreds of billions of pounds. That money will fight poverty in the UK and overseas. It will tackle climate change. And it will come from fairer taxation of the financial sector.* Groups also referred to public opinion in their submissions to the Commission’s public consultation on taxation in February 2011. Oxfam wrote: “Taxing the financial sector is highly popular. A You Gov poll commissioned by Oxfam and carried out in six European Countries found that the majority of people in the UK, Germany, France, Spain and Italy support a financial transaction tax. And on average more than 80 % of citizens in the Netherlands, UK, Germany, France, Spain and Italy believe banks, hedge funds and other financial institutions have a responsibility to repair the damage caused by the economic crisis they helped to cause.”³⁰⁰

Decision-makers explicitly referred to public pressure when explaining their decision to implement a FTT. Commissioner Šemeta, for example, referred to overwhelming public support for the legislative proposal in a speech in front of the plenary of the EP: “Europe needs to reconnect with its citizens. And the FTT is prime example of a project which can help to achieve this. 64 per cent of EU citizens support the FTT, according to the latest Eurobarometer survey. This is a highly popular initiative, which Europeans believe in [...]. The broad based FTT is the one that [...] many stakeholders and citizens want” (Šemeta 2014). Interviewees supporting the tax linked the success of the campaign to widespread public support, saying that campaign actions mattered most when they reflected favorable public opinion.³⁰¹ Pro-reform advocates reported that policymakers “value when we do involve European citizens [...]. Anything that shows the popularity of the idea strengthens their case.”³⁰² Proponents of the tax also explained the political success of the idea in the EP with reference to public support: “MEPs reacted pretty quickly to the ground swell of support in their constituencies. Citizens across Europe are in favor of a FTT, it is popular with the voters.”³⁰³ Another campaigner made the same argument, explaining Commissioner Šemeta’s

³⁰⁰ Oxfam submission to Commission public consultation on taxation of the financial sector, European Commission, DGTaxud, February 2011.

³⁰¹ Interview 17 with trade union representative, Brussels, 24 May 2013.

³⁰² Interview 43 with NGO representative, London, 12 June 2013.

³⁰³ Interview 17 with trade union representative, Brussels, 24 May 2013.

support of the tax as “partly due to public pressure.”³⁰⁴ This proponent of the tax simply said: “We have the public opinion.”³⁰⁵

Similarly, interviewees from the financial services industry opposed to the introduction of the tax explained their inability to prevent regulatory reform by referring to “the weight of public opinion.” One industry attributed pro-reform campaigns “significant impact,” because “they have been very effective in engaging public support.”³⁰⁶ In the eyes of one interviewee, “NGOs and the mobilization of citizens [were] far better placed than any industry body” in the political debate.³⁰⁷ Another financial industry lobbyist clearly linked political reform efforts to public opinion, saying that “pretending to introduce a tax to regulate is an argument which uses the fact that there is a political opinion shared by citizens that banks are bad and not managing rightly.”³⁰⁸ Private sector groups felt that adverse public opinion put them at a disadvantage in reform discussions, as one interviewee put it, “quite a lot of the public debate hasn’t happened in the way I think it would have been useful to happen [...] because the financial services sector [...] is so tainted by the financial crisis.”³⁰⁹

To sum up: As predicted, the active involvement of pro-reform groups was spurred by the financial crisis and based on the perception of a “window of opportunity” for reform. The organization as broad-based pro-reform coalition, incentivized by the opened-up political opportunity structure, allowed diffuse interests to weigh in on reform decisions. Newly mobilized groups were particularly influential because they turned into key actors transmitting public opinion to decision-makers. As expected, diffuse interest groups acted as a transmitter of public opinion, putting increasing pressure on policymakers to actively pursue regulatory change, even counter the interests of the more powerful financial lobby. The next section will focus on the role of government allies in insider-outsider coalitions among groups and legislators to bring about actual reform change.

³⁰⁴ Interview 103 with trade union representative, London, 18 June 2013.

³⁰⁵ Interview 32 with NGO representative, Brussels, 1 June 2011.

³⁰⁶ Interview 70 with industry representative, London, 20 June 2013.

³⁰⁷ Interview 94 with industry lobbyists, London, 24 June 2013.

³⁰⁸ Interview 47 with industry representative, Brussels, 14 May 2013.

³⁰⁹ Interview 70 with industry representative, London, 20 June 2013.

Government Allies

The EP and the European Commission became important governmental allies to pro-reform groups in pushing for a FTT. In light of the electoral popularity of the FTT, it is little surprising that the EP acted as a real champion of reform, voicing the concerns of European citizens. Although the Parliament's role regarding the FTT was a merely consultative, it was clear to pro-reform advocates that large cross-party majority among MEPs in favor of a transaction tax would send a clear signal of political support for policy change to the Council and the Commission.³¹⁰ The case of the FTT is characterized by an insider-outsider coalition. Early on, members of the Party of European Socialists and the European Green Party became active governmental allies, defending diffuse interests on the political stage. Although close ties among groups and parties, notably between the European ATTAC movement and the Green Party, existed, group-legislator relationships were formalized after the financial crisis. Under the official framework of a pro-reform coalition dubbed "Europeans for Financial Reform" (EFFR), interests groups on the outside worked together with policymakers at the inside pushing for the same policy solution. In early 2009, the European Socialist Party together with the Green party organized a coalition of pro-reform groups, mainly in tandem with trade unions. The coalition, bringing together the socialist and green party in the EP with trade unions and development NGOs, was organized by the President of the Party of European Socialists, Poul Nyrup Rasmussen, modeling the coalition after the "Americans For Financial Reform" initiative. By setting up the EFFR coalition, the Party of European Socialists had actively pursued the objective to "work and network with partners from civil society" in order to empower civil society lobbying in the field of financial regulation usually dominated by financial sector groups. According to participants, the existing cooperation among the S&D group and labor unions was formalized, so that for the first time an insider-outsider coalition emerged.³¹¹ Within the formalized EFFR coalition, 23 groups, including the trade union movement, represented by the European Trade Union Confederation (ETUC), as well as national level unions, such as the German DGB and the British Trade Union Confederation (TUC), were able to take part in monthly meetings with MEPs. Table 13 gives an overview of the main interest groups involved in the EFFR coalition.

³¹⁰ Interview 21 with Commission official, Brussels, 12 May 2013.

³¹¹ Interview 32 with NGO representative, Brussels, 1 June 2011.

Table 13 Participants in the “Europeans For Financial Reform” Coalition

<i>Name</i>	<i>Founded</i>	<i>N° of members</i>	<i>Type of organization</i>
Party of European Socialist	1973	32 member parties	European political party
The Greens	2004	16 member parties	European political party
Global Progressive Forum (GPF)	2001	5 partners	NGO
Foundation for European Progressive Studies (FEPS)	2004	50 foundations & think tanks	Social democratic think tank
European Trade Union Confederation (ETUC)	1973	83 trade unions	Independent nonprofit EU consumer organization
Solidar	1948	56 member organizations	European network of NGOs
Austrian Trade Union Federation (ÖGB)	1945	1.333.421	Trade union
Confederation of German Trade Unions (DGB)	1949	6 million	Trade union
IG Metall	1891	2.4 million members	Metalworkers’ union
TUC British Trade Union	1868	6.5 million	Trade union
UNI global union	2000	20 million	Global union federation

Source: Assembled by the author

Overall, the campaign run by pro-reform advocates and parliamentarians pushing for the same policy objective was closely coordinated. For EFFR a new position of a “Project Officer for Financial Reform” in Brussels to coordinate the meetings was created. With preferences largely aligned, for advocates, the cooperation with MEPs across party lines was “positive, without any reservations”.³¹² According to one trade union representative, the EP

³¹² Interview 11 with trade union representative, Brussels, 10 April 2013.

was a “good ally” and pro-reform advocates “were in safe hands in the EP.”³¹³ Individual MEPs also became important allies to pro-reform groups, such as Social Democrat MEP Podimata, who prepared a report on a common financial transaction tax system as the rapporteur for the S&D group. This provided another important access point for the diffuse interest groups. In March 2011, the EP adopted the Podimata report favoring the introduction of an EU-wide tax on financial transactions. Sven Giegold, a German MEP and spokesperson of the Green Party on finance and economy, was another ally, actively promoting pro-reform demands in the ECON Committee of the European Parliament. As co-founder of the German ATTAC as well as member of the Tax Justice Network, the Green MEP has been supportive of Tobin tax for over a decade.³¹⁴

In early 2010, the EFFF coalition officially launched its campaign “A Financial Transactions Tax, Now.” A campaign website was set up, summarizing the main arguments in favor of a FTT. The pro-reform groups framed the case for introducing a FTT not only in terms of curbing high-risk speculative activities but also as a means of enhancing fairness by increasing government revenue to support long-term public investment. For pro-reform advocates, the FTT was one of the answers to the financial crisis and for the banking sector to make a useful contribution.³¹⁵ In January 2011, grass-roots groups advocating for a FTT, including the UK Robin Hood Tax Campaign, the German Tax against Poverty and ATTAC entered into an informal alliance with the EFFF coalition.³¹⁶ Meetings as well as monthly teleconferences started to take place among national grass-roots campaigns and the EFFF coalition to synchronize reform tactics, coordinate the campaigns and agree on common advocacy strategies.³¹⁷ One example of successful cooperation among the advocacy coalition was the coordinated response by civil society organizations to the Commission’s public consultation on taxation of the financial sector launched in February 2011. The Make Finance Work network, the Robin Hood Tax Campaign and the EFFF coalition closely coordinated their replies to the Commission’s consultation, providing all member organizations with a common template. Answers to the consultation questionnaire were drafted in cooperation with

³¹³ Interview 17 with trade union representative, Brussels, 24 May 2013.

³¹⁴ Interview 88 with NGO representative, Brussels, 26 May 2013.

³¹⁵ Interview 17 with trade union representative, Brussels, 24 May 2013.

³¹⁶ Interview 99 with NGO representative, 29 February 2013.

³¹⁷ Interview 18 with NGO representative 18, Paris, 11 July 2011.

leading academics (e.g. economist Stephan Schulmeister at the Austrian Institute of Economic Research) sending a clear message to the Commission, that a FTT should be introduced at EU level.³¹⁸ Non-financial groups had significantly increased their mobilization in the regulatory debate with NGO, trade unions and research institutes submitting even more replies to the Commission's public consultation than financial sector groups (European Commission 2011c).

Pro-reform groups not only found important governmental allies among MEPs, but also among high-level Commission officials. After mounting political support for a FTT from eleven member states, including Germany and France, as well as overwhelming majority in the EP, the Commission jumped on the reform bandwagon and became an important political ally for diffuse interest groups starting to actively promote a FTT in 2011. In June 2011, Commission President Barroso publicly supported an EU-wide FTT (European Voice 2011). Lobbying activity was mainly focused on DG Taxud. Civil society representatives reported that they had meetings on a regular basis with the cabinet, or the team of personal advisors to the Commissioner, discussing questions of technical feasibility of the tax, the tax rate, the tax base as well as the principle of residence and ownership.³¹⁹ Numerous meetings among cabinet-level Commission officials of DG Taxud and pro-reform advocates, including TUC, Oxfam and Stamp out Poverty took place "with very frank discussions and exchange of technical details of the proposal," in the perception of one of the participating interest group representatives.³²⁰ Before and after the Commission issued its draft Directives, formal as well as informal meetings took place among advocacy groups and the Commissioner for Taxation and Customs Union, Algirdas Šemeta, personally.³²¹

Several comments from pro-reform advocates and Commission officials illustrate the coordination among interest groups and DG Taxud, regarding the proposed FTT. One advocate gave this explanation of the degree of cooperation and teamwork among pro-reform interest groups and Commission officials: "We know the [EU Commission's] Director [for indirect taxation] and the Head of Unit. I met with them [...] about two months ago. I had colleagues who were in a meeting with DG Taxud yesterday. I will probably have a meeting

³¹⁸ Interviews 32 and 88 with NGO representatives, Brussels, 1 June 2011 and 16 May 2013.

³¹⁹ Interview 68 with NGO representative, Washington DC, 13 September 2013.

³²⁰ Interview 17 with trade union representative, Brussels, 24 May 2013.

³²¹ Interviews 43 and 68 with NGO representatives, London, 12 June 2013; Washington DC, 12 September 2013.

with their communications people next week, so that we can talk through common messages and work together because, basically at this point in time, it is good to look at each other's messages because we are being hit by the same questions. So why shouldn't we be working together? We have built up a good relationship.”³²²

Another pro-reform advocate described the relation with the Commission as mutual exchange and teamwork pushing for the same policy solution: “Basically we have a common objective here. It is about understanding where they think the problems are and for us as civil society to be able to make interventions either through some degree of high level contact or through grassroots [...]. It is our intention with the campaign to strengthen this relationship [...] to be able to give things back and forth [...]. We need the intel from them and they can sometimes value our expertise.”³²³ One advocate active on the FTT noted the degree of agreement among Commission officials and campaigners, working hand in hand to promote their shared policy goal: “We worked quite close with them [Commission officials] in terms of edging the Robin Hood Tax argument. There was a good working relationship among NGOs and the Commission. [...] Some speeches by Šemeta we could have written ourselves.”³²⁴ In April 2012, Stamp Out Poverty, one of the leading advocacy groups, published on its website the following statement about a meeting with the Commissioner to display the degree of support the civil society campaign received from the Commission: “The meeting was informative about next steps and it was held in good spirit. We gave the Commissioner a Robin Hood Tax badge as we were leaving, which he was happy to wear for a photograph” (Stamp Out Poverty Campaign 2012).

Pro-reform groups in turn were eager to gain the Commission's recognition by deploying technical advice to become an accepted interlocutor. One campaign leader reported: “By talking to us [Commission officials] realized that we were not ignorant on the subject because we spent a lot of time researching it and developing ‘myth-busting’ briefings, countering every single argument from the financial lobby and we called upon our own experts to get into the ‘nitty-gritty’ of the proposal. So [Commission officials] would see, they are not dealing with immatures campaigning for a good idea, very naively.”³²⁵ On the other

³²² Interview 43 with NGO representative, London, 12 June 2013.

³²³ Interview 43 with NGO representative, London, 12 June 2013.

³²⁴ Interview 68 with NGO representative, Washington DC, 13 September 2013.

