The London School of Economics and Political Science

Lobbying across venues in EU financial regulation: the role of institutions' demand for information

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A thesis submitted to the Department of Government of the London School of Economics and Political Science for the degree of Doctor of Philosophy, London, September 2021

Declaration

I certify that the thesis I have presented for examination for the PhD degree of the London School of Economics and Political Science is solely my own work other than where I have clearly indicated that it is the work of others (in which case the extent of any work carried out jointly by me and any other person is clearly identified in it).

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Abstract

Research has often conceptualised lobbying as an exchange between what is often called the "supply side" – interest groups – and the "demand side", namely policymakers and institutions which are targeted by lobbyists. Within this conceptual framework, lobbyists provide some access good (usually information or money, the latter notably under the form of campaign contributions) to policymakers in exchange for influence on policy outcomes. While research on advocates' features and how they influence lobbying has abounded traditionally, and scholarly attention has more recently acknowledged the importance of contextual factors such as policy characteristics, the role played by the policymaker (the "demand side") has often been neglected by researchers. Similarly, research on agency lobbying in the EU has traditionally been scarce, as most scholars have focused on the European Commission, Parliament and Council, while stakeholders routinely also engage with the EU's independent authorities, which have gained significant rulemaking powers over time. My research question aims to explore the role played by policymakers' information demand in affecting advocates' lobbying success: *does lobbying success vary by the targeted institutional venue? If yes, is the information need of the institutional venue an explanatory factor?* I hypothesise that the higher information capacity of the European Securities and Markets Authority, the EU agency in charge of securities markets rules, compared to that of the European Commission, translates into lower success chances for stakeholders as the policymaker's demand for the information they supply is less significant. Furthermore, I expect that institutions' "baseline" information demand varies depending on contextual factors, notably the complexity of the policy, and that stakeholders will accordingly be more successful when trying to influence rules pertaining to a more complex policy, all else equal.

Independent agencies are now an integral part of the institutional framework behind EU financial regulation. The European Supervisory Authorities (ESAs) created in the wake of the financial crisis have indeed been granted significant rulemaking powers and tasked with the responsibility of drafting delegated legislation. While the European Commission maintains the monopoly of initiative and power to draft primary legislative acts, the ESAs now hold the pen for delegated rules, which are

meant to be of a more detailed and technical nature but are often similar to the former in practice. Agency-drafted delegated rules are also of increasing importance in EU financial services law, as demonstrated for instance by the various oversight mechanisms created to control ESAs' drafting powers. The internal procedures leading to the preparation of rule drafts by the Commission and ESAs respectively are highly similar, and so are the requirements pertaining to how policymakers engage with stakeholders prior to rule adoption.

Two of the lobbying strategies most frequently used by stakeholders are submitting a response to a policymaker's consultation and meeting with the former to directly discuss a given policy issue. The data I collected, which include a main database of over 4000 consultation submissions (covering almost a decade) and a database of circa 1800 meetings (taking place between 2014 and 2018), display no significant difference in stakeholders' engagement with the European Commission and ESMA. Stakeholders target both policymaking institutions in a similar way in terms of both responding to their consultations and seeking a meeting, and do not clearly prioritise one institution over the other. In both cases, business interests represent the majority of stakeholders represented in the databases, and more complex policies are the subject of most consultation submissions and meetings with the two institutions. Measuring lobbying success has long been a challenge for political scientists, but recent advances in quantitative text analysis coupled with spatial theories of lobbying offer a promising avenue for lobbying researchers. Extracting advocates' policy preferences through text analysis (in my case *Wordfish*) and using these estimates to calculate lobbying success as relative improvement yields results with very good face validity, and allows to analyse large amount of data. The regression analysis of my consultations database confirms as expected that lobbying success varies by the targeted institutional venue, namely that targeting ESMA compared to the Commission significantly lowers advocates' chances of achieving their preferences. This effect is moderated by the level of policy complexity, which is also positively correlated with lobbying success: in the case of a more complex policy and all else equal, advocates will be more successful in influencing the related rules.

In the case of Credit Rating Agency policy, the information demand of the Commission was significantly higher than that of ESMA, which when drafting the relative legislation could count on a team of specialised officials with relevant prior experience. In contrast, the Commission had no expertise on CRA policy and took significant steps to gather stakeholder feedback when preparing CRA rules, pointing to its higher information demand in this area. Affected by this difference in the two policymakers' information capacity, stakeholders' lobbying success was considerably higher in the case of the Commission rules. Advocates were indeed successful in achieving considerable changes on corporate governance requirements, conflict of interest rules and provisions for structured finance ratings. In contrast, stakeholders were unable to influence the standards drafted by ESMA, notwithstanding similar lobbying efforts, as the authority's final proposals were only marginally different from its initial drafts. In the case of MIFID II, a significantly more complex policy, the in-house expertise possessed by ESMA compared to the Commission was also significantly higher, meaning that stakeholders were similarly better able to influence the Commission final rules than those drafted by the agency. The gap in lobbying success levels between the two venues was smaller in the case of MIFID II compared to CRAs, as ESMA accepted a comparatively larger proportion of stakeholder comments in the MIFID II case. The information demand of the two institutions was higher in the MIFID case, deepened by the considerable level of policy complexity, but the effect of policy complexity on the policymaker's demand for information and in turn stakeholders' success was stronger for ESMA compared to the Commission. In conclusion, the research question can be answered in the positive, as the findings of this thesis show that lobbying success varies by the targeted institutional venue, and that policymakers' demand for information is a significant driver behind this effect.

Acknowledgments

First of all, I would like to thank my advisers, Professors Mark Thatcher and Ken Benoit, for their invaluable support throughout the doctoral programme. Mark has constantly pushed me to refine my thinking and helped me become a better researcher; Ken has provided vital methodological support where I most needed it. I would like to thank both for their advice; this thesis would have looked completely different without their precious guidance. I would also like to thank my viva examiners, Professor Andreas Dür and Professor David Coen, for a stimulating exchange and their helpful feedback.

Second, I would like to thank the many researchers who provided constructive feedback at various stages of the preparation of this thesis, both at the LSE and beyond. This includes notably the convenors and participants of the ECPR's Summer School on Interest Groups which I attended in 2015, EUSA's 2017 Biannual Conference in Miami, and the LSE faculty and students who provided valuable advice when I presented working drafts of my research at various LSE seminars.

Third, my thanks go to my peers, the other students forming the 2015 incoming cohort who embarked with me on the PhD journey at the Government Department, and many more friendly faces in the Department's PhD room. Elena, Selina, Jan, Kaveh, Takuya are only some of the friends I made there, who supported me both on a personal and professional level.

Finally but not less importantly, I want to extend my immense gratitude to all my loved ones, my family and friends who have been close to me over the years and across countries, always helping me stay motivated throughout this long journey. In particular, I would like to thank my parents Adriano and Silvia, and my friends Elena and Marina, who have been a constant source of support, for this thesis and beyond.

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List of Acronyms

ACER	Agency for the Cooperation of Energy Regulators
AFME	Association for Financial Markets in Europe
AIFMD	Alternative Investment Fund Manager Directive
AMF	Autorité des Marchés Financiers
BMR	Benchmarks Regulation
BTS	Binding Technical Standards
CEBS	Committee of European Banking Supervisors
CEIOPS	Committee of European Insurance and Occupational Pensions Supervisors
CESR	Committee of European Securities Regulators
CJEU	Court of Justice of the European Union
CNMV	Comision Nacional del Mercado de Valores
CRA	Credit Rating Agency
CSDR	Central Securities Depositaries Regulation
DTO	Derivatives Trading Obligation
EACRA	European Association of Credit Rating Agencies
EASA	European Aviation Safety Agency
EBA	European Banking Authority
EC	European Commission
ECSC	European Coal and Steel Community
EFAMA	European Fund and Asset Management Association
EFET	European Federation of Energy Traders
EIOPA	European Insurance and Occupational Pensions Authority
EMIR	European Market Infrastructure Regulation
ENISA	European Union Agency for Cybersecurity
EP	European Parliament
ERA	European Union Agency for Railways
ESA	European Supervisory Authority
ESMA	European Securities and Markets Authority
ESME	European Securities Markets Expert Group

ETF	Exchange Traded Fund
EU	European Union
EuSEF	European Social Enterpreneurship Funds Regulation
EuVECA	European Venture Capital Funds Regulation
FSAP	Financial Services Action Plan
HFT	High Frequency Trading
IOSCO	International Organisation of Securities Commissions
ISDA	International Swaps and Derivatives Association
ITS	Implementing Technical Standards
KID	Key Information Document
MAD	Market Abuse Directive
MEP	Member of the European Parliament
MIFID	Markets in Financial Instruments Directive
MIFIR	Markets in Financial Instruments Regulation
MTF	Multilateral Trading Facility
OCR	Optical Character Recognition
OLS	Ordinary Least Squares
OTC	Over The Counter
OTF	Organised Trading Facility
PEPP	Pan-European Personal Pension Product Regulation
PRIIPs	Packaged Retail Investment and Insurance-Based Product Regulation
RM	Regulated Market
RTS	Regulatory Technical Standards
SEC	Securities and Exchange Commission
SFTR	Securities Financing Transactions Regulation
SI	Systematic Internaliser
SSR	Short Selling Regulation
STO	Share Trading Obligation
TD	Transparency Directive
UCITS	Undertakings for the Collective Investment in Transferable Securities

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Chapter 1

Introduction

1.1 What the thesis is about

Research has often conceptualised lobbying as an exchange between what is often called the "supply side" – interest groups – and the "demand side", namely policymakers and institutions which are targeted by lobbyists. Within this conceptual framework, lobbyists provide some access good (usually information or money, the latter notably under the form of campaign contributions) to policymakers in exchange for influence on policy outcomes. While research on advocates' features and how they influence lobbying has abounded traditionally, and scholarly attention has more recently acknowledged the importance of contextual factors such as policy characteristics, the role played by the policymaker (the "demand side") has often been neglected by researchers. In contrast, I argue that policymakers' demand for information is a significant determinant of lobbying success and show that advocates' chances of achieving their preferences when trying to influence rules vary according to the information demand of the policymaking institution charged with drafting them.

This resource exchange model is implicit in most of the field, as researchers routinely analyse either "supply side" factors, "demand side" factors or contextual factors to understand several outcomes of interest, ranging from the density of the interest group population to mobilisation, from access to policymakers to lobbying influence. "Supply side" (stakeholder-related) factors have been investigated first, with scholars looking at how variables such as advocates' resources, strategies or type shape lobbying activities and outcomes. More recently, contextual factors have been recognised as crucial to understand how lobbyists interact with policymakers, and this realisation has spurred research on issue-specific variables such as salience, complexity or level of conflict (Mahoney 2007, Baumgartner et al 2009, Klüver 2013). In contrast, "demand side" factors linked to the targeted policymaker have been under researched. Some studies argue that different venues require different kinds of information (Bouwen 2002), others that institutions play an active role in shaping the interest group arena (Mahoney 2004), and finally others look at the incentives that officials have for engaging with advocates (Braun 2012b). However, scholars have rarely explored the role played by the venue itself in determining lobbying success, failing to fully appreciate that what institution is being targeted can make the difference for whether advocates are successful or not. Lobbying a democratically elected institution such as a parliament will be quite different to lobbying a ministry or independent agency, as any interest representative would confirm: the nature of the targeted policymaker, their information capacity and needs are all poised to have an effect on advocates' success chances. Interest groups indeed routinely engage in 'venue shopping' and this is particularly apparent in the EU, thanks to the institutional opportunity structure of the EU political system which provides for multiple access points. However, scholars usually consider only the three main institutions involved in legislative decision-making: the European Commission, the European Parliament and the Council of the European Union (Eising 2008). Among these, the Council is the least studied, while the European Parliament rose in parallel importance for legislative decision-making and as a lobbying target, with academic research following suit. The European Commission has been the object of most lobbying studies, not least in view of its central role in the policymaking process: it holds the monopoly of legislative initiative and hence agenda setting and policy formulation, the stage at which it is considered easiest for lobbyists to shape outcomes (Bernhagen et al 2015). What is missing from the lobbying literature are a relatively new type of actor in the EU institutional landscape, agencies.

The last three decades have witnessed an impressive increase in the number of agencies, both at the European Union and at national level, leading some scholars to describe the phenomenon as "agencification" (OECD 2002, Levi-Faur 2011). Agencies perform a variety of tasks, and rulemaking is crucial among them: technical rules adopted by insulated technocratic bodies nowadays represent the lion share of legislative output. We already know a great deal about why these institutions are created, but not nearly as much about the process of rule adoption and the role played by lobbyists therein. While US interest group scholars have long pointed to the importance for advocates of lobbying bureaucrats and influencing agency rulemaking, the relationship between these venues and lobbying is not clear. Agencies could be 'easier' targets for advocates due to their inherent characteristics, institutionally or otherwise, or they could make success less likely due to the higher lobbying efforts needed to target more institutions. Over the last decades, governments and parliaments in Western societies have increasingly delegated governance tasks to non-majoritarian institutions, a phenomenon typically set in motion by the privatisation of the utilities and telecommunications industries (Thatcher and Stone Sweet 2002). Politicians delegate powers to independent regulatory agencies for a variety of reasons, e.g. to increase credibility, to meet the expertise requirements imposed by modern decision-making, and to resolve the time-inconsistency problems that make politicians' decision-making often short-sighted (Kydland and Prescott 1977, Thatcher 2002). In contemporary technologically complex societies, agencies offer expert knowledge, professional management and depoliticised decisions (Majone 1997).

In the European Union, the agencification phenomenon has been particularly marked due to its nature as a 'regulatory state' and to the increasing delegation of regulatory power to Brussels over time (Majone 1996). Aside from a small minority, most of the (over 40) EU agencies have been established since the early 1990s, with the overarching aim of supporting the implementation of EU policies. Despite acknowledging this major development in EU governance, most scholars initially underlined the weak powers of EU authorities, an observation backed by the fact that the oldest among these bodies (CEDEPOF and EUROFOUND) only had information-sharing tasks (Yataganas 2001, Geraldin et al 2005, Thatcher 2011). EU agencies were chiefly regarded as facilitators of transnational regulatory networks or arenas for mutual learning and information exchange (Groenleer et al 2010, Egeberg et al 2014, Coen and Thatcher 2005). Their limited powers therefore did not make them an appealing target for either lobbyists or lobbying scholars at the beginning. However, the picture is more mixed than it seems, as several EU agencies have been granted considerable rulemaking powers over time. Not only are most agencies involved in some regulation by soft law, but several of them participate in rulemaking procedures leading to the adoption of binding legislative rules (Chiti 2013, Busuioc 2013). In the EU, primary legislation establishes the overarching principles on how to regulate a policy issue, while secondary (or delegated) legislation is used to fill in the details and ensure uniform conditions of implementation. However, this distinction is often more formal than substantial, as there is a fine dividing line between the two and 'turf wars' are routinely fought between EU institutions on where to draw the exact boundaries (Moloney 2014). Whereas primary legislative rules are proposed by the Commission and adopted by the co-legislators (European Commission and Council), several agencies are involved in the adoption of delegated legislation. Neglected by most political scientists, these pieces of secondary law are of rising significance and empirical evidence shows that they represent the bulk of EU legislation (Moloney 2014, Busuioc 2013, Toshkov n.d.). Thus, there are excellent reasons for advocates to target the agencies and try to shape the legislative rules they are responsible for, or offer their technical expertise. The fact that the European Commission proposes primary legislation and (some of the) agencies propose secondary legislation provides a unique opportunity to compare these two types of venues and look at how they affect lobbying success for advocates.

These institutional rules put EU agencies in a similar position to US federal ones, which play a key role in the rulemaking process and are required to hold extensive stakeholder consultations before adopting new binding rules (Webb Yackee 2005). Empirical evidence from the United States confirms the importance for interest groups of lobbying the bureaucracy (Hula 1999, Boehmke et al 2013). Administrative rulemaking is rising in importance compared to Congress bills, and agency rules now represent an impressive 90% of federal binding legislation (Nelson and Webb Yackee 2012). Several scholars have noticed this tendency and analysed interest group involvement in agency rulemaking, consistently reporting officials' responsiveness to lobbyists' demands, particularly those advanced by business interests (Webb Yackee 2005, Webb Yackee and Webb Yackee 2006, Naughton et al 2009, Haeder and Webb Yackee 2015). Others have investigated the strategic choice faced by advocates when deciding whether to lobby the legislative arm, the agencies, or both (McKay 2011, Holyoke et al 2012). These studies confirm that lobbying the agencies is deemed crucial by most interest groups hoping to influence policymaking in Washington. The increasing prominence of delegated, secondary legislation is hence by no means an EU-specific phenomenon, but similar research on lobbying and EU agencies is yet to emerge.

1.2 My research question: the link between venues and lobbying success

The brief overview of the existing lobbying literature outlined in the previous section highlights the two gaps I aim to address, namely within research on the exchange model and on agencies. First, the plethora of existing lobbying studies employing an exchange theoretical framework have only recently started to look at the "demand" side represented by policymakers. More specifically, there are a few studies on the information demand of the EU institutions (Bouwen 2002, Bouwen 2004), and some comparative research on policymakers' information demand in their engagement with interest representatives (Hanegraaff and De Bruycker 2020). Closer to my thesis, recent research by Dür and colleagues finds support for the argument that stakeholder-supplied information is ineffective when the policymaker already has enough information at hand about the policy proposal (Dür et al 2019). However, to the best of my knowledge scholarly literature is yet to address in detail the issue of how the "demand" side of the lobbying exchange (the targeted venue) affects stakeholders' chances of achieving their preferences, and to compare the information demand of different institutional venues. Second, existing research on independent authorities has looked broadly at interactions between agency officials and stakeholders from the policymaker's perspective (Braun 2012a, Braun 2012b), but not at whether lobbying efforts targeted at agencies are successful or not, and why. This gap is particularly wide in the EU lobbying literature, as US scholars have long acknowledged the importance of agency-stakeholder interactions and analysed interest groups' lobbying efforts of federal authorities.

I apply the theoretical exchange model to investigate how the "demand" side of the equation influences lobbying outcomes, notably stakeholders' lobbying success, which is most often linked to their own characteristics or strategies. I argue that understanding the "supply" side or advocates' features, such as resources, lobbying strategies or technical expertise offered to the policymaker, is not enough to explain whether they achieve their ideal policy outcomes or not. The policymakers' side of the equation, particularly their demand for stakeholder-supplied technical expertise, is equally crucial. I focus on the "demand" side, i.e. the targeted policymaker, because lobbying research has only recently started looking at its role and is yet to unveil the precise effect it has on lobbying outcomes, going beyond the acknowledgment that officials seek advocates' input for a variety of reasons. Furthermore, in exploring the link between venues and lobbying success, I concentrate on the role played by information capacity. There is indeed a wide agreement in the lobbying literature that information is the single most important currency in lobbying, and plenty of evidence that policymakers need externally supplied expertise to shape policy design and implementation. However, the precise effect that a venue's pre-existent information capacity, and in-house expertise, has on lobbying outcomes and advocates' success chances has not been specifically explored. My research question is therefore two-fold: *does lobbying success vary by the targeted institutional venue? If yes, is the information need of the institutional venue an explanatory factor?*

Answering this research question entails two key endeavours, namely an explicit comparison between lobbying venues and ascertaining the information demand of the latter. In terms of policymaking venues to compare, I could have compared the three main European Union institutions that lobbying scholars have traditionally looked at, namely the European Commission, Parliament and Council. These three institutions exercise the legislative function (the first enjoys the monopoly of initiating legislation, and the other two are the co-legislators), hence they control arguably the most significant policy output – binding law – and scholars' attention testifies to their significance. The first application of the lobbying exchange model was indeed developed around these three institutions and their peculiar information necessities during the legislative process (Bouwen 2002). The main output of the three policymakers are legislative acts (first in a proposal format, later in its adopted form once it has gone through the legislative process), so this setting would have presented the advantage of comparing the same policy output across venues. However, scholarly research has demonstrated that the stage of advocates' intervention when trying to influence policy is crucial: the earlier they are able to get in the lobbying game and shape the agenda, the more likely they are to achieve their preferred outcomes. Lobbyists that intervene at the pre-proposal stage, when the policymaker is still consulting and has not designed its proposal yet, are more effective at their advocacy efforts. Therefore, a potential result of higher lobbying success at the Commission level that this comparison could have yielded might have been due to the information capacity of this institution or just its earlier role in the legislative process, and it would have been challenging to distinguish the two factors.

More importantly, adding agencies specifically to the lobbying exchange model allowed me to address both literature gaps highlighted above, since the exchange framework has so far only looked at the three "usual suspects" in terms of EU institutions. Rather than looking at agencies in isolation, I set up an explicit comparison with the European Commission. EU agencies nowadays have considerable quasi-legislative powers and are responsible for an increasing share of legislative output, with significant drafting responsibilities similar to the Commission.

I wanted to establish whether targeting the Commission or an independent authority (in my case the European Securities and Markets Authority, ESMA) affected stakeholders' success chances, and argue that policymakers' information demand is a significant factor in determining lobbying outcomes. A similar research could have been carried out within a national setting, by comparing an independent authority with a government department: both agencies and ministries are responsible for drafting legislation in most countries, and their features in terms of political independence and technocratic expertise are similar to those found at EU level. Nevertheless, I chose to focus on the European Union rather than the domestic level for two reasons, namely my previous knowledge of its institutional and policymaking structure and the better data availability it offers to researchers. The second key consideration in answering my research question was the focus on institutions' information demand. In trying to understand what could drive the difference in advocates' average success across venues, I decided to focus on this variable and test whether it was indeed contributing to this observed variation. However, there could have been many other factors accounting for the observed gap in success levels at the Commission versus agency, including for example a varying degree of political independence, accountability mechanisms, or different time pressures, which I did not explicitly account for in my thesis. The focus on information demand was linked to the theoretical and empirical importance that information plays in the lobbying literature, particularly in the European Union context where the role played by campaign finance is minimal in contrast to the United States.

Another choice I needed to make to answer the research question was the policy area. There are several reasons why I selected financial regulation as the empirical setting for my thesis, and not other (or more) policy areas. First, the literature on lobbying in financial regulation has so far predominantly focused on its "input" side, i.e. mobilisation efforts. Several studies have investigated the assumption that interest group pluralism is particularly limited in the financial sector realm, compared to other policy areas. Scholars have confirmed the limited mobilisation of voices outside the business community and the underwhelming representation of civil society among active stakeholders in finance, thus lending support to the "unified dominance model" of financial regulatory politics (Pagliari and Young 2015, Pagliari and Young 2014, Young and Pagliari 2017). Patterns of participation in financial regulation consultations are characterised by a particularly poor involvement of civil society organisations (Chalmers 2015). Second, the few studies on lobbying outcomes in finance have looked primarily at global financial regulation, notably at how the Basel Committee on Banking Supervision is influenced by transnational advocacy efforts (Young 2012, Young 2014). Moreover, scholarly research on financial regulation as a policy area has adopted mostly an intergovernmental approach, and explained EU financial services policy as the result of Member State preferences, with a limited attention for interest groups' involvement in the policymaking process (Quaglia 2010, Quaglia 2011, Quaglia 2012, Howarth and Quaglia 2013). The third reason is linked to the particularly strong rulemaking powers of EU agencies in this field. While a comparison of lobbying across venues in other policies would have been equally feasible, I expected EU agencies in charge of financial regulation to be particularly important lobbying targets, since they are responsible for drafting delegated legislation. Choosing the comparatively powerful financial authorities as opposed to other EU agencies slightly impacted my theoretical expectations, as I expected their demand for lobbying information to be lower compared to other, less powerful EU authorities. This might potentially affect the generalisability of my results, and I will discuss this in the concluding chapter of the thesis.

My research aims to contribute to three strands of scholarly literature. First and foremost, I address my findings to the interest groups literature, in that I aim to achieve a better understanding of how lobbying outcomes are linked to venues. My research question directly addresses "demand" side factors. While scholars have so far considered only the Commission, the Parliament and the Council, these are not the only EU institutions lobbied by stakeholders. The number of agencies is significantly growing, together with the quantity of rules adopted by these non-majoritarian institutions. Developments in EU governance hence make this study particularly timely and worthwhile, if we aim to understand what the effects of these institutional developments are on policymaking and interest groups' involvement therein. Adding the agencies to the lobbying exchange model will improve our collective understanding of advocacy efforts in the EU multi-venue political system. Second, my research speaks to regulation scholars with an interest in agencification, as it increases our collective knowledge of how these independent bodies interact with the stakeholders they are meant to regulate. The involvement of interest groups might for instance have an impact on the accountability of regulatory agencies, or researchers might be interested in whether independent authorities are responsive to stakeholders' concerns and how this affects regulatory outputs. Third, I add an additional explanatory factor to the literature on financial regulation: my argument is that policy outcomes do not only depend on intergovernmental preferences in this area, and analysing the stances of active stakeholders is necessary to gain a fuller picture of this policy field.

1.3 How my research was conducted

The nature of institutions as a target of stakeholders' engagement matters for lobbying outcomes, as different venue-related features create varying constraints and opportunities for lobbyists. In particular, based on exchange theory I argue that policymakers' demand for information is a significant factor in determining stakeholders' lobbying success: interest groups can supply enormous amounts of specialised expertise, data and information to officials, but they will only be successful if there is a corresponding need for this information on the policymaker's side. I therefore expect that *lobbying success is correlated with policymakers' demand for information*, and that in my chosen empirical setting interest groups will be more successful in lobbying the European Commission versus ESMA given the latter's lower information demand. I hypothesise that due to their inherent characteristics, the two institutions have different levels of in-house expertise, and that this matters for lobbying outcomes. Furthermore, I argue that the complexity of the policy affects policymakers' need for information, and expect that *lobbying success is higher as the complexity of the policy increases, as the latter deepens institutions' information demand.*

I adopted a mixed approach towards both research design and methodology. In terms of research design, after collecting a very large original database of consultation responses I started analysing it with quantitative techniques, including automated text analysis which I notably used to calculate lobbyists' success. In doing so, I adopted an explorative, inductive approach which was not driven by any specific theoretical framework but rather aimed at unveiling interesting patterns in my database. This inductive stage of my research showed that some factors were more relevant than others, and notably that the targeted venue had a sizeable effect on lobbying success, whereas traditional variables related to the interest groups did not seem to be statistically significant. I therefore decided to focus on lobbying exchange theory for the next stage of my research, the qualitative one, where I derived expectations in line with the tenets of this theory, notably by focusing on the role played by information demand and policy complexity. My choice of two different qualitative case studies was driven by my second theoretical expectation, namely that policymakers' demand for expertise supplied by interest groups is affected by the actual complexity of the policy at hand. My research design is therefore neither entirely inductive nor entirely deductive, as it is characterised by an inductive quantitative part followed by a deductive qualitative one.

Similarly, I decided to adopted a mixed methods approach. Mixed-methods (or multi-methods, as some scholars prefer to call it) research is on the rise in political science, but good methodological guidance on how to conduct it is still scarce (for an exception see Lieberman 2005, Rohlfing 2008, Weller and Barnes 2014). Quantitative and qualitative tools can however be powerfully combined for purposes that cannot be easily achieved otherwise, as they both come with a distinct set of advantages. For example, qualitative methods are often associated with a detailed emphasis on the context of the analysis and a higher number of variables, while quantitative methods tend to abstract from the context to control all "exogenous" factors and generalise conclusions to a wide range of settings. Some recent methodology research has suggested there are three main purposes of linking different methods: convergence, addition and sequencing. *Convergence*, which often goes under the term "triangulation" of results, is the most traditional reason for mixed-methods research and involves comparing the degree of agreement between different methods to demonstrate that they yield comparable results. In this case, qualitative and quantitative studies are usually pursued independently to show that each produces similar results capable of standing on their own. Another purpose for combining quantitative and qualitative tools is *additional coverage*, whose key feature is a division of tasks that assigns each method (with its own strengths) to separate purposes for the benefit of the wider research project; research designs with this feature are often referred to as "nested" or "embedded" (Morgan 2017). The third purpose is the *sequential contributions* approach, which seeks to use the results of one method to enhance the performance of the other in a carefully integrated analysis. The goal here is to use the learnings from the first method (which can be either qualitative or quantitative) to enhance the use of the second, so the project will typically be structured as a sequence of two integrated sections, where the results of the first stage provides input for the second method.

My aim for a mixed-methods research design is primarily one of sequential contributions, although I also use the qualitative component of my research to validate results from the quantitative stage, thus also achieving a convergence or triangulation goal. More specifically, my research design is an explanatory sequential design ("*explanatives design*"), where a first phase of quantitative data collection and analysis is followed by two process tracing case studies supported by further qualitative data collection, which are used to offer some explanations for the initial quantitative results (Creswell et al 2003). While cross-sectional analysis is a form of correlational inference across cases aimed at establishing a link between an independent and a dependent variable (in my case the venue and lobbying success), process tracing aims to explain the causal process behind this link by studying hypothesized processes usually within a single case, or uncover the mechanism behind this black box of causality (Weller and Barnes 2014, Kay and Baker 2015). In other words, while quantitative methods helped me answer the "what" question, only process tracing could answer the "how" and "why" question by shedding light onto the mechanisms underlying my large-N findings.

Process tracing was developed in the United States in the field of cognitive psychology in the late 1960s, and first applied to political psychology at the end of the 1970s. It can be defined as "the analysis of evidence on processes, sequences and conjunctures of events within a case for the purposes of either developing or testing hypotheses about *causal mechanisms* that might causally explain the case" (Bennett and Checkel 2014). There is some ambiguity as to what causal mechanisms exactly are and several definitions have been put forward, ranging from "entities engaging in activities" to "components of our causal explanations that display invariance" or "chains of causation" (Jacobs 2016, Beach 2016). Theories often tell us what kind of causal mechanism to expect, or at least that is the case in theory-testing process tracing. Process tracing can indeed take different forms, notably it can be *theory-testing* when it proceeds in a deductive manner to test existing theories, or *theory-building* when it proceeds inductively to develop new theory based on the empirical evidence available in the case (Kay and Baker 2015). When undertaking theory-testing process tracing, researchers identify pre-existing theories and the hypothesized causal mechanisms that these predict. If theories already exist offering a potential explanation of a case, process testing can proceed deductively and can be somewhat more straightforward, although the researcher will still need to develop case-specific observable implications (Bennett and Checkel 2014). Once hypotheses about observable implications and mechanisms are derived from theory, existing pieces of evidence in the case can be used to check whether these hypotheses are true; evidence is any insight or piece of data that provides information about context, process or mechanism (Kay and Baker 2015). Researchers should collect a large and variable dataset to allow for triangulation of empirical observations, although the "diagnostic weighting" of a casual process observation can vary and Bayesian logic is often used to determine how probative it is. It is equally crucial to consider the likelihood of an empirical observation occurring if the alternative theory is true, and the ideal scenario consists in finding evidence of observable implications that is inconsistent with alternative explanations. Examples of evidence used in process tracing are primary and secondary sources. Primary evidence, which is created during the period under analysis, comprises media articles, manuscripts, speeches, policy documents and grey literature. Secondary literature, which is created after the period under analysis, can include interviews, ex post commentaries and historic accounts. In all instances, researchers need to assess carefully if the evidence gathered can be considered accurate and trusted, considering *inter alia* the data generation process and potential sources of bias, such as issues of authorship and context that can undermine confidence in any single piece of probative evidence (Beach 2016).

In practice, I collected an extensive database of over 4000 consultation responses submitted by more than 1000 unique stakeholders over 2009-2017, a decade characterised by an intense legislative output in the wake of the financial crisis. Alongside this, I collected a smaller meetings database to further illustrate stakeholders' engagement patterns with the two institutions. I then conducted my analysis in two steps. First, I applied quantitative methods to analyse my consultations database and specifically assess whether there is a difference in lobbying success when advocates target the European Commission versus the European Securities and Markets Authority, in order to answer the first part of my research question. There are three European authorities in the financial services area, but I chose to compare the Commission with ESMA because the latter is responsible for securities markets, the segment most directly affected by the intense regulatory drive which happened after the 2008-09 financial crisis; furthermore, banking rules (the realm of EBA) are mostly set at global level, and the EU has legislated in a more limited manner on pensions and insurance (EIOPA's remit). I adopted a large-N approach and used quantitative text analysis to calculate the degree of lobbying success enjoyed by stakeholders when they try to influence rules drafted by the two different institutions. My analysis of the over 4000 consultation responses submitted to the Commission and ESMA across the realm of post-crisis financial regulation showed a remarkable difference in stakeholders' success levels when lobbying the two venues. I indeed found a gap in lobbying success that interest groups experience when targeting the Commission and ESMA, notably an "agency effect" damaging their chances at influencing policy when ESMA is being targeted.

In a second stage, first I used process tracing to triangulate the results of my quantitative analysis, thus improving the reliability of my findings. More importantly, I relied on about 20 semi-structured interviews and extensive documentary evidence to answer the second part of my research question and confirm the expectations derived from lobbying exchange theory. Specifically, through process tracing I sought to establish whether the varying information demand of the two institutions could contribute to explaining the gap in stakeholders' lobbying success levels. After my quantitative analysis unveiled the difference that the targeted venue makes for stakeholders' success, I assessed through qualitative research whether information demand was a significant causal driver behind this difference. In other to test my third hypothesis, I needed to analyse policies with varying degrees of complexity. The case selection strategy used was therefore one of a "diverse case", as I set out to analyse two policies with opposite levels of complexity, namely the Credit Rating Agencies Regulation (CRA) and the Markets in Financial Instruments Directive (and Regulation) or MIFID II (Seawright and Gerring 2008). The regulation of credit rating agencies (CRAs) was a relatively simple policy adopted at the onset of post-crisis EU financial regulation. The regime introduced requirements for the business conduct of credit rating firms and the transparency of the methodology they use, with no specific rules on how ratings are to be derived. At the other extreme of the complexity spectrum, MIFID/R policy has been described as a "behemoth" regime and covers an incredibly wide range of matters governing financial markets, ranging from categories of trading venues, asset-specific rules on transparency of trades, investor protection requirements, investment research and reporting, to name just some of its elements. In selecting these two policies for my qualitative case studies, I used a range of criteria including my prior knowledge of EU financial services regulation and various possible interpretations of complexity, ranging from sheer length and scope of the legislative text to the feedback of financial services stakeholders involved in designing or advocating on these policies. Both the CRA and the MIFID case confirmed the results of my quantitative analysis, namely the gap in average lobbying success levels between the two institutions. More importantly, through process tracing I could provide evidence that policymakers' information demand is a significant factor affecting lobbying success: in line with my first hypothesis, I established that the level of in-house expertise was lower at the Commission compared to ESMA, due to a combination of factors such as its reliance on policy generalists and the staff's rotation obligation. I also found support for my second expectation, namely that *lobbying success is correlated with policymakers' demand for information*: the difference in information demand can therefore explain the "agency effect" of lower lobbying success. Stakeholders are generally more successful in getting their views reflected in legislation by Commission officials than ESMA, which has stronger in-house expertise and hence a lower information demand. By analysing two cases with varying complexity levels, I could also demonstrate that for the complex MIFID II policy the information demand of both institutions was higher than for CRAs, which supported my third expectation that *lobbying success is higher as the complexity of the policy increases, as the latter deepens institutions' information demand.*

1.4 How the thesis proceeds

My thesis is divided in seven chapters alongside this introductory chapter. Chapter 2 surveys the literature on lobbying. In particular, it looks at existing scholarly research on the determining factors of lobbying success, which are often divided in stakeholder-related ("supply side"), contextual (issue-related), and policymaker-related ("demand side"), with a specific focus on the latter and on resource exchange theory. The chapter also analyses the literature on agency-stakeholder interactions and on how stakeholders strategically engage in venue shopping, to highlight the research gaps that my thesis aims to fill, and lays out my hypotheses and theoretical expectations. Chapter 3 includes an explanation of the EU's institutional structure in financial services regulation, my chosen empirical setting. It is divided in four parts:

the first one provides an overview of the evolution of this policy area and particularly the decision to establish EU agencies, the second explains their considerable powers in terms of drafting legislation, the third presents a long-standing legal doctrine (the Meroni doctrine) with consequences for agencies' formal powers, and the fourth compares the Commission and ESMA's rulemaking and stakeholder engagement processes. Chapter 4 is focused on my data: it presents my case selection and data collection strategies, and includes an exploratory investigation of both my consultations and meetings databases, which sheds light on lobbying mobilisation patterns at both the Commission and ESMA levels; this data exploration also supports my underlying assumption that stakeholders consistently engage with both the Commission and ESMA. Chapter 5 is then focused on my quantitative analysis and explains how I proceeded in the challenging measurement of lobbying success, my outcome variable of interest. The explanation of the quantitative text analysis methodology is accompanied by an illustration of its use through the pilot analysis of one stakeholder consultation on CRAs. Most importantly, the chapter includes my quantitative findings on lobbying success, namely that there is a clear gap in lobbying success levels when interest groups target the two institutions and that ESMA rules are harder to influence (what I call an "agency effect"). Chapters 6 and 7 are the process tracing case studies, in turn dedicated to CRA and MIFID II, two policies at the opposite extremes of the complexity scale. Both follow a similar structure, as they provide an overview of these policies, establish the two institutions' relative information capacities, and qualitatively analyse lobbying success levels at the Commission and ESMA to explore the role played by the policymakers' demand for information and triangulate my quantitative results. Analysing two different case studies allowed me to investigate the role of policy complexity and show how it affects venues' information demand and correspondingly stakeholders' lobbying success. Finally, the concluding chapter (chapter 8) provides an overview of my main findings and the contributions of the thesis from a methodological, theoretical and empirical viewpoint. It also points to the generalisability of the results beyond my chosen setting as well as the limitations of this research. Lastly, the chapter briefly discusses potential policy implications and indicates avenues for future research endeavours in this field.

Chapter 2

The demand side of lobbying and the missing agencies

Lobbying has often been conceptualised in exchange terms, as a relationship where interest groups seek access and influence over policy outcomes in exchange for providing policymakers with information, citizen support or other "access currencies". The policymaker-stakeholder engagement is therefore assumed to be mutually beneficial, but scholars have traditionally focused on interest group features when assessing their success chances – not so much on the "demand" or policymaker's side. Similarly, research on agency lobbying in the EU has traditionally been scarce, as most scholars have focused on the European Commission, Parliament and Council, while stakeholders routinely also engage with the EU's independent authorities, which have gained significant rulemaking powers over time. My research question aims to explore the role played by policymakers' information demand in affecting advocates' lobbying success. I hypothesise that the higher information capacity of the European Securities and Markets Authority, the EU agency in charge of securities markets rules, compared to that of the European Commission, translates into lower success chances for stakeholders as the policymaker's demand for the information they supply is less significant. Furthermore, I expect that institutions' "baseline" information demand varies depending on contextual factors, notably the complexity of the policy, and that stakeholders will accordingly be more successful when trying to influence rules pertaining to a more complex policy, all else equal.

This chapter surveys some of the existing scholarly literature on lobbying in order to highlight the two main research gaps that my thesis aims to fill: the effect of the "demand side" of lobbying on advocates' success, and how EU independent agencies are being targeted by interest representatives. It explores how the lobbying literature has first analysed advocates or the "supply" side, to then turn to a contextual approach whereby policy characteristics have been deemed relevant, to most recently take into proper consideration the needs of the policymakers being targeted by interest groups. Separately, this chapter assesses the current status of the literature on agency lobbying, which has given rise to a flourishing set of studies in the US context but is rather scarce when it comes to European Union advocacy, despite the rising importance of EU authorities over the recent decades and the abundant empirical evidence on their interactions with stakeholders. Having surveyed both strands of the literature – the exchange model and particularly its "demand" side, and agency lobbying – the chapter concludes that there is an apparent need to fill these two gaps; the thesis achieves this by using the agencies' case to explore the role played by policymakers' demand for information. The final section of this chapter presents my research question and explains how it is linked to the two literature gaps I underline, and how the thesis aims to contribute to lobbying research; it also lays out my hypotheses on the link between stakeholders' lobbying success and venues' information demand, and the argumentation behind my expectations, including on the role played by policy complexity. I posit that the policymakers' side of the lobbying equation has not been analysed with the attention it deserves, and that a specific type of institution, EU agencies, has been so far largely neglected by lobbying scholars. I therefore aim to build an explicit comparison of an authority with the European Commission to explore venues' effect on lobbying success, and argue that policymakers' information demand, affected by the complexity of the policy in question, is a significant determinant of stakeholders' ability to achieve their preferences.

2.1 Lobbying influence and success

Generations of US and EU scholars have tried to explain lobbying influence. Influence is often understood as control over political outcomes, and actors are considered powerful (or influential, as the two terms are often used interchangeably) if they can bring policy outcomes close to their ideal points, in line with Hart's definition of power as control over outcomes (Hart 1976). Some scholars adopt a methodologically safer approach as they restrict themselves to talking about "success", the assumption being that the latter can occur due to luck or other unobservable factors, whereas the correlation between interest groups' ideal preferences and policy outcomes cannot be taken as evidence for their influencing power *prima facie.* A range of causal mechanisms might be at play which are completely unrelated to interest groups' activities, and knowing that a particular outcome corresponds to any actor's preferences cannot demonstrate influence *per se,* as this would require proving a causal link (Woll 2007, Pritoni 2015). Following on from this caveat, some scholars prefer to study interest groups' resources and access as preconditions to power and influence, given the difficulties in demonstrating the latter (Woll 2007).

The literature has identified three sets of factors that affect lobbying outcomes: those related to advocates themselves, those related to the targeted institutions, and finally issue-related characteristics (Mahoney 2007, Dür and De Bièvre 2007b, Dür 2008a, Dür 2008b). This literature categorisation has often been linked to theorisations of lobbying in exchange terms, whereby interest groups are seen as the "supply side", targeted policymakers are the "demand" side and the (access) goods being exchanged between the two sides can take several forms, ranging primarily from expert knowledge to information about the interests of affected communities or stakeholders (Bouwen 2002). These theories move from the assumption that policymakers need these resources (first and foremost information) from lobbyists and are grounded in 1960s sociological studies, namely resource dependence theory (Pfeffer and Salancik 1978). Under this framework, private actors and public institutions are interdependent from each other: stakeholders need access and policymakers need information. Access goods such as information are also valuable as they help enhancing public institutions' input and output legitimacy, the former aimed to ensure that governments are responsive to citizen preferences and the latter aimed to ensure that policies represent effective solutions to common problems of the governed population (Scharpf 1999).

2.2 What determines lobbying success: the advocate, the context or the policymaker?

Scholars exploring the effect of interest group characteristics on their lobbying success have been primarily interested in resources. The latter have been operationalised alternatively as financial resources, personnel, degree of expertise or information, legitimacy, structural power and public support (Mahoney 2007, Woll 2007, Baumgartner et al 2009, McKay 2012a, Klüver 2013, Young 2015). In her comparison of lobbying success in the United States versus the European Union, Mahoney measures interest group resources in terms of staff size, membership size and annual lobbying expenditure, but finds that none of these measures bears a clear relationship with success. However, she finds a link between *type* of interest group and influence, as business representatives and trade associations are more likely to be successful in the US, while comparatively speaking citizen representatives are more likely to gain something in the EU (Mahoney 2007, Mahoney 2008). In one of the most comprehensive studies on policy change done until then, Baumgartner and colleagues try to explain policy outcomes on a range of almost 100 randomly selected policy issues, spanning across four years in the United States (Baumgartner et al 2009). One of their most striking findings goes against the assumed link between advocates' resources and their lobbying success, in that they find a virtually inexistent relation between material resources and policy outcomes moving in the lobbyists' desired direction. Various measures of resources are used (donations, lobbying expenditure, membership size, organisational budget), yet none of these has an observable statistically significant effect on outcomes. The only exception they find is that business assets seem to have some significant effect (with the caveat that the sample of firms in the study is rather small) as does the fact of having the support of a government official who can be counted as an ally and is actively involved in the advocate's cause (Baumgartner et al 2009). In her study specifically devoted to investigating the relationship between lobbyists' resources and their policy success, McKay similarly finds little evidence backing this popular claim. She measures resources in financial terms – namely as revenue and budget – and also uses alternative operationalisations such as the number of employed staff but finds no significant results.

Nevertheless, the intensity of lobbying efforts (measured as time spent in Washington and/or on federal policymaking) does seem to be linked with greater lobbying success, and money is seen as enabling more intense advocacy efforts (McKay 2012a). In a case study on the role of non-governmental organisations in European trade policy conducted by Dür and De Bievre, results point more clearly to an advantage for business interests: higher mobilisation and access of NGOs to policymakers does not translate into more civil society-friendly outcomes, and business interests are better able to influence policy formulation and implementation as confirmed by a survey of organised interests themselves (Dür and De Bievre

2007a). Other scholars like Klüver also find that economic power pays off when it comes to lobbying success; this however is not systematically linked to group type, as she also finds that business and citizen groups are equally powerful and EU policymaking is not biased in favour of any specific interest group type (Klüver 2013). Taking a somewhat different approach, Young tackles the issue of resources and lobbying success by bringing back into the literature *structural power*, a concept which is usually overlooked due to the challenges in measuring it empirically. Acknowledging these concerns, he himself recognises that the relational data needed to assess structural prominence of firms are not available to researchers and ends up using proxies in the absence of the ideal network-relational data. More specifically, he assumes that firms employing a higher number of staff and holding more assets are structurally more prominent and finds that on a sample of SEC (Securities and Exchange Commission) rules issued between 2000 and 2007 the structural power of the financial industry did not have a discernible effect on, or constrain the costs imposed on the industry by the regulator (Young 2015).

Given these apparent difficulties in obtaining complete and reliable data on advocates' resources, the type of interest group has often been used as a proxy for resource endowment, although the link between group type and influence is a contested one and researchers have struggled to demonstrate the impact of resources on advocates' strategies and their ability to shape policy outcomes (Binderkranz and Rasmussen 2015, Beyers and Kerremans 2007, Beyers 2008, Bernhagen 2012). In her study on *negative lobbying* (lobbying against a proposal to prevent its adoption), McKay disproves the common belief that superior financial resources translate into more favourable lobbying outcomes, as she finds that public interests hold an advantage over business interests when it comes to fending off a policy proposal (McKay 2012b). Looking at the US Securities and Exchange Commission consultation procedures on proposed administrative rules, Nixon and colleagues similarly find little or no evidence that powerful dominant interests are more effective in changing the Commission's rule proposals during the "notice and comment" period (Nixon et al 2002). Binderkranz and colleagues build a more nuanced narrative, as they argue that business resources are not relevant to policymakers across all issue areas: in other terms, they expect them to matter only for business regulation but not in other areas of public policy. Their results (stemming from data on the Danish political system) support this intuition, as they find that business interests are more influential in consultations regarding business regulation, whereby non-business groups tend to achieve better outcomes on consultations related to public sector services and general regulation (Binderkranz and al 2014). In their comprehensive study on the influence of business interests in the European Union, Dür and colleagues also fail to find a systematic advantage for business; industry stakeholders are not more likely than other interest group categories to achieve their preferences and shape policy. As a matter of fact, they find empirical evidence of a business interests' disadvantage compared to citizen groups, a disadvantage that only disappears on less conflictual issues and when the role of the European Parliament is more limited (Dür et al 2019).