³²⁵ Interview 17 with trade union representative, Brussels, 24 May 2013.

side, one Commission official confirmed how helpful the cooperation with interest group allies was during the legislative process in framing technical arguments to counter the opposition from financial services groups: “Some of those [nonfinancial groups] had gone one step further, not only requesting the introduction of a Tobin Tax to fight poverty in the world but also investing into technical feasibility, how such a tax could be designed. How can you best respond to critique coming from the banking lobby? Interest groups tried to provide assistance to the Commission [...] which was sometimes quite helpful.”³²⁶

Pro-reform advocates were important partners in providing necessary technical expertise to counter arguments against economically harmful effects of the proposed FTT to both the EP and the European Commission. While exchanges with the Commissioner were highly political, technical policy debates took place among advocates and Commission officials at officer level.³²⁷ This gave pro-reform groups opportunities to press for their policy demands being considered in the impact assessments and draft Directives. To acquire the necessary technical know-how, campaign groups closely cooperated with development economists, such as Columbia professor Stephanie Griffith-Jones and Stephan Schulmeister at the Austrian Institute for Economic Research. Also former financial industry employees or “City insiders” such as Avinash Persaud of Intelligence Capital and Sony Kapoor of Re-Define became part of the civil society network.³²⁸

One example of a technical input from campaign groups included in the Commission’s impact assessment concerns the potential effects of the FTT on economic growth. A first impact assessment presented by the Commission in September 2011 estimated that a FTT would lead to negative effects on GDP (European Commission 2011d). The impact assessment’s conclusion was then repeatedly cited in position papers by financial industry associations opposing the measure (Financial Times 2012; Alternative Investment Management Association 2012). In cooperation with experts, civil society activists provided the necessary technical expertise to the EP and the Commission to make an important counter-argument shedding doubt on the initial calculations. In a report prepared for the Robin Hood Tax campaign, two experts, Griffith-Jones and Persaud, could show that the model used by the Commission to measure effects of a FTT on the level of GDP had been

³²⁶ Interview 21 with Commission official, Brussels, 12 May 2013.

³²⁷ Interview 88 with NGO representative, Brussels, 26 May 2013.

³²⁸ Interview 43 with NGO representative, London, 12 June 2013.

recently updated and would lead to a far more positive estimate in its updated version (Griffith-Jones and Persaud 2012). In February 2012, the two experts gave testimony in front of the European parliament's ECON Committee hearing, opposing the calculations in the impact assessment. Echoing their report, they argued that the overall impact of a FTT would be positive, leading to a 0.25 per cent increase in GDP and not, as argued by the Commission's impact assessment to a long run loss of GDP of -0.53 per cent (Economic and Monetary Affairs Committee 2012). Advocacy groups also arranged meetings among Commission officials and the tax experts, who laid out economic arguments in favor of a transactions tax as well as technical details of its feasibility.³²⁹ In a second impact assessment presented in February 2013, the Commission eventually changed its calculations and rephrased its conclusions, saying that depending on the simulation, in case a FTT was used for productive public investment, it might show a positive impact on GDP (European Commission 2013a).

A second example surrounding the debate of the issuance principle illustrates how pro-reform groups successfully included technical amendments in the Commission's second draft Directive by lobbying member states and EP. According to one Commission official, the Commission adopted the issuance principle in its second draft Directive in February 2013 after the EP had included an amendment in its opinion in May 2012, suggesting to complement the residence principle with the issuance principle (European Parliament 2012). He clearly linked the Parliament's adoption to civil society input.³³⁰ Campaign leaders reported that a range of face-to-face meetings with Commission officials and MEPs took place between May and December 2012, with groups pushing for the inclusion of the issuance principle. In parallel to their lobbying efforts at EU level, pro-reform advocates also addressed the member state governments and national level tax officials, notably in France and Germany.³³¹

To sum up: policymakers in tandem with newly mobilized non-financial interest groups formed a broad-based pro-reform coalition as countervailing force to industry interests. Commission and EP became important governmental allies to diffuse interest

³²⁹ Interviews 43 and 99 with NGO representatives, London 12 June 2013; 19 February 2013.

³³⁰ Interview 21 with Commission official, 24 May 2013.

³³¹ Interviews 103 and 58 with civil society representatives, London, 18 June 2013 and interview with national level campaigner conducted via Skype, 22 April 2013.

groups, pushing for the same policy solution. Advocates favoring a broad-based FTT closely cooperated with MEPs as well as with Commission officials, in “insider-outsider” coalitions, trying to find arguments against industry objections referring to technical feasibility as well as economic desirability. Advocates found strong governmental allies in MEPs, notably in the S&D and Greens Party who promoted the proposal of a FTT in the ECON Committee and before plenary votes. Although the EP’s opinion has no legally-binding character regarding the FTT, its support sent a clear political signal to Commission and Council. In addition, pro-reform advocates had well-established working relations with Commission officials and the Commissioner responsible for taxation. The coalition of pro-reform advocates was an important partner in deploying necessary technical expertise to decision makers at an early stage of the policy formation.

While this causal explanation tried answer the question why financial industry groups, despite their unified position against regulatory change, could not prevent the decision to introduce a FTT by eleven member states, the next section will try to shed some light on changing reform dynamics during the policy formulation phase, which led to a considerable watering-down of proposed legislation.

Changed Contextual Conditions: Low-salience Politics

When legislative debate moved to the policy formulation stage, salience slowly faded away with the FTT making the headlines less and less often. The decline in issue salience is again visible in Figure 6 (p. 179) Political receptivity towards pro-reform demands can be explained in light of increased issue salience and public pressure in favor of reform. Figure 6 provides empirical evidence for increased issue salience across different member states. By tracing the use of the word “financial transaction tax” in newspapers the increase in issues salience is clearly visible in Germany, France and the UK. The FTT received substantial media attention, even in the UK, a country that opted out of the coalition of 11 countries proceeding with the introduction of a FTT. Media attention notably increased in 2011 with the FTT raising to the political agenda of the G20 meeting in Cannes in November that year. This was followed by a spike in attention in 2012, with the EP voting in favor of an EU-wide FTT in May 2012 and eleven member states announcing their commitment to introduce a FTT via enhanced cooperation in June 2012, after failed Council negotiations for an EU-wide solution.

Figure . An upsurge in interest in the issue in 2012, when eleven member states signaled their willingness to proceed with the introduction of an FTT by enhanced cooperation, was followed by a steady decline in press coverage throughout 2013, until reaching by mid-2014 the lowest level of attention since the start of reform debates in 2009. The drop in public attention parallels the move of legislative debates from the top of policy agendas to working group meetings. Shortly after the Commission had presented a second draft Directive for enhanced cooperation in February 2013, negotiations moved to the Commission's indirect taxation working party. These working party meetings (among all 27 member states) were characterized by a noticeable "quietening" of regulatory debates with much less public scrutiny. In addition, negotiations started to take place in unofficial meetings among participating member states prior to the formal working party meetings. Discussions about proposed legislation were thereby narrowed down from a broader public debate to a limited circle of participants and non-official working party papers. It is also indicative of fading salience of the policy issue that in June 2013 the FTT was not included on the agenda of the ECOFIN Council, nor the EU's Summit. Reform discussions in informal meetings resulted in a perceived lack of transparency in the decision-making process. Non-participating member states criticized the negotiations as "closed process," "a political deal negotiated largely in secret" (Financial Times 2014b). In June 2012, Green MEP and supporter of the FTT Lamberts expressed his frustration about the policy process: "[I]t has become clear that the proposal for the tax, presented by the European Commission in February, is being torn apart by governments with close relationships to the financial lobbies. Since they [governments] are acting behind closed doors, in ambassadors' meetings, in central bankers' gatherings, beyond public pressure and democratic accountability, they feel free to destroy the Commission's ambitious proposals" (Lamberts 2013).

When debates moved from high issue salience to lower issue salience and from broad democratic debate toward special interest bargaining, new possibilities opened up for exemption, delay and modification beneficial to industry interests. It is therefore little surprising that financial industry groups started to step up their lobbying efforts directed at member states negotiations in the Council. According to one industry representative: "We haven't even tried to contact the Commission on this. Parliament is an area where we might be lobbying more but we haven't done anything. We believe that it is really the governments

that are going to decide and primarily the French and German governments.”³³² Up until the decision to proceed via enhanced cooperation at the beginning of 2013, the likelihood of legislative success of an EU-wide FTT seemed too remote to industry groups to actively engage in counter-lobbying. Industry groups had therefore limited their lobbying efforts to stating their opposition to a FTT in the public consultation without investing resources into organizing concerted advocacy campaigns trying to block legislation. One interviewee reported that industry lobbyists conceded that they did not take the proposed FTT seriously, thinking that “anything in the European context could always be blocked by the UK” without realizing “that in fact, [enhanced cooperation] was a way around it.”³³³ Similarly, industry lobbyists interviewed for this project reported that they did not actively lobby against proposed legislation in the early phases of the legislative process, when the Commission presented a draft Directive for an EU-wide FTT in September 2011.³³⁴ For banking lobbyists the possibility that the EU would agree on a FTT seemed far from imaginable. With the second Commission proposal in February 2013 eleven member states signalled their willingness to proceed with a FTT and the chances of legislative success of a FTT greatly improved. Industry groups subsequently changed their lobbying strategy and started to actively push back, launching “a concerted and broad attack” against the FTT from March to June 2013 (Persaud 2013).

Financial industry groups employed four different lobbying strategies, mainly addressed at the participating member states. First, industry groups started a massive outside lobbying campaign. One effect of increased salience and actor plurality was that opponents of a FTT had been rather reticent in making a public case outright opposing a FTT in the early phases of the policy process and the memory of the financial crisis still fresh. After the second Commission proposal and under conditions of more quiet politics, financial industry groups changed their lobbying strategy. In early 2013, banks (Goldman Sachs, Deutsche Bank, Citigroup, Morgan Stanley) and their lobbying associations (International Banking Federation IBF, European Fund and Asset Management Association EFAMA) published a range of research reports presenting empirical evidence against a FTT. In its research report “Financial Transaction Tax: how severe?,” Goldman Sachs claimed the proposed FTT would lead to a

³³² Interview 70 with industry representative, London, 20 June 2013.

³³³ Interview 43 with NGO representative, London, 12 June 2013.

³³⁴ Interview 47 with financial industry representative, Brussels, 14 May 2013.

massive tax burden for the banking sector, amounting to 170 billion euro. The report further claimed that “the burden of the FTT would fall on retail investors” (Goldman Sachs 2013). In a research report from March 2013, Deutsche Bank stated its opposition to the proposed tax more explicitly, saying that “this is a bad law and should be scrapped” (Deutsche Bank Research 2013). Several more studies, press releases and commentaries in major newspapers brought arguments forward against the FTT (Bloomberg Business 2013; Financial Times 2013b; Financial Times 2013a).

A second advocacy strategy employed by industry groups was to advocate for exemptions from the scope of the tax. German MEP Giegold remarked in July 2013: “Many opponents of the tax in the financial industry and in politics have changed their strategy in the last couple of months: Instead of fighting the tax directly, they are now demanding all sorts of exemptions from different sides” (Giegold 2013). EU industry groups lobbied over a wide variety of these exemptions, typically arguing that the inclusion of the respective financial instruments within the scope of the tax would lead to liquidity problems. Third, financial sector groups focused on timing and actively lobbied for delaying implementation of the proposed FTT. Financial industry lobbying added up to what “Der Spiegel,” a German weekly news magazine, called a “revolt” aimed at delaying implementation (Hesse and Pauly 2012). As a fourth advocacy strategy, in an effort to leverage their political influence, financial industry groups tried to tie their interests with those of other private sector groups, which were indirectly affected by the introduction of a FTT. With their expertise and credibility discredited by the crisis, industry groups had to choose their coalition partners wisely, in order to be able to make convincing counter-arguments to proposed policy reforms. In fact, financial sector groups in the Eurozone deliberately chose not to organize joint campaigns with US and UK-based financial firms because there was a perception that arguments coming from the latter were rather counterproductive in efforts to convince policymakers to oppose a FTT. As this industry representative reported: “There is a risk that lobbying [...] is not very helpful because it is all a bit the Anglo-Saxon conspiracy to preserve its financial markets [...]. We share information but we are not involved in any joint initiatives.”³³⁵ Although they refrained from joined campaigns, financial groups could take advantage of the counter-mobilization of non-financial groups within the business community. Policymakers were not eager to publicly support banking industry arguments

³³⁵ Ibid.

opposed to regulatory reform, but they were equally shying away from supporting regulatory reform that would have negatively affected corporate activity and economic growth. A significant number of corporate actors actively mobilized against the introduction of a FTT. In May 2013, German companies including Bayer and Siemens voiced their opposition to the proposed FTT, highlighting its damaging effects for companies and the export-oriented German economy (Financial Times 2013c). One financial industry representative explained the lobbying strategy as follows: “The better way for the financial sector to address this topic is to get other parties on board. When Deutsche Bank complains, people say it must be good but if Siemens says it is detrimental to clients, you make a strong argument.”³³⁶ Although business actors were not the actual target of the regulation, they feared downstream costs of the tax by raising the cost of corporate debt. Rather than stressing the potential effects of the tax on financial markets, business associations emphasized the damaging consequences for growth and corporate activity. Accordingly, the American Chamber of Commerce argued in letters sent to participating member states that the tax “will have serious implications not just for the financial institutions but for the ‘real economy’ – on businesses in every sector who legitimately use financial instruments in the normal course of their business.”³³⁷ Similarly, in its research report from March 2013, Deutsche Bank found that “most importantly, the FTT will hurt the real economy” (Deutsche Bank Research 2013).

Next to business groups, financial industry groups found another important ally in the community of central bankers. Financial sector groups repeatedly criticized of the proposed FTT during advisory groups meetings with ECB staff in spring 2013 (Corporate Europe Observatory 2013). In April and May 2013 then, the heads of the German, French and British central banks publicly expressed their reservations towards a FTT (Financial Times 2013d, The Telegraph 2013). After reports and lobbying by the financial industry had shed considerable doubt on the desirability of the tax, political support clearly faded. In May 2014, German finance minister Schäuble declared that the options, interests and situation of the various participants were so divergent that states should start by introducing a limited taxation of shares and some derivatives (Wall Street Journal 2013).

To sum up: with member states in the Council having the final say, the national route, where interest groups try to persuade their governments at national level or the national

³³⁶ Interview 9 with financial industry lobbyist, 16 May 2013.

³³⁷ Unofficial, non-public paper on the FTT, April 2013, provided by bank lobbyist, London, May 2013.

officials in the permanent representation in Brussels, was the key means for industry groups trying to exert influence. While industry groups did not fare very well under high salience and public pressure in the early stages of the policy cycle, they were able to bounce back and influence public policy as soon as the contextual conditions provided by the financial crisis started to fade away. Latest reform proposals of a scaled-down version of the tax indicate that financial industry lobbying was highly successful under changed contextual conditions. A united lobbying front among industry groups as well as lobbying coalitions with business provided the financial sector with important leverage over the negotiations in Council working groups.

Conclusions

This chapter has examined the role of organized civil society in the policy process leading to the decision to introduce a FTT among eleven European member states. Detailed process-tracing allowed for testing a causal relationship in the advocacy process between political opportunities, organized diffuse interest groups, their involvement in close insider-outsider coalitions with legislators and the (preliminary) reform decision. I have examined the extent to which advocacy groups were able to have their preferences met at different phases of the policymaking process. Although financial industry groups proved highly successful in watering down initial reform proposal, the EU FTT cannot be read as a case of unmediated industry influence on public policy.

Table 14 summarizes the main findings. The causal mechanism was hypothesized to function in a post-crisis regulatory context. Interview material with financial sector lobbyists presented in the case study provided confirmatory evidence, the direct leverage of financial industry groups over the agenda-setting phase of the policymaking process that regarding the FTT was more constrained than in the past. Industry complained about a lack of consultation and subsequently perceived proposed regulatory reform extremely negatively. The analysis then moved to the organized advocacy efforts of European civil society groups, examining a variety of detailed policy changes that these groups sought during reform debates. In an effort to capitalize on the crisis and increased salience which opened a policy window for reform, diffuse interest groups actively mobilized in coalitions promoting a “Robin Hood Tax.” Pro-reform campaign saw insider-outsider coalitions emerge among nonfinancial groups and legislators acting as a countervailing force to industry interests, spurred by public pressure.

MEPs as well as Commission officials and a number of civil society groups worked together in an attempt to build a strong pro-reform coalition. With “Europeans for Financial Reform” a formal insider-outsider coalition emerged among MEPs of the Social Democratic and Green Party, trade unions and development NGOs pushing in tandem for the introduction of the FTT. By deploying specific expertise in crafting legislation to Commission officials, pro-reform groups managed to see some of their major preferences reflected in initial draft proposals. Although the EP had only a consultative role in, the close cooperation among MEPs and groups had important political consequences, sending a clear signal of broad-based political support to member states and Commission. Although experts played an important role in the policy process, giving testimony to the Commission and parliamentary committees, none made any viable political connections to become a policy entrepreneur for pro-reform groups at EU-level. Despite this lack of entrepreneurship, diffuse interest groups did fare quite well during the early stages of the policy process. This supports the proposition that policy entrepreneurs that are well-connected and politically savvy matter less in EU policymaking due to the existence of public funding schemes that lead to a more balanced representation of diffuse interest groups in the policy process.

Pro-reform groups also effectively channeled and transmitted public opinion to decision-makers. In the context of heightened salience, policymakers in turn had strong incentives to react to public pressure and to become active allies defending diffuse interests in the policy process, even against industry preferences. This response to public opinion explains the initial success of campaign groups in support of a broad-based FTT. In the post-crisis context, heads of states and governments became interested in the FTT as a populist policy measure to appease public opinion. In those early phases of the reform, financial industry groups, faced with adverse public opinion, were not successful in vetoing policy change. Industry groups saw themselves deprived of their full lobbying repertoire and largely refrained from outside strategies. Taken together, then, there is substantial evidence against the proposition that industry groups effectively influenced the agenda-setting phase of financial reform making.

Table 14 Summary of Findings

Propositions	Findings
Scope conditions present:	Yes. Little to no pre-legislative discussion among financial industry groups and Commission officials before the first FTT proposal was published.
1. Favorable opportunity structures: politicians under public salience and electoral constraints become more receptive and grant new access points to diffuse interest groups.	Yes. Easy access of civil society groups to the EP, EP committees and DG Taxud.
2. Diffuse interest coalitions: the organization as advocacy coalition spurred by the perception of a window of opportunity allows diffuse interest groups to promote reform goals.	Yes. European network among civil society groups as well as national-level campaigns, i.e. Robin Hood Tax Campaign, Steuer gegen Armut.
3. Policy entrepreneurs: activism of entrepreneurs as source of innovation, expertise, institutional resources etc. thereby leveraging advocacy groups' influence.	No. No signs of entrepreneurship of experts to make viable political connections.
4. Governmental allies: Joining the bandwagon public officials actively side with mobilized diffuse interests to promote same policy solution.	Yes. Insider-outsider coalition among groups and MEPs (S&D, Greens), Taxud Commissioner Šemeta and key governments (France, Germany).
5. Outcome: Policymakers enact financial reforms reflecting diffuse interests.	Mixed. Decision to introduce tax taken by 11 EU member states, but successful industry attempts to water-down legislative proposal.

Contextual conditions that allowed the causal mechanism to function in the first phase of reform negotiations changed dramatically when regulatory debate moved to the actual policy formulation stage. Findings of the case study correspond to Young's (2014) argument that financial sector groups reacted to the new regulatory environment by shifting the focus of their advocacy efforts to different stages of the policymaking cycle. First, under much less public scrutiny, negotiations among the eleven participating member states were much more conducive to private sector lobbying than the previous debate. Working group meetings

received, for example, considerable less press coverage than previous FTT debates. While diffuse interest groups were able to capitalize on the regulatory environment and the political opportunities provided by the shock of the financial crisis, initial advocacy success turned out to be only temporal. The causal mechanism that allowed diffuse interest groups to leave their imprint on the initial reform agenda could no longer work under changed contextual conditions.

The massive mobilization of the financial industry as a unified front in opposition to the proposed FTT was a second factor that considerably restrained diffuse interests' policy influence. Adapting to the new regulatory environment, financial industry groups changed their lobbying strategies with emphasis on delaying implementation and aimed at forging lobbying alliances with the broader business community to dilute proposed legislation. Financial groups could also take advantage of increased mobilization of non-financial corporate actors opposing a FTT. By linking their arguments against the proposed tax to harmful effects on the business community or end-users, rather than solely on financial institutions, financial sector groups successfully lobbied for a reduction of the tax scope, exempting, for instance, pension funds.

The case study of the EU FTT clearly revealed that industry capture exists. The active lobbying of EU financial industry groups was, however, more circumscribed than commonly assumed. Indeed, policymakers largely ignored industry attempts to veto regulatory change during the agenda-setting phase. The EU FTT case thus also evokes the extent to which regulatory capture by concentrated industry interests is constrained, both by increased interest group plurality in the policy debate, and by the active involvement of governmental allies in the defense of diffuse interests. During the early phases of the policy process the advocacy efforts of financial sector groups aimed at blocking regulatory change were largely frustrated. It was only during the subsequent policy formulation phase - when debates moved from a more political debate over redistributive possibilities to a more technical debate over feasibility - that new opportunities for industry lobbying opened-up, allowing for increasing influence of concentrated interests. The second section of the chapter thus briefly dealt with the advocacy efforts of financial industry groups to influence the specific content of regulation after the Commission had presented its draft Directive for a FTT to be implemented by eleven member states.

Nevertheless, findings of the case study suggest that scholarly work on financial regulatory politics would benefit from a more nuanced understanding of the traditional capture narrative. Regarding the political decision to implement a FTT, EU financial industry groups have been largely unsuccessful in their attempts to block regulatory change during the agenda-setting phase, although they had bitterly opposed a FTT from the beginning. In contrast, industry groups have been largely successful in watering down initial reform provisions and advocating for various exemptions during subsequent policy formulation. Also, while the European Commission and the EP have proposed a broad-based FTT it remains to be seen how much the proposal will be watered down in Council negotiations.

The chapter also highlighted the limitations in diffuse interests' lobbying capacity to influence regulatory change. The analysis suggests that the success of organized civil society to bring about the desired policy change is mixed. While groups were successful in lobbying legislators sympathetic to their cause during early stages of the policy process, many changes were subsequently watered-down. The impact of NGO campaigns was largely restricted to the agenda-setting phase of the reform process. By contrast, the crisis-shaken private financial sector was back on its feet not long after the financial meltdown, increasing lobbying efforts and slowly trimming back reform advances, watering down financial reforms during the policy formulation phase. This corresponds to Culpepper's (2011) argument about the rise of "quiet politics" in financial regulation. Where public salience is high, business power is low. Under conditions of high public salience elected officials have an incentive to respond to public opinion. Interest groups matter, because they can serve as an important transmitter of public opinion to decision-makers. As soon as the interest of the public and the media starts to fade away, highly organized business interests "bounce back" much more quickly and capture the policy process through their lobbying capacity and under much less public scrutiny. Pro-reform groups, so it seems, have only been able to delay financial industry capture, not to prevent it.

PART III EMPIRICAL AND THEORETICAL CONCLUSIONS

8. Conclusion

Summarizing the Argument

After the 2008 financial crisis, an increasing number of diffuse interest groups started to engage with questions of financial re-regulation and actively press policymakers for policy change. Has their advocacy made a difference? This analysis has tried to examine policy effects of newly mobilized diffuse interest groups and networks under contextual conditions characterized by a post-crisis regulatory environment. Findings of the case studies presented here speak directly to the existing literature on the role of industry capture of regulatory reforms after the 2008 financial crisis. Most scholarship in political science and economics as well as journalists on post-crisis reforms has converged on the theoretical lens provided by capture theories. The general view taken in studies on financial reforms in response to the crisis is that business is the predominant influence in regulatory policy making. But for reforms to occur after the crisis, a diffuse and ill-organized public interest had to be favored over special, well-organized, and presumptively very powerful financial sector interests. This research tried to shed light on the policy process in financial regulation and the mechanism that may lead to regulatory outcomes that favor a diffuse public interest over concentrated special interests.

The point of departure for this research project was the identification of an important gap in the literature. Increased actor plurality in post-crisis reforms, brought about by newly mobilized civil actors, had been discussed by political economy scholarship. But the role of these outsider groups as a countervailing force to financial industry interests in financial reforms enacted in response to the crisis had not been systematically tested. This research project tried to fill this gap by systematically testing a hypothesized causal mechanism by

which nonfinancial groups can have their preferences met in regulatory reforms, across four cases bound to the post-crisis regulatory context.

Given the limitations of capture theories in providing a satisfactory account of the full scope of the regulatory response to the crisis, this analysis presented a theoretical framework that centers on an element that existing explanations of regulatory reforms have largely neglected, namely: how have diffuse interests come to be strongly represented in the regulatory reform process spurred by the crisis despite greater resources mobilized by the financial industry? I have examined the extent to which diffuse interest groups, such as consumer associations, development NGOs and trade unions, were able to have their preferences met at different stages in the making of four financial regulatory policies which were part of the post-crisis reforms in the EU and the US. Specifically, I find that the ability of these groups to affect either the policy agenda or the content of new regulatory rules has been quite considerable, despite relatively poor resources at their disposal. The case studies presented here therefore provide compelling reasons for a more nuanced understanding of capture in financial regulatory decision making.

My task in this chapter is to summarize how it was possible for putatively weak and diffuse interest groups to push for policy change, even under the difficult conditions posed by the case of financial regulation, where organized industry interests usually win the day. Having traced processes of policy change that reflect diffuse interests in four parallel case studies also allows me to draw some comparative lessons. First, I will provide an overview of the key factors that emerged to explain how diffuse interests come to be successfully represented in public policy. The following sections will then discuss the findings in a comparative perspective, trying to distil the main findings in terms of variations in policy impact by issue area and political system. The chapter ends with a reflection on the theoretical implications of this study for business power, its limitations as well as its implications for a subject of broader concern to policymakers and publics alike, namely how to mitigate regulatory capture when it comes to regulating financial markets.

In analyzing the research questions, a case-oriented strategy was adopted. This study explored four case studies that focus on the way in which diffuse interests interact with policymakers in the context of financial regulatory reform making in the EU and the US after the financial crisis. Careful process-tracing of hypothesized causal conditions illuminated social mechanisms linking diffuse interests to regulatory change in finance. Beyond the single

case study, the dissertation also illustrated the main argument with in-depth analyses of additional cases presenting a similar or contrasted causal chain as far as the involvement of diffuse interests in reform-making is concerned. Assessing both potential and limits of involvement of diffuse interest groups in reform-making, the analysis has not only focused on successful cases, but also on one mixed and one negative case. Moreover, it presented a more systematic survey of two important policy areas – consumer protection and taxation – in two different political systems. By comparing reforms in the field of consumer protection to taxation, the findings suggest that diffuse interest groups can achieve legislative victories, even in hard cases (such as taxation). It is helpful to recall the hypothetical propositions that have been tested in the case studies (Figure 7).

Figure 7 Comparing Theoretical Predictions

<i>Case</i>		(1) <i>POS</i> ³³⁸	(2) <i>Diffuse interest coalitions</i>	(3) <i>Entre- preneurs</i>	(4) <i>Allies</i>	(5) <i>Outcome reflecting diffuse interests</i>
US consumer protection	<i>Post-crisis contextual conditions given</i>	X	X	X	X	Yes, winner-take-all outcome pro consumers
EU consumer protection		X	X	NP	X	Yes, win but compromised
US FTT		X	X/NP	NP	X/NP	No, legislation did not come about
EU FTT		X	X	NP	X/NP	Mixed, reform watered down

X: causal proposition confirmed in that case

NP: causal proposition did not yield a correct prediction

The parts of the causal mechanism are understood as individually necessary elements that are jointly sufficient to produce the outcome. Each part taken individually is understood

³³⁸ Political Opportunity Structures

to be insufficient to produce the outcome. Hence, the mobilization of countervailing interest groups is considered one necessary element in a larger causal chain to explain policy change in response to the financial crisis. I have proposed five distinct parts of a causal mechanism: First, political opportunities open up a policy window for diffuse interests in terms of access and responsiveness. Second, diffuse interest groups undertake coalition-building efforts, forming a “countervailing force.” Third, policy entrepreneurs support diffuse interest groups in their quest for reform. Fourth, government allies decide to actively side with and defend diffuse interests, promoting the same policy goals. Taken together, these elements lead to a reform outcome that reflects diffuse interests. The context in which this mechanism is hypothesized to function is characterized by the presence of a legitimacy crisis that weakens the incumbent industry groups.

The Explanation of Success

I conclude that regulatory reforms promoting a diffuse public interest over a narrow industry interest occurred for the following principal reasons, applicable to the positive and mixed cases examined here: post-crisis context, favorable political opportunities, mobilized diffuse interest groups, policy entrepreneurs and active government allies.