Nevertheless, a swathe of research seeking to explain *access* to policymakers – seen as a precondition for achieving influence or success - finds consistent results pointing to a strong advantage for business interests and those having superior resources. In her study focused on access to EU institutions, Mahoney finds that financially endowed groups like business and trade associations have an advantage in getting seats at committees organised by the European Commission. She also finds that organisations have a higher probability of being included in the consultative committee system if they maintain a Brussels office (another proxy for higher financial resources) or represent a wider number of EU Member States (Mahoney 2004). Similarly looking at *access* rather than influence, Chalmers demonstrates that superior resources (measured in terms of financial resources and staff) translate into getting more seats at the table, namely more frequent membership of European Commission expert groups (Chalmers 2014). Industry interests also represent the majority of participants in hearings and other events organised by the European Parliament's economic and financial affairs committee (Coen and Katsaitis 2021). In yet another study focused on access of national interest groups to policymaking, resources are similarly shown to matter as resource-rich business groups have more frequent contacts with national and EU institutions (Dür and Mateo 2012).

Starting from the 1980s, scholars have been increasingly analysing the context of decision-making to explain individual-level mobilisation and political participation (Baumgartner and Leech 1998). Correspondingly, scholars started looking at contextual variables to explain lobbying success (Baumgartner and Leech 1998, Mahoney 2007, Dür 2008a). In her insightful study comparing advocacy patterns between Brussels and Washington, Mahoney argues that the degree of democratic accountability in any given polity should have an impact on the level of lobbying success that organised associations can achieve (Mahoney 2007). More specifically, she assumes that political systems with higher accountability to the public should be more responsive to civil society organisations, since the latter represent citizen interests and the failure to take their voices into account might endanger politicians' re-election prospects. On the other hand, in an electorally unaccountable system, where politicians can retain their positions irrespective of public support, there should be less responsiveness to civil society lobbying. This argument would in the scholar's view be valid for all advocates, since non-elected policymakers should be less responsive to any sort of pressure, whatever side it is coming from. Transatlantic differences should become relevant in this respect, as most policymakers in EU institutions are not held accountable through direct elections, whereby policymakers in the US are strongly driven by re-election motives; it should be noted however that this argument stands only because she focuses her attention on Congress lawmakers in the US context. For example, European Commissioners are appointed and not elected, hence they may be less receptive to interest groups' demands as they do not need to rely on external resources for their re-election campaigns (Dür 2008a). Moreover, they might want to appear even-handed because of their lack of electoral legitimation; output legitimacy would be particularly crucial for them given the lack of input legitimacy. Based on this argument, Mahoney expects advocates to generally experience higher levels of lobbying success in the US compared to the EU. Another system-level characteristic is taken into account to explain different average success levels, namely the higher likelihood of policy change happening once a proposal is put forward in the EU versus the US (where it is comparatively easier to "kill" draft legislation) would make lobbyists more likely to attain at least partial lobbying success in the EU than the US (Mahoney 2007). The results of her empirical analysis are mixed, as Mahoney finds that advocates achieve at least partially their lobbying goals in the EU compared to the US, contrary to her accountability-related hypothesis. This result can be explained however by her second argument: the fact that lobbyists more often attain partial success in the EU could be linked back to policy change being overall more likely in Brussels (Mahoney 2007). The somewhat surprising results pointing to higher degrees of success for advocates in a less accountable polity such as the EU is explained by other scholars by the fact that precisely the lack of electoral (and generally public) oversight can increase officials' scope to take onboard interest groups' demands (Dür 2008a). At a system-level, political institutions are expected to affect interest groups' influence also by shaping access to policymaking. In this respect, there has been some scholarly debate on whether the highly complex vertical and horizontal division of power in the EU either facilitates access of societal actors to decision-making - by increasing the number of potential access points and hereby lobbying opportunities - or rather makes it more difficult, given that these complexities and shared responsibilities might make it harder to design an effective lobbying strategy (Eising 2007, Dür 2008a, Princen and Kerremans 2008).

At a more granular level, academics recently started to explore the impact of issue-level characteristics on lobbying and specifically interest group influence. The type of policy has been hypothesised to matter (Dür 2008a, Binderkranz et al 2014), while several studies have emphasised the potential effects of salience, complexity and degree of conflict on lobbying success (Michalowitz 2007, Mahoney 2007, Bunea 2013, Klüver 2013). Lowi's traditional categorisation of policies into regulatory, distributive or redistributive would matter as the distribution of costs and benefits of any policy interacts with the costs and benefits of lobbying: while interest groups' influence is expected to be limited on redistributive policies producing diffuse costs and benefits, groups representing concentrated interests have the upper end compared to diffuse interests when it comes to distributive or regulatory policies, whose benefits are concentrated on a smaller constituency (Lohmann 1998). Other scholars argue that the degree of interest group influence is higher on technical issues than on "high politics" issues, as policymakers' demand for information on the former is higher (Greenwood 2019; Beyers 2008). This realisation came as researchers started moving away from the predominant case study approach, which allowed variation in advocates' characteristics (such as resources) but held the context fixed by looking at specific policy issues, hence not allowing to explore the effect of variables such as degree of salience or technicality (Baumgartner and Leech 1998). Enlarging the scope of research projects brought about the realisation that the nature of political issues can have a bearing on interest representation and affect anything ranging from interest group density to lobbying strategies and success. In line with this new thinking, several scholars have been calling for the development of mid-range theories that are more attentive to the contextual nature of policymaking and lobbying than the traditional one-size-fits-all theoretical approaches, and could thus account for the policy- and institution-dependent variables that affect interest groups' activities in the EU and elsewhere (Klüver et al 2015b, Varone et al 2016).

For instance, the nature of the political conflict influences how a group represents their interests, e.g. through either inside or outside lobbying, through arguing or bargaining (Beyers 2008). While it has often been argued that EU-level policymaking is characterised by a particularly low intensity of political conflict and by the technicality of most policy issues, the latter still vary considerably when it comes to their salience and public visibility. Issues indeed vary significantly in terms of the amount of political activities that take place in front of broader audiences, and the level of public attention can determine how organisations decide to deploy their resources, and whether they are able to do so effectively (Burstein and Linton 2002). Issues can be of a technical nature and attract huge attention from interest groups, or they can feature high on the political agenda yet be of concern only to a handful of private actors: this means that interest organisations can choose to concentrate their resources on niche technical issues that the general public is unaware of, but where the payoff is higher as tangible and concrete benefits for their membership can be obtained (Beyers 2008).

The degree of conflict on an issue is also posited to be important, notably whether interest groups are part of strong opposing coalitions of interests (and whether these comprise a wide variety of actors) or whether they consistently lobby for policy change to happen in the same direction (Michalowitz 2007). The argument about countervailing lobbying is an intuitive one: lobbying success is likely to be higher where the constellation of lobbying actors is not plagued by internal conflict (Mahoney 2007). Chalmers also finds empirical evidence for the role of a "unified voice" in his study on lobbying success, which highlights how the latter partially depends on the extent to which financial industry interests are united behind a common position (Chalmers 2020). In a similar vein, Bunea argues that the relative positioning of advocates' preferences matters and finds support for her hypothesis that median preferences are more likely to be translated into policy outcomes, thus pointing to a consensual policymaking process (Bunea 2013).

While the focus of her attention is the strategy pursued by interest groups rather than their final influence, in her aforementioned study of US versus EU lobbying Mahoney finds that the scope and salience of issues matter: advocates tend to engage more in outside lobbying when dealing with highly salient issues, while inside lobbying strategies are more often pursued when the policy issue has a large scope (Mahoney 2008, Dür and Mateo 2013). In the European Union only, she also garners some evidence that salience matters for lobbying success as the latter decreases when salience increases; this relationship however does not hold in the United States context (Mahoney 2008). Other authors show that issue salience also raises the diversity of interest groups that become active on any given issue (Chalmers 2015). It should be noted however that the link between issue characteristics and lobbying success – rather than strategy or mobilisation – has been much harder to demonstrate empirically. For example, Klüver finds that only the complexity of the issue affects lobbying outcomes, while there is no evidence of correlation between lobbying success and salience or other policy characteristics; other scholars similarly do not find any significant effect of issue salience on advocates' success (Bernhagen 2012, Klüver 2013, Bunea 2013). Others find this contextual variable to have a different effect across specific interest group types (Pagliari and Young 2015), consistently with claims that business has an upper hand where the media and public do not pay attention, i.e. issue salience is low and the information asymmetry is wider (Vannoni 2015). This is the argument of "quiet politics", namely that business interests prevail when democratic control – exercised through political parties' activity and public attention – is lower, as the issues are less politically salient and politicians invest less energy taking on political battles (Culpepper 2010). One mechanism which makes business-friendly outcomes less likely on salient issues is the fact that the latter tend to draw mobilisation from countervailing forces, typically the general public and citizen interests (Hojnacki et al 2015). It is also not a coincidence that salience tends to be related to complexity, as the issues which the public and politicians care less about also tend to be the most complicated, often to the advantage of business and its superior technical expertise. Not everybody agrees with this view, as some scholarly studies show to the contrary that business has a slight advantage on issues characterised by high media publicity; this result however is restricted to the congruence of policy frames (identifying what is at stake in a peculiar debate) (Borang and Naurin 2015) or to specific case studies in the area of financial regulation (Gross 2015).

2.3 The "demand" side of the equation and resource exchange theories

Scholars have more recently acknowledged the relevance of demand-side, or institutional, variables to understand lobbying. As aforementioned, lobbying is often theorised in exchange terms: in a nutshell, interest groups offer various types of resources in exchange for influence over policy outcomes. In this conceptual framework, interest groups represent the "supply" side whereas the policymakers targeted by the lobbying activity represent the "demand" side. Exchange theories have their origins in 1960s sociological studies, notably in the exchange model developed by Levine and White to study interorganisational relationships, based on the insight that organisational entities weigh costs and benefits of their interactions with a utility-maximisation purpose (Levine and White 1961). The framework was quickly adapted to resource dependence theory, which analyses how the external resources of an organisation affect its behaviour and how exchange and power relations work within organisations (Aldrich and Pfeffer 1976, Pfeffer and Salancik 1978).

These early insights of organisational theory and sociology were quickly applied to lobbying studies. Resource exchange theory was first used to explain interest group mobilisation, as scholars argued that group organisers offer a set of benefits (material or otherwise) to prospective members as an incentive for joining, and must receive some sort of "return" for the group mobilisation to continue (Salisbury 1969). In the context of the European Union, the concept of exchange was first used implicitly by Greenwood as he sought to explain the plethora of organised interests lobbying the European Community (Greenwood 1993). Another early adaptation of the exchange framework to EU policymaking was a study of the bloc's common agricultural policy: by using a network approach, Pappi and Henning argued that the links between actors who are active in the agricultural policy domain can be motivated by the exchange of resources, the most important of which being final control over policy decisions. According to them, policymakers who control policy outcomes can hand out influence over these in return for resources possessed by interest groups, such as public support or expert knowledge (Pappi and Henning 1999).

Resource exchange theory has been often applied to EU lobbying studies in the past two decades, with several studies looking at interest groups' informational resources or at resource dependencies to explain lobbyists' access to the institutions. A general conceptualisation of EU lobbying in exchange terms was developed by

Bouwen in his study of interest groups' access to EU institutions (Bouwen 2002). In this framework interest groups constitute the "supply" side, while targeted policymakers are the "demand" side and the "access goods" being exchanged between the two can take several forms. These theories start from the assumption that interest groups can offer various types of resources to policymakers that need them: private actors and public institutions are interdependent from each other and find it mutually beneficial to engage in a relationship. This core assumption runs counter to the common perception that business lobbying consists in unidirectional pressure exerted by private interests on public authorities: the latter similarly need close contacts with stakeholders to be able to fulfil their role, especially when this consists in creating new policy or legislation (Bouwen 2002).

"Access goods" supplied by interest groups give the latter an opportunity to be heard during the policymaking process, and are essential to policymakers who are often in short supply of information on the likely outcomes of the policies and laws they are devising. Information and expert knowledge are thought to be the key resource exchanged between advocates and public authorities, and as such the most crucial "currency" in lobbying. There are indeed wide informational asymmetries between lobbyists and policymakers, as underlined also by the formal modelling literature: decision-makers are often faced with important capacity constraints (time and resources) and must seek information on the consequences of their proposed policy decisions from interest groups active in the relevant realm (Austen-Smith 1993). In a recent book, Koehler confirms both theoretically and empirically that demand for information is one of the major drivers of lobbying and is created by the uncertainty that policymakers often encounter when taking major decisions. In his view, political uncertainty is what truly creates institutions' information demand rather than a somewhat limited technical expertise, but the conclusion on the relevance of information as an access good is consistent with prior research (Koehler 2019).

Some scholars argue that these informational asymmetries are particularly severe in the European Union, where expert knowledge would thus play an even more critical role than in other political contexts. This is often explained by the relatively limited staff that the European Commission relies on compared to national administrations: according to this theory, EU officials charged with drafting legislative proposals are particularly reliant on resources supplied by external actors such as information on the effects of proposed legislation (Broscheid and Coen 2003).

Moreover, EU officials are often under-resourced and pressed for time, which would create an important demand for policy-relevant knowledge (Chalmers 2011, Chalmers 2013). Besides, information plays a stronger role in the EU compared to the United States, where the dynamics of campaign finance and the influence of PAC donations on elected representatives give rise to stronger civil society concerns on the political power of private interests. Campaign finance contributions are accordingly considered in the United States the key tool used by private sector interests to lobby elected representatives (Mahoney 2008).

The information demand of EU institutions is likely to take different forms, depending on their role in the policymaking process and their ensuing specific needs (Bouwen 2002). Bouwen theorises that the European Commission is particularly receptive to technical information ("expert knowledge") required to understand the market and indispensable to develop effective policies. On the other hand, the European Parliament tends to privilege the "European encompassing interest", namely information about the aggregated needs and interests of a sector in the entire internal market or European arena. Finally, the Council of the EU is biased towards the "domestic encompassing interest" or information which refers similarly to the needs and interests of an entire sector but limited to a domestic (national) market, given that officials representing Member States in the Council are often motivated by advancing their national objectives. For example, in the case of capital adequacy rules for banks, "expert knowledge" can be supplied by one individual bank, information about the "European encompassing interest" by e.g. the European Banking Federation and information about the "domestic encompassing interest" by a national banking association (Bouwen 2002). The kind of information requested by the European Parliament and Council tends to be more politically charged than the expertise favoured by the Commission, although this needs not be the case. As a matter of fact, other studies suggest that the information sought by Members of the European Parliament (who are elected politicians) can be of a very technical nature, not differently from the one most valued by the Commission (Baroni 2014).

Other scholars underline other kinds of access goods which are crucial currencies for the lobbying relationship between interdependent public and private actors. In his study of interest group access in the EU, Eising argues that financial resources are crucial for interest representation, as EU lobbying requires substantial material backing and well-endowed associations enjoy much better access to the institutions; his underlying assumption is that material resources and policy-relevant information are highly correlated (Eising 2007). The author's conclusions are quite pessimistic on the possibility of a truly diverse representation and effective civil society participation, as he finds that interest groups with higher financial resources and superior economic clout enjoy better access and hence presumably higher chances to influence EU policies. Klüver conceptualises lobbying as an exchange where policymakers trade influence for three kinds of access goods supplied by advocate coalitions: policy-relevant information, economic power and citizen support (Klüver 2013). Firstly, European institutions do not only require technical expertise to draft sound policies; they also need information regarding the policy positions of other stakeholders involved in the process, notably Member State governments and Members of the European Parliament. Policy *expertise* and information on the *preferences* of major stakeholders, whose support will be needed to steer the proposal through the legislative process, are the two different types of information needed by policymakers. Information on other stakeholders' and legislators' preferences is by no means a crucial access good only in EU policymaking, as this kind of "political intelligence" is necessary in all political systems and helps legislators achieve their own objectives (Hall and Deardorff 2006). Secondly, European institutions need citizen support to enhance the legitimacy of EU policies. While this argument is particularly valid for Members of the European Parliament and governments represented in the Council, as both categories face electoral scrutiny and thus seek to adopt policies favoured by the electorate, the European Commission can strategically exploit the electoral dependence of MEPs and Member State governments to achieve its own objectives (Klüver 2013). Moreover, citizen support is important to boost legitimacy, as European institutions are subject to the principles of democratic governance and want to avoid being publicly blamed for adopting policies or legislation that are not supported by the population. In this respect, interest groups with a wide membership base (such as large associations) are expected to be crucial as they represent a larger number of voters, albeit indirectly. Thirdly, economic power is seen by Klüver as a vital access good, following from the double assumption that (1) citizens' vote choices are driven primarily by economic motives and that (2) policymakers (particularly MEPs and national governments) seek to secure the support of economically powerful actors hoping that this would in turn boost economic performance in their constituencies. European institutions demand economic power as they listen attentively to the concerns raised by interest groups which control decisive economic sectors and can hence drive business investment and job creation, or in other terms enjoy a structurally powerful position (Lindblom 1977). While the European Commission itself is less directly exposed to the consequences of (economic) voting as mostly composed of unelected bureaucrats, its political level (the College of Commissioners) understands that having the backing of major companies and possibly entire industries will likely grant its proposals a smooth sailing through the legislative process (Klüver 2013).

A slightly different perspective on information supply by lobbyists and the peculiar characteristics and uses of political information is provided by De Bruycker, who offers his take on the traditional exchange model by arguing that the latter is supplied to exert political pressure, rather than as part of an expertise-based exchange undertaken by advocates to obtain access (De Bruycker 2016). In other words, while still assuming and finding that interest representation in the EU is predominantly characterised by expertise-based exchanges, he emphasises that the supply of political information – for instance on the level of support for negotiators' positions – is a key component of pressure politics and not necessarily of an information-based exchange. In line with pre-existing research, De Bruycker identifies three different categories of expertise (legal, economic and technical information); he also maintains that the mode of information supply is primarily driven by the targeted venue in line with Bouwen's theory (De Bruycker 2016). Consistently with the studies surveyed above, the European Commission will be particularly receptive to credible expert information whereas the European Parliament will privilege political information and pressure politics, and the Council will be somewhat in between. Different institutional venues have varying receptivity to lobbying strategies and types of advocacy content: this key argument resonates well with scholars' growing awareness that lobbying is not undertaken in a vacuum, but on the contrary represents a communication-heavy enterprise where messages need to be targeted and adjusted to many contextual factors, including lobbying channel and issue salience (Austen-Smith and Wright 1992). Empirical evidence corroborates this argument, while simultaneously unveiling how the different types of information supplied are not necessarily correlated with interest group type, somewhat contrary to the widespread assumption that business interests are superior at providing detailed technical information (De Bruycker 2016). In a global perspective, a similar study on decision-makers' information demand and their exchanges with interest representatives found that policymakers' information needs also depend on country-level factors such as the degree of development or the level of democratic accountability: decision-makers from less developed countries prefer interactions with lobbyists that provide them with technical information, while those hailing from democratically accountable polities privilege interest groups offering political information (Hanegraaff and De Bruycker 2020).

"Demand-side" variables have also been used to explain the establishment of interest groups (Mahoney 2004). While scholarly research has traditionally focused primarily on the role of "disturbances" in the environment (such as economic changes) in driving the establishment of interest groups and their activities, Mahoney argues that the government is a powerful force capable of influencing the interest group constellation. She analyses the EU system and posits that the European Commission uses three different routes to steer stakeholders' mobilisation and include them proactively in the policymaking process: (1) direct subsidisation, (2) creation of formal debate arenas, and (3) government expansion. The first of these routes consists in the Commission directly funding interest groups, something which happens notably for civil society interests. One example in financial services are the consumer protection NGOs Finance Watch and Better Finance, established by the Commission with the explicit aim of improving representation of consumers and end-users in financial regulation policymaking. Secondly, the Commission routinely creates consultative committees to get stakeholders' early input into the policy process, and decides who will get a seat at the table. Thirdly, the author highlights how the general process of expansion of EU competences into newer areas, including several previously sitting at national level, provides a natural impetus towards interest group activity in those areas (Mahoney 2004).

2.4 Agency-stakeholder interactions, venue shopping and strategic choices

More recently, several researchers have brought EU agencies into the picture and argued that access goods are similarly crucial for lobbyists to gain access to agency officials, similarly to other institutions (Braun 2012a, Braun 2012b). Braun argues that policy goods such as expertise or information play a part in agency-group interactions as posited by resource exchange theories, while also highlighting agencies' active role and demonstrating how these interactions are grounded in long term relations and organisational practice, the so-called "logic of habitual behaviour" (Braun 2012b). In other terms, agency officials interact with interest groups not only because they need information on proposed policies from them, but also because of a behavioural habit of regular consultations. Agency staff also need political support from stakeholders and value their perceived influence, hence they weigh the consequences of non-interaction with them in a "logic of anticipatory behaviour" as they realise that swift and effective implementation of policies is not achievable without the support of affected stakeholders (Braun 2012b). The motivations driving demand of stakeholder involvement by EU agencies are mostly linked to their needs, but a role is also played by "legislative control", processes enshrined by the EU legislators into agencies' regulations to maintain a certain degree of control over the independent authorities they create (Arras and Braun 2018). "Legislative control" over these non-majoritarian institutions is often achieved through so-called "fire alarm" mechanisms, namely rules and procedures that allow private citizens and interested parties, including politicians, to access information on administrative decision-making and its possible drifting from principals' positions (McCubbins and Schwartz 1984).

Alongside public consultations, further examples of "access instruments" that agencies have in place are stakeholder committees – permanent entities within the agency structure that consent regular interaction – or observer status in agencies' management boards that set out the high-level priorities for their work. Among agency needs, information and particularly industry expertise represent "*the lifeblood of regulatory policy*" and are considered the most important factor explaining active stakeholder involvement, not differently from what posited by more general theoretical perspectives on lobbying (Coglianese et al 2004). Agency staff need expertise to formulate regulatory proposals which duly consider their addressees' capability of implementing them, and the potential impact on the regulated sector and beyond. Moreover, information on stakeholders' organisational capacity can be useful for the agencies as their role (especially in the case of associations) as intermediaries can help attain higher ownership among regulated actors and therefore higher compliance levels (Arras and Braun 2018). Finally, agencies can achieve higher levels of autonomy when embedded within networks of state and non-state actors, whose management can improve their authority and reputation (Maggetti and Verhoest 2014). Conversely and from stakeholders' perspective, a recent study on banks' relationship with the European Banking Authority finds that banks' decision to engage is dependent on the regulator being characterised by credibility, legitimacy, and transparency (Coen and Salter 2020). The relationship between agencies and stakeholders can also take the form of subtler ties, manifested *inter alia* through the relevant presence of stakeholder links held by agency personnel. For example, a recent study shows that around 40 percent of EU agencies' board members have stakeholder ties, these mostly being relationships to business groups or private consultancies working in the same policy area (Perez Duran 2019). This is notably due to board members' past professional trajectories, as stakeholder ties are defined either as a work relationship (the agency board member works or has worked with stakeholders) or as an affiliation.

Another strand in the literature has looked at the strategic choice advocates face when deciding which institution to target. The concept of "venue shopping" was introduced by Baumgartner and Jones in their analysis of radical policy change to describe the process by which interest groups strategically select access points and direct their attention to whichever venue provides the best opportunity to meet their goals (Baumgartner and Jones 1993). Venue shopping often provides an opportunity for political actors to escape domestic constraints when turning to "higher" venues ("vertical" venue shopping), although the term was initially coined to describe "horizontal" venue shopping in US federal policymaking. Crucially, the choice of a venue is largely determined by institutional access opportunities and by what scholars call the "receptiveness" of the venue, namely the link between institution priorities and policy images, which are in turn framed by interest groups seeking the most receptive ears (Baumgartner and Jones 1993). Subsequently the concept has proven easily adaptable to the multi-level, multi-venue EU political system, which, despite falling short of being a fully-fledged federation, provides similarly numerous *loci* for policymaking at both the national (Member States) and European level (Baumgartner 2007, Mazey and Richardson 2015beyer). Not only do European, Brussels-based interest groups have every incentive to "shop" around different EU venues and institutions; domestic interest groups have also been shown to seek access to EU policy venues. EU institutions can provide additional and alternative fora for interest representation, a phenomenon dubbed "multilevel venue shopping" and particularly prone to benefit domestically disadvantaged stakeholders transcending borders to seek "compensation" from their domestic weakness (Princen and Kerremans 2008).

Disproving these early Europeanisation theories, several studies found that domestically stronger interest groups tend to be more active in Brussels and that the greater organisational resources resulting from a privileged position “back home” favour multi-level strategies, thus reinforcing existing disparities. Multi-level, Europeanised political strategies seem to be positively correlated with access to domestic policymakers, and less so with generic structural or individual organisational properties; different domestic partisan politics hence result in varying Europeanisation of stakeholders (Beyers and Kerremans 2012).

Other factors have been shown to affect interest groups’ decisions when it comes to the targeted policy venue(s). Studies of lobbying in the United States suggest for example that the constellation of conflict matters, and specifically that advocates are less likely to target a venue when they expect higher competition from opposing groups (Holyoke 2003). When choosing which battlegrounds to prioritise among the multiple venues available, lobbyists appear to be strategic: they tend to avoid unnecessary conflict in venues where their opponents are strong, and rather concentrate efforts where there are more sympathetic policymakers and less countervailing forces. Using two large datasets, McKay studies the conditions under which US interest groups lobby the bureaucracy (agencies) rather than, or in addition to, the legislature (Congress) and finds that more conflictual issues lead stakeholders to expand their lobbying strategies into multiple venues (McKay 2011). She also demonstrates that, despite their greater resources, business lobbyists are less likely to target both legislative and administrative branches and tend to focus their attention on agencies over Congress (McKay 2011). By contrast, issues with fewer interested parties often show a pattern where the latter only work with either one branch or the other, and this preferred venue is often the executive agency.

A similar study looks at the advocacy strategies devised by stakeholders when shopping venues both vertically (federal versus state level) and horizontally (elected versus unelected institutions). Advocates are more likely to lobby venues where policymakers have preferences closer to their own, contact additional venues when owning more resources and finally display a high degree of path dependence in deciding which institutions to contact (Holyoke et al 2012). No comparable study seems to exist as to under what conditions EU interest groups lobby agencies as compared to the legislative institutions (Commission, European Parliament and Council), perhaps due to the relatively recent establishment of EU agencies and their comparatively limited powers respective to the three institutions above-mentioned. The most similar research looking at the EU as an empirical setting seeks to establish how domestic lobby groups from Western European Member States (France, Belgium, the Netherlands and Germany) define their "multilevel venue shopping" strategies, i.e. choose to target national and/or European policymakers (Beyers and Kerremans 2012). Furthermore, a study focusing specifically on regulatory engagement find that banks are biased towards engaging with their national regulator compared to the EU authority, and that they also "shop" venues by refocusing their efforts on the EU legislative arena where issues are addressed at a higher political level (Coen and Salter 2020). A similar study of companies' attitudes towards regulatory venue shopping finds that firms apply a multi-regulatory and multi-level strategy when engaging with regulatory authorities; venue shopping is more likely when issues are highly salient, technical or when the stakes for the individual firms are high (Coen et al 2021).

Advocates' strategic decision to lobby agencies is analysed by only the above-surveyed literature on venue shopping in US policymaking. It has indeed long been clear to US lobbying scholars that administrative venues are considered crucial targets by interest groups, and lobbying agency bureaucrats at least as important as lobbying Congress representatives (Hamm 1983, Webb Yackee 2013, Hula 1999). Early on, the theoretical framework of "policy subsystems", also called "whirlpools" or "iron triangles", pointed to the importance of agencies and underlined how policymaking resembled a tripartite affair characterised by tight relationships between legislative (Congress) committees, interest groups and executive agency officials (Griffith 1939). The equally popular theoretical framework of lobbying as an exchange relationship could be easily merged with that of a subsystem: agencies provide favourable policies or rules to stakeholders in return for a supportive environment, chiefly in their dealings with legislative committees. Interest groups can be helpful to executive bureaus as they can help them attain their goals, and several studies indicate that a mobilised clientele (including regulated actors) is crucial to agency development and can constitute a powerful ally for its senior management. The relationship is mutually beneficial, as agency administrators not only benefit from the support of major interest groups: they can also convey lobbyists' preferences while providing their technocratic input to legislative committees (Hamm 1983).

Administrative venues are deemed crucial by most interest groups, and while almost no groups specialise solely in agency lobbying, a large proportion thereof decide to lobby the administrative in addition to the legislative level (Boehmke et al 2013). Scholarly research in the United States has notably analysed US agencies' consultation practices by looking at the "notice and comment" practice, which is used by agencies to encourage and consider stakeholder views before promulgating a final rule (Webb Yackee 2005). Looking at a vast dataset of comments sent by stakeholders to four different federal agencies in the policy areas of labour and transport, Webb Yackee and co-authors find strong evidence that interest group written contributions influence US agencies' bureaucratic rules (Naughton et al 2009, Webb Yackee and Webb Yackee 2006). It is also apparent that business interests submit most of the comments to the agencies and are better able to shift final rules closer to their desired level of government intervention (Webb Yackee and Webb Yackee 2006, Webb Yackee 2013). Moreover, the desired policy change sought by interest groups is more easily achieved when attention to policy implementation by elected officials in Congress is lower (Webb Yackee 2006). Lobbying in consensual coalitions avoids sending contradictory messages and helps bringing about the pursued rule shifts, an effect which is even larger when one side of a policy issue dominates the lobbying efforts (the "squeaky wheel" model), especially as there is little evidence of strategic counteractive lobbying in agency rulemaking (McKay and Webb Yackee 2007). While the "notice and comment" procedure is thought to have a democratising effect on agency policymaking as it gives the interested public a voice and influencing channel, participation is not equal among interest groups. Business lobbying is found to be overrepresented similarly to other venues, and the administrative arena does not seem to give new opportunities to those unheard in the legislative process, in line with popular beliefs about policy outcomes being skewed towards the rich (Boehmke et al 2013, Webb Yackee 2015).

These empirical studies – most of them carried out in the US setting – tell us a lot about how advocates behave strategically in choosing the venues they target, but very little about the outcomes of their lobbying strategies, i.e. how venues and particularly agencies affect lobbying success. One of the few exceptions is a study by McKay, who uses survey data on 776 Washington representatives to demonstrate that advocates are more likely to achieve their aims when they target multiple venues, notably Congress and agencies: a higher number of targeted venues is associated with higher self-reported lobbying success (McKay 2012a). Klüver, despite underlining the importance of demand-side variables, ends up analysing separately lobbying efforts on the Commission (policy formulation stage) and Parliament (decision making stage), and is therefore unable to determine the effect of the venue on advocates' success (Klüver 2013). What is missing in the literature is hence a direct comparison of agency lobbying with lobbying targeted at other institutions. The existing research does not comparatively examine how agency lobbying differs from other policymaking venues, and to the best of my knowledge there is no research analysing the difference in interest group interactions between EU agencies and other EU institutions such as the Commission.

2.5 Research question and hypotheses

My research thus aims to bring agencies into the framework by drawing a direct comparison between the European Supervisory Authorities (ESAs) and the European Commission, venues that share many similarities as regulatory bodies tasked with drafting binding rules. I focus on the demand side of lobbying, the institutional arena, and use resource exchange theory to derive testable hypotheses on lobbying success. While exchange theories are quite popular in lobbying studies, most of these have focused on the supply side of the equation by looking at what interest groups can offer to policymakers, and how their lobbying success varies consequently. I argue that the demand side is equally important in determining lobbying outcomes, and that the amount of resources, information and expertise "thrown" at a policymaker hardly matters if there is little necessity for it on the latter's side. It is often assumed that lobbying is beneficial for all involved and stakeholders are inevitably successful in swaying policy outcomes when they have useful information and technical expertise to share with public officials. I want to test this assumption by comparing agencies with the Commission, and explore whether the venue's in-house expertise can influence lobbying success through the following research question: *does lobbying success vary by the targeted institutional venue? If yes, is the information need of the institutional venue an explanatory factor?* I apply resource exchange theory to answer this research question, drawing from its central insight that the key asset provided to policymakers by interest groups is information. As seen previously in this chapter, the information required by policymakers can take several forms, notably it can be *technical* information relative to policy issues or it can be *political* information on the preferences of key stakeholders (Klüver 2013). In a recent contribution on information supply in EU legislative lobbying, De Bruycker similarly argues that there are two main modalities of information supply. The first is the provision of technical, economic and legal expertise, and represents the dominant interaction between lobbyists and policymakers in the EU; the second mode is the supply of political information, which allows interest groups to signal the level of public support or opposition for the proposed policy among their members. The latter mode is particularly relevant for elected policymakers, who are likely to be dependent on public support for re-election purposes and broadly speaking more susceptible to societal pressure and demands (De Bruycker 2016). Chalmers similarly conceptualises lobbying as information exchange between well-informed interest groups and understaffed decision-makers, but focuses on policy-relevant information as the main mode of information supply, noting that EU institutions are affected by an informational asymmetry problem and "rely on interest group for a steady supply of policy-relevant information" (Chalmers 2011). I adopt a similar approach, and define information as policy-relevant expertise for the purposes of this thesis: while the Commission and ESMA might also find *political* information on stakeholder preferences useful, I posit that this is not the main kind of information they seek, notably because these policy-makers are not elected (at least directly). I argue that institutions' demand for externally supplied expertise plays a significant role in lobbying exchanges, and specifically that it affects lobbying success. My research assesses policymakers' demand for information by analysing their in-house expertise and information capacity, and furthermore investigates the role that policy complexity plays to strengthen, or weaken, this information demand. In doing so, it provides an empirical application of the resource exchange model that adds agencies to the lobbying relationship framework and looks at the latter in comparison with the Commission. Needless to say, information supply can also depend on the specific category of interest groups, and there is indeed some research looking at how lobbyists' characteristics can affect their expertise provision, often trying to unveil a possible association between superior financial resources and the former. As with the link between lobbyists' resources and their influence, findings here are similarly inconclusive, with some studies challenging assumptions about the dominance of private interests in the EU, and showing no significant difference across group types in terms of information processing and transmission capacities (Chalmers 2011).

Conversely, Klüver argues that information supply to decision-makers varies across interest groups and finds that resource endowment is positively correlated with information supply: stakeholders with a larger amount of resources at their disposal provide on average more information to the Commission compared to those which are poorly equipped (Klüver 2012). This thesis however does not look at the information supply on the interest groups' side, focusing instead on information demand by the targeted policymakers.

The similarities of the European Commission and the European Supervisory Authorities as policymaking bodies might lead many to assume that their demand for technical expertise should be similar. As explained in detail in the next chapter, both the Commission and the ESAs are administrative venues tasked with drafting binding rules, they are often under time constraints and they both run stakeholder consultations, suggesting they are in similar need of the external information supplied by interest groups. However, I posit that the agencies' information demand is lower and that this matters for lobbying outcomes. There are many factors behind the creation of agencies and other non-majoritarian institutions, including the desire to increase political insulation and to solve time inconsistency problems inherent in politicians' decision-making (Kydland and Prescott 1977, Thatcher and Stone Sweet 2002). Among the many forces driving delegation to independent authorities, increased specialisation and the desire to enhance technical expertise are powerful reasons, as agencies are often established to overcome informational asymmetries in technical areas of governance. I therefore expect to see a difference in the information capacity of the European Commission and the European Supervisory Authorities:

Hypothesis 1: The European Commission has a higher information demand than the European Supervisory Authorities, due to the inherent difference in their in-house technical expertise.

The qualitative case studies (chapters 6 and 7) will provide evidence for this expectation stemming from delegation theory and indeed show that agencies' need for external expertise is lower than that of the European Commission, as agency officials command higher technical knowledge than Commission staff. For instance, the relevant Commission department in charge of financial services policy, DG FISMA, has a few hundred staff and only a few dozens of those are responsible for securities markets, whereas ESMA can rely on a few hundred officials exclusively dedicated to this area of financial markets regulation, as evidenced in detail in the qualitative chapters of the thesis. Similarly, there are only a few dozen officials working on banking issues in DG FISMA, while the European Banking Authority employs a few hundred, and the same happens for the European Insurance and Occupational Pensions Authority and pensions/insurance policy.

If policymakers have more technical expertise and higher in-house information on the likely effect of their policy proposals, in accordance with exchange theory this should have direct consequences for interest groups' chances of influencing these proposals. My second hypothesis is therefore that lobbying success is directly correlated with policymakers' demand for information, meaning that lobbying success will consequently be lower at agency level compared to the Commission:

Hypothesis 2: Lobbying success is correlated with policymakers' demand for information, ceteris paribus. Interest groups will be more successful in lobbying the European Commission than the European Supervisory Authorities, given the latter's lower information demand.

I expect that advocates' success will be higher at the Commission level than agency level for all the policies under analysis, given the inherent difference in institutional capacity and in-house technical expertise between the two venues. However, one could expect that the degree of information demand can be also impacted by contextual factors, as even comparatively less expert officials would find it easier to design more straightforward, less complex policy proposals. Therefore, I further hypothesise that the relationship between institutions' information demand and lobbyists' success is moderated by the complexity of the policy. Commission officials are expected to have less in-house expertise than ESA staff, however they would find it comparatively easier to develop a policy proposal in a less complex area, and therefore should have less necessity to seek and take on board stakeholders' feedback. Conversely, I expect ESA officials to be more expert in their fields, and therefore have a lower demand for stakeholders' information. However, in the case of particularly complex policies or rules, policymakers' demand for technical information will be higher, thus creating higher chances of advocates' lobbying success.

Hypothesis 3: The relationship between policymakers' information demand and lobbying success is moderated by the complexity of the policy: ceteris paribus, for the same institution lobbying success is higher as the complexity of the policy increases, since the latter deepens the institution's demand for information.

To sum up, my thesis contributes to the above surveyed literature in that is sheds light onto the relationship between the "demand", or policymaker's side, and lobbying success, thereby contributing to our collective understanding of what determines advocates' winning chances. Furthermore, it adds to the lobbying literature which focuses on contextual factors, as while my central argument is that institutions' information demand is a significant driver of lobbying, I also argue that a venue's demand is not fixed across policies but depends on their characteristics and notably their complexity. In conclusion, my thesis contributes to scholarly research on lobbying as an exchange relationship, to the (rather scarce) literature on agency lobbying in the EU and its consequences, and to studies on financial regulation, given that the latter is my chosen empirical setting.

Chapter 3

The institutional structure of EU financial regulation

Independent agencies are now an integral part of the institutional framework behind EU financial regulation. The European Supervisory Authorities created in the wake of the financial crisis have indeed been granted significant rulemaking powers and tasked with the responsibility of drafting delegated legislation. While the European Commission maintains the monopoly of initiative and power to draft primary legislative acts, the ESAs now hold the pen for delegated rules, which are meant to be of a more detailed and technical nature but are often similar to the former in practice. Agency-drafted delegated rules are also of increasing importance in EU financial services law, as demonstrated for instance by the various oversight mechanisms created to control ESAs' drafting powers. The internal procedures leading to the preparation of rule drafts by the Commission and ESAs respectively are highly similar, and so are the requirements pertaining to how policymakers engage with stakeholders prior to rule adoption.

This chapter covers the institutional structure underpinning EU financial services policy and regulation; it is aimed at explaining the process of rule formation, its significance and the opportunity structure it creates for stakeholders. Its first section provides an overview of the institutional history that led to the establishment of the European Supervisory Authorities (ESAs), the EU agencies in charge of financial services. It shows that the three ESAs were established primarily as a reaction to the supervisory failures experienced during the financial crisis, but were also tasked with significant rulemaking powers in the realm of delegated legislation. This section also explains the difference between primary legislation (Level 1) and delegated legislation (Level 2), a distinction which in theory carefully distinguishes strategic policy choices from technical rules, but in practice is more blurred than initially foreseen. The second section delves into the latter, underlining how the agency-drafted Level 2 rules have increasingly risen in importance since the authorities were first created, testifying to their technical expertise and the relevance of delegated regulation. This section also highlights the oversight mechanisms used by both the European Commission and the co-legislators to exercise a degree of control over the Level 2 standards, pointing to the significance of agency rulemaking both in terms of inherent policy choices and for affected stakeholders. The third section looks specifically at ESMA, the authority in charge of securities markets which is compared to the Commission in my thesis; it emphasises how its particularly significant supervisory responsibilities have given rise to institutional tensions, and delineates the reason why the ESAs cannot formally adopt the Level 2 drafts, namely the legal doctrine stemming from the 1958 Meroni ruling. Finally, the fourth section compares the rulemaking procedure that the Commission and ESAs must apply when developing Level 1 and Level 2 rules respectively, including the related requirements to engage with interest groups and take their views into account.

3.1 The European System of Financial Supervision

To better understand why the European Supervisory Authorities are an important target for advocates' engagement, it is worth spending some time on how these institutions were established and their role in policymaking. As part of a broad agenda of creating a single market in capital services to complement the more advanced one in goods, EU institutions first started regulating banking services decades ago. The first legislative acts adopted by the EU in the area of financial regulation dated back to the 1970s and 1980s, and aimed at allowing the provision of cross-border banking through the so-called "passport": once established and authorised in the "home" Member State, banks could freely provide services in all other EU countries, subject to "host" Member State supervision. Most of the relevant legislative acts were adopted by means of Directives, which set goals that all EU countries must achieve but otherwise require transposition at national level and often leave discretion to Member States in how to implement them. Directives are one of the two main categories of binding EU legislative acts alongside Regulations, which are directly applicable and do not necessitate national transposition, thus resulting in higher harmonisation. During the period when the first banking Directives were adopted, the European Commission created one of the first examples of "comitology" committees, composed of national officials. Comitology committees are important in that they demonstrate how the Commission seeks external input when drafting legislation, and are one of the several stakeholder engagement tools at its disposal to gather this information. This particular committee was the Banking Regulatory Committee: it comprised representatives from national central banks and ministries of finance, and held a crucial role in feeding the Commission with regulatory expertise (Council of the EU 1977).

At the beginning of the 1990s, most EU legislative action in the area of financial services was still related to banking and free movement of capital, as the vast remits of e.g. securities regulation or asset management had stayed largely in the hands of national authorities. Nevertheless, this changed when the Delors Commission embarked on its ambitious programme to complete the Single Market by 1992, as impact assessments had suggested that reinforcing EU harmonisation of financial services and achieving an integrated financial market could boost GDP levels remarkably. The most significant step forward came under the Santer Commission in 1999, when the Financial Services Action Plan (FSAP) was adopted following an explicit request from Member States (European Commission 1999). The Plan had the stated intention of building a single EU financial market through a regulatory framework which would achieve the removal of cross-border barriers and the integration of fragmented national financial markets, especially wholesale ones. It contained as many as 42 legislative initiatives, all to be adopted via codecision (the standard legislative procedure) by 2005[1]. While the FSAP had seen 36 out of its 42 initiatives adopted by 2003, the experience and the average 2-year length of legislative negotiations highlighted how the EU institutional framework in place to govern financial services was rather inflexible, and the pace of legislative change slower than policymakers' wishes. This was the main rationale behind the decision of EU finance ministers to convene a committee of "wise men", tasked with devising an ad-hoc institutional architecture better suited to regulating securities markets and financial services more generally. The length of legislative negotiation processes was identified by the advisory committee, chaired by the Hungarian central banker Alexandre Lamfalussy, as one of the main institutional hurdles hampering the effectiveness of

[1] Under the ordinary legislative procedure, the European Commission enjoys the exclusive right of legislative initiative while the Council of Ministers and the European Parliament act as co-legislators and share equal decision-making powers to adopt the law (TFEU articles 289-294).

the FSAP reforms; the committee also identified as problematic the difficulty in distinguishing between framework principles and detailed technical rules. The committee's final report, issued in July 2001, also underlined how the institutional structure in place was characterised by a high degree of political compromising and not apt to respond to market developments with the necessary flexibility and effectiveness (Lamfalussy et al 2001).

To overcome the lack of flexibility and inefficacy of standard legislative means, the Lamfalussy report suggested a new institutional architecture which notably combined an increased delegation of powers to the Commission with a strengthened control by Member State expert representatives through comitology committees (Lamfalussy et al 2001). The existence of advisory committees was not a major development *per se*, as it was foreseen for instance by the abovementioned first banking directive, but the systematic reliance on comitology procedures represented an innovation. Given that the Council of Ministers and European Parliament are responsible for adopting legislation, the only power which can be delegated to the Commission is the power to adopt non-legislative acts which do not need to undergo the full legislative process. This delegation however saw the co-legislators (Council and Parliament) giving up powers intrinsic to their role and was hence accompanied by strict control procedures, signalling their desire to preserve some influence over the prerogatives handed to the Commission. The decision to delegate further powers to the Commission was taken for the reasons mentioned above, namely the slow pace of the average legislative process and its lack of flexibility, coupled with the acknowledgment that the specialisation of Commission officials compared to the co-legislators would help achieve better policy outcomes. The rationale was therefore not dissimilar from the many motives driving the agencification process, although at this stage no independent authorities were involved, and delegation only happened to the Commission.

The Lamfalussy committee systematised the institutional system for adopting, implementing and supervising EU financial services legislation with a hierarchical approach comprising four different levels. "Level 1" is represented by legislative acts adopted through codecision by the European Parliament and Council of the EU on the basis of a Commission proposal, namely the "standard" legislative tool which had been used until then but was considered slow and inefficient. "Level 2" was the major innovation of the Lamfalussy structure, meant to overcome the issues arising from the lengthy negotiation process of ordinary legislative proposals. Level 2 was to be composed of delegated, technical rules of quicker adoption; technical rulemaking would be entrusted upon the Commission, but subject to legislators' oversight, notably exercised by Member States through comitology committees. The most important committees, gathering Member State representatives and thus functioning according to an intergovernmental logic, were the European Securities Committee and the Committee of European Securities Regulators (CESR). The Parliament had very limited oversight powers at the time, and thus recourse was often made to so-called "sunset clauses" which established clear limits to the delegation of rulemaking power to the Commission and gave Members of the European Parliament a chance to scrutinise how the former was exercising its delegated tasks. Level 1 and Level 2 rules were meant to be inherently different, as Level 1 legislation was supposed to contain the fundamental framework principles and high-level provisions, while Level 2 legislation would include the detailed requirements complementing the latter. This crucial distinction however would prove less straightforward than initially foreseen, since Level 1 has continued to include detailed provisions, and political choices have often ended up in Level 2 rules. Furthermore, both Level 1 and Level 2 rules are legislative acts and therefore binding. The establishment or reinforcement of oversight mechanisms by the co-legislators testifies to the importance of Level 2 rules, which far from being purely technical have often ended up having an inherent political dimension, and features not dissimilar to Level 1 legislative acts. Again, oversight mechanisms introduced to control the Commission's use of its delegated Level 2 rulemaking powers were similar to those often accompanying agencification, and signal the importance that co-legislators have placed on maintaining some control over these detailed rules. To complete the four-level Lamfalussy structure, "Level 3" would consist of exchange of best practices, guidelines and questions and answers (Q&As), and was aimed at allowing a better cooperation between national regulators and supervisors to achieve a consistent implementation of Level 1 and 2 rules. Level 3 guidelines would notably be issued to encourage harmonised implementation of rules across the Union; these measures are non-binding, but compliance is often incentivised through a "comply or explain" mechanism. "Level 4" would finally consist in the enforcement powers of the Commission, which traditionally acts as a guardian of the EU Treaties and can initiate proceedings as well as enact sanctions against non-complying Member States.