During the post-crisis context, financial industry groups had only a limited ability to defend their interests (contextual conditions). The case studies show how context matters in bringing about policy change in financial regulation that does not correspond to the interests of the incumbent industry. In order to function, the hypothesized causal mechanism needs to be situated within a specific context characterized by changed interest group dynamics. The post-crisis regulatory context has become particularly favorable to the influence of diffuse interest groups as countervailing force to the financial industry. After the damage the financial crisis had done to the economy, common mechanisms of regulatory capture were no longer at play. Instead, divisions among policymakers and the private sector occurred. Industry lobbyists in my cases felt “cut out,” “isolated,” “irrelevant,” or as “the ones to be punished.” In the case of consumer protection regulations in the EU, representatives of financial sector groups reported that they found it difficult to lobby the European Institutions. Some complained about dropping communication levels and lamented that Commission officials

and MEPs were giving industry lobbyists “a very tough time.”³³⁹ The case of US consumer protection reforms evokes a similar picture. Industry representatives perceived lobbying in the post-crisis context as “frustrating” and “difficult.” The fact that industry lobbyists were surprised about the content of the US administration’s blueprint for reform testifies to their inability to influence policymakers in those early stages of reform making. Before the financial crisis, industry groups were used to exchanging information with decision makers at early stages of the legislative process. In the post-crisis context, financial industry groups were clearly put at a strategic disadvantage and temporarily lost their political leverage.

Afraid of public denunciations, industry saw itself deprived of the usual lobbying repertoire. For example, in case of the EU FTT, industry groups refrained from openly speaking out against the FTT in early phases of the policy process. Findings of my case studies also confirm what Young (2013) could show empirically with respect to a range of regulatory reforms in response to the crisis, namely that industry groups started to adapt their lobbying strategies to the more hostile regulatory environment, refraining from attempts to outright veto regulatory change. For instance, in the case of the US consumer regulator, Edward Yingling, then President of the ABA softened his lobbying position and offered to provide information and cooperate with policymakers on proposed legislative reforms. In sum, the crisis drastically changed the lobbying environment in which financial industry groups had to operate in both the US and the EU.

Opened-up political opportunity structures shaped the possibilities for success for diffuse interest groups to affect reform-decisions (1). The financial crisis yielded opportunities and constraints for diffuse interest groups seeking to influence the reform process. As policymakers pushed for financial reform in the direct aftermath of the crisis, diffuse interest groups found themselves positively affected in terms of access to the policymaking process, receptivity of political elites and resource mobilization – key factors for policy influence identified in the social movement literature. A qualitative shift in policymaking from technical discussion groups to parliamentary agendas opened up spaces for nonfinancial groups to have their voices heard in the legislative process. While earlier regulatory debates were usually dominated by industry groups, post-crisis reform negotiations were characterized by increased actor plurality. This plurality is indicative of the capacity of

³³⁹ Interview 94 with bank lobbyist, London, 17 June 2013.

organized diffuse interest groups to adapt and find new spaces for influence that have emerged in the context of the financial crisis.

In both the US and the EU, the degree of access to policymakers as well as overall political receptivity to pro-reform demands notably increased in the aftermath of the crisis. In the EU case, access points opened up for groups representing diffuse interests to actively participate in the policy process via the “national route.” In the wake of the crisis, access to national policymakers who were sympathetic to the reform cause allowed advocates to press governments to champion a pro-reform stance at EU level in the Council of Ministers or the European Council. Simultaneously, diffuse interest groups had access to EU level decision making via the “Brussels route” by lobbying the European Institutions. The responsible DGs at the European Commission became increasingly receptive to pro-reform demands. According to one Brussels-based consumer advocate, political receptivity of DG Markt to demands coming from consumer groups had changed “as day and night” with the financial crisis. Notably the involvement of the European Parliament opened new opportunities for influence for civil society groups. Indeed, MEPs were an attractive target for groups seeking reform. In case of the civil society campaign for a transactions tax in the EU, one advocate reported that the responsible directorate-general, the Directorate General for Taxation and Customs Union (DG Taxud) was “one of the most accessible units.”³⁴⁰ Asked about lobbying the EP, interviewees for this research project reported that civil society groups had a much easier access to the Parliament after the financial crisis than financial industry groups had.

Similarly, in the US cases, Congress and its committees opened new access points for a broader range of interest groups. Starting in early 2009, individual consumer representatives were repeatedly invited to testify in front of Congressional committees. Advocates interviewed for this research project reported that Members of Congress increasingly responded to demands coming from consumer groups to restrict subprime lending and increase consumer protection after the crisis. In both cases, political receptivity was accompanied by increased issue salience of the respective reform issue. The crisis had at least partly redistributed political leverage from financial to diffuse interest groups.

Non-financial interest groups mobilized and built pro-reform coalitions among themselves effectively influencing reform decisions (2). In the positive cases examined here,

³⁴⁰ Interview 17 with trade union representative, Brussels, 24 May 2013.

diffuse interests enhanced the collective action capacity by mobilizing as coalitions. The financial crisis generated the mobilization of non-financial interest groups, including trade unions, consumer associations, civil rights actors and health activists. Unprecedented and broad-based coalitions among a wide range of civil society actors emerged on both sides of the Atlantic demanding more substantial reforms of financial markets. The broad coalitions of diffuse interest groups pushing for reform has been important in channeling public support for policymakers' efforts to reform financial markets in light of massive bank bailouts at taxpayers' expense. In the US, the crisis served as a catalyst to federate a wide array of organizations concerned with financial reform under the common umbrella of "Americans for Financial Reform." As their counterpart in the EU, a coalition named "Europeans For Financial Reform" set up a campaign for financial reforms. In both the US and the EU, various groups came together in "Robin Hood Tax" coalitions to promote the introduction of a national or European-level tax on financial transactions.

Diffuse interest groups greatly benefited from favorable public opinion which made policymakers much more responsive to pro-reform demands coming from outsider groups. By explicitly adopting campaigning methods designed to demonstrate that their policy demands have broad popular support, pro-reform groups played an important role in transmitting the public opinion to decision-makers. In case of US consumer protection reforms, consumer advocates testified in front of Congress and its committees throughout the legislative debate. Groups also set up a database of collected testimonies of abusive lending practices, so-called "horror lending stories" - which served as important source of information for Congress. According to interviewees in Congress, this evident wide-spread public support in favor of stricter regulation also helped policymakers to push for reform and overcome the opposition of the industry. In case of the EU transaction tax, groups also served as important transmitters of public opinion, by, for example, organizing online petitions supporting a FTT that were sent directly as a citizen response to the Commission or by giving testimony in front of national parliamentary chambers.

It is noteworthy that diffuse interests were particularly successful when the opposition of industry groups split. Indeed, oftentimes, industry lobbying after the crisis was marked by a lack of coordination. In the case of the US consumer regulator, the industry's political response suffered from a clear lack of unity. Instead of pulling together to jointly oppose the creation of the new consumer agency, industry groups split. The Independent Community

Bankers Association negotiated a political deal, which granted a semi-carve out for small banks under \$10 billion from the CFPB's oversight authority. In return, the Community Bankers did not oppose the bill during passage in Congress. Deprived of a powerful ally who also had a more favorable public image, the ABA was left with little to no political leverage to oppose the legislative proposal. In case of EU consumer protection, cohesion among industry groups was also weaker than commonly assumed and heterogeneous coalitions among stakeholders emerged, comprising both financial and non-financial stakeholders. Consumer protection measures were strengthened, for instance, when strange bedfellow coalitions emerged among consumer advocates and financial services industry, as in the case of the KID Regulation, when user representatives and European fund industry supported stricter EU regulations, against the opposition of other industry groups. The case of the EU financial transaction tax, diffuse interest groups succeeded during the early agenda-setting phase of the reform process, while the industry's response was still somewhat uncoordinated, with major banking associations not taking a transaction tax proposal serious and refraining from active lobbying. This situation changed when industry groups stepped up their lobbying efforts to organized a coordinated anti-taxation campaign.

So far, the literature on financial regulation has largely ignored the question of how interest groups outside of finance, in particular civil society groups, can affect policy change and oppose industry groups. A contribution of this research is therefore to show the capacities and practices of civil society groups to address regulatory change in financial markets. In a lecture in 2013 on "World Financial Crisis and Civil Society," Jan Aart Scholte concluded that "even after the magnitude of the latest world crisis, civil society engagement of financial markets and their regulation has mostly been small, short and without impact." Scholte argued further, that we did not observe a "large, sustained and influential civil society mobilization on finance, in the way that major citizen activism has developed on environmental problems, human rights, poverty and trade."³⁴¹ In a short article examining the relation between civil society and financial markets after the financial crisis, Scholte finds that civil society groups "play a fairly marginal role in the politics of commercial finance, thereby largely surrendering the advocacy field to industry lobbies and establishment think tanks." He concludes that "civil society activism to steer financial markets in the common good remains

³⁴¹ 4th Käte Hamburger Lecture with Prof. Jan Aart Scholte, World Financial Crisis and Civil Society: Implications for Global Democracy, 5 June 2013, Duisburg.

mostly muted and ineffectual, and governance of finance generally eludes democratic accountability” (Scholte 2013, 130). Similarly, Clark (2011) asserts that the financial crisis has been tough on civil society groups, reducing levels of public funding for civil society activities and increasing divisions within the sector who generally failed to provide a convincing alternative to policymakers. These trends in turn have reduced political influence and effectiveness of civil society’s advocacy.

The study at hand provided empirical evidence that confirms a very different claim about the influence of the financial crisis on group activity, and in particular on activities and practices of politically less advantageous groups, such as NGOs, consumer groups and trade unions. In case studies on the reform of consumer credit markets in the US and the EU and taxation in the EU, this analysis shows that less powerful pro-change groups who traditionally struggled to see their preferences translated into policy were able to take advantage of the shock of the crisis as an opportunity to promote policy change. Notably, civil society groups, such as Finance Watch, benefited from new sources of public funding that became available at EU level to support existing NGOs as well as the formation of new ones to provide counter-expertise to financial industry groups in the financial regulatory process.

Empirical evidence from my case studies further suggests that civil society’s strategy of campaigning to correct financial market regulation in response to the crisis has proven surprisingly effective. I presented some evidence to demonstrate that citizen groups do have the ability to counter the predominant influence of private interests in global finance and bring about policy change in favor of the public interest. Diffuse interest groups engaged in advocacy played a central role not by “throwing a spanner” in negotiations “what they have proven to be adept at” (Utting 2014, 24), but by deploying central expertise and shaping regulatory content. The coalition of “Americans for Financial Reform” in the US, Finance Watch in the EU as well as the transnational Robin Hood Tax campaigns excelled in this role, by participating in consultations and hearings, providing language for legislative drafts, advising on technical details and connecting decision makers with financial experts. While in case of the FTT, the success of the pro-reform groups was largely restricted to the agenda-setting phase of the reform process, advocates provided expertise and were actively involved in the drafting legislative language in the case of consumer protection reforms.

However, the study also highlights the limitations in civil society capacity to influence regulatory change. In case of the EU FTT, the findings suggest that the impact of pro-reform

campaigns was largely restricted to the agenda-setting phase of the reform process. By contrast, the crisis-shaken private financial sector was back on its feet not long after the financial meltdown, increasing lobbying efforts and slowly trimming back reform advances, watering down financial reforms during the detailed policy-negotiation phase. This corresponds to Culpepper's (2011) argument about the rise of "quiet politics" in financial regulation. As soon as the interest of the public and the media starts to fade away, highly organized business interests "bounce back" much more quickly and capture the policy process through their lobbying capacity and under much less public scrutiny. Nevertheless, this analysis provided evidence that civil society groups are increasingly involved in financial regulatory decision making.

Active government allies took initiative in defense of a diffuse public interest (3). Findings of the positive cases examined here confirm the importance of "understanding where the preponderance of government support lies [...] in understanding when lobbyists succeed and when they fail" (Mahoney 2007, 54). An unmistakable pattern emerges in my case studies: high-level legislative allies (including presidents and heads of states, committee chairmen in Congress, European Commissioners and EP rapporteurs) advocated for reform and worked in tandem with mobilized diffuse interest groups to bring about policy change. Under conditions of salience, office holders had strong incentives to act in the defense of diffuse interests, rather than special interests. In the case of the new US consumer regulator, which represented the most sweeping policy change in any of my cases, not only the US President but also the two chairmen responsible for pushing financial reform legislation through Congress actively sided with consumer advocates to promote the new agency. Therefore, findings confirm that much of the success of diffuse interests in Congress hinges on the support of the President or party leaders who have an incentive to respond to broad interests as political leaders with "collective responsibility" (Derthick and Quirk 1985, 142).

In the case of EU level consumer protection regulations, the Commission and EP allowed for consumer interests to bear upon the regulatory reform agenda. Internal Market Commissioner Barnier, responsible for financial services regulation, became an important advocate for diffuse consumer interests, pushing for the same policy goals as advocates, despite industry opposition. Similar, members of the EP were quite sympathetic to consumer groups and amended the main directives according to demands of advocacy groups. MEPs

were generally accessible and willing to articulate a consumer viewpoint as highlighted during several interviews conducted for this project. In particular the S&D and the Green party proved to be consumer-friendly and receptive to the preferences put forward by pro-reform groups. Findings of the case study also suggest that diffuse interests' success mainly hinges on the rapporteur in the EP. The role of the rapporteurs proved to be instrumental in achieving consumer-friendly outcomes because they have to steer the legislative proposals through the ECON Committee and the plenary vote. The consumer voice can also be translated into policy when it coincides with member states' concerns for leveling the playing field as in the case of the support of the UK and Dutch government for a community-wide ban on inducements.

In the case of the EU FTT, the legislative proposal made it to the policy agenda due to key member state governments, including France and Germany pushing for the FTT, as well as MEPs pushing for reform along with the preferences of a newly mobilized civil society coalition. However, with public salience fading during the technical negotiations among member states at the policy-formulation stage, the principal condition for legislative allies to support legislation even against the preferences of special interests had been removed and financial sector lobbies successfully watered-down the initial draft Directive. Ultimately, the joint opposition from industry groups and business groups towards a FTT contributed towards watering down of the proposal at EU level.

Policy entrepreneurship helped diffuse interest groups to organize and gain leverage
(4): Faced with collective action problems, diffuse interest groups needed a helping hand in getting organized. In the case of the new US consumer regulator, Harvard law professor and consumer advocate Elizabeth Warren became an influential policy entrepreneur who promoted the proposal of a new consumer regulator in tandem with the newly mobilized reform coalition AFR. Warren's academic work served as important source of innovation, putting forward the idea of a new agency to protect consumers. She also successfully built supportive coalitions for her idea, thereby exploiting opportunities opened by the credit crisis and the excessive industry influence over regulation that it brought to the fore. She was instrumental in rallying initial support for a single regulator among consumer, labor and other interest groups. Throughout the reform process she served as key expert for the pro-reform side. The kind of policy entrepreneurship displayed by Warren in the US consumer protection

case, did not find any parallels in the other case studies examined here. A reason why policy entrepreneurs do not occur in the European context can be found in the EU-level organization of civil society access to the policy process. EU-based diffuse interest groups mobilize with the help of the European Institutions and greatly benefit from resources provided by the Commission and the European Parliament. In the absence of public funding, US groups need to find alternatives to public funding schemes to mobilize effectively. Experts that are well-connected and politically savvy can provide groups with a jump start by playing an important leadership role to help groups mobilize around a common reform theme.

To sum up the analysis in the broadest terms, the explanation for success in my cases has three principal elements: the difficulty of industry interests - although mobilized in opposition - to affect policy decisions due to a deep legitimacy crisis, the mobilization of diffuse interest groups as broad pro-reform coalitions channeling public support and deploying expertise and the need of politicians for positions that were responsive to current public concerns in times of financial crisis and high salience. The analysis of the US case studies also suggests that diffuse interests are best represented in public policy if policy entrepreneurs and government allies work together in their defense. Policy entrepreneurs appear to be particularly important for the effective mobilization of diffuse interest groups in the US, where interest groups do not benefit from public support schemes as in the EU. Indeed, the empirical analysis of the EU cases found that policy entrepreneurship is not a necessary element to explain the representation of diffuse interests in financial regulatory policies. EU-based diffuse interest groups did fare relatively well, even in the absence of a policy entrepreneur. Based on our findings, we thus have to re-conceptualize our causal mechanism for the EU cases to exclude policy entrepreneurs. This leads us to two slightly different theoretical models for political processes representing diffuse interests in the US and the EU, whereby the role of policy entrepreneurs becomes redundant in the latter model. Routes to success for diffuse interest groups differ across the Atlantic, due to differences in institutional structures of the two political systems.

In both the US and the EU the key to success for diffuse interest groups are government allies sympathetic to their cause that actively pursue diffuse interests throughout the legislative process. The stronger the government allies they can successfully recruit to defend their cause, the more likely diffuse interests are to succeed in the policy process.

Adversely, advocates lose if they are not able to forge coalitions with well-positioned policy entrepreneurs, nor with potent governmental allies who would push their cause through the legislative process. Success of diffuse interest groups also depends on which political leader they can recruit as an ally. Diffuse interest groups only succeed if they find government allies that are central players in the policy process, such as for example the US President, Committee chairmen in the US Congress, the rapporteur in the European Parliament, or heads of states and government in the European Council. For diffuse interest groups to succeed in recruiting such powerful allies, issue salience appears to be more important in the US than in the EU. Although favorable public opinion is an advantage for diffuse interest groups in both cases, the political system of the EU seems more prone to diffuse interest representation in general.

Comparative Case Studies

The findings demonstrate the complexity of diffuse interest group representation in financial regulation. Advocacy success cannot be understood solely with reference to favorable political opportunity structures or groups mobilization efforts. In the following section I will conduct a cross-case analysis which provides insights into the workings of a causal mechanism that takes into account complex interactions among demand and supply side factors for institutional change reflecting diffuse interests. With regard to the two issue areas of consumer finance protection and taxation of financial transactions, differences and similarities in the representation of diffuse interests emerged.

Consumer Finance Protection

In light of the 2008 financial crisis, policymakers in the US and the EU turned their attention to financial consumer protection and adopted a range of policy measures in response to crisis-related failures. The US financial reform overhaul established a new federal agency solely responsible for consumer protection, the Consumer Financial Protection Bureau (CFPB). At the same time, the European Commission brought forward a policy package, including a series of proposals, which changed the institutional design of financial consumer protection in the EU.

The new US consumer regulator was arguably the most contentious issue in the US reform act. The Wall Street Reform and Consumer Protection Act of July 2010 created an

independent regulatory agency, housed in the Federal Reserve, with the sole responsibility of protecting consumers of financial products. In charging one single agency with consumer protection responsibilities, the reform succeeded in replacing a patchwork of different agencies, thereby consolidating and strengthening the regulation of consumer financial products. For consumer advocates, who saw all their main advocacy goals translated into policy, the creation of the CFPB was a major success. To produce this winner-take-all outcome favorable to consumer interests, all four elements of the hypothesized causal mechanism played together: (1) in reaction to a perceived opening of political opportunity structures; (2) diffuse interest groups mobilized as a broad coalition advocating for a new consumer regulator; (3) the pro-reform coalition's mobilizing efforts were supported by policy entrepreneur Elizabeth Warren, who also served as central innovator for the reform proposal; (4) pro-reform advocates succeed in recruiting sympathetic government allies, including the President and the two key Committee chairs Barney Frank and Chris Dodd who pushed the legislation through Congress. Taken together, I found strong confirming evidence of each part of the mechanism.

In the case of consumer protection regulations in the EU, the process-tracing analysis of four different legislative initiatives at EU level suggests that private sector lobbying did not result in blockage of reform or weakening of regulatory standards at the agenda-setting or policy-formulation stage. All four legislative initiatives resulted in compromise solutions with all stakeholders seeing some of their preferences reflected in policy. In the EU case, the following elements of the hypothesized causal mechanism can be considered necessary to produce a regulatory outcome reflecting diffuse interests groups advocacy goals: (1) perceived political opportunities opened up for diffuse interest groups in terms of access to Commission officials and MEPs as well as receptivity; (2) diffuse interest groups mobilized in coalitions and (4) found allies in Commissioner Barnier and rapporteurs in the EP that actively pushed for policy change throughout legislative debates. In comparison to the US case, where Elizabeth Warren played a central role in the reform process as a policy entrepreneur, EU diffuse interest groups fared quite well without the helping hand of a policy entrepreneur. This difference might be explained by the fact that diffuse interest groups, notably Finance Watch, received a jump start in their mobilization efforts by the European Institutions which provided organizational as well as financial aid. Hence, the empirical record of the case studies suggests that EU-based diffuse interest groups are at a slight

advantage vis-à-vis their US counterparts, because EU groups can see their preferences reflected in public policy, even without the active support of policy entrepreneurs.

A comparison of the policy processes in the US and the EU reveals another interesting insight. Increased salience of financial reforms played an important role in both cases, providing a strong motivation for decision makers to push for reform in line with preferences of diffuse interest groups. In comparison to the US CFPB, which received enormous public attention, making it one of the key reform issues, individual consumer protection reform proposals in the EU received relatively little public attention. This suggests that US decision makers are more prone to take diffuse interests into account if they are backed by widespread public opinion, whereas their counterparts in the EU seem to be more favorable in general to take diffuse interest groups on board. In other words, the salience of an issue is more important to the advocacy success of US-based diffuse interest groups than to their counterparts in the EU.

Financial Transaction Tax

In response to the financial crisis, pro-reform coalitions among civil society groups emerged to push for the introduction of a FTT on both sides of the Atlantic. But not all advocacy efforts of diffuse interest groups were successful. Reform efforts to introduce a transaction tax in the US stalled and were clearly watered down in the EU, after advocates had initially been successful in putting the tax on the EU's political agenda. What explains these failures in advocacy for financial reform?

In my limiting case, the US transaction tax, issue salience - as a condition that encourages elected officials to become active legislative allies in the defense of diffuse interests as opposed to special interests - was absent and the causal process that carried my positive cases was never set in motion. (1) Although political opportunities opened up in terms of access and receptivity, (2) the pro-tax campaign organized by a network among NGOs and trade unions was not successful in their mobilization efforts that could make a transactions tax salient and appealing for broader audiences or policymakers. Different activist groups also failed in successfully linking their efforts; (3) potential policy entrepreneurs, including academic and private sector economists such as Paul Krugman, Joseph Stiglitz and Avinash Persaud and development economists such as Jose Ocampo and Stephanie Griffith-Jones, made important contributions to support a tax including reports

detailing technical feasibility, economic utility and social desirability, but none of the prominent voices could rally enough public and political support. Despite attempts, policy entrepreneurship defending diffuse interests largely failed at the national political stage; (4) several legislative proposals were introduced into Congress, but stalled in political debate, because neither the President, nor chairmen of leading committees were prepared to support them on a national scale. Allies in Congress that pro-reform groups were able to recruit were too weak to bring broader political support on board. Political leaders, including the President or the influential chairmen of the committees responsible for financial reform, did not endorse policy reform.

In the case of the EU, a financial transaction tax seems likely to be implemented in a scaled-down version, which makes it a case of qualified success. The legislative proposal of a FTT made it to the policy agenda due to key member state governments, including France and Germany pushing for the FTT, along with the preferences of a newly mobilized civil society network. Under post-crisis contextual conditions and financial reform under public scrutiny, EU decision makers demonstrated a willingness to support an EU-level FTT even in the face of firm industry resistance. During the early phase of the reform process, the hypothesized causal mechanism played out as expected: (1) opened up political opportunity structures provided incentives (2) for the formation of a broad-based coalition among diffuse interest groups as “Robin Hood Tax” campaign to push for the introduction of a transaction tax; (3) despite the absence of policy entrepreneurs, (4) pro-reform groups found important allies in key politicians at national and European level to promote a FTT in legislative debates.

During later stages of the reform process, with memories of the crisis fading, contextual conditions that had initially allowed the causal mechanism to work were largely removed. With public salience fading during the technical negotiations among member states at the policy-formulation stage, the principal condition for legislative allies to support legislation even against the preferences of special interests had been removed and financial sector lobbies successfully watered-down the initial draft Directive. While industry attempts to affect the agenda-setting phase of regulatory decision making largely failed, subsequent industry attempts to delay implementation proved much more successful with German finance minister Schäuble proposing to introduce a limited version of the tax in May 2013. Ultimately, the joint opposition from industry groups and business groups towards a FTT contributed towards watering down of the proposal at EU level.

The comparison of the two cases confirms that the success of diffuse interest groups is highly contingent on issue salience and public opinion. As the salience of an issue to the public decreases, the likelihood of success for diffuse interest groups decreases in both the US and the EU. Advocacy success of diffuse interest groups also hinges on the support of a powerful governmental ally who pushes for reform at the inside of the legislative process. Ultimately, advocacy success of diffuse interest groups is not determined by favorable political opportunity structures. To succeed, diffuse interest groups have to take advantage of increased issue salience favorable to their advocacy goals and recruit powerful government allies in defense of their interests. Otherwise, diffuse interest groups are likely to lose.

Diffuse Interests in Transatlantic Comparison

The research on mobilized diffuse interests for US and EU financial reforms is also of interest, independently of the sectors studied here. Drawing lessons from the case studies, this section will highlight similarities and differences between diffuse interest representation in financial reforms in the US and the EU. I argue that diffuse interest groups in the US and the EU played an important role in deploying expertise to decision-makers throughout the legislative process, despite of differences in lobbying culture across the Atlantic. In both political systems, the success of diffuse interest groups is highly contingent on high issue salience and favorable public opinion. As another similarity, I find that the chances of US and EU diffuse interest groups to achieve their lobbying goals increased when they started to build coalitions. Differences among the two political systems persist in terms of the degree diffuse interests get to be reflected in the policy outcomes and how diffuse interests get to be represented in the respective political systems.

Similarities

The literature on lobbying has emphasized different lobbying cultures in the US and the EU. While US interest groups have been described as aggressive, EU groups are usually portrayed as consensus-oriented. As Woll (2012, 193) observes: “While US groups and lobbyists oftentimes defend their immediate interest by trying to exert pressure on public officials, EU representatives seem to be more soft-spoken in their approach and are said to work in a more constructive manner with bureaucratic and political representatives.” While EU groups need to focus on problem-solving in the complex multi-level organization, US

groups rely much more on exerting direct pressure on policymakers in the much more adversarial US political system. Although the provision of expertise is relevant for US and EU interest groups alike, it is particularly important for EU groups when trying to influence the European Institutions. In the study of consumer finance protection and taxation these differences across the Atlantic diminish. In the EU cases, diffuse interest groups became central for deploying expertise to the European Institutions. Consumer groups interviewed for this project reported that a permanent link of cooperation and exchange was established with the European Commission following the crisis.³⁴² MEPs were also depended on the expertise provided by non-financial interest groups, such as Finance Watch. Interviews with EP staffers testify to the close cooperation among MEPs of the Green Party and the S&D with experts from Finance Watch throughout the reform process, including so-called “group briefings” took place at the EP where Finance Watch staff met with MEPs, their assistance and the advisors to the political groups to explain technical details of regulations.³⁴³ Moreover, the EP regularly invited experts from Finance Watch to testify on financial reform issues. Pro-reform advocates were also important partners in providing necessary technical expertise to counter arguments against economically harmful effects of the proposed FTT to both the EP and the European Commission. One Commission official confirmed how helpful the expertise coming from non-financial interest group was during the legislative process in framing technical arguments to counter opposing arguments.³⁴⁴

Similarly to the role of EU groups, in the US cases, all interviewees representing diffuse interest groups highlighted the importance of deploying expertise to policymakers throughout the legislative process. Rather than pressing politicians, interviewees reported that advocacy groups served as an important source of expertise in the drafting phase of the legislation. In case of the US CFPB Congress staffers testified to the role of consumer advocates as knowledgeable people who could draft legislative language when needed. Close cooperation also took place among pro-reform advocates and individual policymakers on numerous bills introducing an US FTT. Since 2009, pro-reform groups have provided the necessary expertise for several bills containing a FTT introduced by Senator Harkin, Congressmen DeFazio and others.

³⁴² Interview 69 with trade union representative, 24 January 2013.

³⁴³ Interview 71 with NGO representative, Brussels, 15 May 2013.

³⁴⁴ Interview 21 with Commission official, Brussels, 12 May 2013.

Related to this is another factor, namely the position of government officials in determining lobbying success. The present case studies provided clues to the relationship among politicians and diffuse interest groups. The success of diffuse interests in the policy process largely depends on the extent to which policymakers' preferences align or diverge from those of mobilized diffuse interest groups. Putatively weak diffuse interests only become powerful, if policymakers are receptive to their demands. Findings also confirm that in particular under conditions of high salience, politicians are inclined to push for public interest reforms, even against industry opposition. Lobbying success of diffuse interest groups increased with greater issue salience, when groups saw their position backed up by public opinion. One important finding is therefore that the influence of diffuse interests depends on the receptiveness of policymakers which in turn depends on the public attention an issue attracts.