Table 1. Lamfalussy structure for EU financial services legislation

Lamfalussy structure	*What is it?*	*What form can it take?*	*Who adopts it?*
Legislative and delegated acts (binding)	Level 1: framework legislation	Directives and regulations	Co-legislators (European Parliament and Council) based on a Commission proposal
	Level 2: technical standards (detailed provisions)	Delegated and implementing acts	The Commission, based on drafts prepared by the European Supervisory Authorities (ESAs)
Supervision and enforcement	Level 3: supervisory convergence	Guidelines, questions & answers, opinions (non binding)	Mostly the ESAs, sometimes the Commission
	Level 4	Enforcement	Commission

The architecture proposed by the Lamfalussy Report in 2001 was initially applied only to securities regulation, but policymakers soon decided to expand this four-level structure to banking and insurance regulation as well. Mimicking the Committee of European Securities Regulators (CESR), which gathered representatives of securities and markets regulators, two similar committees of Member State competent authorities were formed in 2004, namely the Committee of European Banking Supervisors (CEBS) and the Committee of European Insurance and Occupational Pensions Supervisors (CEIOPS). The role of these three Lamfalussy committees was focused around Level 3 rules, as they were primarily tasked with contributing to the consistent implementation of EU financial services directives and convergence of supervisory practices. The committees had no responsibility for binding legislation during their first years of existence: they were on occasion instrumental in advising the Commission in its Level 2 rulemaking function, but this was not a formal responsibility, and their primary mandate was to improve supervisory cooperation among national competent authorities. The first years of experience of the Lamfalussy structure were characterised by the rise of CESR, CEBS and CEIOPS as soft law actors which informally provided technical expertise and advice to the

Commission, albeit without a formal role in the policymaking process or powers over binding legislation.

The main driver for reforming the four-level Lamfalussy architecture was the 2007-2008 financial crisis, which after originating in the United States hit the European continent and brought to the forefront some of the perceived weaknesses of EU financial services policymaking. Whereas the principal driver of the Lamfalussy reform was the need to expedite slow legislative processes to better achieve EU policy aims, this time the reform trigger was the global financial crisis, and the related consensus that regulation had been ineffective in curbing excessive risk-taking in the wider financial industry. The G20 forum of finance ministers met in Pittsburgh in September 2009 and issued a statement calling out major failures of regulation and supervision as a key root of the crisis, alongside private actors' excessive risk taking and profit-seeking behaviour (Group of 20 2009). In the European Union, the European Commission then led by Barroso established a High-Level Expert Group on EU Financial Supervision in October 2008; the committee, presided by Jacques de Larosière, delivered its final report in February 2009 (De Larosière et al 2009).

Alongside the private and economic causes of the crisis – including excessive leverage and the failure to assess the risk inherent in the subprime mortgage business and related derivatives products – the committee report blamed serious institutional deficiencies in the EU. In particular, the de Larosière committee found major weaknesses in the so-called "Level 3" of financial policymaking (supervisory convergence), as suboptimal cooperation among national competent authorities resulted in inconsistent supervisory practices and more importantly inefficient crisis management capabilities (De Larosière et al 2009). The recommendations included greater use of Regulations rather than Directives, as the former could mitigate the problem of divergent and inconsistent national implementation across the EU thanks to their directly applicable nature. Most importantly however, the report stated that the three committees of national regulators (CESR, CEBS and CEIOPS) lacked adequate resources to accomplish their tasks, which severely limited the work they could undertake and their capacity to react in a crisis scenario. The committees, the report stated, should be enhanced and turned into proper EU authorities to create a new supervisory architecture at European level; this was considered necessary to reflect the closer integration of European financial markets. It was thought that some centralisation of financial services supervision would help avoid the inconsistencies and inefficiencies laid bare by the financial crisis: some tasks such as coordinating the application of common supervisory standards should be performed at EU level, while national supervisors would remain responsible for day-to-day supervision in respect of the EU subsidiarity principle. Specifically on rulemaking, De Larosière recommended a decisive reinforcement of the "Level 2" of the Lamfalussy structure, the technical standards: together with the EU institutions responsible for Level 1 legislation, the reinforced authorities would "equip the EU financial sector with a consistent set of core rules" (De Larosière et al 2009).

In November 2010, the EU co-legislators adopted three different Regulations which would transform the pre-existing Lamfalussy committees into three EU authorities, the European Supervisory Authorities or ESAs. Together with the newly established European Systemic Risk Board, tasked with monitoring macroprudential risk and macro-economic developments, these three agencies would form the "European System of Financial Supervision". The Committee of European Banking Supervisors was turned into the European Banking Authority (EBA), the Committee of European Securities Regulators into the European Securities and Markets Authority (ESMA) and the Committee of European Insurance and Occupational Pensions Regulators into the European Insurance and Occupational Pensions Authority (EIOPA), all three independent EU agencies with legal personality, a budget and independent decision-making structures. EBA is responsible for banks and credit institutions, investment firms and payment institutions. EIOPA oversees insurance and re-insurance companies, insurance intermediaries and providers of occupational and private pensions. ESMA is responsible for credit rating agencies, trade repositories and investment and asset managers, as well as the general oversight of trading and securities markets. Each of the three ESAs hence oversees a specific sector of the European financial industry, but the authorities also work together through the ESAs Joint Committee to address issues that affect the entire financial system in a horizontal, cross-cutting manner.

The main decision-making body of the ESAs is the Board of Supervisors (BoS), which is composed of all the heads of the national supervisory authorities plus representatives of the European Commission, the European Systemic Risk Board, the other two ESAs and a Chairperson, all of whom without voting power. Alongside the Board of Supervisors, the ESAs all have a Management Board which is composed of the Chairperson and six members from the Board of Supervisors, a full-time independent Chairperson, and a full-time independent Executive Director. ESAs additionally have a Board of Appeal given the third-party effects of their decisions, and their budget derives from both EU and Member State contributions. The ESAs' overarching scope, enshrined in article 1 of their Regulations, is one of financial stability or in more faithful terms to "protect the public interest by contributing to the short, medium and long-term stability and effectiveness of the financial system, for the Union economy, its citizens, and businesses" (European Parliament and the Council 2010a, 2010b, 2010c). Their objectives are wide-ranging, as they include improving the functioning of the internal market and ensuring its integrity, transparency and efficiency, achieving consistent regulation and supervision, and strengthening international supervisory coordination. The ESAs' numerous tasks include regulation (developing draft rules to facilitate the uniform implementation of EU financial legislation); supervision (developing guidelines, recommendations and best practices to ensure EU supervisory convergence); financial stability (conducting stress tests and monitoring markets developments); and consumer protection (identifying trends and if necessary restricting certain market activities if damaging to consumer rights).

On Level 2 technical standards, the crucial difference between the Lamfalussy structure and the post-crisis authorities was that the ESAs' predecessor committees (CESR, CEBS and CEIOPS) had no formal rulemaking power, as their role was limited to advising the European Commission on drafting delegated acts and supporting their implementation at national level. In contrast, the new ESAs were granted a much wider range of responsibilities including developing the Level 2 technical standards, which should not involve strategic policy decisions but are still binding on regulated firms. Previously the Member States were playing a crucial role in the adoption of these standards through the comitology committees, so there was initially some resistance to such significant delegation from the Council of the EU. The European Parliament in contrast supported the institutional reform, in line with its traditional support for EU harmonisation; however, it also sought to secure a degree of scrutiny over administrative rulemaking to maintain its oversight prerogatives. The new responsibilities soon made the authorities crucial lobbying targets for stakeholders, as the latter quickly realised that the locus of rulemaking was shifting and that they needed to engage with the ESAs if they wanted to see their preferences reflected in the technical standards.

To better understand the ESAs' crucial prerogative to hold the pen on these standards, this paragraph will delineate in more detail the overall EU framework for delegated legislation, which as described above is called Level 2 in financial services regulation. Legislative acts, which are adopted through the ordinary legislative procedure by the European Parliament and Council of the EU, are referred to as Level 1. The power to adopt non-legislative acts, or Level 2, is instead delegated to the Commission by the European Parliament and Council, yet subject to strict controls and procedures which try and strike a balance between the need for efficient, technocratic decision-making and the co-legislators' desire to maintain some form of control over the entire procedure. Level 2 rules can take the form of either delegated or implementing acts. Delegated acts are quasi-legislative measures used by the Commission to *supplement* legislative acts or *amend non-essential* elements thereof, whereas implementing acts are used to establish uniform conditions for the harmonised implementation of EU legislation across the Member States. Delegated acts most closely resemble Level 1 legislative acts, as they stem from the co-legislators' choice to let the Commission adopt measures they could have adopted themselves but decided not to; this choice can be taken in the interest of entrusting a technical matter to subject experts, to close a negotiation quickly thus leaving some elements to be settled later, or to the awareness that delegated acts are easier to amend. Delegated and implementing acts, the two categories of Level 2, can serve different purposes and entail a different degree of "policy relevance", so they can both be mandated in a Level 1 act. While only some dozens of Level 1 Directives or Regulations are adopted on a yearly basis by the co-legislators, expanding areas of responsibility for the EU and the increasingly technical nature of EU policymaking has over the years boosted the sheer number and relevance of delegated, or Level 2, rule-making. In all cases Level 2 rules should not touch upon key policy choices reserved to the co-legislators, as they should be technical and cannot imply strategic choices: in reality, the distinction is far more blurred, and the boundaries between Level 1 and 2 are often set by timing constraints, institutional preferences or other reasons not related to the degree of technicality of the measure. This similarity is a key assumption of my research design, as the thesis compares Level 1 and Level 2 rules directly; chapter 5 will support this assumption by providing empirical evidence that the degree of complexity of Level 1 and 2 is only marginally different.

Prior to the establishment of the European Supervisory Authorities, Level 2 delegated rules were drafted by the Commission, with extensive input from various comitology committees (representing Member States' interests) and a limited oversight role for the European Parliament. When the ESAs were created in 2011, the responsibility to draft Level 2 rules was entrusted upon them: both delegated acts and implementing acts are directly written by the authorities, which differently from the pre-existing committees have been given the formal power to develop technical standards. The Commission can still draft Level 2 rules itself rather than rely on the ESAs to hold the pen, however this scenario is increasingly rare, and the authorities develop the overwhelming majority of delegated financial services legislation. Level 2 rules drafted by the ESAs are called Binding Technical Standards (BTS) and can either take the form of Regulatory Technical Standards (RTS) or Implementing Technical Standards (ITS), mirroring the distinction between delegated and implementing acts. Regulatory Technical Standards are formally adopted as delegated acts, while Implementing Technical Standards (ITS) are enacted as implementing acts.

Table 2. Level 1 versus Level 2 rules

		Who holds the pen when drafting proposals?	*Stakeholder consultation requirements*
Level 1: legislative acts	*Directives and Regulations*	Commission	Consultation is not mandated, but standard practice under the Better Regulation agenda
Level 2: technical standards (binding technical standards, BTS)	*Delegated acts (regulatory technical standards, RTS)*	European Supervisory Authorities (ESMA, EBA, EIOPA)	ESAs are mandated to carry out public consultations and cost-benefit analysis
	Implementing acts (implementing technical standards, ITS)		

In both cases binding technical standards are formally adopted by the Commission, and this is a crucial feature of delegated decision-making. All forms of technical rules (be it delegated acts, implementing acts, RTS or ITS) are adopted by the European Commission, as the EU Treaties firmly mandate that legislative powers can only be delegated to the Commission, but not to other EU bodies or agencies such as the European Supervisory Authorities. This principle, which underpins the EU institutional balance, is referred to as the "Meroni doctrine" and has given rise to important case law and legal doctrine, alongside institutional debates. Despite the formal adoption being reserved to the Commission for legal reasons, the fact that ESAs have been granted drafting power represents a revolutionary change in the context of Level 2 rules, as traditionally the Commission had enjoyed monopoly of initiative and the responsibility for drafting all these measures. Therefore, the Commission is no longer in the driving seat, although it maintains a degree of influence though its involvement in the process and its responsibility to formally adopt the drafts prepared by the authorities.

3.2 The rising importance of Level 2 and ESAs' drafting powers

Since the European Supervisory Authorities were established in 2011, most Level 2 rules have been drafted by them under the form of binding technical standards (RTS and ITS), as co-legislators have generally preferred to entrust technical issues to the ESAs' expertise rather than to the Commission. ESAs-drafted technical standards have taken the lion's share of delegated legislation over "traditional" delegated and implementing acts, which can still be drafted by the Commission directly. It is important to bear in mind that RTS and ITS are governed in detail by the ESAs' Founding Regulations as they are specific to financial services, while delegated and implementing acts developed by the Commission are governed by the general Lisbon Treaty framework of delegated legislation, applicable across all policy areas. Standard delegated acts and implementing acts are still foreseen in a few financial services files, but this represents an increasingly residual option as ESA-drafted Level 2 rules are coming to dominate the administrative rulebook in EU financial market regulation (Moloney 2018). One of the first crisis-era legislative measures enacted after the creation of the ESAs, the Alternative Investment Fund Manager Directive (AIFMD), did not heavily rely on the ESAs as the substance of its Level 2 regime was contained within one delegated act, which was drafted directly by the Commission; the latter sought advice from ESMA but the mandate was relatively high-level. A first shift towards an increasing reliance on the ESAs for technical standards happened with the credit rating agencies regime enacted over 2012-2014, where the Level 2 regime primarily took the form of ESMA-drafted RTS. This pattern of reliance on ESA-drafted rules took hold with the 2012 European Market Infrastructure Regulation (EMIR), a highly complex regime which reorganised the EU's derivatives markets; this reliance on ESMA for the Level 2 regime can be explained by the technicality of the provisions and the Commission's increasing comfort with the authority's role as an expert drafter. Another example of reliance on ESA-drafted Level 2 for an incredibly complex and detailed regime is the Markets in Financial Instruments Directive (MIFID) II, which contains extensive delegations to Level 2 and foresees almost exclusively technical standards drafted by ESMA. The MIFID RTS cover a range of technical yet pivotal requirements on market functioning, ranging from the regulation of trading venues to the transparency regime for equities and bonds, from financial reporting requirements to politically significant exemptions for commodities firms. The greater reliance on ESAs for technical standards over time can be explained by a range of factors, such as the co-legislators' trust in the procedure, the authorities' harnessing of expertise and institutional experience over time, and their ability to address the technical details of any given regime compared to the Commission.

Interestingly, the procedural requirements differ, as when drafting delegated rules itself the Commission is under no obligation to either consult stakeholders or conduct public consultations or impact assessments, though in practice it routinely does so as set out in its Better Regulation policy. When the Commission directly drafts delegated rules under "traditional" Lisbon Treaty rules, the standards need to be adopted by comitology committees of Member State experts, usually by qualified majority. The Commission can also choose to consult expert groups of private stakeholders, but their opinion is not binding on the Commission, contrary to comitology committees. At present, the relevant comitology committees are the European Insurance and Occupational Pensions Committee, the European Securities Committee and the European Banking Committee, while relevant expert groups comprise the Expert Group of the European Securities Committee and the Expert Group on Banking, Payments and Insurance. The ESAs are not embedded in the formal procedure when Commission-drafted delegated or implementing acts are adopted, although there is a strong expectation that the Commission will nevertheless consult the authorities and seek their expert advice (Moloney 2018). In the few cases when delegated or implementing acts are chosen, the ESAs are indeed routinely called upon to input technical advice regarding the content of these measures, as the Commission might not always command the in-depth technical expertise required to draft these rules. Not only are ESAs regularly consulted by the Commission, the authorities can carry out public consultations before submitting the final technical advice to the Commission, one of the reasons why the latter often skips this procedure (which is anyhow not mandatory for the Commission when drafting Level 2). While Commission-drafted Level 2 rules are still an option in EU financial services regulation, this is an exceptional case and this thesis only takes into account ESA-drafted Level 2, which currently represents the norm in Level 2 rulemaking. The heavy reliance in particular on Regulatory Technical Standards in the post-crisis period points to this possibly becoming the default procedure for delegated rule-making, and creates both powerful incentives for the ESAs to build their regulatory capacity and opportunities for institutional tensions, given that technical details often imply policy choices, especially in the financial markets sphere (Moloney 2011).

The procedure for the adoption of binding technical standards drafts by the authorities is detailed in their Founding Regulations. Slightly different procedures apply to regulatory and implementing technical standards, but they are both designed to privilege the ESAs as primary *loci* of expertise while preserving the formal prerogative of adoption for the Commission. While the Lamfalussy committees only had an informal advisory role for technical standards and the Commission retained its drafting power, the latter was shifted to the ESAs upon their establishment thus creating strong incentives for the Commission to exert some control over the procedure. Not only did the Commission retain its formal Level 2 adoption power because of the Treaty-derived impossibility to delegate discretionary power to agencies (the Meroni doctrine), it also sought to create procedural provisions which would allow it to amend the ESAs' draft standards. Proposals for technical standards are adopted by the Board of Supervisors of the relevant ESA (or their Joint Committee in case of a cross-cutting matter) and sent to the Commission for adoption; drafts are also forwarded to the Council and European Parliament. The Commission then has three months to decide whether to endorse the draft rules or not. While this stage usually results in the smooth adoption of the authorities' drafts by the Commission, other scenarios may also arise where the Commission endorses the draft in part only, or subject to its own amendments. The reasons for a partial endorsement or for amendments being put forward must derive from the Commission's legal review of the draft, aimed to ensure that the Level 2 measure is consistent with general Treaty principles and with the provisions enshrined in the Level 1 legislative act and specific delegation mandate. In both cases the draft is sent back to the ESA with an accompanying explanation of the reasons for non-approval or amendment, although the Founding Regulations clearly state that the Commission should not arbitrarily change the drafts' content without prior coordination with the authority. Most importantly, the measures should only be amended in "*very restricted and extraordinary circumstances*" given the underlying assumption that the authority will "*know best*" thanks to its closer proximity to financial markets. In other terms, despite its formal power to adopt the rules and this possibility to exercise a degree of control over the drafts through its legal review, the Commission cannot amend ESAs' drafts in a totally discretionary manner. On the contrary, the limited circumstances where amendment is foreseen are linked to incompatibility with EU law, disproportionality and inconsistency with fundamental principles of the internal market. Once the draft is sent back to the authority for review, there are additional possibilities for institutional conflict if the ESA amends the draft but in a different direction than the Commission's, a scenario following which the latter can decide to reject the draft or adopt it with its own amendments. Conversely, if the ESA does not provide a revised draft within the review period, the Commission may go ahead and adopt the standards directly thus disregarding the ESA's role. Once the Commission has adopted the Level 2 rule, it must notify the Council and Parliament.

Having outlined the institutional arrangements governing the adoption of Level 2 standards, it is useful to assess how these arrangements have produced rules governing financial services. While the Commission's rejection of an ESA draft is a residual and rare option, as most disagreements end with the authority modifying the draft rule in accordance with the Commission's view, this option is foreseen and has already materialised in the short history of the ESAs' existence, pointing to the relevance of Level 2 rules. The inherent strength of the ESAs' drafts due to their specialist expert knowledge and institutionalised stakeholder engagement was expected and explicitly discussed during the negotiations surrounding their establishment: according to the Recitals in the Founding Regulations, Commission rejections of Level 2 drafts are envisaged to be a rare exception, as "*the Authority is* *the actor in close contact with and knowing best the daily functioning of financial markets*" and "*given the technical expertise of the Authority in the areas where regulatory technical standards should be developed, note should be taken of the Commission's stated intention to rely, as a rule, on the draft regulatory technical standards submitted to it by the Authority*" (European Parliament and the Council 2010a). The risk of tensions was already apparent at the onset of the ESAs' establishment, as ESMA revealed the sensitivities of the Commission's power in its 2011 FAQ, where it boldly stated that "*the substance of the creation (of technical standards) has been delegated by the legislator to the supervisory community*" and conservatively interpreted the Commission's oversight role as one "*to check that these draft laws are in the Union interest and are compatible with EU law and then to adopt these draft technical standards with minimal amendments, if at all possible*" (European Securities and Markets Authority 2011c).

In 2013, Level 2 rules under EMIR were being finalised, the key objective of the regime being to identify and better monitor risks arising from derivative markets. On that occasion, ESMA and the Commission had a clash over the need to postpone the starting date of reporting requirements for exchange-traded derivatives, as the authority was pushing for a delay whereas the Commission claimed that the key policy objectives of EMIR would be hindered in such a case (European Commission 2013a, European Securities and Markets Authority 2013a). The Commission sent back the draft insisting on the original starting date for the reporting requirements, but ESMA maintained the need for a delay and the disagreement resulted in the Commission proceeding to formally reject the draft implementing technical standard concerning the format and frequency of reporting to trade repositories in January 2014. On another occasion, the Commission rejected draft technical standards prepared under the Alternative Investment Fund Manager Directive in July 2013 (European Commission 2013b). Without going all the way to the formal rejection, another example of divergent views with the ESAs is constituted by some of the standards needed to complete the Level 2 framework under MIFID II: over the course of 2015, ESMA submitted to the Commission more than 40 different binding standard drafts, but the Commission announced its intention to amend three of the RTSs in April 2016, which eventually led to the authority caving in and an agreement being found at the end of the year (European Commission 2016). While legally the reasons for the Commission amending or rejecting ESAs' drafts are limited, these episodes testify how the

Commission seeks to maintain a certain degree of control over Level 2 and the authorities, which despite their higher technical expertise are not supposed to exercise policy discretion when drafting technical rules. The legal impossibility to itself adopt Level 2 rules puts the ESAs in the shadow of the Commission's hierarchy when it comes to their quasi-regulatory activities, a hierarchy which however they have appetite to resist as seen above (Moloney 2016).

While the Commission's power to review draft binding technical standards is closely linked to its formal role in the legal adoption of the texts, the co-legislators can also exert a certain degree of influence when it comes to delegated rules. The Council and Parliament's desire to set up oversight mechanisms, allowing them to maintain a certain degree of control over agency rulemaking, represents another indication of how crucial for all stakeholders Level 2 rules can be. It also demonstrates how politically consequential these standards can be, despite their technicality, pointing to the fact that the distinction between Level 1 and 2 is not necessarily as straightforward as in theory it should be. Control mechanisms do not differ on the basis of the institution drafting the rule (Commission versus ESA), but they do differ based on the significance of the measure. More specifically, delegated acts and Regulatory Technical Standards (RTS) are those subject to the highest scrutiny, as the co-legislators both have a binding right of objection (veto power) as well as the right to revoke the entire mandate given to the Commission to adopt delegated rules. Implementing acts are subject to weaker scrutiny rights, as Council and Parliament only enjoy a non-binding right of objection.

These scrutiny powers are once again not merely theoretical: while the Council has not raised issues on draft Level 2 so far at least in the public domain, the European Parliament has often demonstrated its appetite for challenge, and first threatened to veto the whole range of technical standards under EMIR on both procedural and substantive grounds in February 2013 (European Parliament 2013). The Parliament even decided to veto the draft Level 2 standards governing the Key Information Document (KID) under the Packaged Retail Investment and Insurance-Based Products Regulation (PRIIPs) in September 2016 (European Parliament 2016). The Key Information Document is meant to provide retail consumers with key information on risk and costs when making investment choices, especially when opting for more complex products. The dissatisfaction of the Parliament was not only linked to the content of the measures, but also intended to express disagreement with the

Commission's decision to go ahead and adopt the rules without fully respecting the Parliament's scrutiny rights and listening to MEP concerns.

Further signalling its appetite for careful oversight of Level 2 measures, the European Parliament regularly holds so-called "scrutiny slots" where representatives of both the Commission and ESAs are invited to discuss the most important upcoming Level 2 rules. Moreover, the general accountability framework of the ESAs obliges them to submit an annual report to the European Parliament and Council, where they illustrate the activities carried out in the previous months and lay out future priorities, including those on Level 2 rulemaking (Simoncini 2015a). Another measure meant to allow this oversight to be effective is the interinstitutional register of delegated acts, which became operational in December 2017 and provides transparency on all stages of the adoption of a delegated act, from planning to publication in the Official Journal of the EU. The relevance of delegated legislation is not only demonstrated by the abundance of these oversight mechanisms, it is also explicitly set out in official documents by the co-legislator, such as the European Parliament's 2018 resolution on the Interinstitutional Agreement on Better Law-Making (European Parliament 2018). In the section devoted to delegated and implementing acts, the Parliament acknowledges that the delegation of power to the European Commission "*is not merely a technical issue but can also involve questions of political sensitivity*" and recalls that politically significant elements should always remain part of a Level 1 act, where appropriate in the form of annexes. Specifically on the matter of Level 2 rules in financial services, parliamentarians signal a certain dissatisfaction with the Commission's habit of swiftly adopting drafts presented by the three ESAs without changes, as this practice can reduce the amount of scrutiny time available to the Parliament for its own amendment proposals.

3.3 The European Securities and Markets Authority and the Meroni doctrine

Among the three authorities of the European System of Financial Supervision, ESMA is the one with the strongest powers. While the "quasi rule-making" powers of drafting Level 2 rules are consistent across the three authorities, ESMA was additionally entrusted with significant supervisory powers to intervene in financial markets, namely the power to restrict or ban the sale of certain financial products in emergency situations. The negotiation of its founding Regulation, whose proposal was presented in September 2009, was marked by institutional struggles between the Council and Parliament over the range of control that ESMA would exert over financial markets (Moloney 2011). There were some institutional tensions in respect to ESMA's rulemaking power and ability to propose binding technical standards, but overall the political contestation of the authority's suggested regulatory powers was non-material compared to the debate on ESMA's supervisory tasks (Moloney 2018). The comparatively limited contestation of the ESA's proposed rulemaking tasks reflects the long experience that the EU had already had with independent agencies supporting regulatory governance since the first of these independent bodies were established in the 1990s. It is clear that the ESAs, and especially ESMA, have gained significant rulemaking responsibility which have turned them into central institutions in EU financial services regulation, miles away from the soft information-sharing powers entrusted upon the committees of national regulators originally created in the early 2000s as part of the Lamfalussy process (Pelkmans and Simoncini 2014, Simoncini 2015a).

Nevertheless, as aforementioned they step short of enjoying the same independence of the Commission, as all the ESAs' Level 2 drafts must be formally adopted by the former. The Commission's formal endorsement of all technical standards drafts stems not only from the willingness of the delegating authority to keep some control over the procedure, but most importantly from the EU legal-institutional balance as preserved by the seminal Meroni ruling (Simoncini 2015a). The Meroni ruling, issued in 1958, concluded that agencies could not exercise discretionary powers to adopt rules of general application, and has been increasingly invoked since the 1990s, as a rising number of independent EU authorities have been entrusted with ever more significant powers (Court of Justice 1958). In the Meroni case, the applicant company challenged for procedural reasons the financial arrangements of the ferrous scrap regime established by the High Authority of the European Coal and Steel Community (ECSC), the institution which the Commission would later replace. Most importantly, it questioned the underlying decision taken by the High Authority to delegate the financial operation of the regime and the accompanying powers to two bodies established under Belgian private law, the *Office Commun des Consommateurs de Feraille* and the *Caisse de Péréquation des Ferailles importées*. In its judgment, the Court of Justice of the Community upheld the principle of balance of powers as being an essential feature of the Community institutional structure and "*a fundamental guarantee granted by the Treaty*", a guarantee which should not be broken by entrusting discretionary powers to bodies other than those directly established by the Treaty (Court of Justice 1958). The Court's decision indeed established that powers may be delegated from the Commission to other EU bodies only if no discretion is conferred which could amount to actual policymaking; delegation can only relate to "*clearly defined executive powers*" (Di Noia and Gargantini 2014). If discretion is granted which could represent the "*execution of actual economic policy*", the institutional equilibrium of the Treaty would be endangered (Court of Justice 1958). The delegation can only concern clearly defined executive powers, strictly reviewed to ensure compliance with the objective criteria determined by the delegating authority.

The Meroni doctrine remained rarely contested until the 1990s wave of agencification sparked academic interest in this ruling and its implications for these new institutions, and has provided since then a powerful limit to the delegation of powers to EU administrative bodies. The Meroni restrictions on agency design have been pushed to their limit in ESMA's case, as the range of its powers go beyond the traditional agency model. This was demonstrated early on by the Commission's concern that ESAs would not be delegated the power to take decisions which require difficult choices, as it emerges from the impact assessments accompanying the proposal to establish the authorities (European Commission 2009). The supervisory powers granted to ESMA are particularly significant, as the latter may temporarily prohibit or restrict certain financial activities that threaten the orderly functioning and integrity of financial markets or the stability thereof (European Parliament and the Council 2010a). ESMA's proposed ability to effectively overrule national competent authorities in emergency situations and in case of a breach of EU law, as well as its power to prohibit specific products and services, was the main flashpoint in the political negotiation around its creation.

The potential consequences and sensitivities around the proposed new European regime were evident from the stances taken by some Member States: the UK Financial Services Authority notably published a paper expressing its institutional anxiety over the ESAs and particularly ESMA's foreseen centralisation of supervisory and rulemaking powers (Moloney 2018, Scholten and Van Rijsbergen 2014). The need to develop a uniform EU rulebook for financial services and the case for institutional centralisation were nevertheless strong, and the authority was ultimately handled these significant product intervention powers. Alongside the crosscutting emergency intervention power, the Short Selling Regulation represents an explicit sectoral application of this provision as it empowers ESMA to forbid short selling in certain circumstances (European Parliament and the Council 2012). This emergency power was the most controversial to be granted to the ESAs, albeit seen as necessary where market disruptions can have a cross-border nature and the authority best placed to act in a crisis scenario is the EU-level one rather than the national supervisor (Simoncini 2015a). The United Kingdom sought an annulment of this article by invoking the Meroni doctrine and arguing that ESMA had been given broad discretionary tasks, which can have a political nature and would therefore be at odds with the decade-long non-delegation principle. However, the Court of Justice of the EU recognised that the delegation of such powers to ESMA was lawful as long as objective criteria and circumscribed conditions guided their exercise and the authority's decisions could be challenged in court (Pelkmans and Simoncini 2014). Due to the necessity to comply with the Meroni doctrine still being upheld by the Court of Justice of the EU, ESAs have been prevented from formally adopting regulatory measures, and the Commission retains its power to formally endorse all Level 2 drafts (Simoncini 2015a).

The limitations imposed by the Meroni doctrine are valid beyond the European System of Financial Supervision and concern every EU decentralised body or independent authority, whose existence was not originally foreseen by the Treaties but felt necessary to achieve the harmonisation objectives typical of many EU policies. Especially in the case of services markets and network infrastructures (like energy and transport), the proper functioning of an integrated single market would not be achievable without a certain degree of centralisation of rule-making and enforcement tasks, tasks which are often entrusted upon EU authorities (Pelkmans and Simoncini 2014). Beside the resistance represented by the interests of national regulators and supervisors who are often hesitant to give up long-held powers, the Meroni doctrine has often stymied the constitutional debate about the functional needs of EU agencies. On the other hand, even before the recent CJEU judgment in the Short Selling case upholding Meroni, the gradual erosion of the essence of the non-delegation doctrine has played out through a growing number of EU agencies performing quintessentially regulatory tasks. This has not only been the case of the ESAs in the financial markets sphere, although theirs is arguably the most significant example; other agencies exert rule-making functions which strongly contribute to shaping the content of EU legislation on technical matters. For example, the European Aviation Safety Agency can both issue opinions to the Commission and soft law technical standards: while the adoption of formally binding acts is reserved to the Commission, the agency can independently issue standards to implement the principles contained in hard EU law thus enjoying a substantial regulatory impact going beyond its formal powers (Simoncini 2015b).

Recent constitutional changes seem to justify a gradual move away from the Meroni doctrine, given the fact that one of the considerations behind the Court's 1958 ruling was the need to ensure that no substantial delegation of power could escape its judicial review (Di Noia and Gargantini 2014). The Lisbon Treaty indeed for the first time enshrined the principle of judicial review for EU agencies' acts and explicitly recognised that the system of remedies applies also to them, arguably irrespective of the formal qualification of the rule and thus extending to soft law acts (Simoncini 2015a). The possibility for third parties to have judicial standing and sue the acts of bodies, offices and agencies of the Union under now the remit of the CJEU's review of legality could in principle favour moving formal adoption powers from the Commission to the agencies themselves. Nowadays the process of judicial review is reserved to Commission acts, as the endorsement procedure sees the latter rubber-stamping draft technical standards prepared by the ESAs, thus hindering a direct judicial accountability of the authorities; a possible reform could however substitute the Commission's explicit endorsement with a tacit approval which would still preserve its veto power and possibility to amend the authorities' drafts (Di Noia and Gargantini 2014).

In conclusion, this section has underlined the significance of the ESAs' rulemaking powers, and particularly of ESMA's. The non-delegation doctrine stemming from the Meroni judgment explains why the draft Level 2 measures prepared by the ESAs must be formally adopted by the Commission, which creates an opportunity for the latter to exert some control over the authorities' policy choices. Most importantly however, the sensitivities and institutional oversight mechanisms surrounding Level 2 strongly point to how consequential these measures can be for affected stakeholders, who have significant incentives to engage with the ESAs to influence their rulemaking decisions.

3.4 Commission versus ESMA: rule adoption and stakeholder engagement

This section sets out the different process leading to the adoption of rules by the Commission and ESMA, and the related stakeholder consultation requirements and practices. Given that the thesis focuses on binding rules and compares Level 1 with Level 2, this section will not cover the whole range of policy measures that both institutions can adopt, which can comprise guidance, opinions, action plans, technical advice et cetera. Instead, the focus is on the procedure respectively for adoption of a Level 1 legislative proposal, and an ESA Level 2 technical standard draft. This short overview will set the scene for the following chapters, where data on stakeholders' engagement with both venues and their ability to influence the two categories of rules mentioned above is analysed.

The process leading towards the adoption of a Commission Level 1 proposal starts within one of its Directorates, which are divided in specialised units or teams of policy officers responsible for any given area. For example, in the realm of financial services, a specialised team responsible for trading infrastructure would develop the proposal for related legislation (such as EMIR, or the European Market Infrastructure Regulation). In most instances, one lead officer is responsible for each legislative file and for coordinating the input fed from colleagues within the Commission, as well as the feedback from other stakeholders such as the co-legislators and private sector ones. Once the working level draft is ready, the legislative proposal needs to be approved at the various hierarchy levels, which comprise the responsible Head of Unit, Director, Director General of the relevant Directorate-General (in the case of financial services, DG FISMA) and finally must be adopted by qualified majority by the College of Commissioners, the most senior decision-making body of the European Commission.

In most cases, the Commission carries out an impact assessment to evaluate various policy options and a public consultation before adopting its legislative proposal, the duration of which varies but is usually around three months. However, it should be noted that this step is not mandated under the EU institutional framework or the Treaties but has rather become common practice over time. Furthermore, stakeholders' involvement in the Commission's legislative development is a cornerstone of the Better Regulation package, an initiative launched in 2015 by the Juncker Commission to improve transparency and accountability in the EU legislative process (European Commission 2017). The Better Regulation guidelines call upon Commission officials to develop a wide-ranging consultation strategy for each policy and legislative initiative; this should set out consultation objectives, the targeted stakeholders following a dedicated mapping exercise, and the consultation activities to be carried out. For most initiatives, a public consultation conducted online of minimum 12 weeks' duration is mandated under Better Regulation and can be accompanied by further, more targeted consultation activities such as arranging hearings or expert groups.

Alongside these formal channels, Commission officials hold a range of bilateral meetings with specific stakeholders, usually upon the latter's request, throughout the legislative process. Further to the main consultation being conducted while the Commission is seeking early feedback to develop its policy proposals, the Better Regulation agenda also inaugurated a second consultation step, which takes place once the legislative proposal has been formally adopted and transmitted to the Council and European Parliament, giving stakeholders an additional opportunity to submit their views on both the draft law and accompanying impact assessment. Stakeholder feedback and consultation input is taken into account by the Commission when further developing the legislative proposal and impact assessment, and the latter must include a section on the consideration and implementation of stakeholder views. Once the proposal is formally adopted by the Commission, it is transmitted to the Parliament and Council for consideration and the legislative negotiation process is launched; during the negotiation stakeholders have further informal means to input their feedback, notably by engaging directly with Members of the European Parliament and Member State representatives in the Council.

At the ESAs level, the technical regulatory work of drafting Level 2 rules is carried out by the authorities' various standing committees and working groups, which prepare the standards for formal adoption by the Board of Supervisors. The composition of the ESA technical committees tends to be more limited than the Board, as they not always include all the national competent authorities and can involve sub-groups devoted to specific topics. A policy officer working for the relevant authority holds the pen on the standards, gathering technical input and feedback by the representatives of the national regulators sitting on the committee. Once finalised at working level, the draft standards are adopted by the highest decision-making body of the responsible ESA, namely its Board of Supervisors. Adoption of binding technical standards usually happens by consensus, although a qualified majority vote rule applies whenever a vote is formally invoked. The decision-making rule of qualified majority among Board of Supervisors members closely resembles the structure and functioning of comitology committees, which are similarly comprised of Member State experts. Board of Supervisor minutes can provide some insight into how decision-making operates in practice, although this is limited as most of the rule development happens within the subordinated fora of standing committees, as explained above. A review of Board of Supervisors meeting minutes over the 2011-2018 period reveals indeed that formal contestation is rare and that the overwhelming majority of proposed BTS are adopted without discussion. This record might of course conceal the sensitivity of heated discussions happening at an earlier stage of the process, and/or a careful editorial approach towards the meeting record ahead of its publication. However, a formal voting record did appear for the first time in the minutes of the September 2015 meeting, where ESMA's Board was asked to approve a MIFID Regulatory Technical Standard on trade transparency and national competent authorities had not found an agreement at working level (European Securities and Markets Authority 2015a). Contestation is therefore not totally absent, although voting tables appear only exceptionally in Board meeting minutes, suggesting that the forum's prevailing decision-making mode is deliberative and consensus driven (Moloney 2018).

When developing a Level 2 draft, the ESAs are bound by their Founding Regulations to consult the public and analyse the costs and benefits of the measures, unless proportionality or the urgency of the situation justify a derogation from these requirements. The authorities must also request the opinion of their Stakeholder Groups, permanent committees devoted to stakeholder engagement that comprise a diverse membership of around 20-30 industry and civil society representatives. EBA and ESMA each have one Stakeholder Group (the Banking Stakeholder Group and Securities and Markets Stakeholder Group respectively) while EIOPA has two, the Insurance and Reinsurance Stakeholder Group and the Occupational Pensions Stakeholder Group. Further to these mandatory requirements, the ESAs routinely arrange public hearings on their proposed technical standards, thus giving stakeholders additional opportunities to submit their feedback, and similarly to the Commission they meet with interest group representatives on an ongoing basis.

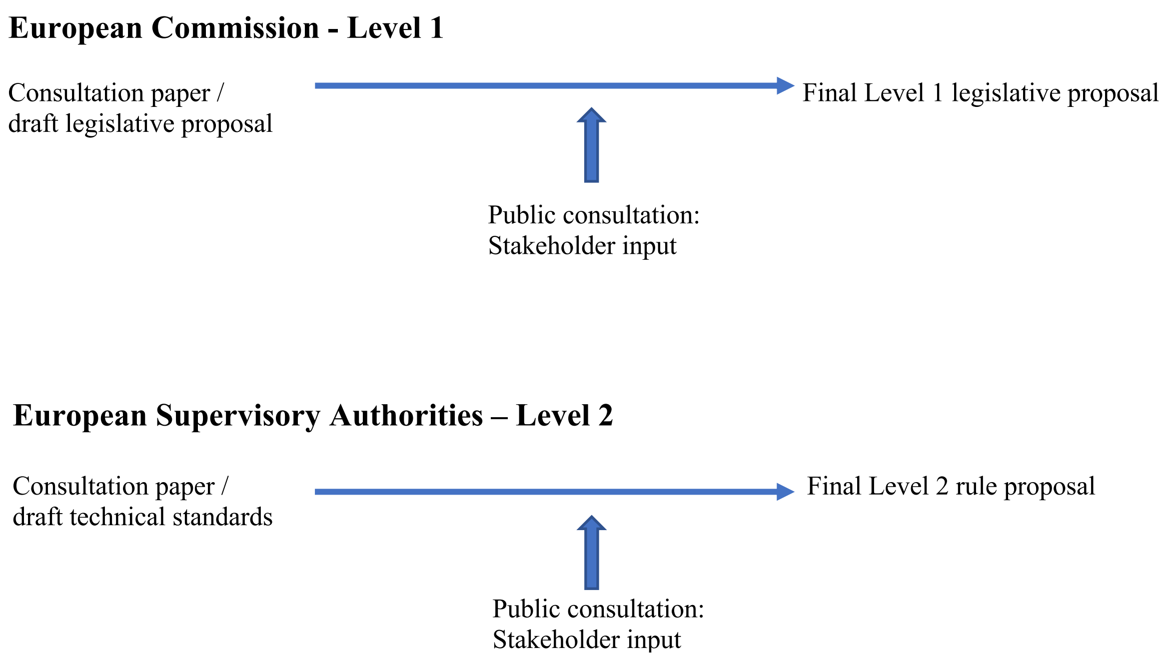


Figure 1. Comparison of Level 1 and Level 2 rulemaking

To sum up, the internal procedure leading respectively to the adoption of Level 1 and 2 standards by the Commission and ESAs is similar, with a working level policy officer holding the pen in both cases and seeking stakeholder input through a range of practices, the most significant of which a public consultation. The mandatory requirements on stakeholder engagement are stricter on the ESAs than the Commission, given that in the former's case consultation practices are set out by EU law (the authorities' Regulations establishing their scope, responsibilities and powers) while for the latter they are guided by the Better Regulation guidelines, which are not binding. However, in practice the two institutions engage with interest groups in a similar way to seek external input into their policy proposals, and the next chapter will show how stakeholders themselves grasp these opportunities to ensure their voices are heard in the rulemaking process.

In conclusion, this chapter provided an overview of the institutional structure of the European Supervisory Authorities, explaining the historical reasons that led to their establishment after the financial crisis. It also highlighted how the ESAs were granted significant "quasi" rulemaking powers, in that they are tasked with the responsibility of drafting Level 2 rules in the realm of financial services regulation; the chapter also explained why the Meroni doctrine prevents the authorities from formally adopting these rules thus maintaining this prerogative for the Commission. It also underlined the rising importance of Level 2 rules in financial regulation and the various oversight mechanisms that were created by co-legislators to control the related ESAs' drafting powers, pointing to the relevance of delegated regulation for a variety of stakeholders. Finally, the chapter emphasised how the Commission and the ESAs proceed in internally preparing and adopting the drafts for respectively Level 1 and Level 2 rules, and highlighted the similarity of the process especially in terms of their stakeholder engagement duties and habits.

Chapter 4

Data

Two of the lobbying strategies most frequently used by stakeholders are submitting a response to a policymaker's consultation and meeting with the former to directly discuss a given policy issue. The data I collected, which include a main database of over 4000 consultation submissions (covering almost a decade) and a database of circa 1800 meetings (taking place between 2014 and 2018), display no significant difference in stakeholders' engagement with the European Commission and ESMA. Stakeholders target both policymaking institutions in a similar way in terms of both responding to their consultations and seeking a meeting, and do not clearly prioritise one institution over the other. In both cases, business interests represent the majority of stakeholders represented in the databases, and more complex policies are the subject of most consultation submissions and meetings with the two institutions.

This chapter describes the data I collected and includes an exploratory investigation of both my consultations database and meetings database. The first section describes my choice to focus on the European Securities and Markets Authority among the three European Supervisory Authorities, and on post-crisis regulation as the timeframe of my analysis. The second section of the chapter then presents my database of consultation submissions, spanning across almost a decade and both the Commission and ESMA. The section includes a description of this database and specifically an exploration of lobbyists' participation patters, and how these are related to some policy and stakeholder-related characteristics. In a similar fashion, the third section offers an exploratory analysis of the meetings database, which also displays interesting patterns in terms of mobilisation trends. While the analysis of lobbying success is undertaken in the next chapter, the patterns in the data imply that stakeholder-related characteristics are not a sufficient explanation for interest groups' lobbying, or at least their decision to submit a consultation response or seek a meeting with a policymaker. Most importantly, these two sections show that stakeholders consistently target both institutions and that lobbying mobilisation patterns are very similar: advocates find engaging with both the Commission and ESMA worthwhile, and for doing so they seek meetings with relevant officials alongside responding to their consultations on draft rules. Advocates' efforts in targeting both institutions also have similar intensity levels: similarly intense advocacy efforts towards the Commission and ESMA (in terms of both consultation participation and meetings) point towards the importance for stakeholders of directing their lobbying activities at both venues and support the comparability of the two venues for the purposes of my research design. Alongside demonstrating that stakeholders engage with both the Commission and ESMA with similar lobbying levels and that the two institutions are therefore comparable, these sections also support my assumption that the "offer" side of the lobbying exchange represented by the stakeholders is not enough to understand lobbying outcomes, and that the "demand" side represented by policymakers and in particular their need for policy-relevant information must be closely looked at.

4.1 Data selection and collection

As outlined in chapter 1, I adopted a mixed methods research design and conducted my analysis in two subsequent parts. I first applied quantitative tools and statistical methods to assess whether there is a difference in lobbying success when advocates target the Commission versus the ESAs, aiming to answer the first part of my research question. I undertook this analysis by adopting a large-N approach and calculating the degree of lobbying success enjoyed by stakeholders when they engage with the two different institutions; this analysis is included in chapter 5. In a second phase, I used process tracing in the first instance to cross-validate the results yielded by the quantitative analysis and improve the reliability of my findings. Second and most importantly, I used a range of semi-structured interviews and extensive documentary evidence to answer the second part of my research question, by testing the hypotheses I derived from lobbying exchange theory. More specifically, as in my quantitative analysis I found that the degree of lobbying success enjoyed by stakeholders is higher when the Commission is targeted, I sought to assess whether the varying information demand of the two institutions is the underlying cause for this difference. After establishing that stakeholders' lobbying success varied by chosen venue (agency versus Commission) in my large-N analysis, I answered the "why" component of my question through process tracing and qualitative research in chapters 6 and 7. This section explains why I decided to focus on the European Securities and Markets Authority as well as the time frame of my analysis, describes my databases and the strategy driving the selection of the qualitative case studies.

As a reminder, the three European Supervisory Authorities that were created in 2011 to reinforce European financial supervision and regulation are each in charge of a different section of financial markets. The European Banking Authority (EBA) is responsible for the banking sector and hence deals mostly with prudential regulation; the European Insurance and Occupational Pensions Authority (EIOPA) is responsible for pension funds and for the insurance sector, and finally the European Securities and Markets Authority (ESMA) oversees securities markets rules. The latter comprise anything related to trading as well as requirements concerning market infrastructure such as clearing houses; in addition, ESMA directly supervises credit rating agencies and trade repositories. While ideally it would have been possible to analyse all the three agencies as lobbying venues and compare them to the European Commission, this would have been extremely challenging from a feasibility perspective. Therefore, a selection had to be made of one of the three ESAs: for the purposes of this thesis I focused on ESMA and hence markets rules, thus leaving both EBA and EIOPA outside of the scope of my research. I made this choice since most prudential rules, the competence of EBA, are set globally by the Basel Committee of central bank supervisors and usually implemented at EU level with relatively minor changes. A large part of banking policy is therefore not specific to the EU and, while technically possible, it would have proven challenging to separate the "global" components of EU banking regulation from the EU-specific "deviations" in order for the thesis to focus on what happens at the European level. Researchers preceding me have made a similar choice, as the existing lobbying literature on banking regulation has primarily analysed transnational lobbying on the Basel Committee on Banking Supervision rather than looking at its implementation through European legislation. I then decided to exclude EIOPA because insurance- and pensions-related rules provide a more limited and less fertile ground for research: EU legislation in this area is composed of few legislative acts (Solvency II, the Insurance Distribution Directive, the Directive on Institutions for Occupational Retirement Provision and most recently PEPP, the Pan-European Personal Pension Product Regulation) and was not subject to an encompassing revision as a result of the financial crisis, differently from market rules.

Consequently, I decided to focus on ESMA and undertake a comparison between the European Commission and this specific authority for my research. As seen in chapter 3, both institutions have significant rulemaking powers and are administrative venues tasked with drafting binding rules; while the Commission is responsible for preparing Level 1 legislative proposals, ESMA enjoys the corresponding power for drafting Level 2 rules. Whereas Level 2 rules are meant to be more detailed and technical or fill in details which are not settled in Level 1 legislation, in practice they are very similar in nature and the distinction between Level 1 and Level 2 is blurred. Therefore, both the drafting responsibilities and regulatory output of the two institutions are comparable. Furthermore, both policymaking venues engage in stakeholder consultation, either because mandated by institutional rules or voluntarily; they notably organise online consultations, stakeholder hearings and routinely meet individual interest groups. Through the description of my consultation and meeting databases, the second and third section of this chapter will empirically show that stakeholder mobilisation patterns towards the Commission and ESMA are indeed comparable and highly similar in nature. It is important to note that my thesis looks at stakeholders' success when attempting to influence the Commission and ESMA's rulemaking as opposed to implementation. This is also the area where the two institutions are comparable (as they are responsible in turn for drafting Level 1 and Level 2 rules), while the Commission enjoys far more discretion and more significant powers than ESMA when it comes to the implementation and enforcement stage of policymaking.

The time scope of my research is the post-financial crisis period of 2009-2017. The intense legislative activity which took place in this period was aimed at strengthening the rules that governed European financial markets, and at creating a legislative framework for some market actors and activities that had previously not been regulated. Another interesting option would have been to compare lobbying activities before and after the creation of the ESAs: since 2005-2009 was a period of legislative pause, this would have resulted in a comparison of the Financial Services Action Plan period (1999-2004) with the post-crisis period (2009-2017). The Financial Services Action Plan era was indeed a period of intense legislative activity, aimed at liberalising and integrating the European market in financial services: almost forty measures (Directives, Regulations and Commission Recommendations) were adopted over five years as part of this policy programme. The responsibility for drafting Level 2 rules in the FSAP area, and generally before the creation of the ESAs, lay with the Commission; hence this alternative research design would have possibly allowed me to identify the causal effect of agency creation on lobbying success through a difference-in-difference design. However, it was unfortunately not feasible to undertake this promising endeavor, as public consultations with stakeholders were not systematic before the 'Better Regulation' agenda was implemented in the mid 2010s. During the FSAP period, a range of consultation methods was used by the European Commission, including meetings with forum groups or national regulators, hearings with selected industry representatives, and consultations with Member State experts in Council working groups. Only particularly relevant and wide-ranging policy initiatives were subject to systematic stakeholder consultation, which is now standard practice and can only be derogated from in cases of emergency; furthermore, it is extremely challenging to obtain submissions for consultations going so far back in time. This would have severely restricted the range of policies under analysis in the FSAP era and resulted in a biased sample for comparison with the post-crisis regulation policies. Moreover, comparing the legislative measures adopted during these two periods would have been complicated by their different features: the nature of FSAP policies was primarily liberalizing, while post-crisis regulation was driven by a strong skepticism towards self-regulation and a general desire to tighten the rules. For the reasons outlined above, I decided to focus on the post-crisis period which ranges from 2009 to 2017. Table 3 contains the list of policies under analysis in my quantitative section, together with the binding rules at Level 1 and Level 2 that implement them and the related consultation submissions by stakeholders. My consultations database comprises as a result a total of 83 legislative acts and about 4,190 interest groups submissions, which I manually downloaded from the European Commission and ESMA websites.

Table 3. Policies under analysis in the consultations database

Policy	**Level 1 acts**	***Level 1 consultation submissions***	**Level 2 acts**	***Level 2 consultation submissions***
Alternative Investment Fund Managers Directive (AIFMD) (2011)	1	*98*	4	*232*
European Market Infrastructure Regulation (EMIR) (2012)	1	*295*	12	*491*
Credit Rating Agencies Regulations (CRAs) (2009-13)	4	*167*	9	*145*
Short Selling and Credit Default Swaps (2012)	1	*109*	4	*74*
Transparency Directive II (TD) (2013)	1	*21*	1	*none*
European Venture Capital and Social Entrepreneurship Funds (EuVECA/EuSEF) (2013)	2	*112*	2	*15*
Markets in Financial Instruments Directive II and Regulation (MiFID/MiFIR) (2014)	2	*331*	19	*627*
Market Abuse Directive and Regulation (MAD/MAR) (2014)	2	*90*	1	*175*
Central Securities Depositories Regulation (CDSR) (2014)	1	*101*	6	*177*
Packaged Retail Investment and Insurance Products Regulation (PRIIPs) (2014)	1	*137*	1	*153*
Units in Collective Investment Funds Directive V (UCITS) (2014)	1	*93*	1	*47*
European Long Term Investment Funds Regulation (ELTIFs) (2015)	1	*93*	1	*21*
Securities Financing Transactions Regulation (SFTR) (2015)	1	*127*	1	*71*
Benchmarks Regulation (BMR) (2016)	1	*72*	1	*116*
Total	**20**	***1,846***	**63**	***2,344***

Source: European Commission, European Securities and Markets Authority

All the consultations and respective stakeholder submissions in the table above formed the database which I used to calculate lobbying success and establish whether the latter varies depending on which institution is targeted. Table 4 below includes some descriptive statistics about this database of consultations submissions; it notably highlights that the texts submitted by stakeholders tend to be long and contain a lot of information, as the average number of words in the database is 11,080 and the average number of sentences 337.

Table 4. Consultations database metadata

	Min	*1st Qu.*	*Median*	*Mean*	*3rd Qu.*	*Max*
Tokens (number of words)	73	2048	4425	11080	9528	2211000
Types (unique words)	62	634	1022	1372	1623	202400
Sentences	1	68	149	337	321	35890

I also collected a range of independent and control variables for inclusion in my quantitative analysis of lobbying success (included in the next chapter); these were operationalised as follows and as also shown in table 5 below. The measurement and operationalisation of the outcome variable, lobbying success, are discussed in the next chapter. The main independent variable I was interested in, necessary to test the link between the targeted venue and lobbying success, is a binary variable distinguishing between consultations held at the Commission and ESMA levels. Three different actor-level variables were included in the analysis in line with previous literature on lobbying success, which underlines the relevance of stakeholder features such as their resources. Lobbying costs, meetings and EP passes were thus inserted into the models to measure respectively advocates' yearly lobbying expenditure, the number of meetings held in the period under analysis and the number of permanent access passes to the European Parliament. Data for the three variables was retrieved from the EU Transparency Register. I then constructed the categorical variable "business", a dummy which separates stakeholders representing the private industry (firms and trade associations) from other types of advocates. "Lobbying intensity" is the last actor-level variable and captures the amount of information provided to policymakers, defined as the total number of consultation submissions per advocate during the period under analysis. Two further policy-related variables were inserted in the regression models. The first one, which I hypothesise is linked to policymakers' information demand, is the complexity of the policy, which I define as the number of questions asked to stakeholders in the consultation paper. While this is by no means a perfect operationalisation of this variable, I posit that consultation documents for more complex policies will cover more issues and, by asking more questions, seek more information out of respondents. Conversely, if planned policy proposals are relatively straightforward, consultations should be shorter and ask fewer questions of interested stakeholders. The number of questions, or issues raised in a consultation paper, can also be an indication of simply its scope rather than complexity; however, while a more encompassing policy is not necessarily more complex than a smaller one, these two features are usually linked. To improve the confidence in this complexity measure, I also provided two alternative operationalisations, measuring it in terms of length (number of pages in the consultation paper) and by using the Flesh-Kincaid index[2]. The second policy-level variable I used captures the media salience of the issue at stake, measured as the number of articles appeared during the consultation period in a range of selected newspapers (*Politico Europe, EurActiv, The Economist* and *The Financial Times)*. To sum up, the three variables of interest to me in the quantitative models are the outcome variable (*lobbying success*), the venue-related dummy (*agency*) and the *policy complexity* variable; all the stakeholder-related variables and policy salience were included for completeness and to align with previous literature. In other words, I do not argue that the venue is the only variable able of determining stakeholders' lobbying success and I acknowledge that many stakeholder-related characteristics ca have a bearing on the latter, as found in previous research.

[2] See Appendix 1 for a discussion of the Flesch-Kincaid index as an alternative measure of complexity.

Table 5. Independent variables and controls

	Definition	Source	Min	Max	Mean	S.d.	Obs
Venue-level							
Agency	**Dummy for ESMA-drafted rules**	EC/ESMA websites	0	1	0.45	0.50	2820
Actor-level							
Lobbying costs	Natural logarithm of yearly lobbying expenditure	Lobbyfacts.eu	0	9.4	5.84	1.8	1497
Meetings	Number of meetings held with EC officials	Lobbyfacts.eu	0	154	10.13	14.46	1502
EP passes	Number of passes to the European Parliament held	Lobbyfacts.eu	0	33	2.83	4.04	1502
Business	Type of interest group (1=Firms and trade associations, 0=Public authorities, citizen and consumer interests)	Own categorisation	0	1	0.84	0.36	2815
Lobbying intensity	Total number of consultation submissions per advocate	Own calculation	0	71	11.6	13	2844
Policy-level							
Complexity	**Complexity of policy measured as n° of questions asked in consultation paper**	Consultation documents (EC/ESMA websites)	22	1317	430.5	477.08	2820
Salience	Media salience measured as n° of articles appeared over the consultation period in selected EU outlets	Factiva	1	1043	324.8	412.71	2820

Alongside this main consultations database, I collected a separate database on meetings that stakeholders held with the Commission and ESMA, to further support my assumption that they engage with both institutions. This database comprises 1819 meetings for which public information is available, spanning over the period 2014-2018, and is described in the third and last section of this chapter. For the qualitative section of my research, I needed to select one or two case studies to allow me to go into the necessary depth required to analyse processes, notably institutions' information demand and how this influenced stakeholder success. Because my third hypothesis brings the role of policy complexity into the framework, I decided to focus on two policies characterised by varying degrees of complexity. The case selection strategy used was therefore one of a "diverse case" (Seawright and Gerring 2008), as I set out to analyse two cases at either end of the complexity spectrum, namely the Credit Rating Agencies Regulation (and Directive) and the Markets in Financial Instruments Directive (and Regulation).

The regulation of credit rating agencies (CRAs) was relatively straightforward, as it imposes some business conduct requirements on these market actors and disclosure requirements for their methodologies, without mandating how ratings should be designed. On the other hand, MIFID/R has been described as a "behemoth" regime and the cornerstone of EU financial services regulation. It covers an incredibly wide range of matters governing financial markets and trading, including categories of trading venues, asset-specific rules on pre- and post-trading transparency, investor protection requirements, research, investment advice and reporting requirements, to name just a few of its numerous elements. Given my hypothesis on the moderating role played by policy complexity on the institution's information demand and consequently advocates' lobbying success, I had different expectations for these two policies sitting at either end of the complexity spectrum. Namely, I expected interest groups' success to be higher in the highly complex MIFID policy case, and lower in the case of CRA policy, irrespective of the venue targeted. Combining the two hypotheses and given my assumption that complexity strengthens policymakers' need for external information, I expected average lobbying success to be lowest in the case of CRA policy at ESMA level, and highest for MIFID policy at Commission level.

After establishing the existence of a difference in lobbying success between the European Commission and ESMA consultations, I used process tracing to test key assumptions of the statistical model and unveil the causal mechanisms accounting for the varying degree of lobbying success. I wanted to establish whether the institutions' information demand was, as hypothesised, a significant driving factor behind this difference. In my research I used theory-testing process tracing, as I set out to test hypotheses derived from a pre-existing theory in the lobbying literature, namely exchange theory. I formulated hypotheses on lobbying success and institutions' information demand, and used a range of qualitative sources to look for probative evidence which could be consistent with my chosen theory's observable implications. The documentary evidence used to conduct process tracing included a wide range of newspaper articles, press releases, reports of public events, and stakeholder consultation submissions. To assess institutions' information capacity, I used a range of criteria such as the number of dedicated staff, educational background and professional experience of key decision-makers, and the length of time spent in the financial regulation domain, information gathered through a range of public sources and professional networking websites.

To complement this documentary evidence, I arranged a series of interviews with interest group representatives as well as officials from ESMA and the European Commission. I chose interviewees based on their experience engaging with the two institutions and working on the policy issues under analysis in my cases. The sample comprised representatives of trade associations active in the financial industry space (such as banking, asset management and stock exchanges), public affairs representatives working in-house for financial services firms, as well as NGOs and consumer interest associations. I undertook 16 semi-structured interviews over the period ranging from January to May 2019, with an average duration of 45-60 minutes; all the interviews were conducted face-to-face except for one, which was carried out over the phone. Since all the questions contained in my interview guide were open-ended, whenever possible I recorded the conversations in their entirety to then transcribe these for my own analysis.

A semi-structured interview is typically characterized by a pre-determined and previously prepared set of questions to be covered, with the interviewer following the guide but also able to stray away from it to better explore topical issues that may arise in the conversation. The semi-structure inherent in this type of interviewing is particularly well suited to produce reliable qualitative data, which can be easily compared and thus enhance the internal validity of the information obtained. Another tool which I had considered to collect further qualitative data are surveys, which I however discarded for two reasons. First, my main aim in contacting interest group representatives was to gather their insights into their engagement with different policy venues; having little or no assumptions of my own, it would not have been straightforward to carefully design a survey questionnaire for the purpose. Given my objectives, this survey would have consisted mostly of open-ended questions, which are better explored through face-to-face interviews, as survey respondents rarely provide a comprehensive and rich answer to online questionnaires. Second, whereas the survey method would likely have allowed me to reach a wider number of respondents, it would also have implied a trade off in terms of depth of information gathered, as interviews provide more room for exploring topics that the interviewer might not have thought of beforehand but are relevant to the issue at stake, or for anecdotes and examples that are not as easily captured while filling in a survey.

Another method I used to gather data for the qualitative part of my research was participatory observation. Participatory observation involves researchers learning about the activities and habits of the people under analysis in their natural setting, through observing and participating in their activities. Participatory observation requires the establishment of a relationship with a community and acting in such a way as to blend into it, so that its members act naturally, but it also requires the researcher to maintain the necessary degree of neutrality and detachment for the academic analysis (Bernard 1994). This method is a staple of anthropology studies and particularly ethnography, and is typically used to study the cultures of indigenous people far removed (geographically and otherwise) from the researcher's own background, but it can also be used to get insights into a different socio-economic condition to one's own by "merely" immersing oneself in another neighbourhood within the same city. In other words, it does not necessarily involve a drastic change and travelling to communities distant in space and time, although this might very well be its best-known application. In my case, participatory observation took the form of interning at one of the institutions under analysis, the European Commission, as well as employment at a large trade association representing the banking sector in Brussels, an established stakeholder with a history of close engagement with both the Commission and ESMA. Working for both a policymaker (being on the target end of advocacy activities) and an interest group (undertaking extensive advocacy towards policymakers) gave me the opportunity to understand the institutions' viewpoint, observe typical behavior and attitudes of its officials, and gather insights into engagement with stakeholders. While at the Commission, I could observe the rules and procedures in place when it comes to stakeholder engagement, as well as appreciate the informal habits in terms of interactions between policy officers and interest group representatives. On the other hand, my employment at AFME (Association for Financial Markets in Europe) allowed me to experience how advocacy strategies are constructed and how engagement is sought at the different venues involved in policymaking on a policy issue of interest to the industry. At neither of the institutions I worked on the same topics under analysis in this research, but the insights I gathered are general to stakeholder engagement in financial services and thus applicable to the cases at hand.

4.2 Data on consultations

In this section, I describe my database of EU financial regulation consultations held during the post-crisis period (2009-2016) to empirically support my assumption that advocates engage strongly with both the Commission and ESMA, and that lobbying patterns towards the two institutions are comparable. I provide some descriptive findings on the consultations database in terms of lobbying mobilisation, showing that advocates engage with both institutions. The similarity of stakeholder engagement patterns supports the comparability of the two institutions for my research design. Furthermore, I look at consultation mobilisation patterns in different policies and for different stakeholder categories. This section is therefore not directly linked to my research question or lobbying success, but explores patterns in my database in terms of participation in the two institutions' consultations. In other terms, it shows how and in what areas advocates respond to consultations but does not address the issue of whether this mobilisation yields positive results for them, and most importantly if engaging with ESMA or the Commission makes a difference for lobbying success. This is addressed in the next chapter.

My database comprises a total of 4,140 consultation responses submitted across 70 consultations on 14 policies, and 1153 unique actors. While the overwhelming majority of interest groups submitted one single response and hence appear only once in the dataset (see Figure 2), almost 100 stakeholders submitted more than 10 comments overall, thereby displaying a remarkably stable presence among stakeholder responses. This suggests that at least a substantial minority of lobbyists regard responding to consultations as a very valuable advocacy strategy, and consistently engages when given an opportunity to submit feedback. As for those that submitted more than 30 responses each, they typically represent financial industry interests and are either trade associations (both at the national level – German and French – as well as European or global) or individual firms; particularly active in this respect are the French asset manager Amundi, Deutsche Bank and the London Stock Exchange Group.

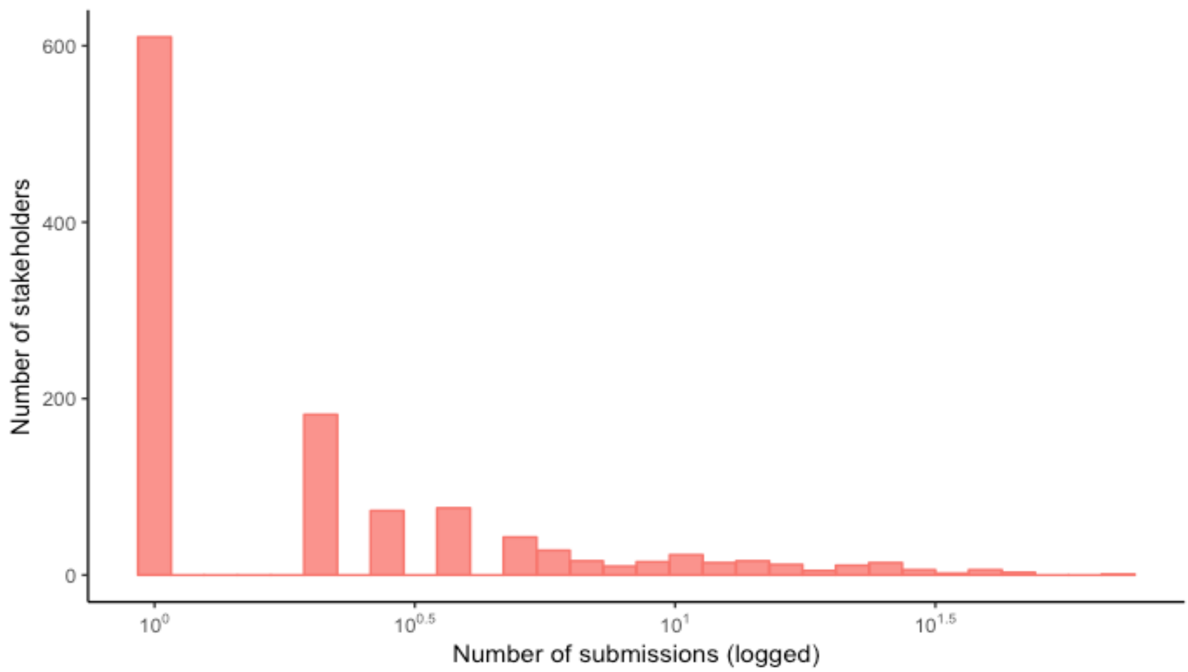


Figure 2. Number of consultation responses per stakeholder. Source: European Commission, European Securities and Markets Authority

As Figure 3 below shows, some policies appear more salient than others and attracted a considerably higher number of consultation responses from stakeholders. Notably, this is the case for MiFID II (the Markets in Financial Instruments Directive II, which implemented the cornerstone reform of securities regulation in the EU) and for EMIR (European Market Infrastructure Regulation), which regulates the trading of derivatives, a market which was overhauled after the crisis with stricter rules on reporting and mandatory central clearing. These two policies combined attracted thousands of responses, while most of the others received around 200 submissions each, and the consultations on the Transparency Directive and UCITS V (Undertakings for the Collective Investment in Transferable Securities) attracted the least stakeholder interest, possibly because of the more targeted nature of the reforms in these areas.

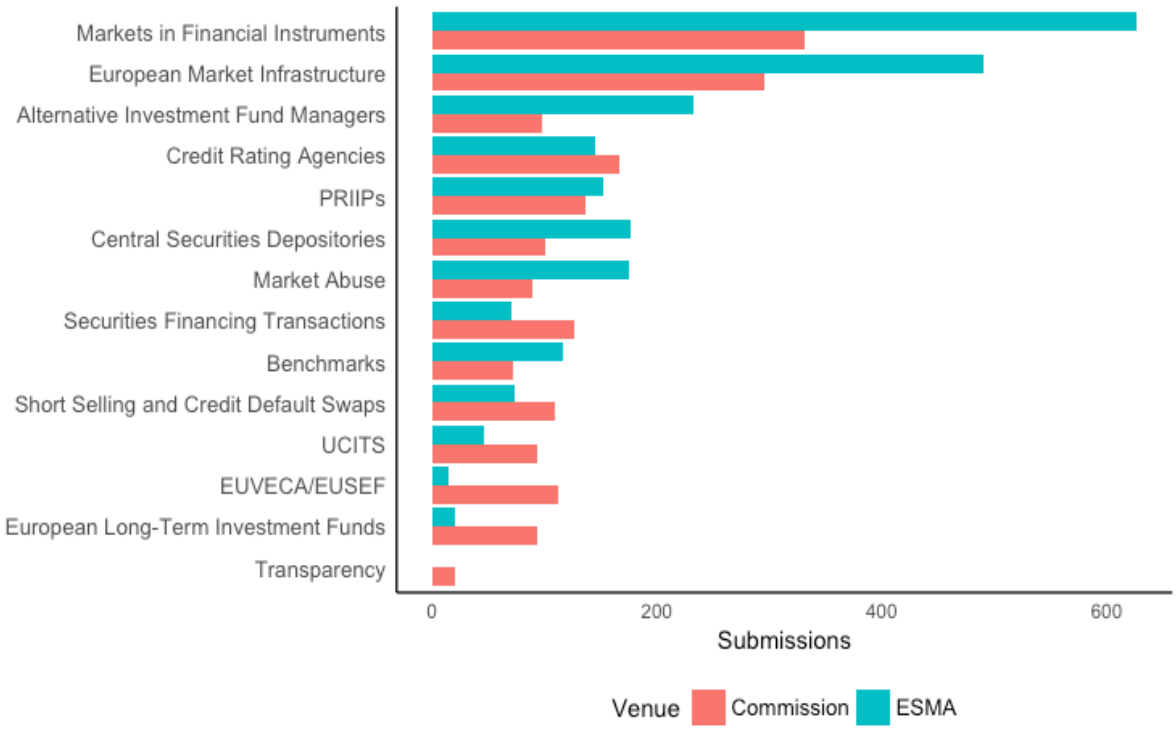


Figure 3. Number of consultation responses per policy across venues[3]. Source: European Commission, European Securities and Markets Authority

When we compare the two venues, another interesting observation is that the number of consultation responses submitted to ESMA was very high and similar to the overall number of comments filed with the Commission: on the 14 policies in my database 2303 comments were filed to the agency, while the responses submitted to the Commission were 1837. Thus, stakeholders clearly find consultation opportunities at agency level at least as valuable as those arranged by the Commission, and provide frequent input to EU authorities on technical Level 2 rules – similarly to what they do for Level 1 legislation. The relative distribution of responses across the two venues varies slightly by policy, but overall the number of comments submitted to the Commission and ESMA for each policy is similar. For around half of the examined

[3] See Table 3 for an explanation of policy acronyms.

policies, the number of stakeholder submissions to the Commission was higher, whereas ESMA consultations attracted more responses in the case of benchmarks, market abuse, PRIIPs, MiFID, EMIR and AIFMD. The table of policies in my database (Table 3 above) indicates that the number of legislative measures at Level 2 is often higher than Level 1, and this is the case in some of the policies which are shown as having more stakeholder replies at ESMA level (namely MIFID, EMIR and AIFMD); the higher number of replies could therefore reflect in these cases the higher number of open consultations within the respective policy.

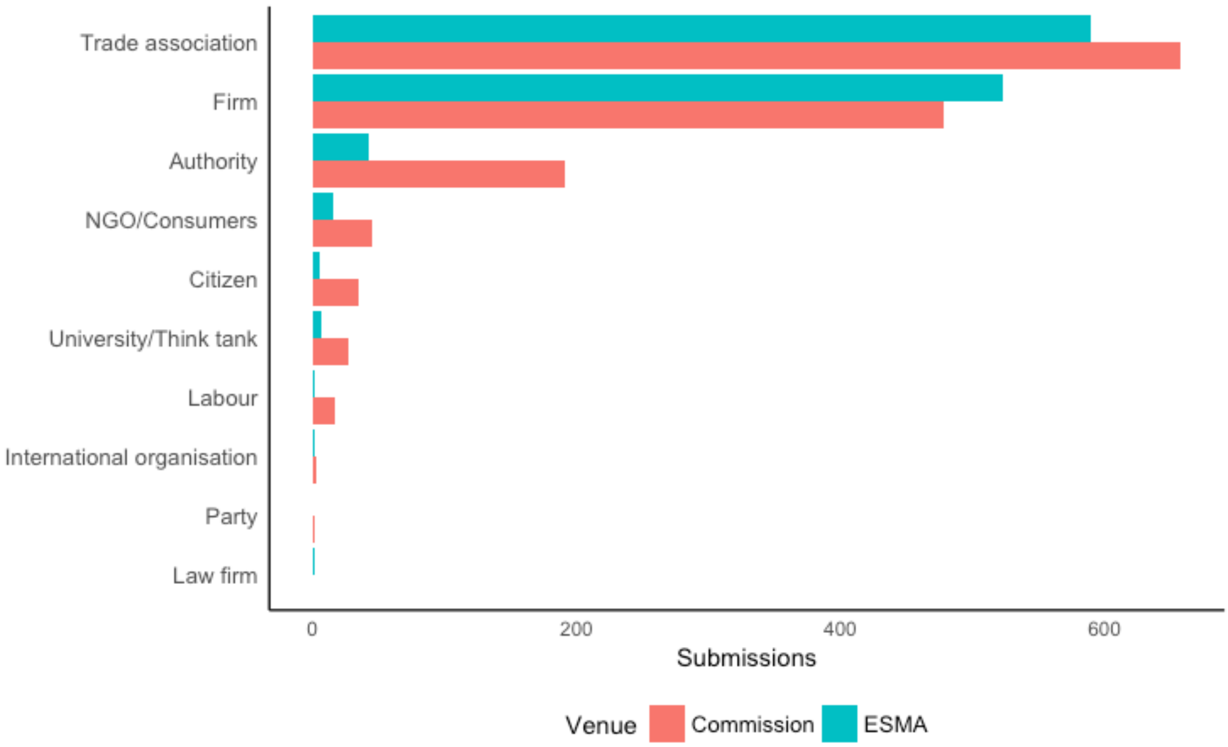


Figure 4. Number of consultation responses per stakeholder type and venue. Source: European Commission, European Securities and Markets Authority

An explicit comparison of stakeholder type participation across venues is similarly insightful (see Figure 4 above). The first clear finding that business interests (firms and trade associations) represent the overwhelming majority of consultation respondents is well established in the literature. Most respondents to both Commission and ESMA consultations represent industry actors: firms and trade bodies together make up 90% of submissions at the agency level, whereas the corresponding percentage in Commission consultations is somewhat lower (70%). While citizen and consumer interests are less prominent in agency consultations, it is important to note that they still engage in the consultation process albeit to a minor degree. This slight discrepancy between engagement at the two levels is also visible for public authorities, which display a sizeable participation in consultations at the Commission level but are less represented in ESMA consultations. This is not surprising, as national regulators are directly represented on ESMA's Board of Supervisors, which is the decision-making body responsible for approving all draft Level 2 rules, and sit on the agency's committees that draft these rules before submitting them to public consultation. Generally speaking though, authorities consistently engage in consultations, suggesting that public sector stakeholders (in my case central banks, ministries and financial sector regulators) find it worthwhile to adopt this advocacy strategy alongside other representation channels they may have. The similarity in the distribution of stakeholder categories in Commission and ESMA consultations supports their comparability for the purposes of my analysis of stakeholders' success in influencing them: data shows indeed that a wide range of stakeholder types consistently engages with both institutions, and that the distribution of stakeholder categories across the two venues follows highly similar patterns.

The finding of a business mobilisation bias in my database is consistent with recent scholarly findings on EU consultations. In their study on interest group participation in EU consultations, Rasmussen and Carroll analyse mobilisation patterns across a sample of over 200 consultations held over a decade (2001-2010) in various policy areas. They compare participation patterns to the population of active interest groups as reflected in the EU's Transparency Register and find an overall higher degree of business bias in consultations than in the overall population of registered advocates (Rasmussen and Carroll 2014). Another recent study specifically analyses participation in financial regulation consultations, looking at the European Securities and Markets Authority (ESMA) and its predecessor Committee of European Securities Regulators (CESR) (Chalmers 2015). The author's argument, tested with a database of online consultations held over a decade (2002-2013) on which around 2,400 unique actors were active, is that mobilisation patterns are affected by both institutional opportunity, defined as openness and accessibility of regulatory policy-making, and by demonstration effects, defined as the combination of exogenous shocks (crises) and issue salience in the media. Press statements by the regulatory authority and consultations characterised by a broader scope lead to a greater number and diversity of stakeholders mobilising, whereas demonstration effects (like the exogenous shocks occurred through the financial crisis and financial stress) diminish both the number and the diversity of consultation participants. While the study includes a statistical model to assess the independent effect of these two factors on the two dependent variables (number of submissions and diversity, measured with the Herfindahl-Hirschmann index), it does not focus on the overall mobilisation bias in these consultations, i.e. the type of advocates filing a comment.

Lobbying mobilisation is often linked with the resources stakeholders have at their disposal, and scholarly findings usually back the assumption that resource-rich advocates find it easier to meet with policymakers, respond to consultations and generally influence legislative processes. In the next paragraphs I explore my database to check whether there is a correlation between lobbying expenditure, European Parliament passes or meetings and the number of consultation responses submitted by stakeholders. As a preliminary step before undertaking the analysis requited to answer my research question, these patterns unveiled in the data are included to support my assumption that stakeholder-related characteristics are not enough to provide a comprehensive explanation of lobbying mobilisation and success. Starting from lobbying costs, it is apparent that the number of consultation responses increases in line with the available resources of the stakeholder, measured in terms of annual self-reported lobbying expenditure (Figure 5). The differentiation based on stakeholder category shows however that this positive correlation does not hold across the board. It is indeed relatively strong in the case of individual firms and especially trade associations, but the relationship between the two variables is not statistically significant for other advocate types (possibly due to the limited sample size for non-business categories). Another interesting observation is that many firms and trade associations record lobbying costs but do not submit any consultation response, suggesting that they might use alternative advocacy strategies.

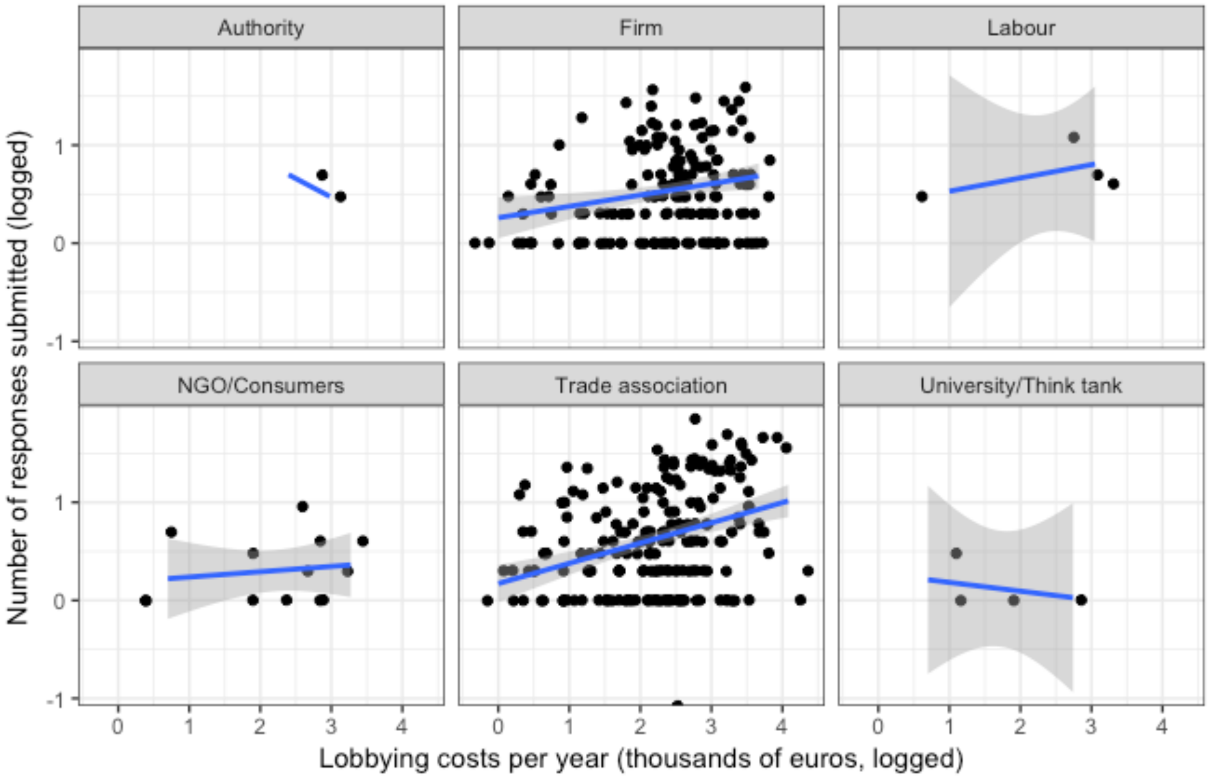


Figure 5. Relationship between lobbying costs and consultation submissions according to stakeholder type

I then turn to the second actor-related variable, namely the badges held by stakeholders to enjoy permanent access to the premises of the European Parliament, which generally indicate higher levels of lobbying intensity and more lobbying staff. While the number of EP passes is usually correlated with lobbying expenditure and we might therefore expect a similarly positive association between the former and the quantity of consultation submissions, this relationship is not significant in my dataset. Figure 6 below shows that stakeholder type does not bear any influence over engagement in consultations, as the correlation is close to being statistically significant only for trade associations. Therefore, having more EP access passes does not seem to translate to higher participation in policymakers' online consultations.

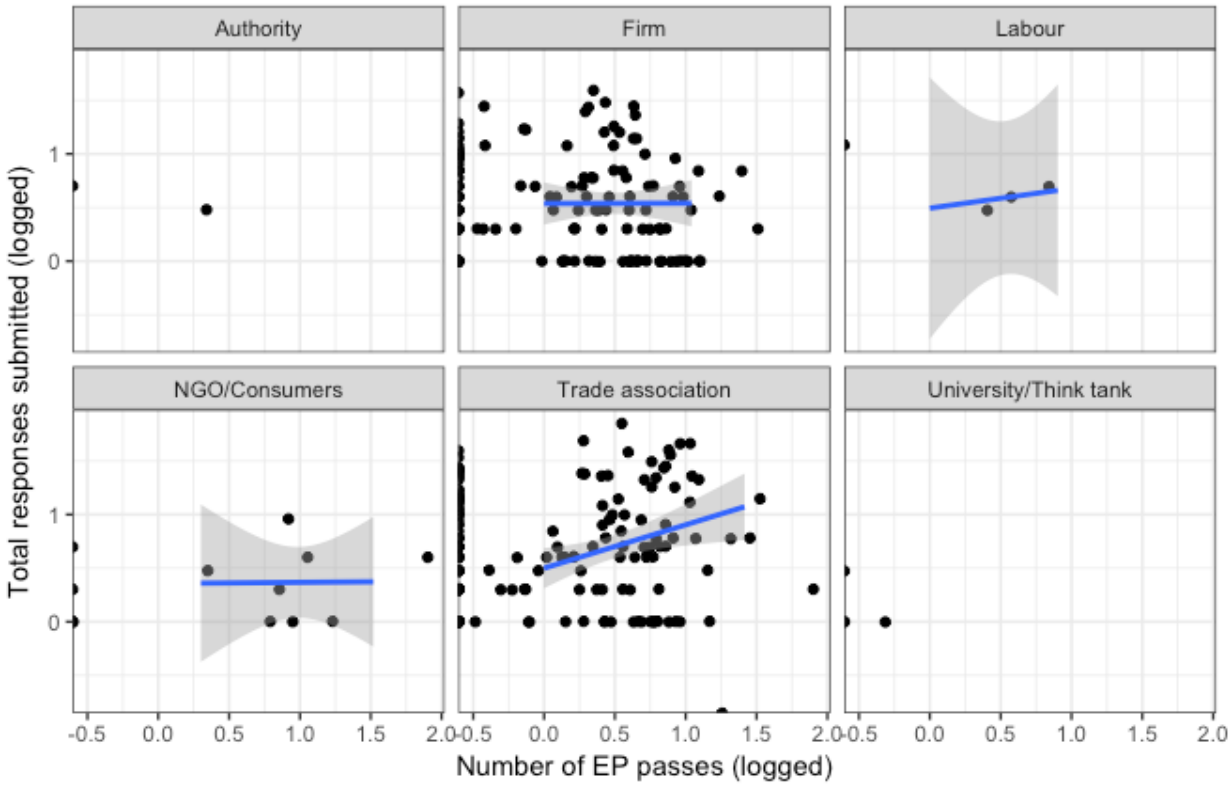


Figure 6. Relationship between EP passes and consultation submissions according to stakeholder type

Finally, the third variable investigated is the number of meetings reported by stakeholders with top officials in the European Commission. Mandatory disclosure of meetings with this institution has been in place since the establishment of the Juncker Commission in November 2014, but this requirement only applies to senior-level meetings with Commissioner cabinets and director generals, while meetings with working level policy officers need not be reported. As shown in Figure 7, here I similarly do not find a statistically significant relationship between the number of meetings held and the consultation responses submitted to either the Commission or ESMA. Again, this is the case for all categories of stakeholders in my database.

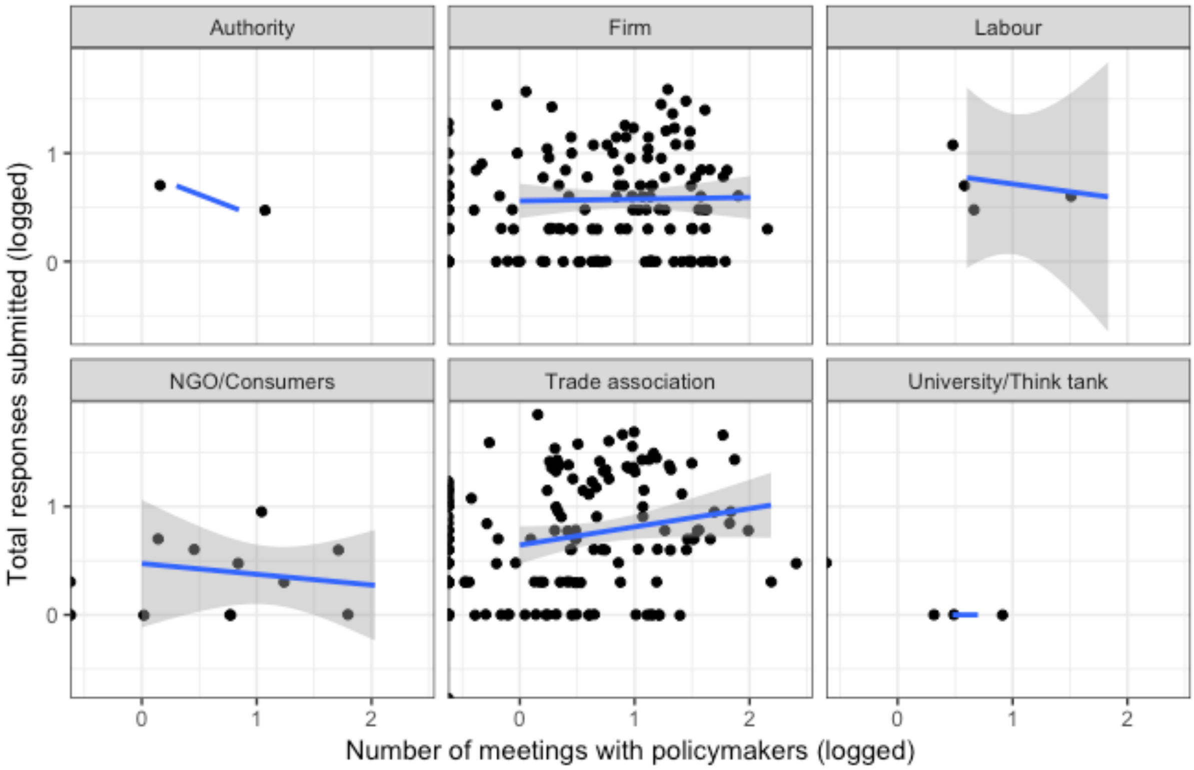


Figure 7. Relationship between meetings and consultation submissions according to stakeholder type

To sum up, the description of my consultations database in this section showed that a significant number of stakeholders consistently engage in Commission and ESMA consultations, and participation is even marginally higher in the case of the agency. This supports my claim that lobbyists mobilise to engage with both institutions and that lobbying activities targeted at the two venues are comparable. In line with previous literature, this preliminary exploration of the data also suggests that consultation participation is influenced by the characteristics of the policy and that respondents are heavily biased towards business interests. This section also indicated a weak relationship between actor-related variables and their decision to submit a consultation response. Consultation mobilisation is positively correlated with lobbying expenditure for trade bodies and firms, while there is no statistically significant relationship for other categories of stakeholders. Furthermore, there seems to be no link between the number of EP badges or meetings held and stakeholders' consultation replies. Engagement with the European Parliament is not necessarily related to how lobbyists value engagement with the European Commission and/or ESMA (which is the focus of my research), but EP badges and meetings are indirect measures for advocate resources: EP badges translate to more permanent staff, and meetings are resource- and time-intensive. These patterns potentially suggest that responding to an online consultation is a relatively cheap enterprise, which could be afforded relatively easily by stakeholders and does not require significant resources. Most importantly, the data suggest that all stakeholder categories find responding to both institutions' consultations valuable, showing that they target their advocacy activities at both the Commission and ESMA.

4.3 Data on meetings

Before moving to the analysis of lobbying success in the next chapter, the fulcrum of this thesis, I explore my second database of stakeholder meetings. While I answer my research question through the database of consultations responses and qualitative research in the next three chapters, this exploratory description of the stakeholder meetings database helps to further prove my assumption that stakeholders engage in lobbying the agency as much as lobbying the European Commission. While still representing a preliminary step to data analysis, the data exploration in this section is therefore useful to show that advocates find engaging with both venues worthwhile, and that for doing so they seek meetings with relevant officials alongside responding to their consultations on draft rules. It shows that advocates' efforts in targeting both institutions have similar intensity levels: similarly intense advocacy efforts towards the Commission and ESMA (in terms of both consultation participation and meetings) point towards the importance for stakeholders of engaging with both venues, and to the comparability of the latter in terms of lobbying patterns and outcomes.

Whereas my consultation responses database spans across almost a decade of policymaking (2009-2017), the data I gathered on meetings between stakeholders and the venues under analysis refer to a subset of this period. Comprehensive data for Commission meetings are not available, as the information on meetings held with desk officers is only made public through specific access to information requests. On the other hand, stakeholder meetings with senior officials in the Commission (Commissioners, Directors-General and Cabinet staff) have been subject to mandatory disclosure since November 2014, as part of the Juncker Commission's "Better Regulation" agenda. For the purposes of this research, I used data obtained through a request for information filed by the NGO ALTER-EU (The Alliance for Lobbying Transparency and Ethics Regulation), which covers all officials from the Commission's DG FISMA and all meetings held between December 2014 and July 2016. On the agency side, the ESAs established a transparency policy and started disclosing all their meetings with stakeholders on a quarterly basis in 2016, so I collected data on ESMA meetings starting from July 2016 to September 2018 for my research. I decided to stop my data gathering of ESMA meetings in Q3 2018 given that my consultation responses database stops in 2017, and that by then most of the rulemaking activity spurred by the financial crisis was over. The timeframe of the meetings database – December 2014 to September 2018 – is shorter than the timeframe of the main database of consultation responses, as illustrated in Figure 8 below. The two meetings databases (Commission and ESMA) are not overlapping other than for the month of July 2016, given that the available Commission meetings data start at the end of 2014, whereas there are no data on ESMA meetings available before mid-2016. Nevertheless, this should not represent a hindrance given that Level 2 rules are finalised only after Level 1: assuming that most lobbying activity takes place around the rule formulation stage, we would expect to see a particular "spike" in advocacy meetings with the Commission referring to policies under finalisation in the period when the meetings were held, with a corresponding increasing number of meetings once the policy reaches ESMA for introduction of related Level 2 rules.