Another main finding is that public opinion matters a great deal in policy decisions that take into account diffuse interests. Although the salience of an issue is more important to the advocacy success of US-based diffuse interest groups than to their counterparts in the EU, public opinion also played a central role in the European reform process. This is especially interesting because the EU, according to many scholars, is characterized by a lack of a European public sphere. The literature on lobbying would lead us to expect that public opinion matters a great deal more in the US than in the EU, which has no integrated media and 24 official languages. Findings of my case studies suggest that public opinion in favor of reform was an important driver for both EU consumer protection reforms and the decision to introduce a FTT among eleven EU member states. Remarks by DG Taxud Commissioner Šemeta in a speech in October 2010 testify to the importance of issue salience also in the EU debate to introduce a FTT: "In recent months, there has been very wide public debate on this issue. Many different opinions have been voiced on whether and how to introduce a new bank tax, and indeed it is a subject that attracts a lot of popular attention" (Šemeta 2010). The following statement by Commissioner Šemeta further testifies to the importance of public opinion in the EU-level legislative process: "Europe needs to reconnect with its citizens. And the FTT is prime example of a project which can help to achieve this. 64 per cent of EU citizens support the FTT, according to the latest Eurobarometer survey [...]" (Šemeta 2014). While interviewees supporting the tax explained the political success of the idea with MEPs with reference to public support, interviewees from the financial industry explained their

inability to prevent regulatory reform by referring to “the weight of public opinion.” The analysis suggests that a generally favorably public opinion also mattered to policymakers in their quest for enhanced EU consumer protection reforms. Hence, contrary to depictions of the lobbying literature, issue salience and public opinion matter a great deal to EU policymakers.

Another comparative insight is related to the number of advocates that get involved in the policy process. In both cases, the chances of diffuse interest groups to achieve their lobbying goals increased when they started to cooperate in broad pro-reform coalitions pushing for the same policy goal. The analysis suggests that policymakers take the whole spectrum of interest group mobilization into consideration when making policy decisions. Hence, the more groups mobilize to promote reform, the greater the likelihood of success. In the case of US consumer protection reforms, this Congress staffer testified to the relevance of this outside mobilization, saying that the “united front [...] was quite important. It gave the consumer and civil rights community [...] the ability to expand the battlefield.”³⁴⁵ Similarly, in the case of the EU transaction tax debate, increased actor plurality mattered during the legislative debate. The Commission noted in its summary report of the public consultation, that they had received “a very large number of petitions,” with citizens being “generally in favor of a broad-based FTT” (European Commission 2011c). In the eyes of one interviewee representing a financial industry group, “NGOs and the mobilization of citizens [were] far better placed than any industry body” in the political debate.³⁴⁶ In both cases, US and EU diffuse interest groups greatly benefited from working together in coalitions.

Differences

Despite important similarities, variation among the US and the EU persists in relation to lobbying success of diffuse interest groups. The findings of my case studies are consistent with the results of Mahoney (2007, 54) who finds that the “EU system negotiates compromises which allow more advocates to attain their goals” while “absolute winners dominate clear losers” in the US. Due to the characteristics of the US political system shaped by direct elections and private campaign finance, these outcomes are usually biased in favor

³⁴⁵ Interview 66 with Congressional staffer, Washington DC, 24 March 2014

³⁴⁶ Interview 94 with industry lobbyists, London, 24 June 2013.

of more resourceful business interests. Accordingly, both US case studies presented here displayed clear winner-take-all outcomes, while both EU case studies resulted in compromise solutions with most stakeholders involved winning a little. The comparison of taxation reforms in the US and the EU reveals the expected pattern of interests groups' lobbying success. The current legislative proposal for the EU FTT among eleven member states shows a clear tendency towards the usual compromise solution. Recent reform developments suggest a scaled back version of the tax reflecting the main objections of the financial industry to the initially broad-based tax. Contrary to the EU-level compromise, no policy change occurred in case of the proposed US transaction tax. US public interest groups advocating for a tax saw their lobbying efforts crushed under industry opposition and government rejection. Proponents of the tax completely lost the political battle in Congress. This policy outcome is little surprising. These findings are in line with the lobbying literature which suggests that "zero-sum games" with one side winning and one side losing are common in US politics (Mahoney 2007). The legislative outcomes in the EU FTT case reflect much more compromised policy solutions with diffuse interest groups and industry groups seeing some of their advocacy goals reflected in the final reforms.

Consumer protection reforms across the Atlantic also follow the expected pattern. Compared to the landslide victory in the US where consumer advocates successfully pushed for a new federal consumer protection regulator, advocacy success of EU-based civil society groups seems moderate. Consumer groups in the EU only achieved modest reform of governance institutions, by pushing for the inclusion of a consumer mandate for the new supervisory authorities. With only a very limited mandate to protect consumers, the ESAs are not quite comparable to the US consumer regulator. In comparison to the US consumer agency, the competencies of the new supervisory bodies remain largely restricted. The ESAs only have limited powers including product intervention, powers to investigate potential breaches and reporting on consumer trends. ESMA, for instance, issues reports on consumer trends as well as warnings, and it monitors new financial activities as well as the development of common rules on information transparency. Overall, EU level consumer protection reforms that followed the crisis remained rather incremental. It is too early to say which effects the regulatory overhaul will have on the European Single Market. Much depends on how member states will implement the new regulations.

What is maybe more surprising is that in the case of the creation of the new US consumer regulator, consumer advocates won the day against industry opposition. Industry advocates trying to kill the proposal of a new regulator, did not achieve their goals. One of the most interesting finding of the case studies examined here is therefore that winner-take all outcomes are not always pro-industry. This finding is especially relevant in light of the dominance of capture theory in the literature on financial regulation.

To sum up, diffuse interest groups in the US either attained all or nothing while in the EU, groups usually achieved some of their goals. These differences in lobby success can be partly explained by the difference in likelihood of policy change. Whereas policy change is very likely in the EU system where almost all Commission proposals lead to a policy outcome, policy change is much less likely in the US, where initiatives can be killed at several stages of the legislative process. While US interest groups can lobby to kill a proposal (either winning or losing), EU interest groups have to work to modify it, making it more likely that some of their preferences are reflected in the final outcome (Mahoney 2007, 39).

Differences in contextual conditions might also explain some variation among the cases. Part of the explanation for why a centralized regulatory authority for consumer protection was established in the US, but not in the EU, has less to do with differences in groups' strength across the Atlantic than with different economic and political characteristics between the US and the EU. The US features a much more homogenous retail banking market, while national differences are much more pronounced in the EU. Supply and demand sides of the EU retail banking market are characterized by fragmentation into national markets. This fragmentation, in turn, promotes regulation through national rather than EU level regulatory authorities. Outlining the main characteristics of the European retail banking market, the DG for Competition of the European Commission found that, on the supply side, cross-border extension of retail products is almost non-existent and that the demand side is characterized by low customer mobility.³⁴⁷

The US and the EU also differ from each other in terms of regulatory systems. Both have dual regulatory systems but with different approaches: "In the US, there has been a presumption that the central authority has a right to preempt local authority, with the burden of proof being on the local authorities to demonstrate that such preemption is not appropriate.

³⁴⁷ European Commission (DG Competition), Commission Staff Working Document: report on the Retail Banking Sector Inquiry, SEC (2007) 106, 31 January 2007.

In the EU, the subsidiarity principle embodied in the EC constitution, implies the opposite approach: there is a presumption that authority resides at the local level, with the burden of proof being on centralized authorities to justify their role” (Lehr and Kiessling 1998, 8). In sum, these differences imply that a centralized authority for regulating consumer finance products is more appropriate in the US than in the EU. This, in turn, also explains why consumer groups’ advocacy for a centralized agency was more successful in the US than in the EU.

As a final comparative insight, claims of “exploitation of the electoral process by moneyed interests” (Mahoney 2007, 54) seem somewhat exaggerated in both cases. Although the US has usually been portrayed as the more electoral accountable system, than the multilevel system of the EU where policymakers appear largely protected from the electoral threat, both systems displayed a capacity to defend diffuse interests in the policy process, even against business opposition. Nevertheless, forms of how diffuse interests get to be represented in the respective political systems vary. While diffuse interest groups are formally empowered through top-down public funding schemes in the EU, US groups mobilize from the bottom-up. The formal empowerment of groups representing diffuse interests in the EU through funding regimes for NGOs has no equivalent in the US and might explain the variation in mobilization of public interest groups. European Institutions, specifically the Commission, have traditionally funded public interest groups at EU level in order to allow for more balanced interest representation (Greenwood 2011, 136). Not only by funding but also by founding a new NGO with Finance Watch, the European Institutions explicitly aimed for a more balanced interest representation in financial regulatory matters. In spite of differences in how diffuse interest groups were mobilized, their function in the policy process as important transmitters of public opinion and providers of expertise in close cooperation with policymakers remained similar in the US and the EU cases analyzed here.

Business Power

The victory of the financial industry to prevent a US FTT stands in contrast with the new US consumer financial regulator where the opposition from a broad civil society coalition undermined the attempts of the banks to veto the creation of a consumer bureau with substantial powers to interfere in industry practices related to consumer lending. Indeed, the case of the FTT in the US - my limiting case - highlights important factors restraining civil

society impact in financial regulation. Congress failed to enact legislative reform despite considerable national and transnational mobilization of civil society. The analysis of the EU FTT as a mixed case is also useful for understanding the limits of civil society advocacy. An explanation for why a FTT in the US failed and was severely watered-down in the EU, despite broad-based civil society advocacy in support of the tax, needs to go beyond actor centered circumstances and take broader structural factors into account.

To better understand the limits of diffuse interests to influence public policy, it is useful to examine how business elites tried to exercise power to resist change or re-shape regulatory reform. For this discussion, it is helpful to recall the conceptual distinction between instrumental and structural power of business. Instrumental power is based on the lobbying capacity and campaign contributions of business groups. The second dimension of power refers to the structural dependence of capitalist democracies on firm investments which provides the latter with political leverage even if financial sector groups do not actively engage in advocacy (Young and Pagliari 2015, Culpepper and Reinicke 2014, Utting 2012).

Instrumental power based on lobbying capacity of business to pursue its policy objectives is particularly important to understand the limits of diffuse interests' activism. The financial industry's instrumental power is clearly brought out by the case of the EU transaction tax. Diffuse interest groups' advocacy success was largely restricted to early phases of the reform process, which led to two Commission draft proposals. During this agenda-setting phase, industry lobbyists had largely refrained from lobbying the European Institutions. Industry representatives interviewed for this research project reported that they refrained from explicit counter-lobbying against the Commission's draft Directive for an EU-wide FTT in September 2011.³⁴⁸ The situation changed, when industry groups started to take the proposed FTT seriously and to exercise instrumental power during the negotiation phase among Council working groups. In an effort to water down proposed legislation, EU-based financial industry groups not only started a massive outside lobbying campaign presenting evidence against a transaction tax, they also formed strategic lobby alliances with central business groups such as Bayer and Siemens. Industry groups also found important allies in the community of central bankers. The mobilization of groups, not directly affected by the proposed regulatory reforms, positively affected the financial industry's advocacy efforts. Due to this active opposition of industry and business groups, the numerous efforts of civil

³⁴⁸ Interview 47 with financial industry representative, Brussels, 14 May 2013.

society groups to push for a broad-based tax with few exemptions eventually resulted in a diluted compromise.

This also provides empirical support to the “finance capital unity” hypothesis which postulates that the broader business community is increasingly likely to mobilize in support of the financial sector when the latter faces new regulations (Young and Pagliari 2015). A reason for why business groups, only indirectly affected by financial reforms, actively sided with the financial industry, might be found in the centrality of finance capital in modern market societies. This centrality stems from the role of the financial sector in the provision of credit as “infrastructural” good to the rest of the business community. It might also stem from processes of financialization as underlying logic of capitalist systems that go beyond the provision of credit. In her often-cited study on the US economy, Krippner (2005, 174), for instance, defines financialization as “a pattern of accumulation in which profits accrue primarily through financial channels rather than through trade and commodity production.” Financialization as primary regime of accumulation, has promoted the financial industry to the central player in contemporary capitalist systems in the US and Europe alike (van der Zwan, 2014, 104). Any attempt to re-regulated financial industry activities must therefore be understood as a direct challenge to the vested interests of finance capitalism. More important, re-regulations in the field of finance are likely to have repercussions not only for the financial industry, but for the wider business community alike. Business groups are therefore more likely to align with financial sector groups’ advocacy efforts. Taken together, a combination of instrumental and structural power of financial industry groups may explain why lobbying demands of EU-based industry groups were eventually successful in diluting the proposed reform.

The structural power of finance may also serve as an explanation, why a FTT did not become a politically viable idea in the US and why US banking associations did not even start to actively lobby against reform proposals. Structural power shapes preferences of decision-makers, who adhere to the same neoliberal worldview as financial services lobbyists. From this perspective, pro-reform advocacy was constrained by “cultural capture” whereby policymakers indirectly promote the special interest in the belief that they act in the interest of the greater good (Baker 2010, 652; Carpenter and Moss 2014, 456). In particular, “structural power that works automatically through the anticipation of policymakers” (Culpepper and Reinicke 2014) can be a strong motivator for politicians to follow business preferences. In the

taxation case (unlike the consumer protection case) policymakers' concerns about potentially harmful effects of the tax to the competitiveness of the financial industry and potential costs to investors and therefore also the broader economy could not be relieved. It was soon clear to US-based industry lobbyists that the likelihood of legislative success of a transaction tax was relatively low and that there was no need for explicit counter-lobbying.

The structural power of capital presents an important impediment to civil society advocacy, as Scholte (2013, 143) writes in his recent article: "The entrenched structure of finance capital generates many strong forces that resist actual and potential civil society campaigns for significant change in financial markets." For the UK pro-tax campaign which had gained some momentum after the financial crises in the late twentieth century, Utting (2012, 33), for example, concludes that it was "stifled" by the structural power of finance. Robin Hood Tax campaigns in response to the 2008 financial crisis seem to have met a similar fate.

Cooptation

Another constraint for diffuse interest groups in influencing public policy is cooptation, whereby groups run the risk of becoming tools to other, more powerful, actors that try to capture diffuse groups' positions (Scholte 2004, 73). Although cooptation is difficult to prove, evidence from my case studies suggest that civil society actors might have slipped into cooptation with political elites, thereby compromising their potential to hold them accountable and democratize the reform process. Risks of cooptation arise, for example, when civil society groups receive funding from public bodies, as in the case of the creation of the Finance Watch with Commission funds. Cooptation can also occur in the relation between civil society groups and political parties. In case of the close cooperation among the European social democratic party and the Greens with trade unions and development NGOs under the umbrella of "Europeans For Financial Reform," the creation of the coalition was not an autonomous grassroots movement. The coalition-building efforts can also be interpreted as an attempt of political parties to buy votes.