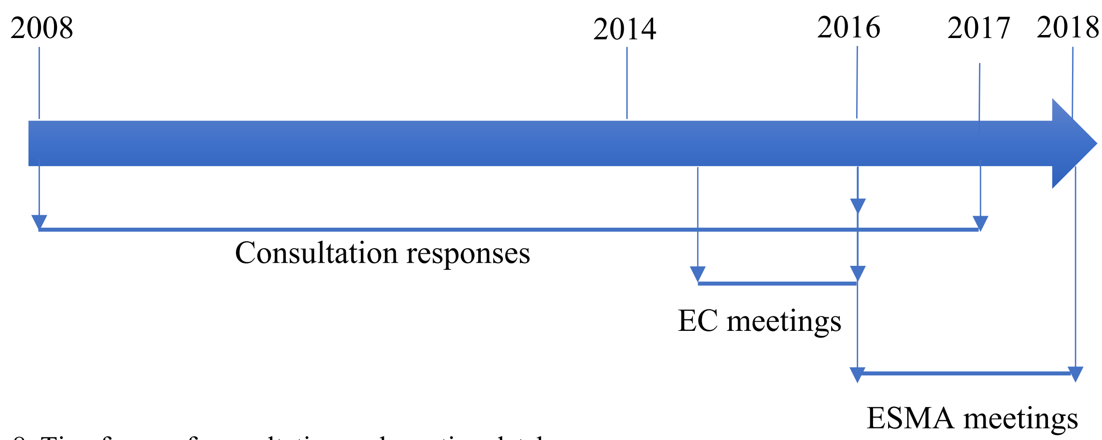


Figure 8. Timeframe of consultation and meeting databases

Bearing this in mind, I can show some interesting patterns in this meetings database, consisting of a total 1819 meetings. First, lobbying mobilisation patterns are aligned with those seen when exploring the consultation responses database in Figure

4, as firms and trade associations similarly outweigh other stakeholder categories when meetings with policymakers (see Figure 9); the distribution of stakeholder types is therefore highly similar at both the Commission and ESMA levels. In both cases meetings sought by public authorities, consumer/citizen interests or universities/think tanks represent only a small minority of the sample, corresponding to 13 percent in the Commission's case and 6 percent in the case of ESMA. The underrepresentation of non-industry interests is consistent with previous research on lobbying mobilisation in the financial sector, and with the data on consultation responses described earlier: the distribution of stakeholder categories in the meetings data is similar to that of stakeholders responding to consultations, as shown in the previous section.

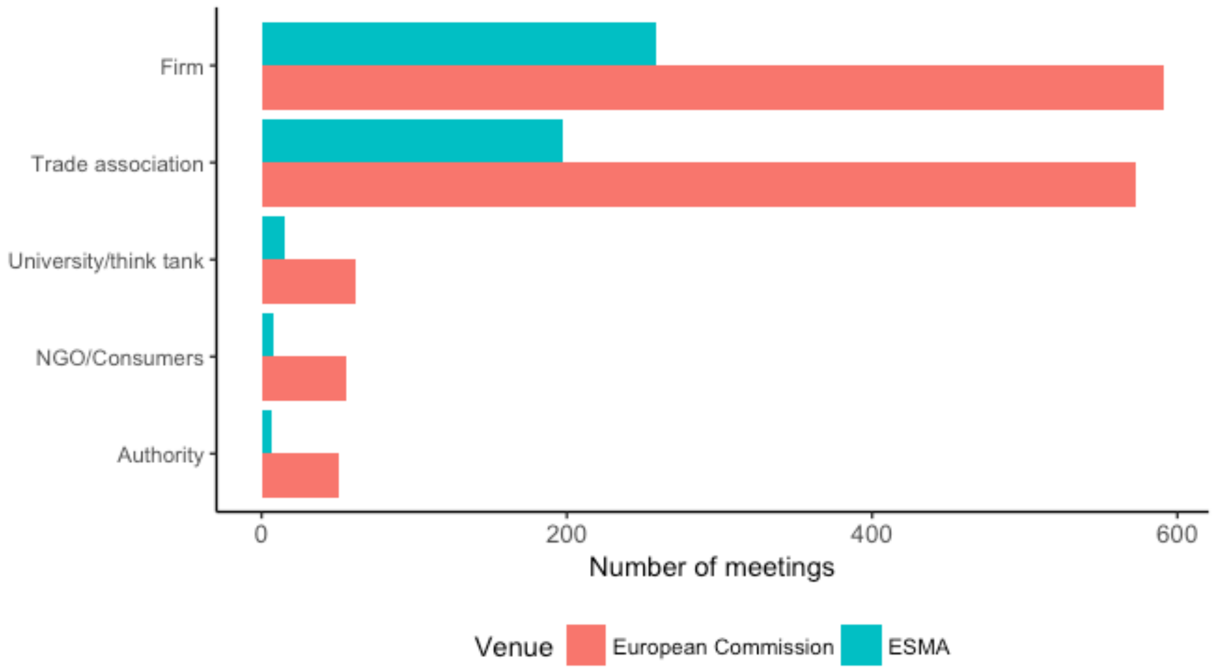


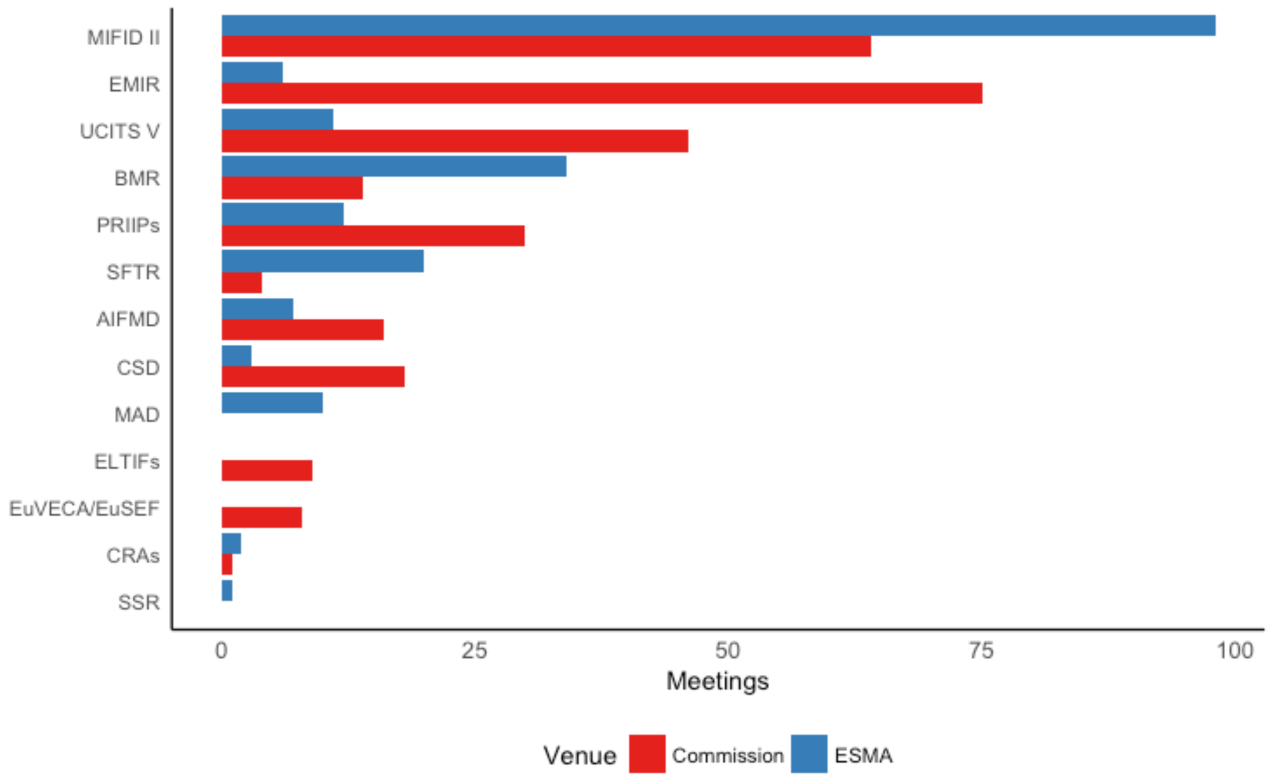
Figure 9. Number of meetings per stakeholder type and venue

Secondly, when looking at the policy under discussion during these meetings (Figure 10 below), there are some interesting differences as some topics were more prominent in discussions at ESMA level than Commission. Some of the policies were undergoing Level 2 finalisation within the timeframe of the database (EMIR, MIFID/MIFIR, SFTR and benchmarks)[4]. The number of stakeholder meetings with agency officials is thus expected to be higher for these policies, if we assume that

[4] For an explanation of policy acronyms see Table 3.

stakeholders prioritise discussing a policy at the time when the policymaker is writing the related rules.

Figure 10. Number of meetings per policy across venues[5]



It is indeed apparent from Figure 10 that not all policies were equally popular as topics for stakeholder discussions. None of the Commission meetings in the sample discussed market abuse (MAD), short selling (SSR) or transparency rules (TD). Similarly, topics such as credit ratings agencies and securities financing transactions were only discussed on rare occasions, with rules governing long term investment funds, social entrepreneurship and venture capital funds (ELTIFs, EuVECA and EuSEF) only slightly more popular. On the other hand, even if related legislative measures had already been adopted by then, policies such as EMIR and MIFID were by far the most popular in stakeholder meetings with the Commission. These are policies characterised by their complexity and high salience, and it might be the case that lobbyists were seeking meetings with Commission officials to discuss their

[5] See Table 3 for an explanation of policy acronyms.

implementation and associated challenges, and that the Commission was equally keen to receive stakeholder feedback given this complexity. While looking on the other hand at ESMA meetings, there is one outlier in the data, the Markets in Financial Instruments Directive and Regulation (MIFID/MIFIR). MIFID Level 2 rules were still open for consultation during the timeframe of the meetings database, but this was also the case for three other policies (EMIR, SFTR and BMR) which were not as equally frequent as discussion topics in ESMA stakeholder meetings. MIFID was by the far the single most discussed policy in ESMA meetings, again possibly pointing to the complexity of the provisions and associated Level 2 rules, which took years to finalise. The popularity of highly complex policies as topics in both Commission and ESMA meetings, and the weak association with the timing of the related consultations, points to the role played by policy complexity in lobbying, which I seek to explore in the case studies.

To summarise, the description of the meetings database in this section showed that stakeholders find it important to seek meetings with both the Commission and ESMA. A wide number of stakeholder categories meet with both venues, and mobilisation is biased towards industry interests, in line with scholarly literature and with the patterns unveiled in the consultation responses database in the previous section. While the overall number of meetings with the Commission in the database is higher than the number of ESMA meetings (ca 1300 versus ca 500), one should compare only the number of meetings relevant to the same 14 policies under analysis: for these, there were 285 meetings with the Commission within the timeframe (December 2014 to July 2016) and 204 meetings with ESMA (July 2016 to September 2018). For these, data suggests that some policy-related factors might be influencing lobbying mobilisation: this finding points to the importance of policy-related factors in lobbying, and particularly to the role played by policy complexity as indicated by the high number of meetings discussing MIFID and EMIR policies.

Table 6. Timing of consultations

Policy	**Level 1 consultation(s)**	**Level 2 consultation(s)**
Alternative Investment Fund Managers Directive (AIFMD) (2011)	December 2008-January 2009	December 2010-February 2013
European Market Infrastructure Regulation (EMIR) (2012)	July 2009-July 2010	February 2012-September 2016
Credit Rating Agencies Regulations (CRAs) (2009-13)	July 2008- January 2011	February 2008-April 2014
Short Selling and Credit Default Swaps (2012)	June 2010-July 2010	January 2012-March 2012
Transparency Directive II (TD) (2013)	n.a.	March 2014-March 2015
European Venture Capital and Social Entrepreneurship Funds (EuVECA/EuSEF) (2013)	June 2011-September 2011	September 2014-December 2014
Markets in Financial Instruments Directive II and Regulation (MiFID/MiFIR) (2014)	December 2010-February 2011	July 2013-November 2016
Market Abuse Directive and Regulation (MAD/MAR) (2014)	June 2010-July 2010	November 2013-October 2014
Central Securities Depositories Regulation (CDSR) (2014)	January 2011-March 2011	March 2014-August 2015
Packaged Retail Investment and Insurance Products Regulation (PRIIPs) (2014)	November 2010-January 2011	June 2015-January 2016
Units in Collective Investment Funds Directive V (UCITS) (2014)	July 2012-October 2012	September 2014-October 2014
European Long Term Investment Funds Regulation (ELTIFs) (2015)	July 2012-October 2012	July 2015-October 2015
Securities Financing Transactions Regulation (SFTR) (2015)	March 2012-June 2012	March 2016-November 2016
Benchmarks Regulation (BMR) (2016)	September 2012-November 2012	February 2016-December 2016

One should however not overinterpret these findings given the limits of this meetings database. First of all, all Level 1 consultations were close in time and concentrated in the first part of the period under analysis (2009-2012) whereas Level

2 consultations run by ESMA are more spread out throughout the years (see table 6). In terms of expectations regarding the meetings data, no Commission consultations were open during the period for which I have data on Commission meetings (end 2014 to mid-2016), while several ESMA consultations were ongoing during the period for which I have data on ESMA meetings (mid-2016 to Q3 2018). More specifically, ESMA was drafting and seeking feedback on rules under four different policies at the time, namely EMIR, MIFID/MIFIR, SFTR and BMR (see Table 6). Beyond the possible role of complexity, the specific timing of the two venues' consultations might therefore also influence the findings on the relative popularity of some policies as meetings topics, if we assume that stakeholders are interested in discussing rules under consultation when meeting the responsible policymaker. Another caveat to bear in mind is that the data sources used for meetings do not always clearly indicate the meeting topic, and that many meetings were held also on topics different from the 14 policies under analysis. This is particularly the case for the European Commission, for which 1048 meetings in the sample were categorised as of having an "other" topic, out of a total of 1333; 79 percent of the meetings held did not deal with the policies in the scope of my analysis. When it comes to ESMA meetings, 282 meetings were unrelated to the 14 policies under analysis out of a total of 486 (58 percent). The proportion of "uncategorisable" meetings is therefore quite high for both institutions, which can be explained by the fact that the subject of a meeting is often not disclosed, or otherwise indicated in very vague terms that make it impossible to link it to any of the policies. There is another explanation for why the Commission held a higher proportion of meetings not falling under any of the policy categories: while ESMA's remit is narrower and only related to securities markets, the Commission is responsible for a much wider remit of financial regulation. This includes rules on banking, insurance and pensions, which are dealt with at agency level by EBA and EIOPA respectively: we might see these topics discussed in the database of Commission meetings while of course stakeholders would not meet with ESMA to discuss them, but rather engage with the responsible authority.

In conclusion, this chapter described my data collection strategy and undertook a preliminary investigation of my data, which encompass a main database of over 4000 consultation submissions spanning across almost a decade (2009-2017) and a database of circa 1800 meetings which took place between 2014 and 2018. The preliminary exploratory description of both the consultations and meetings databases in the second and third section of the chapter showed that there is no significant difference in lobbying mobilisation towards the Commission and ESMA. Levels of stakeholder engagement with both institutions are similar, both in terms of responding to consultations and meeting with officials. On the 14 policies in my database, there are slightly more meetings with the Commission than with ESMA, and conversely slightly more consultation responses are submitted to ESMA than to the Commission, but this difference is negligible. This evidence backs my assumption that stakeholders target both the Commission and the agency in a similar way, and do not seem to clearly prioritise one institution over the other. The distribution of stakeholder categories in both consultations and meetings is heavily biased towards business interests (firms and trade associations), in line with pre-existing research on lobbying and financial regulation. Interestingly, policy characteristics seem to affect mobilisation, as the number of both consultation replies and meetings varies according to the policy, and is higher for complex ones. Some policies, namely MIFID II and EMIR, clearly attract the most attention from stakeholders and are the subject of most consultation submissions and meetings with the two institutions. This is not surprising, at both are highly complex policies encompassing an extremely wide range of issues and enacting a significant reform for trading and financial markets infrastructure. This chapter has therefore set the stage for answering the research question by providing empirical evidence for two key assumptions of mine, namely that interest groups heavily engage with both the European Commission and ESMA, and that stakeholder characteristics are not enough to explain lobbying; in particular, policy complexity seems to play a strong role in lobbying engagement. In the next chapters, I will establish whether policymakers' demand for information drives a difference in lobbying success between the two venues, and whether and how it is affected by policy complexity.

Chapter 5

Lobbying success at the Commission versus ESMA

Measuring lobbying success has long been a challenge for political scientists, but recent advances in quantitative text analysis coupled with spatial theories of lobbying offer a promising avenue for lobbying researchers. Extracting advocates' policy preferences through text analysis (in my case *Wordfish*) and using these estimates to calculate lobbying success as relative improvement yields results with very good face validity, and allows to analyse large amount of data. The regression analysis of my consultations database confirms as expected that lobbying success varies by the targeted institutional venue, namely that targeting ESMA compared to the Commission significantly lowers advocates' chances of achieving their preferences. This effect is moderated by the level of policy complexity, which is also positively correlated with lobbying success: in the case of a more complex policy, all else equal advocates will be more successful in influencing the related rules.

For the purposes of this thesis, I define lobbying success as stakeholders' achievement of their policy preferences. Because congruence between interest groups' positions and policy can be brought about by a range of factors other than stakeholders' lobbying activities, in line with many other scholars I refrain from using the term "influence", which requires proof of causality and is therefore empirically more challenging to determine. Moreover, I analyse average lobbying success rather than focusing on the specific success chances of individual stakeholders, including in the qualitative analysis, as my interest rather lies on the side of the institutions. This does not necessarily mean that all stakeholders in the analysis enjoy the same success levels, but the variation within the lobbyist population within the database is beyond the scope of this project. I argue that the demand side of the lobbying relationship, namely the institutions being targeted, is crucial for lobbying success. Most scholarly research has focused on the offer side represented by interest groups, and there is also a popular assumption that stakeholders with considerable resources and technical expertise are successful in swaying policy outcomes. I argue on the other hand that the expertise supplied by lobbyists hardly matters, and will be ineffective in influencing policy, if policymakers have low or little necessity for this information. As a reminder, my research question is structured in two parts: *does lobbying success vary by the targeted institutional venue? If yes, is the information need of the institutional venue an explanatory factor?* This chapter answers the first part of my research question, namely it seeks to establish whether lobbying success varies depending on the targeted institution. The first section of this chapter discusses the challenges inherent in measuring lobbying success and the various approaches used in the literature so far, with a focus on my chosen measure based on spatial politics theories and the use of quantitative text analysis tools. In particular, it explains why I settle for a measure of relative improvement which uses advocates' preferences extracted from their consultation submissions through the scaling algorithm *Wordfish*. The second section includes a pilot of quantitative text analysis which analyses a small consultation on credit rating agencies policy organised by the European Commission; the results of this pilot demonstrate a high correlation with qualitative analysis for both advocates' *Wordfish*-calculated positions and their success, thus reinforcing confidence in the validity of the chosen lobbying success measure. The third and most crucial section delves into patterns of lobbying success in the entire consultation database. It first includes an exploratory analysis of how lobbying success is linked to stakeholder characteristics, which points to the insufficiency of the latter in explaining success, similarly to the findings of the previous chapter. Then, the section includes the regression models that unveil a clear link between lobbying success and the targeted venue, namely a considerably lower success score when interest groups lobby ESMA compared to the Commission. In accordance with my third hypothesis, the quantitative analysis also shows that policy complexity plays a role in affecting lobbying success, a role which is also dependent on the institution and will be explored in depth in the qualitative chapters.

5.1 Measuring lobbying success through text analysis

To establish whether there is a difference in advocates' success when lobbying the Commission or ESMA, I needed a viable method of measuring lobbying success in my quantitative analysis. The measurement of lobbying success, my main variable of interest, has long been a thorny task for political scientists (Baumgartner and Leech 1998, Woll 2007, Beyers et al 2008). Three main methods have been used in the literature, namely process tracing, "attributed influence" and "preference attainment", each with their respective strengths and weaknesses (Dür 2008a, Dür 2008b). Process tracing has traditionally been the most frequently used methodology and offers results with high internal validity, as scholars gain a lot of knowledge of the examined case studies and the possible explanatory factors. Process tracing can be used for testing rival theories or for generating hypotheses; it can unveil pathways to influence and has the potential to better capture inside lobbying strategies. However, there are also some limitations to it, as the tendency to choose highly salient topics can result in findings of limited generalisability and the focus on one single issue or case study often makes it impossible to analyse contextual variables, which are being held constant. "Attributed influence" relies on the assessment of interest groups' influence, which can either be undertaken by lobbyists themselves through self-evaluation surveys or by independent experts. Among the advantages of this method, it can easily be applied to a larger number of cases as it usually relies on survey or interview data, and it captures all channels of influence. On the other hand, this method can be subjective as respondents might have strategic incentives to either over- or underemphasize their influence; in the case of experts, their judgment can be driven by particularly prominent cases or otherwise they might not have the necessary insights to accurately assess all stakeholders' influence scores (Dür 2008b). The third method is "preference attainment", which is based on the comparison of actual policy outcomes with interest groups' and policymakers' ideal preferences. When this methodology is used, policy issues are modelled spatially, and stakeholders are placed on a point of the policy dimension that represents their position. Similarly to attributed influence, this method can also be applied to large numbers of cases and captures all possible channels of influence; its main disadvantages are however the difficulty in assessing actors' genuine preferences and the impossibility to explain the processes through which influence is exercised (Tsebelis 2005, Woll 2007). While using interviews to ascertain stakeholders' preferences on specific issues across a vast number of cases can be challenging given the time gap often occurring between the moment the preference is formed and when the interview is conducted, more recently a promising avenue has been shown by text analysis techniques, which offer objective measurements of policy positions with no time limitations.

Political scientists started applying content analysis to political documents in the late 1970s to measure the policy positions of political parties. The Manifesto Project inaugurated the manual hand-coding of party manifestos by applying a coding system based on the salience theory of party competition, according to which parties selectively emphasise issues which are advantageous to themselves rather than engaging in direct confrontation on a given set of policy issues (Budge 1982). Using a classification system with 56 categories and seven policy domains, the Manifesto Project has resulted in one of the largest and most widely used datasets in political science, but the technique has the disadvantage of being extremely labour-intensive. To overcome this, in the 2000s researchers developed computerised text analysis techniques to automatically extract policy positions from text, the most important of these being *Wordscores* and *Wordfish*. The first of these two procedures, *Wordscores*, uses the information contained in some "reference texts", pre-selected by the researcher as a benchmark, to extract ideal points on a predetermined policy dimension from unknown documents called "virgin texts" (Laver et al 2003). The model also draws inspiration from the salience theory of party competition and assumes that each word carries a small piece of information about the author's position. In a nutshell, it calculates the probability P_{wr} of reading a reference text *r* given a word *w* and assigns each word a "wordscore" S_{wd} that represents its position on dimension *d*; the last step involves calculating the weighted average of all the scored words for each of the virgin texts. Since *Wordscores* relies on the information carried by the words contained in the reference texts, the latter should be as extensive as possible and at best reflect the extreme ends of the policy dimension of interest to the researcher. Among the disadvantages of the *Wordscores* method is that the statistical estimation assigns all words a weight, so that frequent, overlapping words that carry no substantive meaning (such as articles or conjunctions) tend to pull the final document scores towards the center of the policy dimension and should thus be excluded from the analysis. More importantly, the crucial step of choosing the set of reference texts to identify the policy dimension might not always be feasible, as researchers must be able to rely on an independent source of position estimates which can be used as reference scores.

The second main scaling method developed in automated text analysis, *Wordfish*, overcomes this second shortcoming, in that it does not require any input under the form of previously known reference scores (Slapin and Proksch 2008). *Wordfish* assumes that words within a text are distributed according to a Poisson distribution. The model specification includes both word fixed effects and text fixed effects, while the discrimination between policy positions is captured by estimated word-specific weights:

Equation 1.

$$y_{ij} \sim Poisson(\lambda_{ij})$$
$$\lambda_{ij} = exp(\alpha_i + \psi_j + \beta_j * \omega_i)$$

In the formula above, y_{ij} is the frequency of word j in text i, λ represents the mean and variance of the Poisson distribution, α are text-fixed effects controlling for a document's length, and ψ are word-fixed effects controlling for the fact that some words are used more frequently than others. Finally, β is a word-specific weight indicating the importance of word j for discriminating between policy positions and ω is the estimate of the policy position of actor i (Slapin and Proksch 2008). The confidence intervals for the position estimates are obtained through parametric bootstraps, meaning that they decrease as the number of unique words rises; in other terms, the confidence in the resulting estimate is higher with longer documents. Similarly to *Wordscores*, *Wordfish* also estimates policy positions on a single dimension, which has to be identified by the researcher in advance.

Following Klüver's research on lobbying in the EU, I also decided to use the "preference attainment" method to measure lobbying success in the quantitative part of my research. In a landmark study of EU lobbying spanning across 56 random policy issues, Klüver used interest groups' submissions to European Commission consultations to gauge the degree of success in both the policy formulation and the decision-making stages (Klüver 2013). By using quantitative text analysis, she extracted actor preferences from this rich source of textual data and compared the automatically extracted ideal points to the policy documents drafted by the Commission and then amended by the Council and Parliament during the legislative process. After reviewing advantages and disadvantages of the above-mentioned text analysis tools including both manual and automated coding, Klüver runs a pilot comparing the various techniques. The measures yielded by *Wordscores* and *Wordfish* are shown to be highly correlated in her pilot, but the scholar settles for *Wordfish* as her method of choice (Klüver 2009). The latter is chosen by the author mainly for its unsupervised nature, which allows researchers to avoid the requirement of "reference texts" that are a necessary input for *Wordscores* (Laver et al 2003, Slapin and Proksch 2008). In a similar vein, I used *Wordfish* to extract policy preferences from stakeholder submissions and applied a measure of lobbying success which draws on spatial theories of politics (Bernhagen et al 2014, Dür et al 2019).

The key variable of interest in my quantitative analysis, lobbying success, is measured on an actor-issue level, i.e. it is calculated for each advocate on each of the 14 policies at both Level 1 (Commission) and Level 2 (ESMA) of legislation. Actors' preferences are retrieved from consultation submissions through *Wordfish*, with no need for independent information on advocates' relative positioning as explained in the section above. The initial policy proposal (consultation paper) is used to calculate the institution's *ex ante* position, while the final draft rule (Level 1 or Level 2) is used to assess the policymaker's *ex post* position *after* the consultation has ended and feedback has been incorporated. The preliminary draft proposal is used by both institutions to launch a consultation and represents the starting point for assessing interest groups' influence, as it is what stakeholders try and influence to bring the final policy outcome closer to their ideal points. The scores distance between Commission/ESMA *initial* drafts and interest group submissions represents the initial distance between actors' preferences; the distance between the same submissions and Commission/ESMA *final* drafts represents the final distance. In her study, Klüver subtracts the final distance from the initial distance to calculate her measure of lobbying success; this measure closely resembles the *improvement to reversion point* measure put forward by INTEREURO researchers (Bernhagen et al 2014). However, since this measure only depends on the institution's move as a reaction to the consultation, it takes the same value for all the interest groups on either side of the Commission: for example, on a 0-100 scale if the reversion point (which is the institution's *ex ante* position) is 20 and the outcome is 50, all stakeholders to the right of this (with higher scores than 50) win 30 independently of how close they are to the final outcome.

Klüver decides to use a dichotomous measure of interest group influence because of this and also due to a feature of the *Wordfish* model, namely that identification is guaranteed by setting the mean of actors' positions to zero, and standard deviation to one; this fixes the total variance of policy positions. Due to this identification procedure, the absolute distance between stakeholders automatically changes with the number of consultation submissions, meaning that absolute distances cannot be compared across different policy issues (Klüver 2013). I decided instead to make full use of the positional data to yield a more fine-grained, continuous measure of success, one that could allow me to also distinguish between various degrees of success rather than merely dividing stakeholders in successful ones (those seeing the policymaker move closer to their ideal preferences after the consultation) and unsuccessful ones (those seeing the policymaker move further away from their ideal points). Using a continuous measure rather than a binary one was essential to answer my research question and check whether the average degree of lobbying success differed between the Commission and ESMA. I operationalised lobbying success as *relative improvement,* a measure that has been suggested by scholars drawing from spatial theories of politics and seems to be more promising as it corrects for the lack of specificity inherent in the previously discussed measures (Bernhagen et al 2014, Baroni 2014). The *relative improvement* measure weighs the gains (or losses) compared to the reversion point – what happens in case of no legislative agreement, mostly coinciding with the status quo – by an actor's distance from the final outcome:

Equation 2.

$$s_{ij} = \frac{\left|x_{ij} - RP_j\right| - \left|x_{ij} - O_j\right| + Q}{\left|x_{ij} - O_j\right| + 100}$$

where s_{ij} is actor *i*'s lobbying success on issue *j,* x_{ij} is the position of actor *i* on issue *j,* RP_j is the reversion point (status quo) on issue *j,* O_j is the outcome on issue *j* and Q is the range of stakeholder positions. The range Q is added to the numerator to ensure it remains positive and 100 is added to the denominator to avoid divisions by 0, as well as to prevent the creation of large outliers for actors located very close to the outcome. In my case, this measure is calculated more precisely as follows:

Equation 3.

$$s_{ij} = \frac{\left|x_{ij} - EU_{antej}\right| - \left|x_{ij} - EU_{postj}\right| + Q}{\left|x_{ij} - EU_{postj}\right| + 100}$$

Here the reversion point coincides with the policymaker's initial position, i.e. the consultation paper published to seek stakeholders' comments; (EU_{antej}) represents indeed the Commission's (or ESMA's) draft proposal on policy j. EU_{postj} is the institution's final proposal published once the consultation is over, and Q is the range of stakeholder positions; finally, s_{ij} is the key variable of interest and represents the lobbying success of stakeholder i on policy j (for example, the asset manager Amundi's success in influencing MIFID policy). This formula yields a maximum value of 2 when an interest group's position is on the opposite end of the policymaker's *ex ante* position but coincides with the final outcome (policymaker *ex post*). On a theoretical 0-100 range, for example, this would happen if the Commission's initial position were 0, and both the lobbyist's position and the Commission's final position were 100, indicating that the policymaker moved from one extreme of the dimension – the farthest from this specific stakeholder – all the way towards the latter's ideal point, situated at the opposed end of the spectrum. Conversely, the minimum value 0 is obtained when the interest group's position coincides with the policymaker's *ex ante* position and the final outcome is as far away as possible; this would happen if the advocate and the Commission already had exactly the same (extreme) ideal points prior to the consultation and the policymaker moved to the opposite extreme of the dimension after the consultation (Baroni 2014). All the documents needed, including initial and final legislative drafts and stakeholders' submissions, were downloaded from the European Commission and ESMA websites. Statistics about the lobbying success variable are included in table 7 below.

Table 7. Dependent variable: lobbying success

	Definition	Source	Min	Max	Mean	S.d.	Obs
Lobbying success (s_{ij})	**Lobbying success defined as relative improvement** (see text for in-depth discussion)	Calculated on the basis of stakeholders' and policymakers' ideal points (see equation 3)	0.18	1.32	0.68	0.25	2820

Wordfish scores	Advocates' policy positions	Stakeholders' positions extracted from consultation submissions (EC/ESMA websites)	-12.43	7.55	-0.03	0.94	2820

5.2 A text analysis pilot: the Credit Rating Agencies consultation

To demonstrate the strength of text analysis methods as a basis for my lobbying success measure, I conducted a pilot using one consultation led by the European Commission on credit rating agencies (CRAs). Private investors routinely seek reliable information about financial instruments they are interested in, and rely on the rating services provided by CRAs to assess the soundness (and likelihood of default) of companies and sovereigns. In addition, CRAs are embedded in the regulatory landscape, since private ratings perform a crucial role in regulatory rulebooks, notably the collateral requirements imposed by the European Central Bank or capital requirements for banks. Before the financial crisis erupted, CRAs were subject to a voluntary code of conduct (the IOSCO code), in the absence of any EU binding legislation (Gross 2015). Since these actors were unregulated, the Commission hoped to receive as much feedback as possible through the consultation on CRA policy, which was one of the first to be arranged at the height of the financial crisis, during the summer of 2008.

The texts used in this pilot were downloaded from the European Commission website. Stakeholders submitted 98 documents during the five weeks of the consultation, but not all of them were comments. Thirteen submissions were discarded as they are accompanying letters or technical annexes, and a further two could not be processed because not in English, as quantitative text analysis only works with documents drafted in the same language. In a couple of instances, the same actor provided multiple comments (usually two): in these cases, I merged the relevant documents into a single file, a choice without consequences for the text analysis given the "bag of words" assumption of scaling models (Laver et al 2003). I converted all the documents in the sample – a mixture of *.doc* and *.pdf* files – into the *.txt* format (plain text format) required by the R package *quanteda*, which I used to perform the analysis. Two further documents had to be excluded due to their protection certificate. Some of the *.pdf* submissions were scanned images, so OCR (optical character recognition) software was used to retrieve their content. Unfortunately, OCR does not always yield results of great quality, meaning that I had to manually edit those comments. These pre-processing steps resulted in a final database of 72 stakeholder comments. A majority of these (37) was submitted by European and national trade associations, 16 by ministries and national regulators, 11 by credit rating agencies (the targets of the proposed legislation) and the rest by miscellaneous actors (2 by citizens, 1 by a trade union, 5 by individual companies). In line with findings of previous research, mobilisation was hence skewed towards business interests, but a notable 25% of the comments was submitted by domestic policymakers such as ministries of finance or regulatory agencies, suggesting that public advocates engage in EU consultations. To obtain valid estimates of the Commission ideal points, for its initial position I used the consultation paper and for its final position the legislative proposal. Text preparation involves eliminating opening and closing remarks as well as contact details from the documents, in order to make sure the text is fully informative about authors' policy preferences. Where consultations responses cited directly the Commission's proposed measures, I removed such direct quotations, as they would also create noise in the analysis. The final pre-processing steps are standard in quantitative text analysis: after creating the corpus, I used regex pattern matching to clean the texts and removed punctuation, "stopwords" and words appearing in less than 5 documents or less than 10 times in the corpus overall.

Since reliable estimates for "reference texts" were not available for the stakeholders active on the CRA consultation, I settled for *Wordfish* as the scaling algorithm of choice. This decision should have little consequences: as shown by Klüver in her case study, estimates obtained with the *Wordfish* and *Wordscores* are highly correlated (Klüver 2009). The crucial assumption of scaling algorithms in text analysis is that they place authors on a key dimension of political conflict, which must be identified *a priori* by the researcher. In this pilot on CRAs, as well as in the wider analysis, this is the classic *pro-/anti*-regulation dimension. On one side of the spectrum I expect *Wordfish* to place stakeholders who are vehemently opposed to regulating CRAs, or at best support a lenient, principle-based approach. On the other end the algorithm should place stakeholders who support a more prescriptive, rule-based approach and stricter provisions. This divide reflects a traditional debate in EU financial services policy and has been described by some scholars as a contrast between two advocacy coalitions, a “market-making” coalition (supporting principle-based regulation) and a “market-shaping” coalition (favouring rule-based regulation) (Quaglia 2010). The policy dimension should be unidimensional for the scaling algorithm to work, an assumption supported in practice by the empirical finding that the structure of conflict surrounding a policy proposal largely has one dimension and that interest groups are opposing each other on this (Baumgartner et al 2009). Once a policy proposal is on the table, interest groups either attempt to make it stricter/more aggressive or to dilute its provisions.

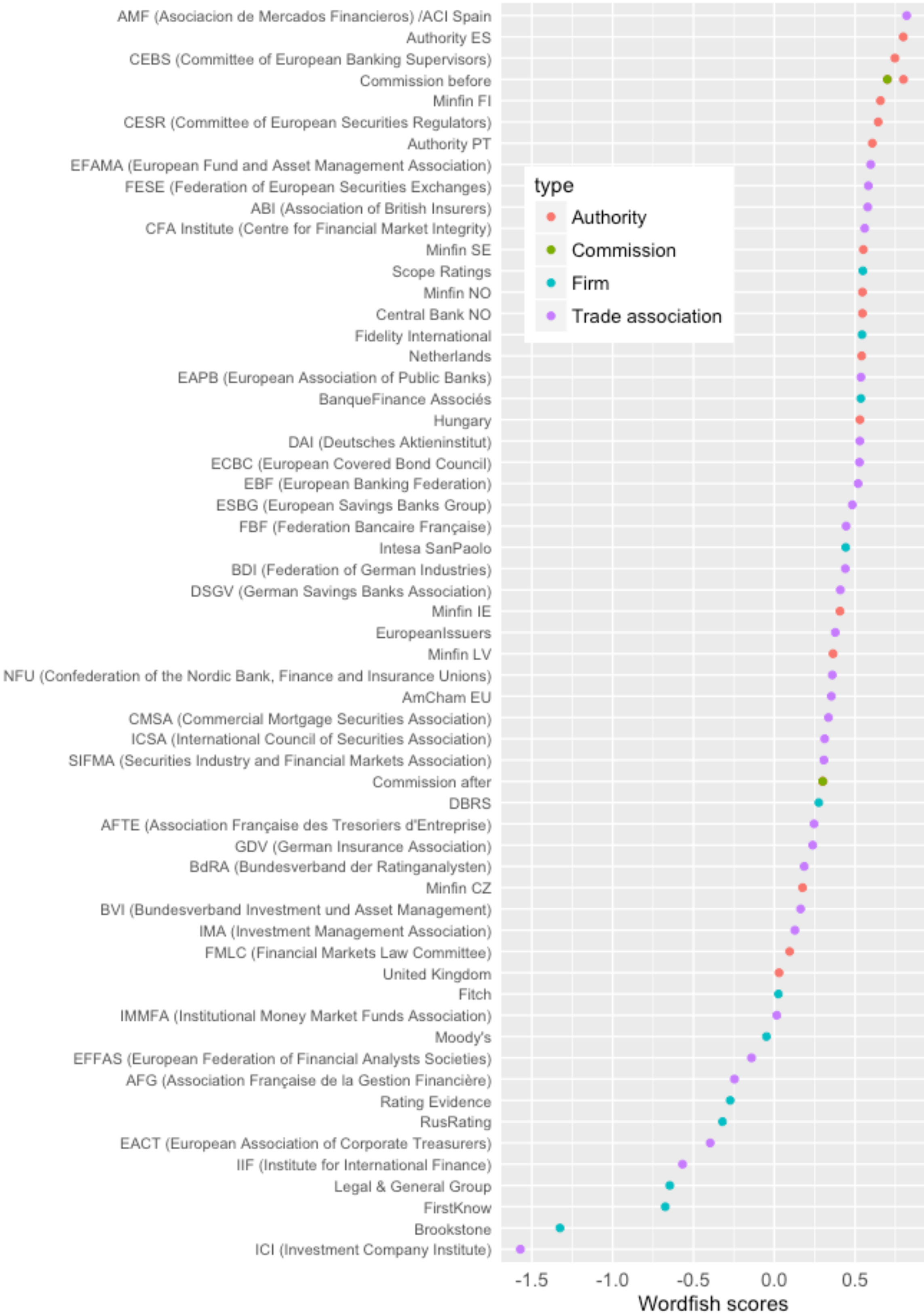


Figure 11. Distribution of *Wordfish* scaling estimates (x_{ij}) in CRA pilot

Figure 11 above shows the result of applying *Wordfish* to the texts in the credit rating agency consultation. Consistently with the expectations outlined above, there are some groups of actors that display a clear preference for a light-touch regulatory approach. At the bottom left corner, one can see most of the firms including credit rating agencies; lower *Wordfish* scores here represent the "principle-based regulation" end of the policy dimension. On the contrary, most of the national ministries and authorities are situated at the upper right corner, where higher scores represent support for a stricter regulatory stance. One notable exception is the position of the UK authorities (common response by HM Treasury, the Financial Services Authority and the Bank of England), which is closer to preferences expressed by the industry. Trade associations seem to display a wide range of policy positions, possibly reflecting the interests of various segments of the financial industry. The Commission, it emerges from the analysis, moves after the consultation towards the less prescriptive end of the spectrum, adopting a slightly more lenient approach than initially envisaged (its *Wordfish* score moves from ca 0.7 to ca 0.3). Despite the policymaker's move towards industry positions, the final regulatory proposal appears quite close to the "prescriptive" side of the scale, in line with qualitative evidence on CRA policy (Gross 2015).

To test the face validity of the measure, I manually analysed some submissions at both ends of the scale. Reading the responses submitted by the likes of Moody's, Rating Evidence or JCR reinforced my confidence in the accuracy of *Wordfish* scoring. Consistently with its *Wordfish* positioning at the left-hand of the scale, JCR (Japan Credit Rating Agency) for instance expressed its serious concerns regarding various aspects of the proposals, such as its extraterritoriality, the intention to clearly differentiate ratings for structured finance instruments (seen as "*burdensome*") and the corporate governance requirements ("*excessive*" and "*not appropriate*") (Japan Credit Rating Agency 2008). Moody's called for a "*principle-based, rather than a prescriptive, supervisory system*" and called the Commission's proposals as drafted as a "*cumbersome and potentially unworkable regime*"; the firm strongly urged the Commission to preserve agencies' independence and described the corporate governance proposals as "*inflexible and potentially damaging standards*" (Moody's 2008). At the opposite end of the scale, the Spanish markets authority CNMV focused its response on institutional aspects and called for the establishment of an EU agency dedicated to the supervision of registered CRAs, as did the Committee of European

Securities Regulators (Comision Nacional del Mercado de Valores 2008, Committee of European Securities Regulators 2008a). Other public sector actors also strongly supported the Commission proposals. For example, the French regulator AMF welcomed the enhancement of regulatory standards for rating activities, supported the Commission's intention to improve transparency on ratings methodologies and agreed with its observations on how conflicts of interest are embedded in the rating process; similarly did the Dutch authorities support "*those measures that aim at preventing conflicts of interest and increasing transparency*" (Autorité des Marchés Financiers 2008, Dutch Ministry of Finance 2008). The main exception in this regard is the joint consultation response by UK authorities, which reminded the Commission that "*it is essential to take a proportionate, principles- and risk-based approach*" for developing CRA standards and expressed its serious concerns that the envisaged regulatory framework "*may not be consistent with better regulation principles*" (HM Treasury, FSA and Bank of England 2008). The UK's positioning closer to the left-hand of the scale is again aligned with the manual assessment and the long-lasting position of UK regulators, who have traditionally adopted a "light-touch" and market-friendly approach to maintain an attractive regulatory environment for the financial industry (Quaglia 2010).

Encouraged by the face validity of the results obtained with the scaling algorithm, in accordance with equation 3 above I proceeded to calculate the measure of lobbying success that represents the key dependent variable of my quantitative analysis. With this measure of lobbying success, the UK and Czech regulators seem to be the most successful among public authorities, whereas most of the other ministries are now clustered at the bottom left corner of Figure 12 below (i.e. have lower success scores). Individual firms including most of the credit rating agencies themselves (Moody's, Fitch, and smaller ones such as RusRating and Rating Evidence) have the highest success scores, although Scope Ratings for example appears less successful. This is in line with the *Wordfish* scores displayed in Figure 11, showing that the Commission moved away from most national authorities' ideal points after the consultation. Key areas where successful stakeholders saw their preferences reflected in the final proposals are corporate governance and disclosure requirements, as revealed by a qualitative validity check of the lobbying success measure. Checking how the preferences of some stakeholders were met in the final proposals further reinforced my confidence in the face validity of the measure. For example, the Institute of International Finance and the European Association of Corporate Treasurers appear particularly successful from the automated *Wordfish* analysis, and indeed reading their submission helps cross-validate the results: the Commission's final proposals reflected several of the firms' concerns in terms of corporate governance, structured finance ratings and the revenue concentration rule (Institute of International Finance 2008, European Association of Corporate Treasurers 2008). On the other hand of the scale, the previously discussed Spanish authority CNMV does not seem very successful. Whereas the authority generally supported the Commission proposals, the latter did not take on board its ask for a fully harmonised supervisory regime managed by a new dedicated EU agency, given that the proposals foresaw only an EU-level authorisation system but left CRA supervision in the hands of the various Member State authorities. Manually checking many of the participating stakeholders' responses thus shows that this lobbying success measure could prove a reliable one to use for the wider analysis.

In conclusion, this pilot illustrated two things. First, it demonstrated the benefit of using quantitative text analysis, showing that this method can allow the researcher to obtain valid and reliable estimates from interest groups' consultation submissions. This methodology allows scholars to undertake large-N analysis across dozens of policy issues and, importantly, to extract preferences from thousands of advocates' comments (some of which are dozens of pages long), an otherwise unfeasible scope for a PhD thesis. Once the data is downloaded and pre-processed, its analysis becomes a matter of minutes with automated methods. A similar amount of text could simply not be analysed with manual coding techniques within the same timeframe, implying a huge loss of information and a trade-off between depth and the number of texts analysed. Secondly, the pilot results showed that theories of spatial politics offer an important contribution to studies of lobbying, paving the ground for a lobbying success measure that appears to have a good degree of external validity and hence providing a sound starting point for my quantitative analysis. Importantly, in using a *relative improvement* measure to calculate lobbying success, I followed the path indicated by other scholars in the field such as Bernhagen or Baroni, and while I might be the first in using *Wordfish* estimates as inputs for this measure, my confidence in its face validity is enhanced by its long-standing and successful use to automatically calculate actors' policy preferences (Bernhagen et al 2014, Baroni 2014).

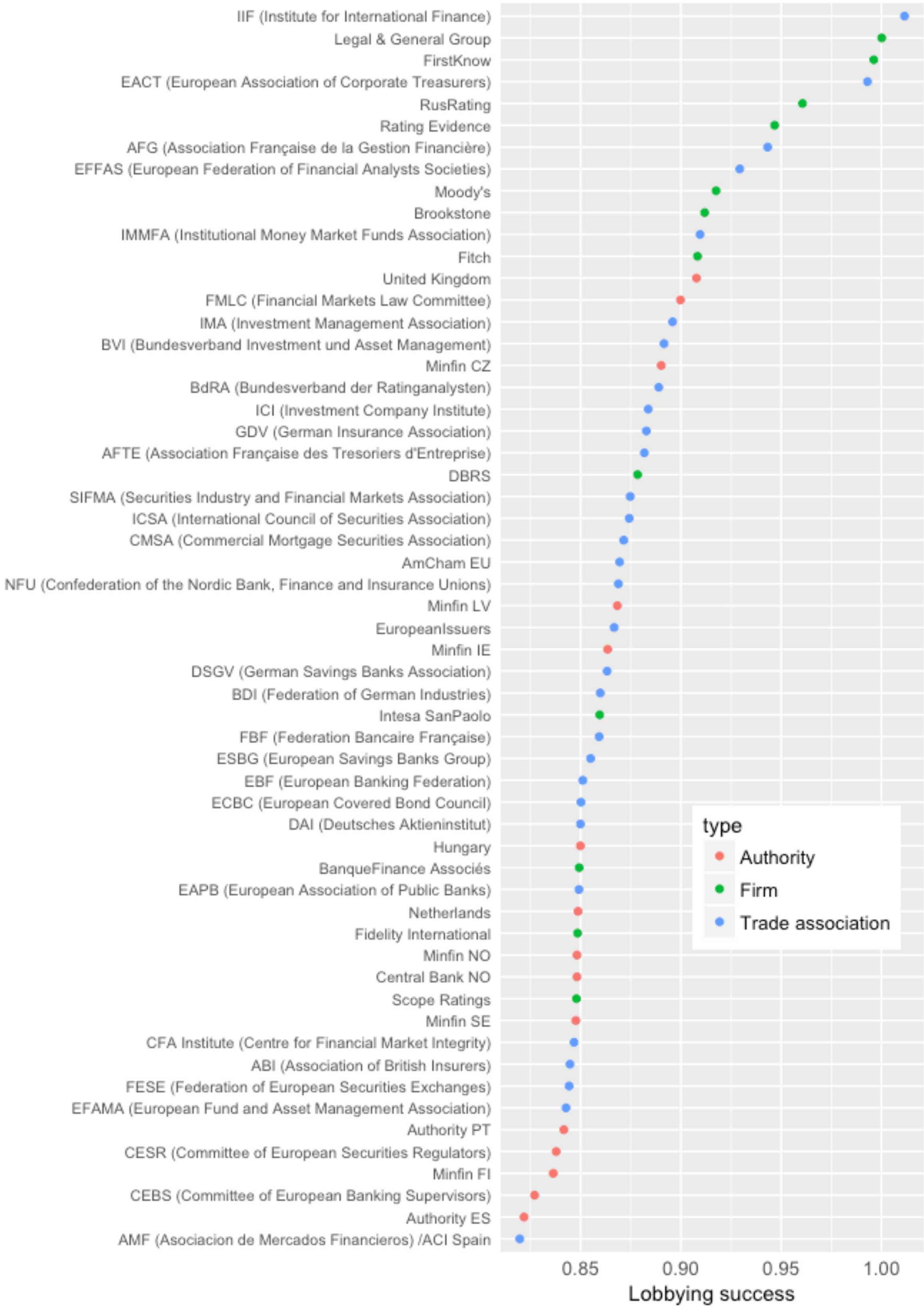


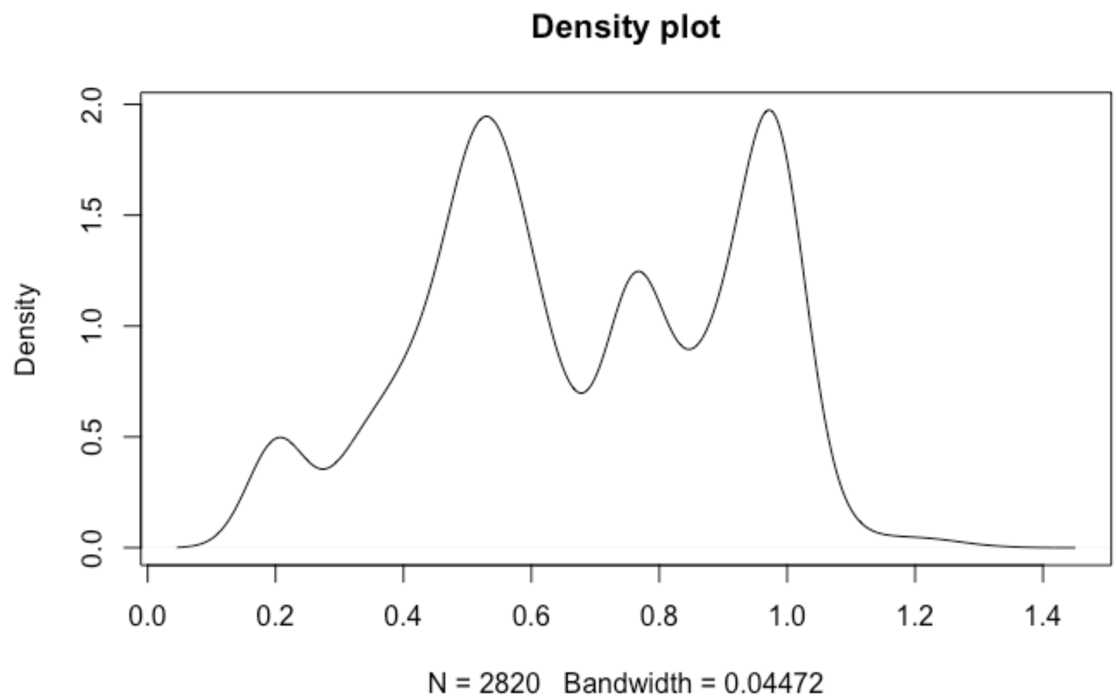
Figure 12. Distribution of lobbying success measure (s_{ij}) in CRA pilot (calculated as in equation 3)

5.3 The outcome variable: lobbying success

This section addresses the fulcrum of the thesis, as it seeks to answer the first part of my research question and namely if lobbying success varies by the targeted institutional venue. In this section, I calculate the lobbying success measure following the formula in equation 3 for the entirety of over 4000 consultation responses in my database, and build a series of regression models to explore the effect of the targeted policymaker on this outcome variable. My quantitative database does not directly allow for the measurement of policymakers' information demand – which I argue is a significant factor behind any potential difference between venues – so I will investigate this using qualitative methods. However, I included a policy complexity variable in my quantitative analysis, which is operationalised as the number of questions in each consultation and should be statistically significant if my hypotheses are correct. If lobbying success is indeed positively correlated with institutions' information demand, and the latter is stronger in the case of higher policy complexity, then the coefficient of the complexity variable should be positive indicating a relationship with the outcome variable (lobbying success). To calculate the lobbying success measure, I cleaned and pre-processed the consultation database texts using the R statistical software. All stakeholder responses were first converted from the *.docx* or *.pdf* format to *.txt* and subsequently loaded into R to create a text corpus with the help of the package *quanteda* (Benoit 2012-present). Unfortunately, automated text analysis does not allow simultaneous processing of texts written in different languages, so the small amount of responses in German and French had to be discarded. However, responses written in a language other than English – the standard *lingua franca* of EU policymaking – were less than 5% in the European Commission's consultations and 0% in the case of ESMA consultations, so the results should still be representative of the full distribution of stakeholder positions. I also cleaned the texts using regular expressions and pattern matching to get rid of email addresses, punctuation symbols, numbers and especially text pre-compiled by EU institutions. This was the case for most recent ESMA consultations, as the agency routinely provides a pre-compiled form to stakeholders to fill including instructions on how to compose the response and some introductory information. If this information had not been removed from the corpus, the scaling estimates of advocate responses would not accurately reflect stakeholder positions as they would have taken into account wording provided by the EU institution.

I analysed the database by creating separate corpuses for each of the 14 policies, at each of the two levels of legislation (Level 1/Commission and Level 2/ESMA). I then used the consultation replies to extract *Wordfish* estimates of the stakeholder positions, as explained earlier in this chapter. In line with previous research, the dimension of *Wordfish* estimates is interpreted as reflecting an anti/pro-regulation dimension, with lower scores indicating a preference for "principle-based" regulation and a general anti-regulatory stance, and higher scores indicating a preference for stricter rules and generally more prescriptive regulation. While there should be some caution about the interpretation of the dimension and in turn of these estimates, confidence in their validity is reinforced by the pilot study I included on credit rating agencies. In the pilot, the *Wordfish* estimates were in line with *ex ante* expectations on stakeholder positioning: CRAs and other financial firms had lower scores – indicating a preference *against* regulation or for more lenient rules - and Southern/Continental Europe authorities in particular had higher scores, signalling their more prescriptive attitude. The estimates were also cross-validated through qualitative analysis of several consultation replies. In accordance with equation 3, I then used the *Wordfish* estimates and confronted them with the EU institutions' (Commission and ESMA) positions to calculate the lobbying success variable, which represents the fulcrum of the research question and the key outcome of interest of the empirical analysis. As explained in the previous section, stakeholders' lobbying success is calculated by taking into consideration policymakers' *ex ante* and *ex post* positions, and by measuring the *relative improvement* that advocates enjoy because of institutions moving closer to (or further from) their ideal policy preferences. Even if the dimension (pro- vs anti-regulation) of *Wordfish* scores were incorrectly identified, this would not affect the measurement of how stakeholders' expressed preferences are reflected in final policy outcomes, as the lobbying success measure is unaffected by a possible misinterpretation of the estimates scale.

An overview of the lobbying success variable is shown in Figure 13. The plots clearly highlight that the variable does not have a normal distribution overall, while this assumption should hold true by looking at the separate corpora (policy and venue level); the density plot indeed indicates that the variables has a bimodal distribution. This is expected, as lobbying success is calculated separately for each of the text corpora, corresponding to the consultation(s) organised for each specific policy at either Commission or ESMA level. While the lobbying success variable has a theoretical minimum value of 0 and a maximum value of 2, in my database it ranges from ca 0.2 to 1.4. As a reminder, this formula yields its maximum value of 2 when a lobbyist's position is on the opposite end of the policymaker's initial position, but coincides with the final policy outcome (i.e. the policymaker's position has moved all the way to perfectly match the lobbyist's preference); conversely the formula yields its minimum value of 0 when the lobbyist's position coincides with the policymaker's initial proposal, but the final proposal following the consultation coincides with the opposite end of the policy dimension. These theoretical minimum and maximum values are in practice hard to obtain, as policymakers' policy preferences are rarely situated at the extremes of the relevant policy scale, such as the strictest possible approach to regulation, or in contrast (and even more implausibly) the "weakest", most anti-regulation position adopted among all stakeholders. While it is certainly conceivable that a policymaker's position is more extreme than the preferences of all stakeholders' on a relevant dimension, in reality rule proposals tend to be clustered towards the middle, possibly reflecting a necessity to compromise to achieve rule adoption, or an anticipation of stakeholders' positions by the officials.



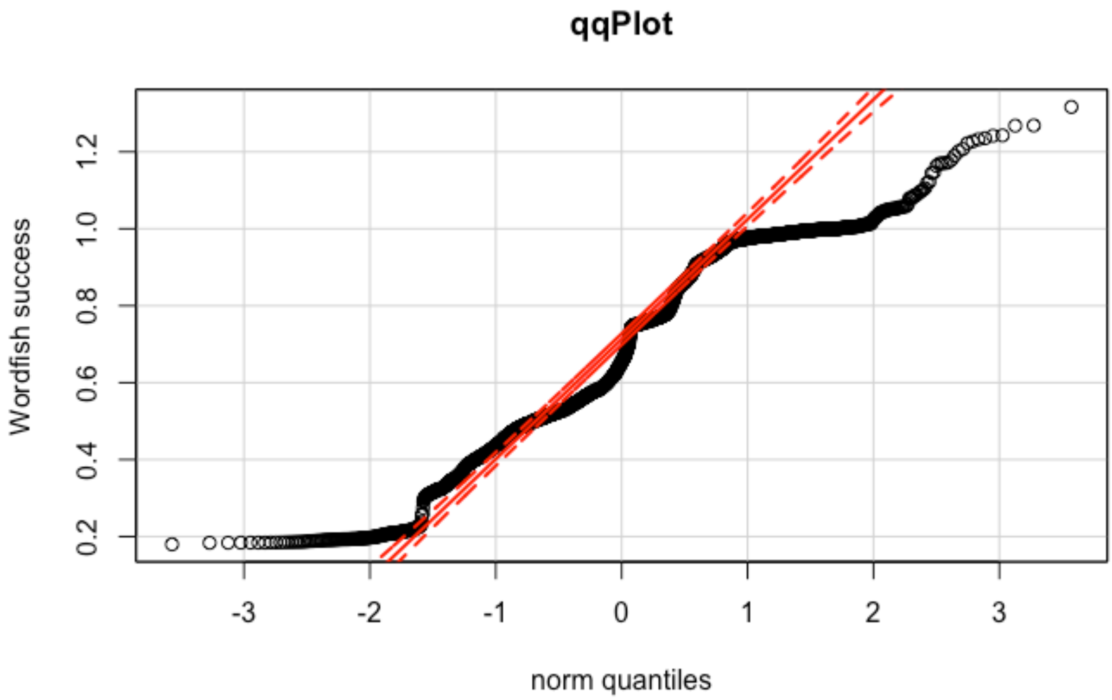


Figure 13. Overview of the dependent variable (lobbying success)

Before conducting the regression analysis necessary to answer the research question, I continued to analyse my database by producing some further exploratory graphs. The boxplots shown in Figure 14 below illustrate for example the relation between lobbying success and stakeholder type, conditional on the targeted venue. There seems to be no major difference in terms of preference attainment according to type of advocate, especially for the Commission level and apart from the case of international organisations, who enjoy significantly lower success scores (with the caveat that there are only a handful of submissions by international organisations in the database). Overall, business interests (firms and trade associations) do not appear to be more successful than citizen or consumer interests, in line with other research that has struggled to find a clear correlation between stakeholder type and lobbying success, as seen in chapter 2. While the effect of stakeholder category on lobbying success is not the focus of my research question, this points to other factors beyond those related to the advocates playing a role in determining lobbying outcomes, such as institutions' demand for information.

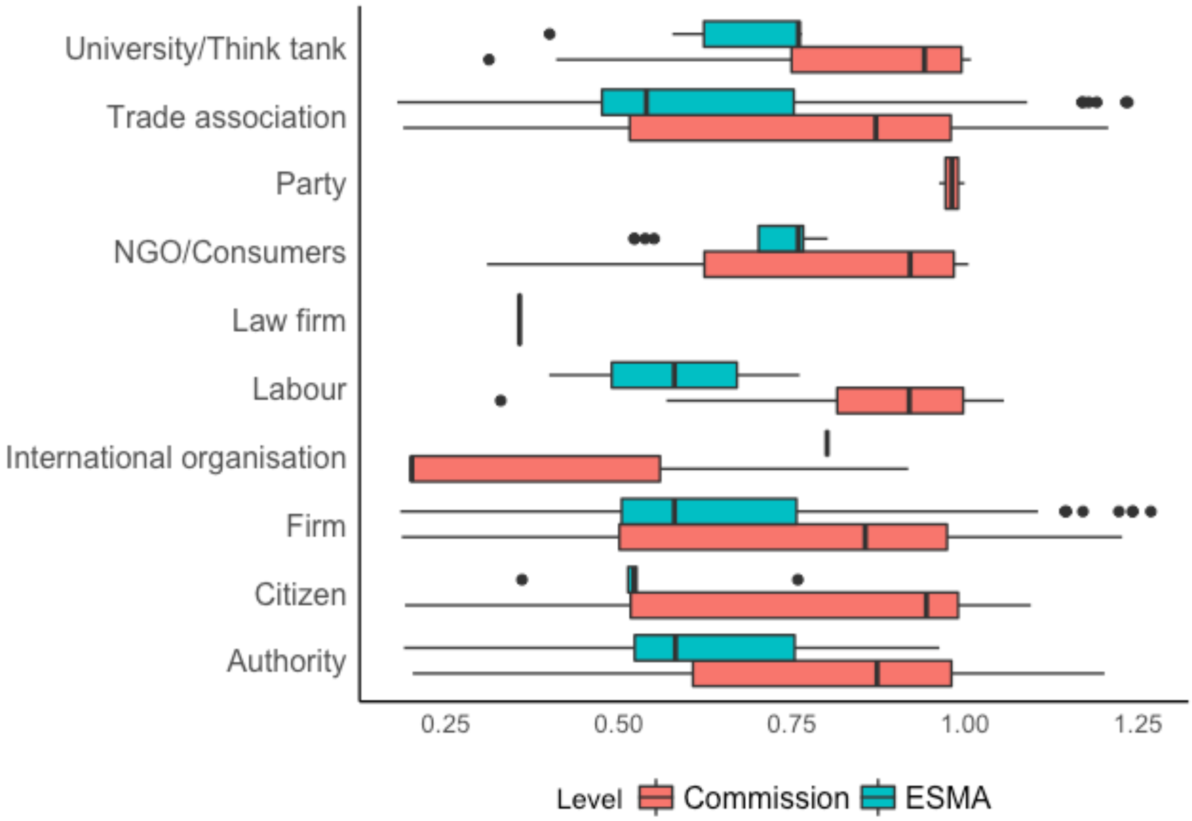


Figure 14. Lobbying success according to stakeholder type and venue

There does however seem to be a difference according to the targeted venue, as levels of lobbying success appear higher at the Commission than at ESMA level. This seems to be particularly the case for labour representatives, as in their case the difference in success scores between the two venues is most marked, but there also seems to be a remarkable difference for other categories such as individual firms and trade associations. The regression analysis will be aimed first and foremost at checking whether such an "agency effect" is supported by the empirical evidence when controlling for other possible explanatory factors. I then visually analysed how some resource-related variables impact stakeholders' lobbying success, similarly to what the previous chapter did in relation to consultation participation, where I found that only lobbying expenditure was (weakly) related to stakeholders' decision to mobilise. As shown in Figure 15 below, the lobbying success score, if anything, seems to slightly decrease when advocates' resources rise, although the relationship is not statistically significant. This runs contrary to widely held beliefs on financial industry lobbying, where the popular perception is often that money can buy influence. However, extensive academic research on the link between stakeholder resources and their lobbying success has consistently failed to demonstrate this (see chapter 2 for a more extensive discussion). This popular assumption seems similarly refuted by my data, which show that higher lobbying expenditure has a negligible effect on the success actually achieved by advocates. This finding points again to other factors playing a perhaps more important role than advocates' resources and capacity to spend in determining their lobbying success. I argue indeed that demand-related variables, and notably policymakers' demand for information, are also important to understand a lobbyist's likelihood to achieve her policy preferences. Certainly, my data does not evidence a relationship between interest groups' resources and their success, and if anything the return on lobbying expenditure even seems to be slightly negative in the case of firms and trade associations (although this is not statistically significant).

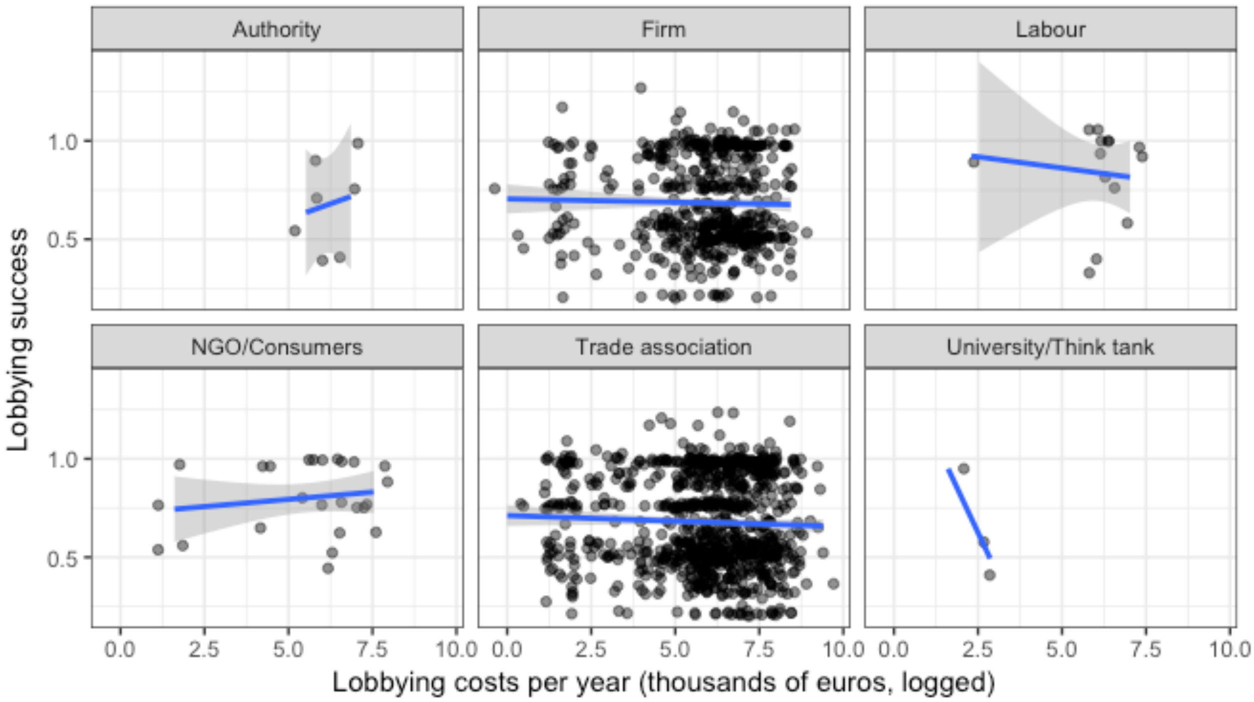


Figure 15. Relationship between lobbying costs and lobbying success

Similarly to the exploration of the consultation database in chapter 4, I further investigated whether passes to the European Parliament or the number of meetings held with policymakers had a relationship with lobbying success. Proceeding to check if EP badges are correlated with advocates' success chances, one can similarly see that this access measure does not have any significant effect on lobbying success: thus, having more advocacy staff based in Brussels has no discernible consequence for advocates' chances of achieving their lobbying aims. Similarly to what seen above, this holds across all categories of stakeholders, as shown in Figure 16 below. The number of passes to the EP is often considered a measure of advocates' resources, given that it usually corresponds to the permanent staff based in Brussels and therefore able to devote resources full time to lobbying activity. This finding therefore provides further empirical evidence that a larger staff or amount of lobbying efforts, measured as the number of Brussels-based representatives engaged in parliamentary advocacy, does not translate into better chances of seeing one's preferences reflected in final rules.

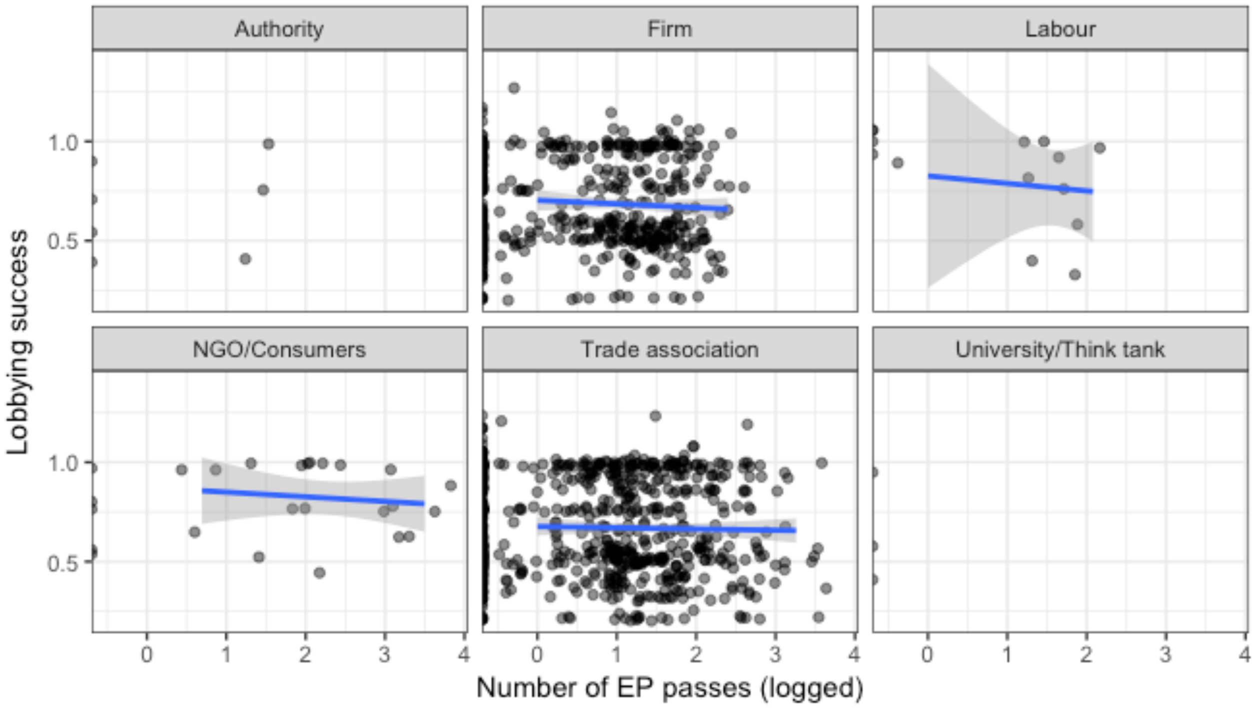


Figure 16. Relationship between EP passes and lobbying success

The same "no effect" scenario emerges when looking at the relationship between meetings and lobbying success, as holding additional meetings with policymakers does not seem to result in improved lobbying outcomes for stakeholders (Figure 17). Examining the effect across stakeholder type shows a very limited (though still statistically insignificant) effect for trade associations, whereas labour representatives seem to be even slightly disadvantaged by organising meetings with policymakers. Similarly to what observed above, the lack of a correlation in my database between advocates' meetings with policymakers – which constitute another indirect measure of their resources and capacity to engage in extensive advocacy – points to the insufficiency of advocate-related variables in accounting for lobbying success on their own. I argue that demand-related factors, and particularly the targeted institution's demand for the information supplied by lobbyists, cannot be ignored and also have a bearing on success chances. The next section will test my argument by applying regression analysis to my full consultations database, spanning across 14 policies and over 4000 responses submitted by circa 1100 different advocates.

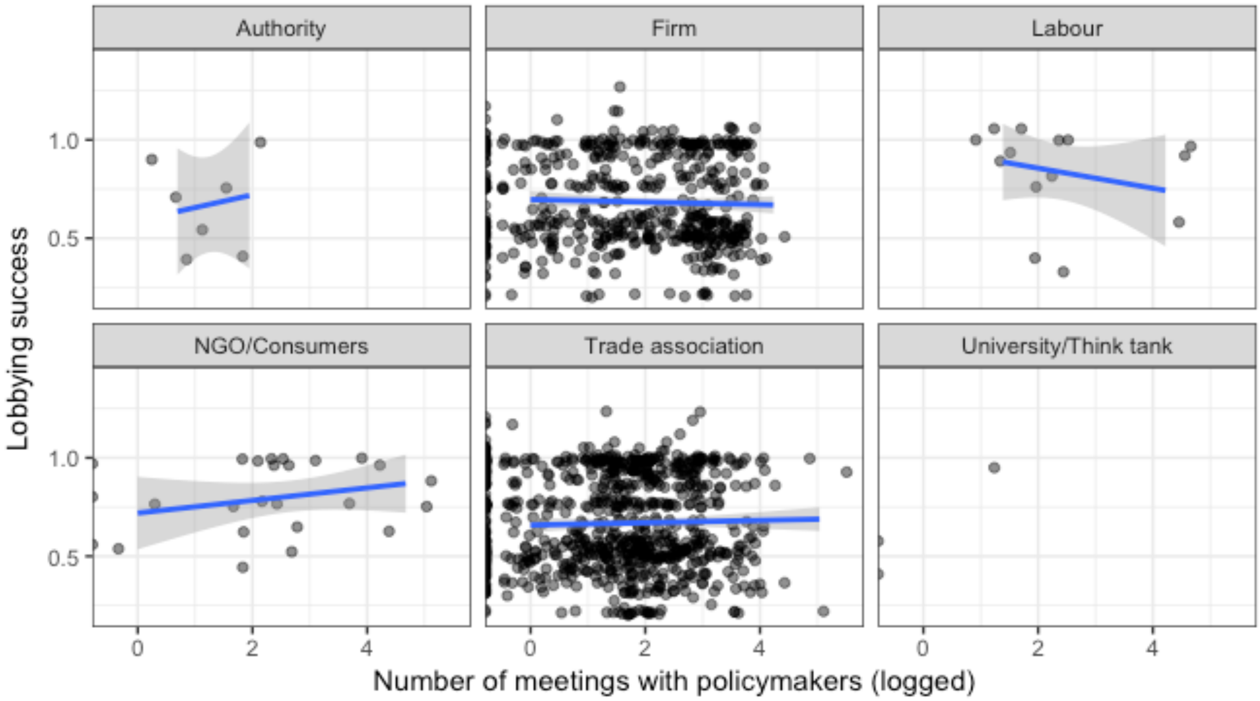


Figure 17. Relationship between meetings and lobbying success

5.4 Lobbying success at the Commission versus ESMA: regression analysis

Following this exploratory analysis, I estimated the regression models needed to test whether lobbying success differs at Commission and ESMA level, and thus answer the first part of the research question (*does lobbying success vary by the targeted institutional venue?*). Since the dependent variable – lobbying success – is a continuous one, I first performed a standard ordinary least squared (OLS) analysis. The key independent variables of interest, as anticipated in chapter 4, are the binary variable indicating the agency (ESMA) level and policy complexity. However, I included in the regression models a wider range of actor-level and policy-level controls in addition to these key variables of interest (for a description of variable operationalisation see table 5). First and most importantly, the statistically significant effect of the agency binary variable implies a positive answer to the first part of the research question: indeed the most crucial finding is that lobbying ESMA greatly decreases the chances of lobbying success, as revealed by the consistently negative coefficient of the "agency" dummy variable in table 8. The coefficient is highly statistically significant across all models, irrespective of the number of other variables accounted for. There hence seems to be a premium on lobbying the Commission versus ESMA: stakeholders are less successful when targeting the authority and trying to influence Level 2 legislation, compared to when they target the Commission and try to influence Level 1 rules. In other words, the Commission seems more receptive to advocates' representations and takes on board more of their comments, on average, compared to the authority. Particularly interesting is the fact that this negative "agency effect" becomes even larger in Model 6, which includes all actor-level and policy-level control variables and has the highest model fit (Adjusted R2). This shows that the statistical significance of its coefficient in the simpler Models 1-5, which include less variables, cannot be explained by the latter not being explicitly accounted for in their direct effect on the lobbying success measure. While the coefficient of the agency dummy varies in a range of decimals, we must bear in mind that the range of the lobbying success outcome variable goes from ca 0.2 to 1.4: a decrease in 0.535 units (Model 6) therefore represents a decrease of about 50% in the entire range of the dependent variable, definitely not an irrelevant one.

Another interesting finding is the surprising or statistically insignificant effect of many variables often thought to be crucial in determining lobbying success. In particular, advocates representing business interests are generally disadvantaged, contrary to intuition and to widely held beliefs, as the coefficient for the business dummy (indicating firms and trade associations) is consistently negative across all models. Stakeholders representing industry interests are therefore less likely to realise their lobbying goals compared to other categories, such as citizen interests or public authorities.

Table 8. Results of OLS models

	Dependent variable: Lobbying success					
	(1)	(2)	(3)	(4)	(5)	(6)
Agency	**-0.145***** (0.009)	**-0.147***** (-0.009)	**-0.147***** (0.012)	**-0.221**** (0.072)	**-0.284***** (0.067)	**-0.535***** (0.098)
Lobbying intensity		-0.001*** (0.0003)	-0.0005 (0.0004)	-0.0003 (0.0004)	0.0007 (0.0004)	0.0007 (0.0004)
Business				-0.122** (0.042)	-0.141*** (0.040)	-0.141*** (0.040)
Lobbying costs°			-0.004 (0.004)	-0.003 (0.004)	-0.002 (0.004)	-0.001 (0.004)
Meetings			-0.0003 (0.0005)	-0.0005 (0.0004)	0.000 (0.000)	0.000 (0.000)
Complexity°					**0.077***** (0.008)	**0.055***** (0.010)
Salience°					0.009*** (0.003)	0.009** (0.000)
*Agency*Business*				0.077 (0.072)	0.122 (0.068)	0.132 (0.067)
Agency*Complexity						**0.044***** (0.012)
Constant	0.745*** (0.006)	0.760*** (0.007)	0.772*** (0.023)	0.885*** (0.046)	0.427*** (0.057)	0.760*** (0.041)
Obs	2819	2665	1459	1459	1459	1459
R2	0.088	0.094	0.090	0.096	0.216	0.286
Adjusted R2	0.088	0.094	0.088	0.092	0.212	0.282
Residual Std. Error	0.232 (df=2818)	0.231 (df=2663)	0.235 (df=1455)	0.234 (df=1453)	0.218 (df=1451)	0.208 (df=1450)
F Statistic	273.5*** (df=1; 2818)	139*** (df=2; 2663)	36.06*** (df=4; 1455)	25.62*** (df=6; 1453)	49.98*** (df=8; 1451)	64.58*** (df=9; 1450)

Note: *p<0.1; **p<0.05; ***p<0.01; ° are logged variables

The financial industry not only does not have the upper hand when trying to influence the rules it will have to comply with, it is actually disadvantaged compared to other categories of stakeholders that represent non-business interests. The other actor-level variables are not relevant when it comes to lobbying success, as seen in Figures 15-17 already. Dozens of researchers have tried to demonstrate a link between interest group resources and lobbying success, often failing to find a positive association: this analysis is no different, in that lobbying expenditure does not have a statically significant effect on advocates' chances of realising their preferences. The same applies for the number of meetings held with policymakers, the number of staff (measured as full-time lobbyists) and passes for the European Parliament (the last two variables were included in alternative model specifications, not reported in Table 8). Similar to the exploratory analysis in the graphs included earlier in the chapter, the regression analysis confirms that a variety of factors linked to the interest groups and their ability to spend on lobbying activities is not relevant for their success chances. This result is surprising, and further corroborates my argument that these traditional "actor-related" variables are not enough to explain lobbying success and the nature of the lobbying exchange relationship more generally.

Lobbying intensity, measured as the total number of consultation responses each of the stakeholders submitted, does also not affect lobbying success: submitting more replies to the two institutions does not make a difference for advocates' chances of achieving their lobbying goals. The coefficient of the lobbying intensity variable is statistically significant only in model 2, and the effect is marginal, showing that higher information supply does not increase advocates' lobbying success. Some interest groups in the database submitted dozens of consultation responses to both Commission and ESMA, but this analysis shows that this is immaterial to their success chances. This evidence supports my claim that the amount of information supplied to policymakers hardly matters if there is no demand for it: the fact that advocates can share a lot of highly technical expertise with an institution does not necessarily mean that their preferences will be taken into account.

On the other hand, the two control variables for policy-level factors, namely complexity and salience, are both statistically significant: lobbying success is increased both by complexity and salience of the policy. The coefficient of the salience variable is positive and statistically significant, although not large in magnitude; it however points to higher success chances for advocates when the relevant policy receives greater media attention. For the models included in the table, I operationalised complexity as the number of questions in the relevant consultation. I also used two alternative operationalisations of this variable, namely the Flesch-Kincaid reading ease index and the length of the consultation paper (number of pages)[6]. While the Flesch-Kincaid index was not significant as a measure of complexity, the length of the consultation was, albeit not across all model specifications. The significance of the coefficient on the *complexity* variable lends support to my third hypothesis, namely that *the relationship between policymakers' information demand and lobbying success is moderated by the complexity of the policy: all else equal,* ***lobbying success is higher as the complexity of the policy increases****, as the latter deepens the institution's information demand.* While the regression models do not directly include institutions' information demand – this will require careful analysis in the qualitative section of my thesis – the quantitative evidence backs my hypothesis that policy complexity increases lobbying success. It remains to be proven if the driving factor I hypothesise to be behind this effect, namely institutions' varying demand for information, can indeed explain this relationship.

Furthermore, the interaction term agency*complexity is also statistically significant, pointing to the fact that the effect of policy complexity on lobbying success is different at varying values of the agency valuable. When the targeted institution is the Commission, the effect of complexity is 0.044, while it more than doubles to (0.044 + 0.055 =) 0.099 when the venue is ESMA. In other words, there is always a difference in lobbying success levels between the Commission and ESMA, but this gap becomes marginally smaller as the complexity of the policy increases. This means that for a comparatively simpler policy, there will be a larger difference in advocates' success when targeting the two different venues, and I hypothesise that this is explained by the lower information demand that ESMA has compared to the Commission. For a more complex policy, the difference in average lobbying success becomes slightly smaller, and I argue this is due to the effect that complexity has on the agency's information demand: if ESMA takes only a limited proportion of stakeholders' comments on board for simpler cases, despite its generally higher expertise than the Commission when it needs to develop rules for very complex

[6] A discussion of the Flesch-Kincaid index, its use as an alternative complexity measure and related model specifications are included in Appendix 1.

policies it will necessitate more information, and therefore reflect stakeholder feedback more. A visualisation of this interaction effect is shown in Figure 18 below, where the two regression lines are not exactly parallel; I used for this plot my main operationalisation of complexity as the logged number of questions asked in the consultation. As evidenced in the plot, the complexity variable is not evenly distributed, and a gap can notably be seen around the value 6: this is because there is a clear outlier in terms of policy complexity and namely MIFID policy, corresponding to the right-hand cluster.

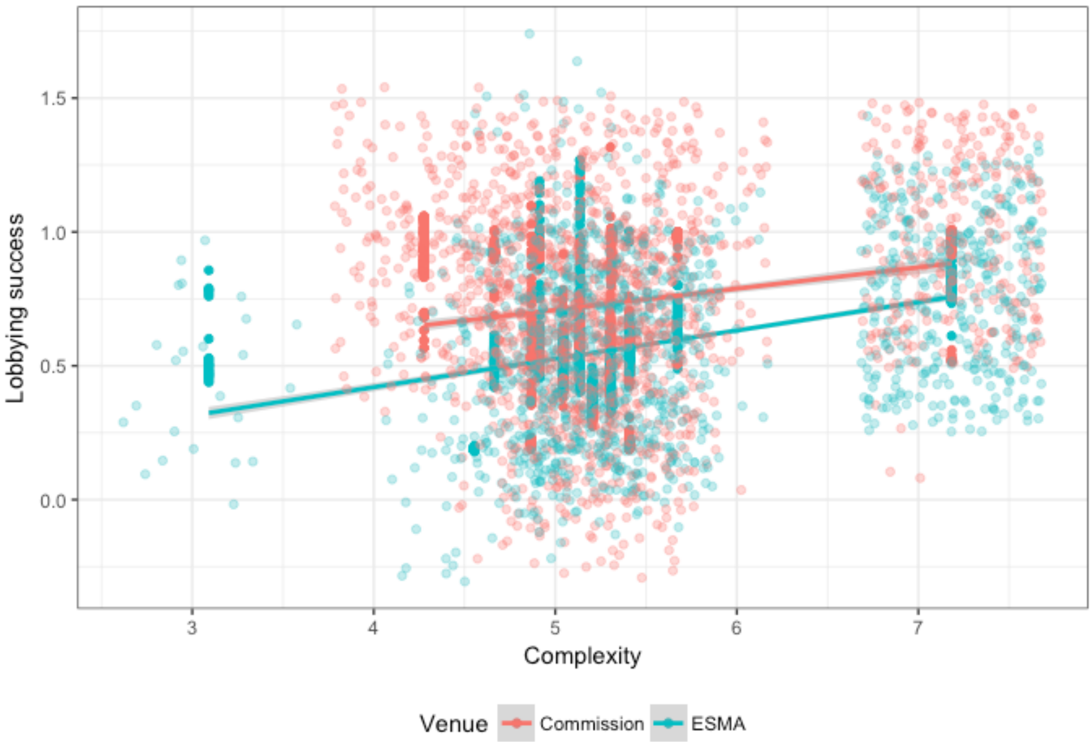


Figure 18. Interaction between venue and policy complexity (note the complexity variable is logged)

Despite scholars' theoretical expectation that interest group influence should vary in line with the complexity of the policy proposals, research taking into account this specific contextual variable is scarce. In one of the notable exceptions, Klüver finds no statistically significant effect of policy complexity in her study on the contextual nature of lobbying success (Klüver 2011, Klüver 2013, Klüver et al 2015b). Different results however have been found on policy salience: Mahoney finds for instance that salience decreases lobbying success in the EU context (but not in the US), while Klüver finds that salience has a different effect depending on the relative size of the lobbying coalition, namely it can increase success if advocates belong to the larger coalition working on a given policy issue (Mahoney 2007, Klüver 2011).

Finally and to improve the reliability of the analysis, I performed a second statistical analysis treating the dataset as panel data. Since the database contains at most one consultation response (and hence one lobbying success score) per lobbyist and per policy, I ran simpler models with fixed effects for both lobbyist and policy, after removing all the actor-related variables measured through EU Transparency Register data (resources, meetings, EP passes) as well as the policy-related variables measuring complexity and salience.

Table 9. Results of fixed effects models

	Dependent variable: Lobbying success		
	(1)	(2)	(3)
Agency	**-0.113*****	**-0.111*****	**-0.115*****
	(0.011)	(0.011)	(0.008)
Information supply		-0.00000	0.00000
		(0.00000)	(0.00000)
*Agency*information supply*			-0.00000
			(0.00000)
Obs	2,628	2,628	2,628
R2	0.876	0.876	0.704
Adjusted R2	0.254	0.253	0.487
F Statistic	2.810*** (df = 1097; 438)	2.806*** (df = 1098; 437)	225.296*** (df = 16; 1519)

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

The results, shown in Table 9 above, demonstrate the solidity of the “agency effect” previously discovered. Given that the models control for the policy and the lobbyist, we can be certain that the negative effect that this variable has on lobbying success is not linked to intrinsic characteristics of either the advocate or the policy, captured in the OLS models performed earlier by variables such as lobbying costs, meetings, scope or salience. One can observe that the magnitude of the effect has been reduced slightly, but the coefficient remains strongly statistically significant. I also inserted the variable *information supply*, which measures the length of the consultation response, to investigate whether stakeholders submitting a lengthier response (supplying more information) had their chances of achieving lobbying success improved. However, this variable is not correlated with the outcome I am interested in, and the same happens for the interaction term *agency*information supply*. These results confirm my main and most interesting finding that lobbying the agency (ESMA) compared to the Commission results in less favourable outcomes for stakeholders, a finding that I argue is driven by the institutions' information demand.

In conclusion, this chapter has put forward two findings. First, after highlighting the difficulties traditionally encountered by scholars in measuring lobbying success and discussing various alternatives for doing so, it showed that the choice of a *relative improvement* measure grounded in spatial theories of politics and calculated using quantitative text analysis was a sound one. The following section included a pilot where the use of *Wordfish* as a scaling method and this measure of lobbying success were tested, before applying these tools to my entire database; piloting these on a single consultation and cross-validating results with qualitative evidence demonstrated a good face validity of both the scaling results and the success measure calculated on the basis of these. The chapter then included some exploratory graphs which pointed to the inadequacy of advocate-related variables alone in accounting for their lobbying success.

Most importantly, the regression analysis of the consultations database in the final section of this chapter has shown a considerable difference in lobbying success at the Commission and ESMA levels: targeting the agency significantly diminishes stakeholders' success chances. This effect is moderated by the level of policy complexity, which is also positively correlated to lobbying success and has a stronger effect in the case of agency lobbying. On the other hand, the level of stakeholders' lobbying effort is irrelevant to their success, supporting my argument that the amount of information supplied is not necessarily relevant if there is no demand for it on policymakers' side. Another interesting finding is that, despite being the preponderant stakeholder category mobilising to influence the EU institutions, business interests are disadvantaged when it comes to lobbying success, while a range of actor-level variables (resources, staff, meetings) have no bearing on their chances of achieving their preferred outcomes.

To sum up, I can therefore answer in the positive the first part of my research question *does lobbying success vary by the targeted institutional venue?*. To test my second hypothesis – *lobbying success is correlated with policymakers' demand for information* – I will use qualitative methods in the next two chapters containing my case studies. While information demand is not directly included in my quantitative analysis, these empirical results seem to support my third hypothesis - *the relationship between policymakers' information demand and lobbying success is moderated by the complexity of the policy* – in that they indicate that the relationship behind policy complexity and lobbying success varies depending on the targeted venue. In the next two chapters, I will investigate if information demand is indeed a significant factor behind the "agency effect" of lower lobbying success and the significance of the complexity variable.

Chapter 6

First case study: Credit rating agencies policy

In the case of Credit Rating Agency policy, the information demand of the Commission was significantly higher than that of ESMA, which when drafting the related rules could count on a team of specialised officials with relevant prior experience. In contrast, the Commission had no expertise on CRA policy and took significant steps to gather stakeholder feedback when preparing CRA rules, pointing to its higher information demand in this area. Affected by this difference in the two policymakers' information capacity, stakeholders' lobbying success was considerably higher in the case of the Commission rules. Advocates were indeed successful in achieving considerable changes on corporate governance requirements, conflict of interest rules and provisions for structured finance ratings. In contrast, stakeholders were unable to influence the standards drafted by ESMA, notwithstanding similar lobbying efforts, as the authority's final proposals were only marginally different from its initial drafts.

Chapter 5 offered evidence for two features of stakeholders' lobbying success: first, that it is generally lower when ESMA is targeted compared to the Commission, and second, that it is also influenced by policy complexity – it is higher when the policy is more complex, particularly at agency level. This and the next chapter are aimed at validating these quantitative results and determining whether the institutions' demand for external expertise is a significant factor driving such a difference between the two venues. My second hypothesis, derived from lobbying exchange theory, is that this "agency effect" is due to institutions' varying information demand: ESMA has more in-house expertise and knowledge, so should have a lower need of information supplied by lobbyists. I will show this through two case studies, as the quantitative analysis could not capture explicitly the role played by information demand. As my third hypothesis relates to the role of policy complexity (*lobbying success is higher as the complexity of the policy increases*), I selected two policies with different complexity levels for the qualitative analysis. Credit rating agencies policy is the first of the two case studies and characterised by a low complexity level, while the second is MIFID/R (Markets in Financial Instruments Directive/Regulation), which sits at the other extreme of the complexity scale. As per my quantitative analysis, stakeholders enjoyed different levels of lobbying success on the two policies (respectively at Commission and ESMA level, 0.9 vs 0.38 in the case of CRAs and 1 vs 0.76 in the case of MIFID). This chapter includes a process tracing case study of CRA policy. It first introduces the main features of the EU's CRA policy, compares the information demand and capacity of the two institutions, and then process traces the Commission and ESMA consultations to establish how the two policymakers' demand for external expertise (or lack thereof) contributed to the difference in stakeholders' lobbying success levels.

6.1 Overview of CRA policy

Credit rating agencies provide information to market participants on borrowers' creditworthiness: they offer judgments about the quality of bonds issued by a wide range of entities (primarily corporations, but also sovereign nations and local governments) and provide a variety of ancillary services to their issuers, such as investment advice. These judgments, provided in the form of ratings, are used by investors to gather information about the likelihood that securities issuers repay the borrowed capital and any interest; issuers rated A or above are those with the highest creditworthiness and thus the most likely to represent a safer investment. There are globally around 100 credit rating agencies, most of which are rather small and focus on a single jurisdiction or industry area; three US-based agencies (Standard and Poor's, Moody's and Fitch) dominate the strongly oligopolistic global and European ratings market. The centrality of credit rating agencies to financial markets has been strengthened through the actions of regulatory authorities over time, notably as both the Securities and Exchange Commission (the US securities regulator) and the Basel Committee on Banking Supervision started endorsing the use of ratings for the calculation of banks' capital requirements. Despite their role in the global regulatory architecture, CRAs were not regulated before the global financial crisis and only subject to market-driven compliance with no sanction mechanisms in place. The

International Organisation of Securities Commissioners (IOSCO) issued in 2004 the "Code of Conduct Fundamentals for Credit Rating Agencies", incorporating a series of best practices that CRAs were invited to adopt into their internal processes on a "comply or explain" basis (International Organisation of Securities Commissioners 2004). The code included rules on conflict of interest, quality and methodology of the rating process, and CRAs' responsibility towards investors and issuers.