Yet another version of cooptation occurs, when civil society groups adopt the official discourse of political elites in the hopes of maximizing their influence. In case of the transaction tax, which enjoyed wide popularity and was adopted by mainstream politicians (Brown, Merkel, Sarkozy), reform demands voiced by pro-reform advocates changed

markedly over the course of the legislative debate. The initial more radical version of the tax promoted by the Robin Hood Tax campaign transformed into a more modest reform proposal. During the different stages of the policy debate, the pro-reform campaign shifted its focus from a global transaction tax with a tax rate of 0.5 per cent that would be used to fund international development and reduce speculation (WEED 2009; Wahl 2014), to an 0.05 per cent EU-wide transaction tax with 50 per cent of the revenue spent domestically and 50 per cent spent internationally to fight climate change and poverty. When prospects for the introduction of a global or EU-wide tax faded, groups mobilized for a FTT via enhanced cooperation for only eleven EU member states, with revenues to be shared between international development, member states and the EU institutions. Given its modest reform proposal “geared toward raising revenues to be put toward existing practices of development aid,” Brassett (2012, 259) assigned the UK Robin Hood Tax campaign a “conformist position.” Indeed, in particular the European civil society campaign after the 2008 financial crisis has been emptied of some of its critical edge and focused more on the technical feasibility of the reform proposal during the reform debate.

Return to Pluralism

What are the broader theoretical lessons that we can draw from findings of the case studies presented here? Findings of my case studies provide some support for the pluralist theory. Detailed empirical analyses undertaken in this research project suggest that industry capture in the field of finance is in fact far more contingent than the logic of collective action leads us to expect. The case studies show that coalitions of non-financial advocacy groups traditionally considered as politically weak, such as consumer groups, NGOs and trade unions, have been much more influential in leaving their imprint on financial reforms than existing literature predicts. Drawing on literature from social movement research and regulatory politics, the analysis ultimately suggests that researchers seeking to understand the outcome of interest group conflicts must look beyond the variable of material resourcefulness. Coalition-building among weak interest groups and with important elite allies on the outside and the inside of government pushing for the same policy solution considerably enhances that group’s ability to shape regulatory policy, allowing groups to bear on policy decisions independently of an individual group’s material resourcefulness. These findings correspond to

Trumbull's (2012) argument that diffuse interests are generally represented in public policy and can serve as an important counterweight to concentrated industry interests.

The puzzle addressed in this research project is that some regulatory changes runs counter to the interests of the most influential and resourceful actors in financial regulation: the banks and industry associations. This calls Olson's logic of collective action into question, which departs from the assumptions that consumers are at a huge disadvantage in the face of well-organized business interests. Substantial reform legislation after the crisis diverges from theories that explain regulatory policymaking by concentrated interest-group pressure. Indeed, the outcome of financial reforms turns on its head the prevalent prediction from capture theories: that the regulatory outcome corresponds to the preferences of the private sector. The analysis has shown that hard-to-mobilize diffuse interests can be politically influential, even in a policy field that has been characterized as exclusively dominated by organized industry interests such as financial regulation. While consumer groups gained more access to the national policy making process, industry groups saw their policy access curtailed.

This study suggests that IPE scholars would benefit from a more nuanced understanding of "politics as organized combat" where financial sector groups try to influence policies behind the "electoral spectacle." My case studies still evoke a picture of "organized combat," but one where interest group plurality is increased, allowing for various actors to shape regulatory reforms. One of the main findings of the analysis at hand is that democratic politics still function, even in the area of financial regulation where the structural power of finance capital is said to dominate political decisions. The empirical work provided here reveals a far more nuanced picture of private sector capture in the reform processes following the financial crisis than commonly assumed. Indeed, despite the ample material resources at its disposal, business has repeatedly found itself on the losing side. In many ways, the argument presented here, echoes Helleiner's and Pagliari's (2011a) quest to devote "[m]ore detailed attention [...] to the entire question of private "capture" of financial regulatory policymaking."

Finance is a technical and highly complex issue area where diffuse interests generally appear relatively ineffective against concentrated industry interests. Financial regulation therefore constitutes a hard case for demonstrating the role of diffuse interests groups in public policy. In doing so, this research joins a number of studies that show that business power can be curbed. Findings of my positive case studies are consistent with existing studies

that found evidence for limited business power. In his empirical study on business group influence in the US, Smith (2000), for example, finds corporate power to be constrained under conditions of high political salience and when public opinion is opposed to business preferences. This in turn amplifies incentives for politicians to listen to the mobilized public. Similarly, Baumgartner et al. (2009) find that the impact of material resources in achieving policy outcomes is not a straightforward link. Rather, wealthy interests sometimes win and sometimes they lose. Most notably, business routinely loses when issue salience is high (Culpepper 2011, 187). The study at hand provides further evidence on how business power can be curbed, in line with other studies, which have focused on public salience (Culpepper 2011; Pagliari 2013), institutions (Hacker and Pierson 2002) and ideas (Bell and Hindmoor 2014). The argument here focused on group-government relations to explain how increased mobilization of diffuse interests can affect the ability of organized concentrated interests to influence policy.

Recognizing the plurality of interest groups involved in financial reform debates, some observers have discerned signs of Polanyian counter-movements “that use the agency of the state [...] to counter the intensification of market-forces” (Clapp and Helleiner 2012a). We should, however, not confuse specific victories of diffuse interest groups with the big picture. Overall, financial reforms have remained rather modest, falling short of a fundamental restructuring of the financial market architecture. Policymakers ignored more radical demands of civil society groups pushing for more substantive reforms, such as a higher tax rate for the transaction tax. Rather than emphasizing the success of a Polanyi-style double movement, an alternative interpretation may therefore regard post-crisis financial reforms as rather incremental reforms “implemented at the margins of finance capital” (Scholte 2013, 138) to temporarily appease public discontent.

Nevertheless, the most general conclusion of this dissertation is that concentrated interests do not always dictate public policy. Structural power of financial industry groups has certain limits. As seen in the cases of advocacy success of diffuse interests in bringing about consumer protection reforms, as well as in the agenda-setting success in case of the EU transaction tax debate, the financial crisis acted as an important catalyst for group mobilization and policy change. Although “big business is on the winning side more often than not” (Grant 2000, 82), business interests may sometimes lose, even when it comes to financial regulation. Non-financial interests, and notably citizen groups, can win significant

victories. To dismiss the findings of the case studies presented here as marginal phenomenon underestimates the power of the democratic mechanisms built into the setup of our societies to hold elected politicians accountable. To say it in the words of Jean-Paul Sartre, ‘Once you hear the details of victory it is hard to distinguish it from defeat.’ – We should therefore not let the finding that industry lobbyists successfully diluted reforms in some cases obscure the fact that civil society activism in reaction to the crisis provides another important example of the potential of diffuse interest groups to influence policy outcomes on the field of financial regulation. To overlook the involvement of groupings with weaker interests such as small retail financial services, consumers and organizations that represent them does a disservice to understanding the regulatory reform outcome in response to the crisis.

Limitations and Future Research

Certain caveats are in order here. First, due to time and space constraints there are empirical limitations to the analysis. I will highlight those limitations here in order to encourage future research on the subject. Reforms of financial service regulation in the EU and the US are far from being completed and some of the regulations dealt with here (particularly in the EU case studies) are only being implemented at the time of writing. A weakness of the study is that the empirical evidence presented here is somewhat incomplete. The case studies focus most on the agenda-setting and policy-formulation stage of financial reform making, while largely neglecting the implementation stage of the policy cycle. In the realm of finance, the more opaque and technical implementation phase of regulation is, however, the stage of the policy cycle where industry interests are hypothesized to be most apt to capture the policy process (Pagliari 2012, 7). Indeed, financial services groups stepped up their lobbying efforts targeted at the implementation of new regulations. Since its creation in 2011, the number of financial lobbyists targeting the CFPB increased considerably with 140 lobbyists working for 37 organizations in early 2011 to more than 400 lobbyists working for 94 groups by the end 2014 (Financial Times 2015). Due to the topicality of the case studies examined here, the present research has, however, left it to subsequent research to unpack the full implementation process of the financial reforms enacted in response to the crisis in order to provide a full picture of post-crisis reform dynamics.

Generally, process tracing studies suffer from limited generalizability. The aim here was to trace a single, generalizable causal mechanism and to test whether the mechanism was

present across a bounded context of cases. In this view, the casual mechanism is understood to be generalizable beyond the individual case within a context that allows the mechanism to operate. Hence, findings from my case studies can only be generalized across cases that are within the same context. Therefore, the main limitation of this study is that it focuses on narrow, temporarily specific case studies with all four cases examined here situated in the post-crisis context. As a result of this, my analysis is, thus, quite limited in the extent to which we can make generalizations outside of the post-crisis context. The scope conditions under which the hypothesized causal mechanism plays out are clearly specified and restricted to situations of post-crisis policy environments. In other words, the crisis was indispensable for the functioning of the mechanism. Hence, conclusions drawn from the case at hand do not allow for addressing larger questions of political and institutional change in “normal times.” Rather, the theory developed here is limited in its application to – albeit crucially important – cases in times of crisis. Regulatory capture has often been described as a cyclical phenomenon, “alternating between crisis and boom” (Pagliari 2012, 14). This implies that Olson’s theory might continue to characterize regulatory decision making as soon as finance starts booming again. Additional case studies examining how diffuse interest groups fare during the implementation process of reforms, would shed further light on the question, whether developments described in my positive cases signify a long-term shift in the balance of power or just a temporary setback for industry groups for the benefit of organized civil society, following the usual boom and bust cycle. Indeed, as Baker (2010, 663) remarks, “the pro-cyclicality of regulatory capture, and the failure to address it explicitly, may yet mean that the same processes re-emerge more strongly than ever, with the same dysfunctional outcomes, once the next boom emerges.” Since my analysis does not allow for generalizations beyond a bounded context, I am unable to determine whether the causal mechanism extends beyond the immediate aftermath of the crisis. Further research might explore this in more detail and expand the study of diffuse interest groups to other policy contexts.

The role of non-financial groups, notably civil society actors, in financial regulation merits further exploration. The case studies at hand find that a growing number of civil society groups have developed capacities to engage with questions of financial regulation. This study also shows that consumer association and trade unions together with many other NGOs succeeded to make their mark on the recent financial reforms and got themselves noticed as active players in financial regulatory debates. As recent developments outlined in

this analysis show, in response to the financial crisis, civil society groups have started to get organized in order to promote a fairer global financial architecture that no longer puts a diffuse public interest at a disadvantage. In some cases this struggle has been fruitful. Additional case studies would shed further light on the question, whether civil society can be a real vanguard for subsequent reforms of the financial architecture in the public interest.

How to Mitigate Capture in Regulatory Decision Making

How can the findings presented here add value to our understanding of regulatory capture in financial regulatory decision making? First, the analysis suggests that we need a much more nuanced picture of regulatory capture than portrayed by the literature on financial reform making so far. My findings therefor correspond to the conclusions recently presented by Carpenter and Moss, who found that “regulatory capture is not an all-or-nothing affair,” but rather “a matter of degree” (Carpenter and Moss 2014, 452). The most important finding of this dissertation might be that capture of the policymaking process through financial interests can be kept at bay. Certain defense mechanisms to prevent capture, including elections to hold policymakers accountable and interest groups channeling the preferences of the electorate, are built into the institutional setup of our democratic systems. This analysis revealed one capture-prevention mechanism that merits further attention. In the positive cases examined here, public salience, newly mobilized diffuse interest groups, policy entrepreneurs on the outside of government and allies at inside of government combined to shape regulatory reforms in ways that transcend the interests and influence of the financial industry. There are several proposals for prevention that we can derive from these insights.

Actor plurality and diffuse interests’ mobilization. Diffuse interest groups - mobilized as grass-roots movement from the bottom up or top down through formal empowerment - can demonstrate a “countervailing force” to concentrated industry interests. Enhanced actor plurality with more end users of financial services, NGOs and consumer organizations participating in the policy process reduces the dominance of the industry voice during legislative debates. We could observe this pattern in the case of the CFPB as well as the EU level debate about the FTT where consumer advocates mobilized as vocal pro-reform coalitions. A similar mobilization of diffuse interest groups, albeit less of a grassroots movement, also allowed for stricter EU level consumer protection standards. Hence, actor plurality has important consequences for the design of regulatory policies: it reduces the risk

of outright industry capture and makes a more compromised legislative outcome, reflecting various stakeholder preferences, more likely. A similar reflection was made by Pagliari and Young (2013a, 10): “We propose that actor plurality matters in financial regulatory politics because it affects the ability of the regulated financial industry group to get what it wants in the policymaking process.”

The creation of participatory mechanisms for diffuse interest groups is one potential policy solution to systematically increase actor plurality in financial decision making processes (Pagliari 2012, 15). The creation of Finance Watch in 2011 is one example of policymakers directly sponsoring an NGO as counterweight to industry. Another example is the creation of the Financial Services Users Groups (FSUG) at the European Commission in 2010 as a standing panel to represent a consumer voice. My case studies suggest that both mechanisms worked well to include a consumer and user perspective in post-crisis reform debates.

Transparency and public scrutiny. The empirical record of the case studies presented here suggests that public attention and increased media coverage are important factors in reducing capture on regulatory decision making. Assessing the amount of news coverage in the press revealed increased publicity of financial reform issues in case of the EU level FTT ax as well as in the case of the CFPB. Press reports about undue industry influence leading up to the financial crisis in 2008 presumably alerted a broader public and increased issue attention to financial reform making. Politicians in turn have an incentive to promote reforms, when the public is watching. There are however objective limits to public scrutiny, as Baker (2010, 657) points out: “The problem here is that public anger and political interest in regulation are also temporary and inherently pro-cyclical.” Although there is no guarantee that broader access will assure greater public interest, increased transparency, such as the publication of information about regulatory decisions on websites of regulators, could allow a broader public to gain access. Enhanced transparency of decision making processes could be one potential policy solution to effectively prevent capture and enhance accountability in the long-term.

Expertise. In a highly complex issue area such as financial regulation, technical expertise has been presented by the literature as important resource for capturing policy processes. In particular in financial regulation, policymakers are dependent on the financial industry groups and their technical expertise of financial markets (Tsingou 2010). The case

studies showed that independent expertise can greatly reduce the risk of legislative capture through special interests. Chapter 4 on the creation of the CFPB highlighted the importance of Harvard professor and consumer credit expert Elizabeth Warren. She gained both credibility and political influence during the reform debate, by providing counter-expertise to arguments brought forward by industry groups aimed at defeating the new consumer regulator. With respect to expertise, economists, political scientists and former bankers, also played an important role in advising the European Parliament and the European Commission throughout the decision making process on the FTT. In both cases, coalitions of pro-reform groups greatly benefited from independent expert advice to contribute to technical aspects of the reform debate. Diffuse interest groups, such as community groups specialized in housing, were also able to deploy technical expertise to policymakers throughout the reform debate and contributed to drafting legislation in both the US and the EU.