The US Congress started regulating CRAs in the United States in 2006 with the Credit Rating Agency Reform Act, but it was only in the wake of the global financial crisis that it became clear that the prevailing voluntary compliance was not enough and the IOSCO Code was revised. CRAs came under the spotlight when the subprime crisis erupted in 2007, as they were accused of misrepresenting the risk related to mortgage-based securities and other complex investment products. While they had often given top tier (AAA) ratings to many structured securities during the pre-crisis housing boom, agencies often downgraded them to "junk" status when the housing market collapsed, and the stability of financial markets was undermined by the "cliff effects" caused by these downgrades and the forced sales that they entailed. CRAs were accused of rating instruments that were too complex to be rated, of providing ratings even when they did not have access to the necessary information, and of sacrificing quality to attract clients and win bigger shares of the lucrative ratings market. Several reports by official bodies and regulators, both at global and European level, scrutinised CRAs' role in the crisis and highlighted several shortcomings, ranging from rating methodologies to governance issues, thus giving impetus to a strong regulatory agenda. Whereas in the United States CRAs were primarily accused of failing to acknowledge the risks of complex structured derivative products, criticism in Europe focused on their overreaction during the sovereign debt crisis. Critics indeed argued that they adopted an opposite stance to what they had previously done in the US, namely aggressively downgrading to junk status the public debt of several European sovereign states with little consideration for the countries' economic fundamentals. Their low credit assessments contributed to rising interest rate spreads on the public debt of crisis-ridden economies (Greece, Ireland, Portugal, Spain, Italy) and in some cases specific announcements of rating downgrades were identified as significantly contributing to the market turmoil.

It is important to note that until the financial crisis in Europe there had never been an effort to regulate credit rating agencies at either EU or national level. EU

Member States deferred to regulators in the US (where the largest CRAs were based) and European companies also relied significantly less on capital markets, meaning that the role of CRAs was of comparatively less importance on the continent, thus creating fewer incentives to establish a dedicated regulatory regime (Lannoo 2010). After years of self-regulation, the U-turn in the European Commission's approach took place after the European Council of October 2008 called for legislative action to strengthen rules and supervision of CRAs at EU level. The Commission consulted on policy options to establish a comprehensive regulatory framework in July 2008; the legislative proposal was presented in November, based on the IOSCO code but supplemented by an enforcement mechanism. At this point it was clear that policymakers' faith in self-regulation had eroded, with Commissioner Charles McCreevy describing the IOSCO code as a "toothless wonder" (Stiglitz 2010). The Regulation (Reg. No 1060/2009, thereafter CRA I) was approved in April 2009. In line with the G20 policy recommendations, the most salient feature of the Regulation was the establishment of a registration and supervision system. At first, the Committee of European Securities Regulators was given responsibility for the registration process, which was compulsory for all CRAs wishing to conduct business in the EU. The Regulation also incorporated provisions on conduct of business, conflicts of interest, rating methodology, transparency and corporate governance. The supervision of CRAs, despite the global nature of the business, was initially left in the hands of Member States' national authorities. Such a supervisory mechanism was however soon considered burdensome and inadequate, as it became clear that national supervisors were not equipped to cope with the global dimension of CRA activities: in February 2009, the High Level Group on Financial Supervision chaired by de Larosière proposed a new supervisory architecture for the European Union and the centralisation of CRA supervision. Following the establishment of the European Supervisory Authorities (ESAs), the European Securities and Markets Authority (ESMA) became the natural candidate for EU-level supervision of credit rating agencies. The second CRA Regulation (Regulation No 513/2011) thus provided for the transfer of registration and supervision responsibilities to the newly created ESMA.

While the crisis in the US mortgage market had sparked the initial regulatory action on CRAs, it was the sovereign debt crisis that acted as a catalyst for further legislative reform in Europe. CRAs were indeed heavily criticised for their responses when the crisis broke in the European periphery and blamed for exacerbating it, most notably when Standard and Poor's downgraded Greece's debt to "junk" status in April 2010 and declared that it would consider the voluntary restructuring of Greek debt as a default, thus complicating the emergency financial assistance package that was being arranged at European level. Similarly, Moody's created outrage when it downgraded Portugal's debt to junk as the country's bailout was being negotiated, and Standard & Poor's downgraded nine Eurozone countries in January 2012 thus maintaining an AAA rating for only a handful of Member States (Brummer and Loko 2014). Part of the issue lay in the fact that the downgrade of several European sovereigns had concrete direct consequences on the financial assistance packages that were being negotiated for them. Furthermore, the timing and nature of some of the sovereign downgrades were disputed due to the greater use of qualitative factors and ultimately subjective judgments that these involved compared to corporate ratings; agencies were even accused of infringing national security and making politically motivated decisions. The issue of sovereign ratings was so controversial that proposals were flouted to establish an EU rating agency, publicly funded, which would focus exclusively on assessing the creditworthiness of European sovereigns, a proposal which was soon deemed impracticable.

Additional legislative action was called for to address several outstanding issues, such as the still unsolved problem of overreliance on external ratings, the poor competition in the industry, a possible civil liability regime and the specificities of sovereign ratings. The rules agreed as part of the third CRA Regulation, adopted in January 2013 (Regulation No 412/2013), comprised specific rules on publication of sovereign ratings, but also strengthened provisions on conflicts of interest and mandatory analyst rotation for certain rating categories. Wider-ranging proposals to reduce reliance on CRA assessments of sovereigns, or to even suspend sovereign ratings altogether, were not adopted in the final reform package. A civil liability framework was however put in place, foreseeing CRAs' liability for damages to investors in cases of intentional infringements of the Regulation or gross negligence. The rules were agreed with limited difficulty despite the opposition of the CRA industry, which argued that the reforms would unduly increase costs and reduce innovation, and other financial institutions, which argued that the small number of competent CRAs would make the rotation rules ineffective (Brummer and Loko 2014).

6.2 The Commission's and ESMA's information demand

This section analyses the information demand of the two institutions, the Commission and ESMA, which I argue is a significant factor behind the difference in the average lobbying success levels experienced by stakeholders. More specifically, in line with exchange theory my second hypothesis states that *lobbying success is correlated with policymakers' demand for information: interest groups will be more successful in lobbying the European Commission than ESMA given the latter's lower information demand.* To check whether this hypothesis is supported by evidence, the chapter analyses the two venues' information demand drawing upon a range of sources including their websites, information provided by interviewees, grey literature and newspaper articles. More precisely, it looks at the typical profiles of officers and senior decision-makers working in the two institutions, focusing on a range of criteria such as their educational background, any direct professional experience in financial services (and specifically CRAs) and the steps taken in particular to gather stakeholder feedback when developing CRA policy. This section will therefore set out the information capacity of the two institutions on credit rating agencies, which is a necessary preliminary step to establish whether the different levels of demand for expertise can indeed explain the varying degrees of lobbying success. The following sections of this chapter analyse the consultation process for draft Commission (Level 1) and ESMA (Level 2) rules on CRAs. This allows me to cross-validate the results of the quantitative text analysis and check that the results of the regression models are consistent with qualitative evidence, but more importantly it establishes the role played by the policymakers' demand for information in driving stakeholders' lower success when influencing ESMA compared to the Commission.

When assessing the European Commission's information demand in the case of credit rating agencies policy, the first obvious observation is that the relevant Directorate-General responsible for financial services (DG MARKT, prior to the organisational change that led to the creation of DG FISMA) had no dedicated unit at the time. As with most administrations, Commission policy departments (called Directorates-Generals, or DGs for brevity) are divided by area into directorates, each of them further structured in teams of 10-20 officials called units. While DG MARKT had specific units responsible for banking issues, securities markets, pensions and insurance, there was no dedicated office for CRAs. This can be explained by two reasons. First and most importantly, when the first Commission consultation was published in 2008 there was no EU law regulating CRAs, and the light-touch monitoring being undertaken was not performed by the Commission but rather by the Committee of European Securities Regulators (CESR). Ratings and CRAs were mentioned in prudential requirements regulations, which recognised banks' use of external CRA ratings for their internal risk management purposes, but no specific rules were imposed on them. As explained in the previous section, CRAs' main product was embedded into the financial system, but there were no requirements on agencies' business models or their rating methodology. Second, not only did no regulation or directive exist at EU level, credit rating agencies were also unregulated and unsupervised at Member State level. In-house expertise on CRAs was therefore scarce not only in Brussels, Commission officials could also not source information on CRAs from domestic supervisors or policymakers. The absence of a dedicated unit points to little (if any) institutional expertise on credit rating agencies within the Commission, at least at the beginning of the post-crisis regulatory reform period when agencies were yet unregulated.

It is also helpful to go beyond the institution-level evidence and assess the expertise of key decision-makers inside the Directorate-General. Even with no dedicated regulation or officials responsible for the sector, it could indeed be conceivable that DG MARKT at the time employed administrators who had gathered plenty of industry experience, perhaps working for one of the credit rating agencies themselves, and could thus apply their prior expertise when it came to drafting rules on CRAs. As there was no dedicated unit to deal with CRAs, the file was assigned to the unit on securities markets inside DG MARKT. When the first consultation on CRAs was issued, the responsible Head of Unit was relatively new to leading the securities markets unit; while having plenty of Commission experience, she also had no direct experience in the financial sector when the Commission started developing CRA policy. When a dedicated unit responsible for credit rating agencies (and auditing) was finally created within DG MARKT, the official tasked with leading it (N.B.) had a similar generalist profile with no academic or professional background in finance, nor in the more specific field of credit risk assessment. After joining the EU administration, she had been primarily involved in institutional matters such as designing the Commission's implementing powers, working on the EU institutional reforms and coordinating relations with the European Parliament and Council. Similarly, the responsible Director of Financial Markets M.M., whom the heads of unit reported to, had a social science background and no industry experience when he joined the Commission. He had worked in the French Treasury for a couple of years before starting his Commission career, which included the position of assistant to the Director General, a Cabinet position, and the role of Head of the Unit “Financial Services Policy and Relations with the Council”, responsible for defining the Commission’s policy on financial supervision and generally coordinating the response to the global financial crisis. He was later appointed Director for Financial Markets, overseeing securities markets regulation as well as asset management and financial infrastructure; he had therefore plenty of experience on financial regulation but no direct professional experience in the financial sector, or expertise on CRAs. The picture changes little for other senior decision-makers at the European Commission: both the Director General of DG MARKT, J.F., and its Deputy Director General at the time, O.G., had social science degrees and no professional experience in the private sector before joining the Commission ranks. After studying law at the University of Sussex and European Studies at the College of Europe in Bruges, J.F. indeed joined the Commission soon after completing his studies and rose through the ranks of the administration. Moreover, he only took responsibility for financial services in 2010, having previously dealt with competition policy and later justice and home affairs, so he too had little direct experience in financial services regulation, and none in finance. O.G. had a similar career path: after studying political sciences and spending a few years at the French ministry of economy and finance, he joined the Commission in 1992, alternating periods in the Cabinets of various Commissioners and the Directorate-General for Competition.

One could argue of course that senior decision-makers within the Commission mostly need managerial competences and a certain political savoir-faire, and that they rely on desk officers’ expertise for drafting legislation: while this is certainly true, it is nevertheless remarkable that none of the Commission policymakers responsible for the development of CRA regulation had direct professional experience in the financial sector, let alone in dealing with credit rating agencies. According to available data, it also seems that none of the working level officials involved in drafting CRA legislation had direct experience of working for a rating agency or in credit risk assessment. This would not be particularly surprising, as the requirements for joining the Commission as a permanent official do not include specialised expertise: alongside rare specialist competitions which have only been launched in the last few years, the main route to enter the institution is the generalist "concours" which neither requires any professional experience among its eligibility requirements, nor imposes specific requirements about degrees other than having obtained one. In practice, social science backgrounds are common, and most people join the Commission either at the beginning of their careers or with little professional experience, while lateral moves from the private sector at more senior levels are extremely rare. Furthermore, it is mandatory for officials working at the Commission to rotate positions after a number of years, often even beyond the Directorate-General where one works. For example, an official could theoretically work at DG MARKT (nowadays DG FISMA) for 8-10 years and thus acquire specialised knowledge of securities regulation, and then be forced to move not only to a different unit within the same DG (where she would still be responsible for financial services regulation, albeit in a different sector) but often to a completely different DG, such as the one responsible for agriculture or regional policy. The fact that most Commission officials join this institution through the generalist competition, have little (if any) professional experience and are required to often rotate their positions during their careers biases the staff towards a generalist profile rather than highly specialised knowledge in one field. While this might be beneficial in terms of flexibility, horizontal skills or ability to pick up new political priorities, it certainly makes the accumulation of specialised expertise more difficult. In the words of interviewed stakeholders, "*the staff at the Commission is less experienced and this is made even worse by internal mobility*" and "*the rotation obligation creates a huge loss of expertise and this means that Commission officials can be more easily influenced by stakeholders*".

A further marker of the Commission's need for expert information in the case of CRAs is the fact that it launched two different stakeholder consultations over a few weeks in 2008, the first to seek feedback on the proposed CRA Regulation on a wide range of issues and the second to gather specific comments on reliance on credit ratings. As it is often the case when drafting or assessing legislation, the Commission also sought external input from other institutions. Once the subprime crisis erupted in 2007, the Commission had already asked the Committee of European Securities Regulators (ESMA's predecessor) to assess regulatory options on CRAs (Committee of European Securities Regulators 2008b). In addition, another report was commissioned in 2008 to the European Securities Markets Expert Group (ESME), an advisory body composed of industry representatives which has since been dismantled. Furthermore, to complement the information provided through the consultation, the Commission sought additional information from relevant stakeholders on its CRA proposals through a roundtable (on 6 July 2011) and dedicated stakeholder meetings: as stated in the explanatory memorandum accompanying the legislative proposals, the Commission "*held discussions with credit rating agencies, and sought comments from other interested parties including industry associations from the insurance, securities and banking sector and information providers*" (European Commission 2008). While it is extremely difficult to know how the information provided by stakeholders is processed internally to the Commission, it is interesting to note that the institution is required to publish a summary of stakeholder replies to its consultations, and of relevant public proceedings such as hearings and roundtables, in the impact assessments and/or explanatory memoranda accompanying its legislative proposals. The Commission's Better Regulation guidelines set out the detailed steps that officials responsible for developing policy must take when organising stakeholder consultations, and require that their feedback is used to inform policy: "*the contributions received through the various consultations carried out in the context of the consultation strategy feed into the further work related to the policy initiative*" (European Commission 2017). While the guidelines invite Commission staff to provide feedback to stakeholders on "*how, and to what extent, their input has been taken into account and why certain suggestions could not be taken up in the policy formulation*", they are not binding and such an explicit indication of the comments taken onboard is usually not provided by the Commission. The presentation of stakeholder views in the impact assessment accompanying the CRA proposals indeed steps short of stating which of the stakeholder comments were ultimately accepted, but it does summarise the main points raised in the consultation by respondents. I will however endeavour to establish what the Commission accepted among the comments provided by interest groups, and how their feedback altered its policy proposals, in the next section of this chapter.

Moving to the agency, my expectation is that ESMA's demand for expertise was relatively low in the CRA case, and in any case lower than that of the Commission in line with Hypothesis 1. While at the time ESMA was a newly established institution, it had already created a dedicated unit and could also rely on expertise provided by the national competent authorities sitting on its Board, expertise it regularly draws upon in its rulemaking function. When looking at ESMA's information capacity, a crucial difference with the European Commission is that the authority set up a dedicated CRA unit very early on, as evidenced in the organigramme contained in its 2011 Annual Report (European Securities and Markets Authority 2011a). The CRA unit was arranged as soon as the agency took on responsibility for credit rating agencies, and well before the rulemaking process on the related Level 2 rules started. The unit was led by F.F., a lawyer with considerable financial services experience who *inter alia* had previously worked for the Dutch Authority for Financial Markets, where he had led the capital markets team before joining ESMA. Other senior policymakers responsible for CRA policy were the Executive Director, who had extensive experience working for the UK financial regulator FSA including overseeing markets policy there, and the Chair, who had long worked as an academic specialising in financial reporting and auditing, areas which are quite close to CRAs. Over the course of 2011, ESMA's CRA unit grew from five to twelve staff, and it reached eighteen officers by the end of 2012, thus displaying a considerable investment made by the authority in specialised CRA expertise. Table 10 below summarises the background of senior decision-makers responsible for CRA policy at both ESMA and the Commission, evidencing the difference in specialised expertise and professional backgrounds between the two institutions.

Table 10. Background of senior Commission and ESMA officials in CRA case

European Commission	**ESMA**
Head of Unit, Securities Markets: M.-T. F.-F. Academic background: law, economics and international relations. Professional background: different Commission DGs, no prior experience in the financial sector.	*Head of Unit, CRAs: F.F.* Academic background: law Professional background: international law firm, European Commission, Dutch central bank, Dutch Authority for Financial Markets.
Head of Unit, CRAs and auditing: N.B. Academic background: European law and politics Professional background: lecturer and freelance consultant, then extensive experience in the Commission on institutional matters and interinstitutional coordination. No prior experience in the financial sector.	*Executive Director, V.R.* Academic background: economics and Chinese Professional background: Bank of England, UK Financial Services Authority

Director for Financial Markets, M.M. Academic background: social sciences Professional background: French Treasury, Commission desk officer, Assistant to the Director General, Member of Cabinet, Head of Unit "Financial Services Policy and Relations with the Council". No prior experience in the financial sector.	*Chair, S.M.* Academic background: business economics Professional background: academia, Dutch Authority for Financial Markets, IFIAR
Deputy Director General, O.G. Academic background: political science Professional background: French Treasury, various Commission DGs (incl. competition). No prior experience in the financial sector.	
Director General, J.F. Academic background: law and European studies Professional background: various Commission DGs (competition, justice and home affairs). No prior experience in the financial sector.	

Unfortunately, moving beyond senior managers there is no publicly available information on the CVs and background of policy officers who were working within the unit at the time. However, ESMA staff are rarely generalists, in contrast to the Commission. Since its establishment, the authority developed a human resource policy aimed at hiring staff with strong technical expertise and knowledge of financial markets, and ESMA vacancy notices typically require specific experience of relevance to the role sought. For instance, a 2014 vacancy for a Credit Rating Agencies supervision officer (who would be responsible inter alia for developing Level 2 rules) listed among its essential requirements "*work experience in the area of financial supervision or regulation in a supranational authority, other supervisory body or in a financial services provider*", while the advantageous requirements were even more demanding and effectively ruled out any candidate with no prior CRA-specific professional experience (European Securities and Markets Authority 2014a). These covered notably the "*ability (acquired by work experience) of conducting legal or economic analysis of credit rating agencies and/or financial institutions or markets*", knowledge of the CRA Regulation, of the EU institutional framework, and of the European financial regulatory framework. The authority's intention to specifically recruit officials with prior experience working for a credit rating agency was explicitly discussed at one of its Management Board meetings, in November 2011 (European Securities and Markets Authority 2011b). Many of the ESMA staff are also seconded from national competent authorities, so they have prior regulatory or supervisory experience in the relevant sector.

All in all, when comparing ESMA's in-house expertise with the Commission's, it is generally the case that the Commission staff is less experienced, while the "*level of technical quality is much higher in the European Supervisory Authorities*" as stated by one of the interviewees. All stakeholders I interviewed confirmed that the level of technical knowledge is considerably higher in the case of ESMA, and one of them directly cited the difference in in-house expertise as one of the factors driving the difference in lobbying success levels experienced when targeting the two institutions. It is clear that the agency had higher prior knowledge, as it could rely on a dedicated CRA unit and on prior, more specialised, professional experience of key responsible staff. To complement this in-house expertise, ESMA set up a dedicated Technical Committee, mandated to provide advice on policy decisions regarding CRAs. The committee's mandate covered technical advice to the Commission, guidelines and recommendations, technical standards, assessments of third country regimes and relevant cooperation agreements. As with all the committees and working groups established by ESMA, the CRA Technical Committee comprised representatives of the national competent authorities who also sit on ESMA's Board of Supervisors. While ESMA staff is responsible for holding the pen and for chairing these groups, considerable drafting input comes from national regulators. In other words, ESMA's information capacity and in-house expertise were strengthened by the technical information and input provided by the national authorities during the Level 2 rulemaking process, thus further weakening the demand for expertise supplied by external stakeholders. In the case of CRAs, the national competent authorities had been responsible for supervising agencies for a while then the draft rules were under consideration, and were thus able to provide input to ESMA on CRA business models, information that they had gathered through supervisory experience.

An additional indication that ESMA had a weaker need for stakeholder information is the fact that the authority, differently from the Commission, did not organise any hearing or roundtable as a further means to gather feedback alongside its consultation processes, despite often doing so in other cases. As explained in chapter

3, ESMA is mandated to arrange public consultations as part of its rulemaking process, so the absence of any additional, non-compulsory step to gather stakeholder feedback is a further marker that the authority already possessed adequate information and did not necessarily need the expertise supplied by interest groups.

Having compared the two institutions, there was apparently little or no institutional knowledge on credit rating agencies inside the Commission, as the administration had no dedicated team responsible for the credit ratings market. Furthermore, key decision-makers in DG MARKT had no direct professional experience in the financial sector, let alone in the field of credit risk assessment, and an educational background in social sciences. The Commission's information demand was therefore quite high in this case, which would explain the higher reliance on expertise provided by stakeholders. In contrast, ESMA could rely on a team of specialised policy officers who had been recruited based on their expertise on credit rating agencies, or at least supervisory experience in financial markets. Moreover, its senior management responsible for CRAs similarly had direct academic or professional experience on financial regulation. Using the criteria set out in chapter 4, table 11 below visualised the difference in information capacity between the two institutions.

Table 11. Difference in CRA information capacity between Commission and ESMA

Criteria	European Commission	ESMA
Number of dedicated staff (at time of rule development)	No specialised CRA unit	Specialised CRA unit with 12 staff in 2011, growing to 18 in 2012 (when Level 2 drafts were finalised)
Educational background	Social science, politics and law	Mostly economics and business studies
Professional experience in finance	None or very rare	Yes, both in the private sector and in financial supervision/regulation
Length of time spent in financial regulation	Low-medium	High

To sum up, this section established a remarkable difference in the information capacity of the European Commission and ESMA, due to a range of factors including their typical recruitment policies. This is in line with my first hypothesis that *the European Commission has a higher information demand than the European*

Supervisory Authorities, due to the inherent difference in their in-house technical expertise. I argue that this variation in the amount of in-house information possessed by the two institutions is a significant reason driving the difference in lobbying success experienced by stakeholders when targeting the two venues, all else equal. If a policymaker can already count on considerable specialised expertise, it will have a lower demand for the relevant information provided by stakeholders and the latter should be less reflected in the final policy. In the next two sections, I will process trace the consultations arranged by the Commission and ESMA respectively on their draft Level 1 and Level 2 rules; this will enable me to cross-validate the results of the quantitative analysis and to establish how the information provided by stakeholders altered (or not) the two institutions' positions from before to after the consultation. Using a wealth of documentary evidence and feedback from the interviews I conducted, the remaining of the chapter will show how the Commission's higher necessity for external information resulted in the institution taking on board a considerable number of the stakeholder comments submitted during the consultation, while ESMA had a lower demand for external expertise and only marginally altered its original proposals to reflect stakeholder feedback.

6.3 Lobbying success at the Commission level

This section investigates whether the Commission's information demand can explain stakeholders' higher success in influencing its draft rules on CRAs. The results of the quantitative analysis indicate an average lobbying success score of 0.9 on CRA policy at the Commission level; this is quite high considering the range of the variable is 0.2-1.4 in my database. This section will go a step further to establish whether the policymaker's high demand for external expertise is a significant factor behind this high level of lobbying success. At the same time, I explore stakeholders' success qualitatively to cross-check the quantitative results and increase confidence in the validity of my lobbying success measure. To do so, this section includes an in-depth analysis of the Commission proposals for the first CRA Regulation and compares the initial consultation paper with the final drafting. This allows to perform a qualitative cross-check of the automated quantitative text analysis and establish how the

Commission's information demand contributed to interest groups' success. More specifically, I analyse the Commission's consultation paper that was open for comments between 31 July and 5 September 2008, the circa 90 replies submitted by stakeholders and the final legislative proposal issued by the institution in November 2008 after the consultation process ended.

The Commission consultation paper took a strong normative view on the role that CRAs had played during the crisis, stating that there had been a "*manifest failure of self-regulatory efforts*" and that the framework needed to be significantly strengthened to react to the "*debacle*" experienced especially in structured credit markets, where agencies had offered favourable opinions that were "*financially engineered to offer high confidence to investors*" (European Commission 2008a). The Commission proposal had three main objectives: a) improve the quality of ratings, b) mitigate conflicts of interest, and c) enhance the transparency of the ratings process. First and foremost, the Commission proposed creating an EU regime for the authorisation and supervision of CRAs, with a one-stop-shop system for registration and a mechanism for supervisory coordination among national competent authorities. Rating agencies would have to establish internal control and risk assessment functions and regularly review rating methodologies. Moreover, to enhance the transparency of ratings the Commission's proposals mandated CRAs to disclose their methodologies – something that CRAs were already doing for the most part – but also to contribute to a publicly available repository of ratings that would be maintained at EU level.

In order to improve the quality of ratings, the proposed rules imposed several conduct of business and transparency requirements. Agencies would for example need to periodically disclose information on their largest clients and on the historical default rates of their rating categories, and annually publish a transparency report with information on their legal structure and any ownership interests, internal quality control system and credit rating review, record-keeping policy, and financial information on their revenues, including the share derived from ancillary services. The Commission proposal banned CRAs from providing consultancy or advisory services, such as making recommendations on the design of structured product instruments: this issue was perceived as creating significant conflicts of interest, as agencies often provided clients with their assessment of the likely rating of structured finance securities and advised them on how to achieve the desired score, before a different part of the CRA business proceeded to perform the actual rating assessment for the same clients. Ancillary services would still be allowed, but the definition of what exactly this entailed was left to CRAs; these would be any non-rating services offered to the client and not related to the independent analysis and rating of a security. While several stakeholders called into question the very grounds of the Commission proposal or argued it was too burdensome, departed heavily from international standards and had extraterritorial effects, the EU registration and supervision elements of the proposal did not change in the final legislative draft. Nevertheless, stakeholders were successful in considerably influencing the Commission's stance in four crucial areas: (1) corporate governance requirements, (2) revenue concentration, (3) analyst rotation, and (4) rules on ratings for structured products. I will analyse these in turn and establish how the Commission changed its initial proposals to reflect the information provided by stakeholders.

Alongside the general requirement for CRAs to hire employees with "*sufficient knowledge and experience*", the Commission draft proposal included detailed corporate governance rules and notably required a majority of executive and non-executive directors to have "*sufficient experience in understanding credit risk and relevant modelling sensitivity analysis techniques across the range of investments and credit structures that fall within the scope of activity of the credit rating agency*", thus requiring highly specialised expertise in a narrow technical field (European Commission 2008a). The proposed draft also envisaged to link directors' remuneration to the "*quality, accuracy and integrity of the rating process*" rather than to the growth in earnings or share price of the CRA, and their term of office would not be renewable.

Despite the corporate governance rules being targeted only to CRAs, the proposal attracted considerable criticism from a wide range of stakeholders who all argued that the requirements on non-executive directors were too onerous, did not consider differences in domestic company law, and even showed a misunderstanding of the role of independent directors. Unsurprisingly, the proposals were not welcomed by the rating agencies themselves: for instance, Fitch argued that no similar corporate governance requirement had ever been set for any financial services provider in EU law, and Moody's stated that the requirement for a majority of directors to be experts in specific areas of credit risk would introduce "*a more difficult to manage conflict of interest in the CRA business model*" and was neither practical nor desirable (Moody's 2008, Fitch 2008). Similarly, Standard & Poor's argued that while corporate governance standards often vary across countries, in many cases non-executive directors are valuable "*precisely because they will bring a different perspective to the deliberations of the Board*" and need not be experts to exercise independent judgment on corporate affairs (Standard & Poor's 2008). The rating agencies were joined by many other stakeholders in pushing back against these rules: for example, many banking associations including the British Bankers' Association, the European Banking Federation, the European Association of Public Banks and the Securities Industry and Financial Markets Association all argued in their comment letters that the draft corporate governance rules were unworkable and misplaced (BBA/ICMA/LIBA 2008, European Banking Federation 2008, European Association of Public Banks 2008, Securities Industry and Financial Markets Association 2008). Some argued that the requirements would have restricted the pool of adequate directors, and even "*severely limit the ability of CRAs to source and appoint sufficient numbers of non-executive directors*" (Institutional Money Market Funds Association 2008). The Association of British Insurers, the American Chamber of Commerce in the EU and the German Fund Association (BVI) also pushed back against the corporate governance proposals, with the latter stating that the suggested requirement for independent directors to have experience in "*relevant modelling sensitivity analysis techniques*" was inconsistent with the fact that director qualification rules are not intended "*to create a board of mathematical rocket scientists*" (Association of British Insurers 2008, American Chamber of Commerce to the EU 2008, BVI 2008).

The Commission took onboard stakeholders' (almost unanimous) feedback and changed the draft to merely require members of administrative or supervisory boards to have "*expertise in financial services*", thus dropping all the detailed requirements regarding knowledge sensitivity analysis and credit risk (European Commission 2008b). As confirmed by my interviewees, corporate governance is indeed an area where the Commission had little in-house expertise, as requirements on company boards are set at national level, vary widely across countries and are not harmonised in EU law. Furthermore, there were no specific requirements on corporate governance in any existing area of EU financial services policy at the time, meaning that DG MARKT officials working on the CRA proposals did not necessarily have the expertise or required knowledge on the practicability of these requirements, and thus reflected stakeholder input in the final proposals.

Among the conflict of interest rules, the most significant proposal in the Commission's draft was a ban on issuing ratings when the CRA gained more than 5% of its annual revenue from a single client (rated entity), a provision going much further than the corresponding IOSCO code rule requiring disclosure when single client-revenue surpassed 10% of the total. Moreover, the CRA would be banned from issuing a rating when either itself, the analyst involved or the person approving ratings had any direct or indirect ownership interest in the rated entity, or otherwise had links to the rated entity in the form of membership of their administrative, management or supervisory bodies (European Commission 2008a).

Stakeholders were particularly successful in influencing these proposals, as after the consultation the Commission reconsidered the ban on issuing a rating when a CRA's revenue share from that rated entity surpassed 5% of its total revenues. A vast range of stakeholders argued that the rule was disproportionate, especially when compared to the IOSCO code of conduct and to US law, which both only required disclosure when a single client relationship was responsible for more than 10% of the agency revenue. Only one submission to the consultation expressed support for this proposal, while serious concerns were expressed by the CRAs, the Association of German Banks, the Commercial Mortgages Securities Association, various European banking associations, the London Investment Banking and British Bankers' Association, and the International Capital Market Association amongst others (German banking associations 2008, Commercial Mortgages Securities Association 2008, BBA/ICMA/LIBA 2008, European Banking Federation 2008). Some stakeholders questioned the very "*presumption that an irresolvable conflict of interest arises on the mere fact that a rated entity (including its related parties) represents 5% or more of CRA revenue*" (Securities Industry and Financial Markets Association 2008); others underlined the operational difficulties it would pose for smaller CRAs who had less than 20 clients and the barriers to entry that the proposed rules would create in an already oligopolistic market. The funds industry provided information on the operational consequences this rule would entail for funds and wider market liquidity implications, with the European Fund and Asset Management Association (EFAMA) and the Investment Management Association noting that forced rating withdrawals would create significant issues with fund mandates, which often contain rules preventing investing in unrated instruments (or forcing selling of instruments falling below a certain rating category) (European Fund and Asset Management Association 2008, Investment Management Association 2008).

The Commission acknowledged these concerns and correspondingly changed its proposals by turning the ban into a less consequential disclosure rule, which would however be triggered when the revenue threshold reached 5% rather than the 10% foreseen by the IOSCO Code of Conduct. In this case, the Commission had not considered the consequences that the ban would have on the oligopolistic CRA market, which is dominated by three very large US firms, and the difficulties it would entail for smaller European CRAs and new entrants which often have only a handful of clients. Having received from stakeholders extensive information on the likely adverse consequences of its revenue concentration proposal, the Commission altered its draft and turned the suggested ban into a disclosure requirement.

Another Commission proposal aimed at addressing potential conflicts of interest was to mandate the rotation of responsible analysts for any given rated client every 4 years; this would ensure that the analyst-client relationship would not incentivise the CRA to grant excessively generous ratings and compromise the necessary analytical independence. Many respondents to the consultation argued however that forcing analysts to rotate every 4 years could hinder the accumulation of expert knowledge and thus run counter to another important stated objective of the Regulation, namely enhancing rating quality. For example, the Canadian rating agency DBRS underlined how the Commission proposal would not be adequate to manage the concern about long-standing relationships with one rated issuer, as "*equity and bond analysts build their expertise and experience by becoming specialists in niche markets and establish their careers through a necessary period of longevity*", and that "*it would be harmful to ratings accuracy to cut short the development of such expertise and experience*" which "*required a period longer than four years*" (DBRS 2008). Similarly, the Japanese rating agency JCR stated that "*analysts can gain the specialised knowledge only incrementally through analysing enterprises in the same business sector over a long period of time*", and emphasised how this provision would "*create competitive disadvantage of small-to-medium sized CRA to their larger rivals*" (Japan Credit Rating Agency 2008). Several respondents also raised the practical difficulties that this rule would create for smaller rating agencies that employ limited pools of analysts and as such would likely experience difficulties in complying with the rule. Finally, respondents explained that the analysts who would be subject to this rule are only responsible for suggesting a proposed rating, which must then be approved by an internal ratings committee or similar senior governance that every CRA has in place. Moody's for instance said that the draft policy "*misunderstands the nature of the rating process*" and underlined how "*rating decisions are the product of a rating committee and not a single analyst or rating team*", which already provides a countervailing check to potential conflicts of interests at analyst level (Moody's 2008). While the Commission maintained the rotation rule in the final proposals, similarly to the previous issue it acknowledged the consequences that analyst rotation would have for small CRAs and new market entrants, as it took some of the stakeholder feedback on board by creating an exception for agencies employing less than 50 staff.

The final area where stakeholders were quite successful in influencing the Commission's proposals were ratings for structured products, which the consultation paper had envisaged should be clearly marked with a different rating category altogether. While a few isolated interest groups (like the French Banking Federation) expressed support for this proposal, the overwhelming majority of respondents raised strong concerns on the complexity this would add to the rating system, whose purpose is to provide investors with easily comparable markers of creditworthiness. Opposition was expressed among others by the CRAs, the European Covered Bond Council, the German Fund Association, the Association of British Insurers, the Investment Management Association, and various banking associations (European Covered Bond Council 2008, BVI 2008, Association of British Insurers 2008, Investment Management Association 2008). For example, credit rating agencies such as Moody's underlined that the differences between corporate (simpler) ratings and structured finance ones are already widely known and that a distinction would provide no benefit; on the other hand the lines for demarcating what exactly constitutes a structured instrument are blurred (Moody's 2008). Similarly the Investment Company Institute, a US trade body representing funds and other investors, emphasised how any differentiation of rating symbols for products could have adverse consequences without adding to the "*quality, integrity or clarity*" of a structured instrument credit rating (Investment Company Institute 2008).

Again, the Commission tweaked the proposals to react to stakeholders' feedback: while differentiated credit rating categories for structured products were still foreseen in the final draft, the Commission gave agencies the alternative option of publishing a report providing a description of "*how the credit risk characteristics* *associated with a structured finance instrument differ to the risk related to any other type of rated entity or financial instrument*" (European Commission 2008b). While the Commission proposals were aimed at ensuring that CRAs would signal the higher complexity of structured instruments with their rating system, the institution reflected industry feedback that creating a separated rating category would only make it harder for investors to navigate creditworthiness, and thus potentially be counterproductive to the aim of ensuring higher transparency.

Table 12. Comparison of Commission initial and final proposals on CRAs with stakeholder feedback

Issue	*Commission original proposal (pre consultation)*	*Stakeholder feedback*	*Commission final proposal (post consultation)*
Corporate governance	Directors need specialised knowledge in credit risk and sensitivity analysis	Independent directors sit on Boards to provide different viewpoints and do not necessitate such specialised expertise	Directors should have experience in financial services
Conflict of Interest - revenue concentration	CRAs cannot rate any client that represents more than 5% of their total revenue	The rule would have consequences on market liquidity (forcing investors to drop unrated entities) and reinforce the oligopolistic nature of the CRA market	CRAs have to disclose the potential conflict of interest when a client represents more than 5% of total revenue
Conflict of Interest – mandatory analyst rotation	Analysts for any rated entity are mandated to rotate every 4 years	The provision hinders the necessary accumulation of specialised knowledge and expertise, and can be problematic to implement for smaller CRAs	Smaller CRAs are exempted from the mandatory rotation rule
Structured finance ratings	CRAs must differentiate structured finance instruments ratings with different symbols or scales	The requirement does not improve rating quality and adds complexity to the system	CRAs can either differentiate ratings, or explain in a dedicated report the different credit risk of structured finance instruments

To sum up, carefully going through the information supplied by stakeholders and the difference this made for the Commission's final proposals validated the quantitative findings: the average lobbying success score of 0.9 is aligned with the qualitative evidence on the consultation, which shows that interest groups were quite successful in influencing the institution's legislative proposals on CRAs. As summarised in table 12 above, the Commission took onboard many of the stakeholders' requests as expressed in their comment letters: it replaced the foreseen rating ban with a disclosure requirement in case of revenue concentration, significantly amended the rules on corporate governance and director expertise, exempted small CRAs from the mandatory analyst rotation rule and watered down the provisions on structured finance ratings. However, stakeholders did not achieve all of their advocacy goals, as the Commission maintained its original proposals on the CRA establishment requirement, which had also raised concerns of extraterritoriality among respondents.

I argue that the Commission's high information demand is a significant factor contributing to this high lobbying success: as seen throughout this chapter, the policymaker possessed very little expertise on CRA business models when it was drafting its original proposals, which made it particularly receptive to the information provided by stakeholders. This is notably the case on the four issues analysed in detail in this section, where the change in the Commission's position points to its relatively low knowledge of CRA business models: this is exemplified clearly by officials' lack of familiarity with agencies' internal structure and role of ratings committees, or its poor appreciation of the usual expertise requirements for Board directorships and feasibility of its broader corporate governance proposals. Furthermore, the Commission had inserted in its consultation paper several provisions that would have had adverse consequences on the CRA market, particularly in their implications for smaller players and new entrants, an area where the information supplied by respondents considerably altered the institution's proposals.

6.4 Lobbying success at ESMA level

I now turn to analysing stakeholders' lobbying success in relation to ESMA's draft rules, on the same CRA policy. The results of the quantitative analysis indicate an average success score of 0.38 at ESMA level, which is quite close to the lower bound of the variable and in line with the general result of low(er) success levels when ESMA is targeted. This section analyses qualitatively stakeholders' success in influencing draft Level 2 rules prepared by ESMA, to validate the regression results and the automated text analysis of all consultation replies. More importantly, after having established ESMA's higher information capacity earlier in this chapter, this section establishes whether its lower demand for information resulted in a lower appetite to reflect stakeholder feedback in its final rules. To do this, it analyses the circa 40 responses to consultations that ESMA conducted in late 2011 before drafting Level 2 rules under the CRA Regulation, and compares them with the authority's initial and final rules to check if the policymaker took onboard any of the information supplied by respondents. In line with the quantitative results of low lobbying success, I expect that the institution's high in-house expertise meant that its final rules were not significantly altered to reflect respondents' feedback.

ESMA opened four different consultations under the corresponding Level 1 CRA Regulation, all of which of a technical nature: i) on CRA supervisory fees; b) on information to be provided by CRAs upon registration; iii) ongoing CRA reporting requirements to ESMA; and iv) compliance with CRA methodologies requirements. In its first consultation, ESMA outlined its proposals for different categories of supervisory fees: registration fees, ongoing fees, and certification fees for third-country certified CRAs (European Securities and Markets Authority 2011d). In terms of registration fees, ESMA presented two options: a simple flat fee, and different bands of fees which would reflect the CRA's foreseen turnover and the complexity of the application process. The second option, preferred by ESMA as more proportionate, would in turn be based on several criteria such as whether the agency had a branch in the EU, it would endorse third country CRA ratings, and whether it would also rate structured finance products. For ongoing supervisory fees, ESMA's proposal consisted in periodic fees: each credit rating agency would be charged a percentage of the total budget allocated to CRA supervision, based on the ratio of its applicable turnover to the total applicable turnover of all registered CRAs; the fee would thus be proportional to each agency's market share. The second option would be specific activity-based fees, which would be more accurate but also harder for CRAs to anticipate and plan for. In both cases, ESMA suggested a minimum fee of about 2000-5000 euros to cover for fixed supervisory costs. Finally, for certified CRAs ESMA suggested a flat fee for processing their application and an annual flat fee, unrelated to the CRA turnover.

The feedback received on this consultation came mostly from CRAs, and while expressing overall support for the proposals, several stakeholders sought changes to the draft rules. EACRA (the European Association of Credit Rating Agencies, representing smaller players in the EU market) raised serious concerns on the ongoing supervisory fees proposal, suggesting that many of the factors ESMA would consider (i.e. its budget and the total turnover of registered CRAs) could not be anticipated by rating agencies and would thus prevent them from properly planning supervisory costs (European Association of Credit Rating Agencies 2011a). Furthermore, EACRA noted that the proposed calculation method would not consider that registered CRAs' turnover could be based on activities other than credit rating, penalising smaller players who often start developing a rating business besides a more traditional business activity, and in turn would discourage new actors from entering the rating market in Europe. EACRA hence suggested activity-based fees would be a better solution and that ESMA should consider setting bands for those, similarly to the suggested approach for registration fees. The trade association called for the inclusion of a turnover-based element in ESMA's flat fee proposals for certified CRAs, and generally for setting a maximum supervisory fee. Among the "big three" agencies, Standard & Poor's did not respond to this consultation and Moody's agreed with the proposals, while Fitch disagreed with ESMA's proposal to create bands of registration fees based on various criteria (structured ratings, presence of branches, use of endorsement) and called for these fees to be based on anticipated turnover only, a position shared also by ICAP (Moody's 2011a, Fitch 2011a, ICAP 2011a). Moreover, Fitch called for much higher minimum supervisory and registration fees of around 20-30.000 euros. A proposal in the opposite direction came from a Portuguese CRA, which advocated a maximum fee of 500 euros for small CRAs for at least the first three years of registration, to alleviate fixed costs for smaller players and boost competition in the oligopolistic market (Companhia Portuguesa de Rating 2011a).

Remarkably, of these stakeholders' points ESMA took on board none, although it did slightly tweak the rules to favour smaller CRAs, as it included in its final draft an exemption from annual supervisory fees for small agencies, and abolished the minimum supervisory fee it had previously put forward. However, ESMA's proposals for its calculation method for supervisory fees, registration fees and fees for certified CRAs remained identical to the initial draft (European Securities and Markets Authority 2011e). The information provided by stakeholders in this case was mostly related to the consequences that some fee calculation methodologies would create for smaller agencies, or reflected a different policy preference for a more proportionate (i.e. based on business criteria) versus a simpler but less proportionate approach. In any event the authority's in-house expertise on supervisory fees – provided notably by its specialised staff, which typically counts on supervisory experience in a national regulator – meant that the feedback submitted through this consultation did not alter its proposals despite the different preferences expressed by stakeholders. In its final Level 2 rules, ESMA notably stated that it had considered "*the fees levied by the competent authorities of the home Member States currently responsible for the registration and supervision of the CRAs*" (European Securities and Markets Authority 2011e). While the agency had until then no responsibility for direct supervision of market actors and CRAs represented its first competence in this respect, further to its specialised staff ESMA could indeed gather input from its Board of Supervisors members, namely the national authorities experienced in CRA supervision.

In a similar consultation on the information to be provided by CRAs upon registration or certification, ESMA set the specific details any CRA would need to submit before registering, based on fine tuning of the existing requirements (European Securities and Markets Authority 2011f). Credit rating agencies would need to provide information on their programme of operations, the CVs of their senior management, an explanation and copy of any outsourcing arrangements, identification of direct and indirect owners including details on other qualified interests, and information on their systemic importance. Again, stakeholder feedback primarily came from the rating agencies, with the smaller agencies (PSR Rating and the trade body EACRA) underlining how the proposals would entail high fixed compliance costs and therefore create important barriers to entry for new players, and expressing concerns regarding the criminal records and outsourcing information to be provided (PSR Rating 2011a, European Association of Credit Rating Agencies 2011b). Moody's instead expressed serious concerns on the disclosure requirement that the draft rules would create in respect of ownership information, advocating that alongside the practical difficulties in obtaining the information for unlisted holdings, this represented an attempt by ESMA to inappropriately expand the scope of the Regulation (Moody's 2011b). A similar concern was raised by the European Association of Credit Rating Agencies, which stated that the information on CRA shareholders' further business activities should be limited to material interests (European Association of Credit Rating Agencies 2011b). Similarly to the first consultation, ESMA did not take any of the suggested changes onboard, and the final Level 2 proposal included only extremely minor tweaks to its original draft. The authority could again count on information it already possessed in-house, notably owing to the experience in registration procedures that the national competent authorities had gathered; moreover, in this peculiar case the policy represented a finetuning of existing rules thus weakening *ex ante* the necessity for stakeholder input (European Commission 2012a).

In its consultation paper on periodic reporting, ESMA suggested that CRAs should report analytical data on all individual rating actions on a monthly basis, including details on the time and date of rating notifications to the issuer, the location of the lead rating analyst and other highly granular information (European Securities and Markets Authority 2011g). The authority argued that the availability of detailed ratings data would allow it to have effective oversight of CRA activities and carry out preliminary assessments before more intrusive supervisory action, thereby enhancing the effectiveness of supervision. Differently from proposals around information to be provided upon registration, this entailed much more frequent and detailed reporting compared to existing practice. Stakeholders raised significant concerns in their responses, and all respondents apart from two (NYSE Euronext and the Association of German Public Sector Banks) called for an aggregated reporting framework, arguing that reporting details of all individual rating actions represented a disproportionate and burdensome requirement. Smaller agencies in particular suggested lower reporting frequencies (bi-annual or quarterly) for small CRAs, but larger firms like Moody's similarly advocated for aggregated reporting and noted the proposals represented an upheaval of the existing reporting framework. Moody's even stated that it did not believe "*ESMA's authority extends to creating a database of all rating actions taken by CRAs*", noting the authority's supervisory aim was unclear and the draft rules might be *ultra vires* (Moody's 2011c).