Coalitions among legislators and pro-reform groups. My positive cases lend support to Griffith-Jones et al. (2010, 6), who stated that a key explanatory factors for financial regulatory change are political leadership combined with lobbying efforts of diffuse interest groups, including trade unions, consumer and civil rights advocates that could capitalize on the public outrage in response to the crisis. Empirical evidence presented here suggests that regulatory change was triggered by lobbying efforts of pro-reform coalitions including nonfinancial groups and policymakers. In sum, industry is less likely to capture the policy process when pro-reform coalitions occur, among diffuse interest groups on the outside of government and policymakers at the inside of government, who work closely together to push for the same policy solution. Most importantly, these findings suggest that governments have discretion over which interests they include and which interests they ignore.

9. Appendix

List of Conducted Interviews

The semi-structured interviews were conducted between July 2011 and March 2014. Interviews lasted between thirty minutes and two hours and were held in English, French or German. All material is dealt with anonymously so that citations cannot be linked to the authors or their institutions. Translations for French and German are my own. To allow situating individual quotations in time, the date of the interviews appears in the text, not in the list below. Anonymized transcripts of the conducted interviews are stored in a database at the Max Planck Institute for the Study of Societies in Cologne and will be made available upon request.

Number of conducted interviews: 116.

European Union – List of interviewees per sector

European Commission

Berestecki, Maciej	Policy Officer	European Commission, DG Internal Market and Services, Retail Financial Services and Consumer Policy	Brussels
Diemer, Rolf	Head of Unit	European Commission, DG TAXUD	Brussels
Jorritsma, Jasper	Policy Officer	European Commission, seconded national expert, DG Internal Market and Services, Unit G3, Securities Markets	Brussels
Pellé, Philippe	Deputy Head of Unit	European Commission, DG Internal Market and Services, Unit H3 - Retail issues, Consumer Policy and Payment Systems	Brussels
Robertson, Jennifer	Deputy Head of Unit	European Commission, DG Internal Market and Services, Financial Markets Infrastructure, Unit G2	Brussels
Shakesby, Timothy	Policy Analyst	European Commission, Internal Market and Services, Asset Management Unit U4, Financial Markets Directorate	Brussels

European Parliament

Donlon, Claire	Policy Advisor	ALDE Group, Committee on Economic and Monetary Affairs	Brussels
Fossati, Luca	Political Advisor	S&D Group, Committee on Economic and Monetary Affairs	Brussels
Gauzès, Jean Paul	Member of the European Parliament	European Parliament	Paris
Gondard, Cécilia	Coordinator	Europeans For Financial Reform (EFFR), Global Progressive Forum, S&D Group in the European Parliament	Brussels
Kemp, David	Policy Advisor	The Greens, Economic and Monetary Affairs, European Parliament	Brussels
Larsen, Stine Laerke	Policy Advisor	S&D Group, Committee on Economic and Monetary Affairs, European Parliament	Brussels
Solli, Petra	Policy Advisor	ALDE Group, Committee on Economic and Monetary Affairs, European Parliament	Brussels

National Authorities

Blaschek, Beate	Head of Department	Department of Financial Services and consumer education, Section III consumer policies, Austrian Federal Ministry of Labour, Social Affairs and Consumer Protection	Vienna
Le Rudulier, Catherine	Assistant Secretary General	Comité consultatif du secteur financier (CCSF), Banque de France	Paris

Civil society (consumer groups, NGOs, grass-roots groups)

Botsch, Andreas	Special Adviser	ETUC/ETUI - European Trade Union Institute	Brussels
Chouffot, Simon	Media & Policy Expert	Robin Hood Tax Campaign	London
Crasta, Elena	Senior Policy Officer	TUC Brussels office, ITUH	Brussels
Degirmencioglu, Ani	Project Officer for Financial Reform	SOLIDAR	Brussels
Fily, Ann,	Head of the Economic and Legal Department	The European Consumers' Organisation (BEUC)	Brussels
Goyens, Monique	Secretary General	The European Consumers' Organisation (BEUC)	Brussels
Grignard, Marcel	National Secretary	French Democratic Confederation of Labour (Confédération française démocratique du travail, CFDT)	Paris
Habbard, Pierre	Senior Policy Advisor	International Trade Union Confederation (ITUC), Trade Union Advisory	Paris

		Committee to the OECD (TUAC)	
Henn, Markus	Policy Advisor for Financial Markets	World Economy, Ecology & Development (WEED)	Berlin
Hillman, David	Director	Stamp Out Poverty, Robin Hood Tax Steering Group	London
Knott, Julian	Head of Secretariat	Transatlantic Consumer Dialogue	Brussels
Lalucq, Aurore		Institut Veblen	Paris
Maslennikov, Mikhail	Head of Secretariat	zerozero cinque campaign, Italy	Amsterdam
Mathieu, Luc	Secretary General	French Democratic Confederation of Labour (Confédération française démocratique du travail, CFDT), banks and insurances	Paris
Mazounie, Alix	Policy Advisor	Reseau Action Climat	Paris
Meaulle, Matthieu	Economic Advisor	Foundation for European Progressive Studies	Brussels
Monzane, Marcio	Head of UNI Finance	UNI Uni global	Nyon
Mulder, Joost	Head of Public Affairs	Finance Watch	Brussels
Naulot, Alexandre	Policy Advisor	Financial Transaction Taxes, Oxfam France	Paris
Phillipponnat, Thierry	Secretary General	Finance Watch	Paris
Plihon, Dominique	Professor, President of the scientific counsel	ATTAC France	Paris
Prache, Guillaume	Managing Director	EuroInvestors, Vice Chairman of the Financial Services Users Group	Brussels
Roux, Jean-Marie	Advisor for European and International Affairs	Fédération des Finances CGT Confédération	Paris
Saldanha, Jean	Senior Policy Advisor	CIDSDE - international alliance of Catholic development agencies	Brussels
Schmalzried, Martin	Policy Officer	Association of Family Organisations in the European Union	Brussels
Simpson, Robin	Senior Policy Advisor	Consumers International	Brussels
Sjölund, Hanna	Policy Officer	UNI Europa	Brussels
Stetter, Ernst	General Secretary	Foundation for European Progressive Studies	Brussels
Strickner, Alexandra	Member of the board of directors	ATTAC Austria	Vienna
Terray, Jacques	Vice-President	Transparency International France	Paris
Tudor, Owen	Head of European Union and International Relations	Trade Union Congress (TUC)	London

Vassalos, Yiorgos	Researcher	Corporate Europe Observatory	Brussels
Vincent, Bernard	National Secretary	French Confederation of Management – General Confederation of Executives (Confédération Française de l'Encadrement CFE-CGC)	

Financial Industry Groups

Boer, Martin	Secretary General	European Financial Services Roundtable (EFR)	Brussels
Corbi, Antonio	Head of the European Tax Committee	International Swaps and derivatives association (ISDA)	London
de Rossignol, Pierre-Thibault Aveline	Regulatory Policy Advisor	European Fund and Asset Management Association (EFAMA)	Brussels
Degortes, Emanuele	Policy Officer	American Chamber of Commerce to the EU	Brussels
Dobranszky- Bartus, Katalin	Senior Economic Advisor	European Mortgage Federation (EMF)	Brussels
Greenhill, Jonathan	Policy Manager	Business and Industry Advisory Committee to the OECD (BIAC)	Paris
Greeves, Rebecca	Strategy Manager	TheCityUK	London
Grout, John	Policy and Technical Director	Association of Corporate Treasurers	London
Heegemann, Volker	Head of Legal Department	European Association of Co-operative Banks (EACB)	Brussels
Ingham, Vincent	Senior Policy Advisor	European Fund and Asset Management Association (EFAMA)	Brussels
Johnson, Jennifer	Head of Legal Affairs	European Mortgage Federation (EMF)	Brussels
Kaiser, Roger	Senior Adviser	Tax & Financial Reporting, European Banking Federation	Brussels
Kobylińska- Hilliard, Katarzyna	Deputy Head of Legal Department	European Association for cooperative banks (EACB)	Brussels
Malhotra, Rohan	Policy Manager	TheCityUK	London
Metin, Inci	Policy officer	Federal Association of Public Banks in Germany	Brussels
Morley-Smith, Jorge	Head of Tax	Investment Management Association	London
O'Donovan, Martin	Deputy Policy and Technical Director	Association of Corporate Treasurers	London
Robinson, Anthony	Senior Policy Advisor, Financial Services	Confederation of British Industry's, Competitive Markets Directorate (CBI)	London
Singh-Muchelle, Arjun	Head of EU Affairs	British Bankers' Association (BBA)	London
Stepnitzka, Andreas	Advisor, Financial Markets	European Association of Co-operative Banks (EACB)	Brussels

van Berkel, Marieke	Head of Department	Retail Banking, Payments, Financial Markets, EACB	Brussels
Weigmann, Ole	Policy Officer for capital markets and taxes	Federal Association of Public Banks in Germany	Brussels
Wengler, Christoph	Head of Unit, Federal	Federal Association of Public Banks in Germany	Brussels
Wulf, Thomas	Secretary General	European Structured Investment Products Association (EUSIPA)	Brussels

United States – List of interviewees per sector

Financial Industry Groups

Abernathy, Wayne	Executive Vice President	Financial Institutions Policy and Regulatory Affairs, American Bankers Association	DC ³⁴⁹
Chon, Julie	Global Head	Perry Capital, Public Investment Strategy, former Senior policy advisor to Senator Dodd, U.S. Senate Committee on Banking, Housing and Urban Affairs from 2007-2011	DC
Engstroem, Rob	Sr. Vice President, National Political Director	U.S. Chamber of Commerce	DC
Geduldig, Courtney	Vice President of Global Regulatory Affairs	Standard & Poor's Ratings Services, former Senator Corker Congress staffer	DC
Miller, Andrew	Senior Vice President and Director of Regulatory Policy	The PNC Financial Services Group, former senior counsel of the Financial Services Committee of the U.S. House of Representatives	DC
Rosenkoetter, Darlene J.	Associate General Counsel, Global Regulatory Affairs	Standard & Poor's Ratings Services, former Senator Corker Congress staffer	DC
Talbott, Scott	Senior Vice President of Public Policy	The Financial Services Roundtable	DC
Yingling Edward L.	Partner	Covington and Burling LLP, former President and CEO of the American Bankers Association (ABA)	DC

³⁴⁹ DC refers to Washington, D.C.

Civil society (consumer groups, NGOs, grass-roots groups)

Abrecht, Stephen	Steering Committee Member	Americans for Financial Reform	DC
Banks, Pamela	Senior Policy Counsel	Consumers Union	DC
Booth, Heather		Former Executive Director, Americans for Financial Reforms	DC
Donner, Lisa	Executive Director	Americans for Financial Reform	DC
Flynn, Jennifer	Managing Director	Health GAP	DC
Hauptman, Micah	Financial Policy Counsel	Public Citizen's Congress Watch division	DC
Kalman, Gary	Director of Federal Policy	Center for Responsible Lending (CRL)	DC
Kemp, Elizabeth	Legislative and Policy Analyst	National Community Reinvestment Coalition (NCRC)	DC
Mierzwinski, Ed	Consumer Program Director	USPIRG, Americans for Financial Reform Executive Committee member	DC
Mombrial, Nicolas	Head of the Washington DC office	Oxfam	DC
Naylor, Bart	Financial Policy Advocate	Public Citizen	DC
Plunkett, Travis	Deputy Director	Family Economic & Financial Security Portfolio, The Pew Charitable Trusts	DC
Redman, Janet	Co-Director	Sustainable Energy & Economy Network, Institute for Policy Studies (IPS)	DC
Rheingold, Ira	Executive Director and General Counsel	National Association of Consumer Advocates (NACA)	DC
Saunders, Lauren	Managing Attorney	National Consumer Law Center (NCLC)	DC
Silvers, Damon	Director of Policy and Special Counsel	American Federation of Labor and Congress of Industrial Organizations (AFL-CIO)	DC
Weinstock, Susan K.	Director	Safe Checking Project, The Pew Charitable Trusts	DC
Wilson, Mitria	Director of Legislative & Policy Advocacy	National Community Reinvestment Coalition (NCRC)	DC
Zigas, Barry	Director of Housing Policy	Consumer Federation of America (CFA)	DC
Zinn, Ken	Political Director	National Nurses United (NNU)	DC

Academics/Think Tanks

Barr, Michael	Professor of Law	University of Michigan, former U.S. Department of the Treasury's Assistant Secretary for Financial Institutions	Michigan
Beales J. Howard	Professor of Economics	George Washington University, former director of the FTC's bureau of consumer protection	DC

Calabria, Mark	Director of financial regulation studies	Cato Institute	DC
Elliott, Douglas	Fellow in Economic Studies	The Brookings Institute	DC
Mayer, Robert Nathan	Professor for Family and Consumer Studies	University of Utah	DC
Rivlin, Gary	Fellow	The Nation Institute	New York
Turbeville, Wallace	Professor of Law	University of Maryland, Fellow at Demos, former Goldman Sachs Vice President	Baltimore

Government and government agencies

Barefoot, Jo Ann	Senior Advisor	Treliant Risk Advisors, CFPB's Consumer Advisory Board	DC
Green, Andrew	Counsel and Staff Director	Economic Policy Subcommittee, Senator Merkley Office	DC
Mavrellis, Democritos	Financial Policy Analyst	U.S. Department of the Treasury, Office of the International Banking and Securities Markets	DC
Miller, Jonathan	Deputy Director for Policy and Research	Division of Depositor and Consumer Protection, Federal Deposit Insurance Corporation (FDIC), former U.S. Senate Committee on Banking, Housing, and Urban Affairs	DC
Pearce, Mark	Director	Federal Deposit Insurance Corporation (FDIC), Division of Depositor and Consumer Protection	DC
White, Evan	Honors Attorney	Consumer Financial Protection Bureau (CFPB)	DC
Zavarello, Bill	Senior staff member	House Financial Services Committee, former senior staff on the House Financial Services Committee Chairman Barney Frank's office	DC

International Organizations

Chapman, Michael	Senior Policy Expert	Financial Education and Consumer Protection Unit, Financial Affairs Division, OECD	Paris
Keen, Michael	Professor of Economics, Deputy Director of the Fiscal Affairs Department	International Monetary Fund	DC
Knott, Julian	Public Affairs Manager	Public Affairs and Communications Directorate, OECD	Paris

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