Despite the significant concerns expressed by large and small CRAs alike, ESMA once again did not significantly modify its proposals, other than cutting down the reporting frequency for smaller CRAs (without fully meeting their demand for semi-annual or quarterly reporting). The market research company ICAP Group had suggested for instance that smaller firms could submit data on their rating actions every 3 months, which the authority partially reflected in the final rule as it envisaged smaller CRAs with less than 50 staff could report data every 2 months (ICAP 2011b). Minor tweaks made to the reporting fields for rating actions consisted in the removal of details on the communication time of the rating and the seniority and currency of the rated instrument, a request which had similarly been specifically raised by ICAP. In this case, the feedback provided by stakeholders did not really consist in information on CRA business models, on adverse consequences that the proposals would have for the market or some segments of it or any other information that only interest groups could provide. The conflict focused instead on a pushback against what were perceived to be burdensome and costly requirements, which the authority decided nevertheless to impose in order to gather the necessary data to meet its supervisory objectives.

Finally, ESMA published a consultation paper on the requirements surrounding CRA methodologies (European Securities and Markets Authority 2011h). The Level 1 text stated that "*a credit rating agency shall use rating methodologies that are rigorous, systematic, continuous and subject to validation based on historical experience, including back-testing*". The draft Level 2 rules were designed to operationalise this rule and ensure that methodologies reflected relevant developments in credit quality, while preventing unreasonably frequent changes that could prove destabilising for rated entities, investors and the broader market. The draft presented by ESMA spelled out in clear terms what each of the methodology criteria – rigorous, systematic, continuous, and subject to validation – meant in practice. For instance, the validation requirement would require rating agencies to ensure they were employing robust, predictive and highly accurate statistical techniques and to assess the sensitivity of ratings to underlying assumptions in the methodologies. The statistical techniques used in validating the methodologies should demonstrate "*the robustness and predictive power of credit ratings over appropriate time horizons and across different asset classes*", as well as that "*the default probabilities or expected losses predicted by the rating model match the actual default and loss rates*" (European Securities and Markets Authority 2011h). Stakeholders raised serious concerns in their consultation responses, particularly regarding the general spirit of the requirements, which in their opinion went against the general principle of non-interference in CRA methodologies clearly set out in Level 1 legislation. ESMA proposals for example required detailed disclosure of how every quantitative and qualitative criterion behind a rating decision was being weighed by CRAs, described by Moody's as "*interference with CRAs' analytical independence*" which would have empowered the authority to be "*arbiter of the analytical merit of a methodology*" (Moody's 2011d). The CRA suggested an almost complete redrafting of the rules, underlining that the rules unless amended would result in agencies coalescing around one single rating approach, thus reducing the range of views in the market which investors appreciated. Other stakeholders, such as PSR Ratings, similarly emphasised the risk of regulatory interference created by the detailed minimum requirements (PSR Ratings 2011b, ICAP 2011c). PSR Ratings also questioned the overreliance that ESMA seemed to place on the statistical testing of methodologies, arguing that qualitative factors can be equally relevant in ratings, while ICAP questioned the requirement to promptly incorporate the findings of internal methodology reviews.

Similarly to the other consultations, ESMA took onboard only a minority of stakeholder comments: the only tweak to the rules was in relation to the back-testing requirement, from which the authority granted an exemption for CRAs having limited quantitative evidence available to support the predictive power of their methodology (European Commission 2012b). Similarly to the issues analysed above, in this case the agency could count on relevant information gathered by the national competent authorities sitting on its Board and on the supervisory experience that its staff had. While credit rating agencies found the proposed requirements burdensome and tried to limit the perceived interference in their analytical independence, ESMA was already knowledgeable on rating methodologies given the latter's mandatory public disclosure and driven by a policy intention to enhance their quality.

Table 13. Comparison of ESMA initial and final proposals on CRAs with stakeholder feedback

Issue	*ESMA original proposal (pre consultation)*	*Stakeholder feedback*	*ESMA final proposal (post consultation)*
Supervisory fees	Registration fees: fee bands based on CRA turnover and other criteria Annual fees: based on CRA turnover compared to all registered CRAs	Certification fees should be based on a range of criteria incl. turnover, and annual fees should be activity-based to improve predictability	Same as before, but smaller CRAs would be exempted from annual supervisory fees

	Certification fees: flat fees upon certification and annually		
Information to be provided at registration /certification	CRAs need to supply information on operation programme, management CVs, outsourcing arrangements, ownership structures and systemic importance	Requirements would be burdensome, particularly in relation to outsourcing and information on direct and indirect ownership which can be difficult to source	No change in requirements
Periodic reporting	CRAs need to submit detailed data on all individual rating actions on a monthly basis	CRAs should report data on an aggregate basis and reporting frequency should be quarterly or bi-annually	No significant change in requirements, ESMA only removed a few fields from reporting templates
Rating methodologies	CRAs need to validate their methodology using statistical techniques which are robust and have high predictive power	Disclosure requirements are too burdensome and the reliance placed on statistical techniques and back-testing too high	Same as before, with an exemption for small CRAs with inadequate quantitative evidence available

As shown in this section and table 13 above, after running its consultations on Level 2 proposals, ESMA took onboard only a very small number of stakeholder requests, essentially just applying minor tweaks to the rules and providing some relief to smaller credit rating agencies. CRAs and other interest groups were unsuccessful in getting the authority to change its proposals around supervision and other fees, the registration process, rating methodology requirements or periodic reporting of rating actions, which remained largely the same as the initial drafts. The only area where stakeholders realised their preferences was on rules for smaller CRAs, as ESMA took onboard the concerns around the effect that its proposals would have on the already very concentrated market and eased some requirements to favour new entrants. Once again, this cross-validates the quantitative results whereby the average CRA lobbying success score for advocates at ESMA level was 0.38, very close to the lower bound of the variable (0.2, with a maximum of 1.4 in my database). More importantly, this evidence supports my argument that ESMA's higher information capacity was a contributing factor behind the lower stakeholder success, as the ESMA officers drafting these proposals already had supervisory experience and therefore did not necessitate information from stakeholders on issues such as setting supervisory fees or periodic reporting. In the CRA case in particular, ESMA was as usual mandated to arrange public consultations on the rules, but it is telling that the authority did not take any further step to gather stakeholder input, suggesting that this was a procedural requirement rather than a genuine attempt by the authority to gather expertise from interest groups.

To conclude, this chapter used the case of credit rating agencies regulation to test the hypothesis that the Commission and ESMA's information demand is a significant factor behind the variation of stakeholders' lobbying success across the two institutions. I argue that the reason why stakeholders were considerably less successful in influencing ESMA was that the authority could draw upon considerable expertise when drafting the rules, and therefore had lower information demand compared to the Commission. I showed that the Commission's demand for technical information in the case of CRAs was quite high, as DG MARKT had no specialised in-house expertise at the time of drafting the Regulation, and none of the senior policymakers involved had any relevant professional experience in financial markets or on CRAs. In contrast, ESMA could rely on a dedicated CRA unit when drafting the necessary technical standards, and alongside in-house staff it had access to the information provided from NCAs. Generally speaking, ESMA employs people with relevant professional background, be it in a regulatory or supervisory role or in the financial industry itself, while the Commission relies mostly on policy generalists. In the words of one interviewed stakeholder, "*technically the staff at ESMA is more expert, and the Commission will never fully catch up: there will always be a gap*". Stakeholders remarked that the difference in expertise levels is quite visible, and that in the Commission's case one can sometimes see "*rules written by people who have no idea how the markets work*". Without going all this way, it is apparent that the Commission's reliance on generalist staff, coupled with its internal rotation rules, can result in a huge loss of specialised expertise which makes it more easily influenced by stakeholders. The problem of limited technical expertise is not significant in the case of ESMA, where staff are routinely seconded from NCAs or otherwise have previous relevant experience and are not subject to mandatory rotation requirements. This information confirmed my first hypothesis on the difference in information capacity between the two institutions. Furthermore, there are often differences between the two institutions in the steps they take to seek stakeholder feedback alongside the consultations that both routinely undertake. In the case of CRAs, the Commission organised a stakeholder roundtable and commissioned several external studies to gather additional information, including seeking technical advice from ESMA itself, while ESMA took no additional steps beyond organising consultations (which it is mandated to do).

In line with my second hypothesis positing that lobbying success is higher when policymakers' demand for information is greater, I expected stakeholders to be more successful when trying to influence the Commission as opposed to ESMA. The empirical results confirmed a higher success level at the Commission compared to ESMA, both generally across all policies (in the quantitative analysis) and in the specific case of CRAs (as cross-validated by the qualitative case study in this chapter). The analysis of the Level 1 and Level 2 consultations organised in the field of CRAs indeed allowed me to cross-validate the regression results, as stakeholders' lobbying success was considerably higher in the case of the Commission rules. In fact, while unable to influence the Commission on most substantive requirements, stakeholders were successful in achieving considerable changes on corporate governance requirements, conflict of interest rules and provisions for structured finance ratings. In contrast, when looking at stakeholders' attempt to influence the Level 2 standards drafted by ESMA, the analysis could ascertain that notwithstanding similar lobbying efforts, their success was minimal. ESMA's final proposals were only marginally different from the initial drafts subject to consultation, and the only tweaks made to reflect interest groups' comments were to alleviate some of the requirements on smaller CRAs, while the overwhelming majority of comments raised were disregarded by the authority. In conclusion, this case study on CRA policy provided strong support for my hypothesis that the different information demand of the Commission versus ESMA was a significant factor behind stakeholders' success levels. The next chapter will additionally seek to establish the role of policy complexity and how it affects institutions' information demand by analysing the case of the extremely complex MIFID policy.

Chapter 7

Second case study: MIFID policy

In the case of MIFID II, a significantly more complex policy, the in-house expertise possessed by ESMA compared to the Commission was also significantly higher, meaning that stakeholders were better able to influence the Commission final rules than those drafted by the agency, in a similar fashion to the CRA case. Both institutions organised extensive stakeholder engagement to gather information, but ESMA could count on a larger team of specialised staff with relevant experience gathered either in the financial industry or through another regulatory role. The gap in lobbying success levels between the two venues was smaller in the case of MIFID II compared to CRAs, as ESMA accepted a comparatively larger proportion of stakeholder comments in the MIFID II case. The information demand of the two institutions was higher in the MIFID case, deepened by the considerable level of policy complexity, but the effect of policy complexity on the policymaker's demand for information and in turn stakeholders' success was stronger for ESMA compared to the Commission.

Chapter 6 presented a first case study on CRA policy, providing qualitative evidence that stakeholders enjoyed more success when seeking to influence the Commission compared to ESMA and thus cross-validating the quantitative results included in chapter 5. It also showed the role played by information demand in creating this gap in lobbying success levels, as it traced how the Commission could rely on lower levels of in-house expertise compared to the more technically specialised ESMA staff. Evidence on the CRA case provided support for my hypothesis that lobbying success is correlated with policymakers' demand for information. This chapter is devoted to MIFID II, a policy which sits at the other extreme of CRAs in terms of complexity. While the quantitative results unveil a positive relationship between complexity and lobbying success, this chapter is aimed at testing the hypothesis that policy complexity increases institutions' demand for information, and that the effect of complexity on the latter is indeed the mechanism behind this positive relationship. It provides an overview of MIFID policy, compares the Commission's and ESMA's demand for information, and analyses how the latter played a role in how the two institutions reflected stakeholder feedback in their final rules. Finally, the chapter seeks to establish how the policymakers' demand for information is affected by the high level of complexity of the MIFID policy compared to the CRA case.

7.1 Overview of MIFID policy

Unlike the CRA case, MIFID policy did not represent a first attempt to introduce legislation for a previously unregulated segment of financial markets. The Markets in Financial Instruments Directive (MIFID) was first adopted in 2004 and is often described as the behemoth of EU financial services regulation, given its broad scope and the range of market actors subject to its rules. While the original directive was aimed at breaking up the monopoly of national stock exchanges on share trading and thus build a liberalised and more competitive market in the EU, the primary objective of its 2014 revision MIFID II – accompanied by a directly applicable Regulation, MIFIR – was to bring more transparency to financial markets, move trading activity from over-the-counter to regulated venues, and enhance rules on investor protection. MIFID legislation is incredibly complex and probably the most far-reaching in EU financial services policy, as it covers virtually all aspects of securities trading and it is applicable to a vast range of actors including banks, institutional investors, brokers, exchanges, asset managers, hedge funds and high frequency traders.

The original MIFID I Directive (adopted in 2004 and implemented in 2007) was designed to reshape the trading landscape and enhance competition among EU trading venues, thus improving choice for investors. To achieve this, MIFID I had notably abolished the "concentration rule", which previously allowed Member States to require all equity trading orders to be routed to their own stock exchanges (Ferrarini and Moloney 2012). The Directive had also put in place a classification system for trading venues which distinguished between Regulated Markets (RMs), Multilateral Trading Facilities (MTFs) and Systemic Internalisers (SIs), each subject to a different set of rules on authorisation, business conduct and transparency. Regulated Markets (essentially stock exchanges) and MTFs are non-discretionary, multilateral venues with extensive transparency on trading interests and orders, both pre- and post-trade; they are therefore “lit” or transparent venues. On the other hand, systemic internalisers are informal, bilateral (trading happens between the firm and the client), discretionary (the venue has control over access to the platform and order execution) and typically “dark” (trading interests are not disclosed to the market). Systematic internalisers are usually operated by investment firms, which provide discretionary order execution services bilaterally to their clients over-the-counter (OTC), with no information disclosed to the wider market. The main regulatory issue linked to venue categorisation is transparency, especially pre-trade, since the disclosure of large trading interests can influence market prices and thus create risks for the investor if the market moves against them. This is why traditionally even multilateral, “lit” exchanges have benefitted from regulatory waivers to provide “dark” trading services to their clients and thus avoid losing business to brokers offering over-the-counter bilateral services: so-called “dark pools” allow investors to execute their orders without revealing size and prizes, thus protecting them against market moves.

It is generally acknowledged that MIFID I had resulted in a market fragmented among different venues, with most trading happening on RMs and MTFs, a significant proportion over the counter (30-40%) and only few firms applying for authorisation as systematic internaliser (Committee of European Securities Regulators 2010, Ferrarini and Moloney 2012). While there is no evidence that the MIFID I regime had led to an increase in OTC trading, increasing the transparency of OTC derivatives markets was one of the clearest aims of post-crisis regulatory reform. The European Parliament was one of the first policymakers to call for reform of the trading regime at the height of the crisis, when in a Resolution it expressed significant concern on the magnitude of the unregulated OTC derivative markets and pleaded for limiting dark trading amounts (European Parliament 2010). In response to the Parliament’s and other stakeholders’ calls for increased transparency, the European Commission published its proposals to revise the EU trading regime in October 2011 (European Commission 2011a). Alongside the general desire to increase transparency and revise the classification of trading venues, other drivers for MIFID reform included some unexpected consequences of MIFID I, such as the fragmentation of trading and liquidity among the various venue categories. The reform was also aimed at addressing technological developments such as the growth in high-frequency and algorithmic trading, which the Commission argued could potentially lead to unwarranted market volatility and systemic risk if not properly regulated.

Following up from the G20 commitments to move standardised OTC derivative trading onto regulated markets, MIFID II created a new category of venues, Organised Trading Facilities (OTF). OTFs are reserved for non-equity instruments such as bonds, structured finance products, emission allowances and derivatives, while the previously existing regulated markets (i.e. the traditional stock exchanges) and multilateral trading facilities (MTFs) can offer trading in both equity and non-equity instruments. Another crucial difference between the new OTF venues and the pre-existing ones is the discretion exercised by the operator: unlike regulated markets or multilateral trading facilities which are multilateral venues and match buyers' and sellers' trading orders according to pre-defined rules, the operators of OTFs can exert a degree of discretion and thus actively mediate between buyers' and sellers' interests. In other words, in all these venue categories third party buying and selling interests are matched, but in an Organised Trading Facility this matching process is not automatic and the operator has discretion as to what particular trading orders to match; the operator of an OTF can also take an order out of the system.

Systematic Internalisers (SIs) were also retained by MIFID II, but with a changed scope to also include non-equity instruments; as a reminder SIs are not multilateral venues but investment firms which operate as counterparty to a trade using their own capital, and under MIFID I they were only allowed to deal in shares. Finally, MIFID II added a specialised category of MTFs called "SME growth markets", i.e. venues where smaller companies can list their shares subject to less burdensome requirements; this specific category was introduced to incentivise SMEs' access to capital markets and thus counterbalance the overwhelming reliance of European small and medium corporates on bank lending for their funding needs. Crucially, the MIFID II reform also implemented the G20 commitment to require standardised derivatives to be traded on regulated exchanges, aimed at shifting parts of the derivatives business from OTC trading onto "lit", transparent markets. Policymakers around the world were indeed worried about the exponential growth in derivatives contracts, which before then were traded on a bilateral basis between market participants and had remained out of regulatory and supervisory purview. The so-called derivatives trading obligation (DTO) which mandates trading on exchange (as opposed to over-the-counter) only applies to standard derivative contracts for which there is sufficient liquidity, as regulators acknowledged that it would be difficult to mandate on-exchange trading for bespoke derivatives, which are subject to a high degree of contract customisation and do not necessarily have a liquid market (i.e. one where there are enough trading interests to avoid large effects on asset prices where a trade takes place). The reform also introduced a similar obligation to trade equity instruments on organised venues (the share trading obligation, or STO), reflecting a clear policy intention to bring as much of equity trading as possible onto transparent venues as opposed to the "dark" over-the-counter markets which regulators had no data or information about.

MIFID II covers a wider range of financial instruments than the original 2004 directive. One of the crucial additions in terms of scope is represented by commodity derivatives, which include emission allowances and other related instruments, while more categories of futures, options and swaps (all derivative contracts) were added to the MIFID regulatory regime. MIFID II also eliminated the exemption from its scope for commodity firms - whose main business is dealing on own account in commodities and/or commodity derivatives - and empowered national supervisors to establish limits on trading positions in commodity derivatives to curb speculation on the underlying commodity markets. Another important reform was the enhanced pre-trade and post-trade transparency regime, which under MIFID I was only applicable to equities admitted to trading on regulated markets (RMs). It was indeed felt at the time that because the transparency rules only covered a subset of instruments, vast amounts of trading took place with no data available to regulators, and lower investor protection; the disclosure of pre-trade trading interests (bids and offers) and post-trade transaction data (price, volume, and time of transaction) indeed provides information to investors and helps them find the best venue to execute their trades on. The scope of the transparency framework was therefore significantly extended by MIFID II in terms of financial securities to include equity-like and non-equity instruments, and in terms of venues it was extended beyond RMs to cover MTFs and OTFs. Linked to the transparency rules and the willingness to improve the quality and availability of trading data were the new transaction reporting requirements, which also foresaw an EU-wide consolidated tape, and requirements for data reporting providers. The rules on transaction reporting were strengthened to apply to a broader range of financial instruments and require more harmonised information, as well as record-keeping for five years.

Another cross-cutting aim of the MIFID II regime was to enhance protection for investors, particularly retail ones. The requirements on firms' compliance and risk assessment functions were made more stringent, and firms asked to record and store for five years all client communication related to orders. The reform introduced stricter product governance rules, requiring firms to have processes for pre-sale product approvals and target market identification based on assessment of all relevant risks. To avoid misselling and protect retail customers, new rules on client categorisation were introduced asking firms to produce suitability reports setting out in detail the grounds for the investment advice given and how it meets clients' preferences and investment objectives. Furthermore, MIFID II prohibited portfolio managers and independent advisers from accepting inducements other than minor non-monetary benefits: firms cannot pay benefits or accept benefits from third parties as these could prevent managers and advisers to act in the best interests of the clients, incentivise them to provide non-independent advice and promote the products of the third party who provided such benefits. The reform also required unbundling of investment research costs from execution costs, which was deemed necessary as asset managers often paid for research and execution as part of "bundled", opaque fees and routinely passed on the research costs to investors in the funds they managed. More broadly to prevent conflicts of interest, the revised MIFID regime strengthened compliance rules and required firms to internally assess and manage all existing and potential risks of conflict, and adequately disclose them to clients. Finally, ESMA, EBA and national competent authorities were granted product intervention powers to prohibit or restrict the marketing, distribution and sale of financial products in case of threats to financial stability, orderly market functioning or significant investor protection concerns.

7.2 The European Commission's and ESMA's information demand

Similarly to the CRA case study, the starting point is the analysis of the two institutions' demand for information to establish whether there was also a difference in in-house expertise at the Commission versus ESMA in the case of MIFID policy. The potential difference in the policymakers' information capacity, I argue, is an important factor for stakeholders' lobbying success and lies behind the quantitative finding of a sizeable "agency effect" depressing lobbyists' chances of achieving their preferences when engaging with ESMA. After analysing the two venues' demand for external expertise in this section, I will trace how they both processed the input provided by stakeholders in public consultations and whether they took their preferences on board. In the case of CRA policy, I found that the European Commission's previous expertise was quite low: the institution had no dedicated unit and none of the senior policymakers had directly relevant credit risk (or financial) expertise. ESMA, on the other hand, could rely on higher in-house expertise thanks to its more specialised staff and the absence of a rotation obligation forcing officials to move jobs after a certain number of years. Stakeholders I interviewed confirmed not only the remarkable difference in average expertise levels between Commission and ESMA officials, they also indicated this as being a crucial factor behind their higher ability to influence Commission rules. This section analyses the information demand of the two institutions in the case of MIFID II, in a similar vein to the analysis performed for the CRA case. Additionally, this case study will assess the role played by policy complexity and how this deepens institutions' information demand to test my third hypothesis: *the relationship between policymakers' information demand and lobbying success is moderated by the complexity of the policy: for the same institution, lobbying success is higher as the complexity of the policy increases, as the latter deepens the institution's demand for information.* The results of the quantitative analysis pointed to a positive relationship between policy complexity and lobbying success: this chapter will now strive to confirm how complexity affects policymakers' information demand, as this could not be explicitly proven by the quantitative analysis.

As highlighted in chapter 6, there are several structural reasons why the information needs of the Commission are comparatively high in relation to ESMA's. First, Commission staff are usually policy generalists: their primary route to join the administration is the generalist competition, which does not require any specialised knowledge or professional experience. Most officials also start their Commission careers within a few years from the end of their studies, which typically consist in general social science or European studies degrees rather than specialist subjects of relevance to the policy area they are recruited for. Thus, while they can and will accumulate specialised expertise while in their role, upon joining Commission policy officers do not necessarily rely on directly relevant professional experience or a specialised academic formation preparing them for a specific policy area; their knowledge tends to be focused on the EU policymaking process and other "horizontal" skills rather than deeply technical expertise. Furthermore, the Commission has a rotation obligation which forces policy officers to change jobs and often move to a different Directorate-General after a certain number of years, thus determining a loss of institutional knowledge for the institution. Conversely, ESMA relies on hundreds of specialist staff who are hired because of their technical knowledge and required to have relevant professional experience in the area they will be working in, acquired either directly in the financial industry or through a supervisory or regulatory role. In addition to these general factors creating a hiatus in knowledge levels between the two institutions, the previous case study established that in the CRA case this gap was worsened by the fact that the Commission did not initially have a dedicated unit when drafting CRA rules. The Commission also ordered several external reports to acquire more technical information before regulating rating agencies and organised a stakeholder outreach programme which included roundtables and meetings. ESMA, on the other hand, took no further step towards gathering stakeholder feedback beyond the routine consultation process, indicating a lower demand for additional information it did not have in-house.

In the specific case of MIFID II, almost all the key decision-makers responsible for this policy at the Commission were the same as the CRA case (see Table 8 in chapter 6). Senior officials starting from director level and beyond were the same people, as only a few years had passed between the finalisation of the CRA legislative proposal in 2009 and the preparation of the MIFID II one over the course of 2011. However, the responsible Head of Unit for securities markets had changed, as the post was held in 2010-2011 by M.V., a Greek lawyer who had joined the Commission soon after qualifying for the bar. She had worked in many policy fields, mainly in financial services and banking regulation, but also freedom of establishment, pharmaceuticals and enterprise policy; she had however no direct experience in the financial services sector similarly to other senior Commission managers in DG MARKT. She held the post as head of the securities markets unit until April 2011, when as part of a wide reshuffle due to the aforementioned Commission's rotation obligation she was replaced by U.G., who had previously overseen asset management policy; he spearheaded the preparation of the final MIFID legislative draft in the roughly six months before its publication in October 2011. Similarly to M.V, U.G. was a previous lawyer with about 15 years of professional experience at the Commission when he took up the position, and had previously worked at the European court of justice and in private law firms, but never for a financial sector firm. While it is apparent that the backgrounds of Commission decision-makers were the same, the key difference between the MIFID II and CRAs cases was the existence of a dedicated unit of officials in the case of MIFID policy. The regulatory regime governing trading rules already existed since the times of the Investment Services Directive, adopted in 1993, which had then evolved into the aforementioned MIFID I; in this case therefore the Commission had a dedicated securities markets unit gathering officers who could have accumulated relevant expertise by working on these files over the years. While this put the Commission in a better situation compared to the CRA case in terms of prior information, the structure (rotation obligation) and typical background of its staff still left it in a weaker position than ESMA.

Looking at the process that the Commission undertook, the "*extensive and continuous dialogue with stakeholders*" that it engaged in, outlined in the impact assessment accompanying the legislative proposals, evidences its high information demand in the case of MIFID (European Commission 2011b). Regarding the main online consultation organised in October 2010-February 2011 that is analysed in the following section, it is telling that this did not include detailed legislative proposals, but after discussing the various policy issues it asked almost 150 open-ended questions to stakeholders (European Commission 2010). Alongside seeking stakeholder feedback through the consultation, the Commission gathered input "*through extensive meetings with a broad range of stakeholder groups since December 2009*" (European Commission 2011b). Between December 2009 and January 2010, the Commission organised six targeted roundtables, covering a broad range of topics including transparency for non-equity markets, commodity derivatives, high frequency trading, waivers from pre-trade transparency, best execution and conduct rules, and data consolidation. The workshops gathered a wide range of financial sector firms, associations and other stakeholder groups. Further to this, the Commission arranged a large two-day public hearing in September 2010 and held "*several ad hoc and organised meetings with representatives of market participants, public authorities and other stakeholders*" (European Commission 2011b). While consultation with stakeholders is a tenet of the institution's Better Regulation agenda, it is worth noting that the Commission was under no legal obligation to arrange such extensive outreach, and I argue that it took these considerable steps as it was actively seeking input from affected stakeholders.

Moreover, and further pointing to the complexity of the proposals as well as its extensive need for input, the institution commissioned four different external studies to independent consultants. The first study, authored by PriceWaterhouseCoopers, was submitted to the Commission in July 2010 and focused on data gathering on market activities. The Commission was keen to gather information on several key issues such as the availability, cost and features of trading data for equity markets, and the market structure, trading and post-trading arrangements and transparency in corporate bonds, asset backed securities and derivatives; further, the institution sought input on various market oversight issues and conduct of business rules. The scope of the PwC study was therefore very extensive and covered the majority of issues tackled by the MIFID reform, pointing to the significant information needs of the policymaker despite the expertise gathered through MIFID I (PriceWaterhouseCoopers 2010). The Commission also requested a study on consumer decision-making in retail investment services, which was finalised in November 2010 by Decision Technology Ltd and drafted by academics with expertise in behavioural economics; the purpose of this study was to obtain evidence on the individual behavioural traits and external factors affecting consumers' decision making and on the effectiveness of potential policy options to help them make informed decisions (Decision Technology Ltd 2010). A similar market study on retail investment advice was prepared by the market research company Synovate in 2010. The fourth study, which was undertaken by the consultancy Europe Economics and handed to the Commission in May 2011, provided a general cost benefit analysis of the various policy options being considered in the context of the MIFID revision and put forward in the Commission's December 2010 consultation paper (Europe Economics 2011). The externally commissioned cost/benefit analysis provided qualitative and quantitative evidence on the potential policy proposals for revising MIFID and was supported by data gathering and a wide-ranging interview programme conducted by Europe Economics. All of these steps taken by the Commission to gather information are clearly outlined in the MIFID II impact assessment, which included an extensive (over 30 pages) summary of the stakeholder views expressed in the consultation, demonstrating a certain engagement with the over 300 substantive comments received by the institution (European Commission 2011b).

Turning to ESMA, the authority's in-house expertise was quite high, similarly to what already established in the CRA case. Alongside senior policymakers (the

Executive Director and Chair) who were the same as in the CRA case, ESMA could rely on the specialised expertise of staff in two divisions, namely the Markets Division and the Investment and Reporting Division, each comprising about 30 officials at the time the rules were drafted in 2014. The Director of the Markets division, R.B., was an economist with a professional background as a financial market analyst, who had worked at a consulting firm for almost a decade (including as CEO) before joining the Spanish markets authority (CNMV) first, and ESMA next in 2011. The head of the post-trading unit, F.P., was also an economist who had worked in the financial sector (for a bank) before joining the Italian supervisor (CONSOB) and then pivoting to a European career with a stint working for the Commission before joining ESMA. As indicated by ESMA's annual report, the Markets Division included two additional units at the time, one focused on secondary markets and one on market integrity (European Securities and Markets Authority 2015b). The division was significantly expanded over the year, and the authority's intention was to increase its headcount from ca 30 officials to 40. Vacancies published by ESMA in 2014 show how the institution was seeking to recruit extremely well qualified individuals, demanding at least 6-7 years of proven professional experience as part of the eligibility requirements for new recruits who would work on markets rules under MIFID II (European Securities and Markets Authority 2014b). Unfortunately, it is difficult to establish the specific names and backgrounds of policy officers who were involved in preparing the MIFID II rules at the time, but available details for the Team Leader for Secondary Markets, C.O. (who later became Head of the Trading Unit) indicate that he too had worked in the private sector (for an auditing firm) before joining ESMA.

The other ESMA's department involved in drafting MIFID II rules - the Investment and Reporting Division – was headed at the time by L.D., who prior to joining the authority had worked for almost twenty years in banking with a focus on structured products and wealth management. While the Markets Division was responsible for trading platforms and transparency rules, the Investment and Reporting Division oversaw rules concerning investor protection, asset management, financial innovation, corporate finance and financial reporting, so it led the development of investor protection provisions under MIFID II. Summing up, this shows that, similarly to the CRA case, ESMA's in-house expertise was higher than the Commission's as the authority could count on about 60-70 officials with specialised knowledge and relevant professional backgrounds, led by senior decision-makers with considerable experience in the financial services sector (see table 14 below).

Table 14. Background of senior Commission and ESMA officials in MIFID case

European Commission	**ESMA**
Head of Unit, Securities Markets (until April 2011): M.V. Academic background: law Professional background: different Commission DGs (freedom of establishment, pharmaceuticals, enterprise policy), no prior experience in the financial sector.	*Head of Unit, Post-trading, F.P.* Academic background: economics Professional background: banking experience, Italian supervisor (Consob), European Commission
Head of Unit, Securities Markets (after April 2011): U.G. Academic background: law Professional background: different Commission DGs (incl. prior management of Asset Management unit), European Court of Justice, private law firms. No prior experience in the financial sector.	*Director, Markets Division, R.B.* Academic background: economics Professional background: financial analysis and consulting, Spanish supervisor (CNMV)
Director for Financial Markets, M.M. Academic background: social sciences Professional background: French Treasury, Commission desk officer, Assistant to the Director General, Member of Cabinet, Head of Unit "Financial Services Policy and Relations with the Council". No prior experience in the financial sector.	*Director, Investment and Reporting Division, L.D.* Academic background: economics and finance, business administration Professional background: Banking (focus on structured products) and wealth management
Deputy Director General, O.G. Academic background: political science Professional background: French Treasury, various Commission DGs (incl. competition). No prior experience in the financial sector.	*Executive Director, V.R.* Academic background: economics and Chinese Professional background: Bank of England, UK Financial Services Authority
Director General, J.F. Academic background: law and European studies Professional background: various Commission DGs (competition, justice and home affairs). No prior experience in the financial sector.	*Chair, S.M.* Academic background: business economics Professional background: academia, Dutch Authority for Financial Markets, IFIAR

Looking at the specific steps taken to start turning Level 1 provisions into a detailed regime, ESMA launched the consultation process for the MIFID II Level 2 rules in May 2014, when it published a discussion paper and a first consultation paper. The consultation paper posed 245 questions to stakeholders and the discussion paper another 615: the two documents together ran close to 1000 pages, an impressive length which reflected the over 100 mandates for ESMA to draft technical standards (European Securities and Markets Authority 2014c, European Securities and Markets Authority 2014d). Testament to the complexity of the policy, the discussion paper covered a "*selected number of more innovative or technically complex topics in order to receive first feedback from stakeholders for the preparation of ESMA technical standards*", and was followed by a second consultation paper in December 2014 (European Securities and Markets Authority 2014e).

The discussion paper covered an extremely wide range of issues, ranging from authorisation requirements to the pre- and post-trade transparency regime, from rules on systematic internalisers to data reporting and access issues. It also included questions on organisational requirements for investment firms, the ancillary activity exemption for commodity derivatives trading and post-trading rules such as reporting requirements (European Commission and Markets Authority 2014c). The consultation paper was mostly focused on investor protection, as it covered investment advice, product governance, conflicts of interest and cost disclosure; the paper however also sought feedback on data publication and on micro-structural issues such as access to trading venues and high frequency trading (European Commission and Markets Authority 2014d). ESMA's technical advice published in December 2014 (alongside the second consultation paper) showed a remarkable level of engagement with the hundreds of replies received from stakeholders through the consultation, as the authority summarised respondents' views and outlined how they were reflected (or not) in its policymaking process (European Securities and Markets Authority 2014f). This demonstrates that ESMA actively engaged with the information it received, and the fact that stakeholders had limited success in influencing its final rules is not due to a possible lack of consideration of the latter by the authority.

In its efforts to seek stakeholder feedback on the proposals, ESMA also arranged a public hearing on 7-8 July 2014 (attended by around 350 participants) and requested the views of its standing committees and working groups, including the Securities and Markets Stakeholder Group. Standing committees are composed of national authorities' representatives and responsible for drafting the technical standards, with ESMA officials holding the pen; in the case of MIFID II relevant standing committees were those on data, investor protection and intermediaries, commodity derivatives, investment management, post trading and secondary markets. Each of these standing committees has its own consultative working group, which gathers senior industry leaders with practical experience in the field and often also academics specialised in that area. Details of consultative working groups meetings are not made public, so it is not possible to know precisely how much ESMA drew upon their expertise to draft MIFID II rules. However, it is perhaps telling that in June 2014 the authority published a call for expressions of interest for the working group associated with the Secondary Markets Standing Committee, stating that its members would be expected to assist in "*elaborating ESMA technical standards and guidelines in relation to MIFID II and MIFID I provisions*" (European Securities and Markets Authority 2014g). This suggests that, despite counting on specialised teams dedicated to trading, post-trading and investor protection rules, ESMA still felt the necessity to gather stakeholder input on secondary markets to complement its in-house expertise.

Finally, and somewhat atypically for Level 2 rulemaking, ESMA launched a public tender for an external study which would help support the drafting of the rules. The call for tenders, which was published already in 2013, tasked the contractor with gathering and analysing the relevant data, and testing policy options to enable ESMA to prepare an "*in depth impact assessment*" and "*high quality technical advice*" (European Securities and Markets Authority 2013b). In this case, the contractor was effectively asked to perform an impact assessment of the various options suggested by the authority, identify the economic impacts and who would encounter them, assess them against the baseline in qualitative, quantitative and monetary terms, and substantiate costs whenever feasible. Both the Commission and ESMA therefore externalised part of their impact assessment work in the MIFID case, pointing to the high complexity of this policy and their lower in-house capacity to conduct a cost/benefit analysis of the required detail and accuracy.

Table 15. Difference in MIFID information capacity between Commission and ESMA

Criteria	European Commission	ESMA
Number of dedicated staff (at time of rule development)	One unit dedicated to securities markets	Four 187pecialized units: secondary markets, post-trading, market integrity, investor protection and intermediaries (for a total of ca 40-45 officers)

Educational background	Social science, politics and law	Mostly economics and/or finance
Professional experience in finance	None or very rare	Yes, both in the private sector and in financial supervision/regulation
Length of time spent in financial regulation	Low-medium	High

It is therefore apparent that the authority made several arrangements towards gathering extensive stakeholder feedback, differently from the limited steps taken in the case of CRA policy, where it had only organised a routine consultation to seek external input. Namely, ESMA arranged multiple online consultation rounds, organised a hearing, drew upon the input of various consultative working groups and even tendered an independent study. This demonstrates a heightened demand for information in the case of MIFID II, which was an extremely complex policy, compared to CRA regulation. The authority could still count on considerable in-house expertise as it relied on ca 40-45 staff specialised in securities markets rules who are not subject to a rotation obligation (as it is the case for the Commission), and on several senior officials with extensive industry experience; most of the staff involved in MIFID policy had prior finance or supervisory experience and educational backgrounds in economics or finance, as is the case for ESMA officials typically (see table 15 above). This supports my first hypothesis that *the European Commission has a higher information demand than the European Supervisory Authorities, due to the inherent difference in their in-house technical expertise.* The extensive steps taken by ESMA to gather stakeholder input to complement its in-house expertise additionally indicate how the extreme complexity of this particular policy considerably heightened the authority's necessity for additional information and data.

The Commission's demand for information in the case of MIFID II was however still higher than ESMA's: its "baseline" in-house expertise was lower due to the abundance of policy generalists at working level and lack of industry experience of key decision-makers, and the institution engaged in an even wider information-gathering programme that included various roundtables, meetings and commissioning four different external studies. The MIFID II case therefore clearly demonstrates that policy complexity increases policymakers' information demand. This effect seems higher for ESMA than the Commission's, as the extra steps taken by the authority to gather expertise were significantly more extensive compared to what it had done in the CRA case. In other terms, while it is a routine procedure for the Commission to commission external studies and arrange several stakeholder meetings or roundtables, ESMA does not necessarily do so, which points to its heightened information demand for MIFID II rulemaking.

The next two sections analyse the consultations conducted by the Commission and ESMA to draft Level 1 and Level 2 MIFID rules, drawing upon documentary evidence (consultation submissions, grey literature, official documents) and the feedback from my interviewees. This qualitative analysis will help cross-validate the quantitative findings, similarly to the CRA case study, and establish how the respective demand for information of the two institutions affected stakeholders' lobbying success. I expect that similarly to the CRA case, the Commission's lower in-house expertise resulted in the institution being particularly receptive to the feedback submitted by interest groups, while ESMA only took on board a minor proportion of the input having a lower demand for external expertise. However, given the higher complexity of MIFID, as suggested by the quantitative findings I expect that in both cases interest groups were more successful in achieving their goals, as policy complexity resulted in the policymakers needing more information than otherwise.

7.3 Lobbying success at the Commission level

This section analyses stakeholders' success in influencing the Commission's draft rules on MIFID. The quantitative analysis yielded an average lobbying success score equal to about 1 (out of a 0.2-1.4 range) in the case of MIFID rules drafted by the Commission, and this section cross-checks this result qualitatively to further confirm the validity of the chosen lobbying success measure. Similarly to the CRA case, the chapter includes a detailed analysis of the Commission proposals which compares the initial consultation paper with the final drafting of the MIFID II legislative proposal. The consultation was opened on 8 December 2010 and closed on 2 February 2011, and testament to the scope of the proposals it attracted almost 4000 replies, of which the overwhelming majority were identical comments submitted by citizens to advocate stronger investor protection rules and a curbing of commodity speculation as part of a coordinated public campaign. The remaining responses (ca 360) were submitted by a very wide range of stakeholders: public authorities, sell side actors such as investment banks or brokers (those selling investment services to asset managers and corporates), buy side (firms buying investment services, such as asset managers and other institutional investors like insurers or pension funds), market operators and exchanges, retail investor associations, non-financial corporations, service providers, academics, issuers, NGOs and law firms. The Commission's proposals in the consultation paper covered a wide range of issues, with almost 150 questions to respondents across 80 pages (European Commission 2010). The Commission's preliminary ideas for MIFID revision can be bundled in six main areas, which will be analysed in turn in this section: (1) market structure, (2) transparency, (3) transaction reporting and market data, (4) investor protection, (5) commodity derivatives, and (6) miscellaneous issues, including stronger compliance rules, supervisory powers and a third country regime.

In the area of market structure, the Commission was concerned by the high levels of trading happening over the counter rather than on regulated trading venues, so it proposed the creation of Organised Trading Facilities (OTF), a new type of trading platform. OTFs would be reserved to trading of non-equity instruments such as bonds, emission rights and derivatives, which the Commission was especially keen to move onto regulated venues in order to improve market transparency and "supervisability"; the other key difference compared to existing venue categories would be the power of the OTF operator to match buying and selling interests in a discretionary manner. The Commission also proposed to convert Organised Trading Facilities into Multilateral Trading Facilities once a certain trading threshold was reached, as MTFs were subject to stricter transparency rules, and even to cap the total amount of trading activity taking place globally outside of MTFs and regulated markets, a proposal bound to irk many stakeholders who were benefitting from the limited transparency on over-the-counter-markets. The Commission also suggested an authorisation requirement for high frequency traders, in light of the rise in algorithmic trading. Furthermore, the proposals envisaged the creation of "SME markets" with lighter listing requirements to encourage market-based finance for smaller companies, traditionally more inclined to turn to bank lending for their financing needs.

The Commission's proposals on market structure were met with diverging stakeholder views. Banks, asset managers, corporates and retail associations all raised doubts regarding the suggested creation of OTFs, notably underlining how this new venue category could be ill-equipped to encompass the variety of trading models and execution patterns that characterised the over-the-counter (OTC) space and the many asset classes that OTFs were meant to capture. The policy aim of the Commission was to move as much trading as possible to regulated venues by creating this new category – the OTF – where instruments other than shares could be exchanged, but stakeholders underlined how challenging it would be to define such a venue, as OTC trading comprised different trading systems such as single dealer, multi-dealer, central order books, brokerage facilities and even voice trading (Association for Financial Markets in Europe 2011a). Many respondents therefore emphasised the difficulty in properly regulating OTFs, especially as the Commission (and other regulators) at the time had very little information and data on OTC trading since this market had remained outside of supervisory purview until then. Furthermore, the industry stated the importance of maintaining the flexibility to agree tailored deals and preserving investor choice, including notably the choice to trade on non-transparent markets and outside of regulated venues. On the other hand, this new venue category was supported by some brokers and service providers and by academics, who thought it important that the new OTF category would cover systems like broker crossing networks to avoid them operating in a regulatory loophole[7]. Despite the many concerns raised by stakeholders, in its final legislative draft the Commission maintained the proposal to create Organised Trading Facilities, arguing that these new venues would represent an appropriate framework for different types of trading systems, and ensure a level playing field by applying the same transparency and core organisational rules to all trading venues (European Commission 2011a).

Another measure which was maintained by the Commission despite the opposition of most consultation respondents was the derivatives trading obligation (DTO), namely that all sufficiently liquid derivative contracts should trade exclusively on regulated venues rather than over-the-counter; the aim of this policy measure was to achieve better transparency and market oversight. Except for retail client associations and some of the exchanges, most stakeholders raised doubts on the practicality of the derivatives trading obligation – given the limited standardisation and high customisation of derivatives contracts – and the costs it would entail. Firms on both the sell side (investment banks) and buy side (asset managers) argued that the

[7] A broker crossing network is a system operated by an investment firms which matches client buy and sell orders internally without first routing the order to an exchange or other market.

DTO would be problematic because of the limited liquidity of many derivatives and the evolution of such liquidity over the life of the instruments, features that would make on-exchange trading inadequate. Additionally, they raised concerns on the possible reduction in competition and user choice that the DTO could create, and explained that the vast majority of OTC derivative counterparties appreciate that they are giving up the benefit of showing their trading requirements to the wider market in return for other advantages of OTC trading, such as the chance to fully customise a contract for their needs. Stakeholders also underlined that a liquidity criterion for selecting the derivatives contracts subject to the trading obligation would be very difficult to manage in practice, as derivatives typically trade far less frequently than other securities like shares (International Swaps and Derivatives Association 2011). Similarly, asset managers explained that the requirement could have the perverse effect to reduce liquidity for large transactions and thus lead to worse investor outcomes, and that it would be important for the policymaker to first analyse in depth the role of liquidity providers in OTC markets. They cautioned against forcing all derivatives onto organised venues, arguing that the choice of execution is best left to market participants and that it would be difficult to accurately distinguish between standardised derivatives and those that cannot be easily traded on venues due to their highly customised nature (European Fund and Asset Management Association 2011).

It is important to note that the derivatives trading obligation stemmed from a specific reform commitment taken at international level by the G20, so it would have been incredibly challenging for lobbyists to obtain its removal from MIFID II. Despite the significant concerns raised, the Commission indeed maintained the derivatives trading obligation in its final legislative proposal, arguing that this was necessary to achieve transparency and adequate supervision of a previously opaque market. The Commission however dropped what was possibly its most controversial proposal related to derivatives, namely the intention to cap the overall amount of over-the-counter trading happening outside of regulated venues, on which supervisors had no oversight and information. Brokers fiercely opposed the proposal, arguing that the transparency linked to venue trading would severely damage the liquidity of the markets – and hence the quality and efficiency of execution – and particularly hinder hedging activities by corporates, which needed OTC trading given their demand for customised products. Furthermore, OTC trading could protect investors from adverse market moves: the lack of transparency on trading interests inherent in OTC markets prevents market actors from being adversely affected by the disclosure of their own buying or selling interests, particularly in the case of large transactions (Association for Financial Markets in Europe 2011a). Trade associations also produced various reports to show that the Commission-estimated proportion of OTC trading was actually overestimating the true size of these markets, and that the systemic risk had therefore been overestimated (Association for Financial Markets in Europe 2011b). While maintaining the creation of OTFs and the on-venue trading obligation for sufficiently liquid derivatives, the Commission took this feedback on board and understood that its proposal to cap OTC markets would not be workable, notably in light of the flexibility and customisation needed by corporates that use these contracts for risk management purposes.

In terms of transparency rules, MIFID I had already mandated the disclosure of buying and selling interests for equity instruments before a trade takes place and provided for some waivers from this rule; the Commission wanted however to improve the consistency and monitoring of the existing waivers from these transparency requirements. More significantly, the Commission proposed to expand the pre-trade transparency regime to instruments other than shares, as it was concerned by the increase in "dark" trading happening over-the-counter and its potential consequences for price discovery and market efficiency. The broadened transparency rules would apply to all bonds, structured products with a prospectus, and all cleared derivatives, with the necessary customisation depending on the features of the asset class; furthermore, systematic internalisers would also be subject to pre-trade transparency requirements. For post-trade transparency, where MIFID I allowed slight deferrals from publishing details of executed trades in specific cases, the consultation paper suggested the introduction of a maximum publication delay as it thought deferrals could damage investor confidence and hurt the policy aim of making trading data widely available in almost real-time.

The proposals on transparency requirements were also met with diverging views from stakeholders, notably in relation to the extension of the regime to non-equity instruments (bonds and equity-like instruments) which represented the key reform proposal put forward by the policymaker. While stock exchanges were in favour of the proposals and their underlying rationale of pushing more trading onto organised venues, all other categories of respondents – banks, asset managers, corporates, service providers and retail associations – raised doubts and strongly advocated the need of targeted rules which would not damage the efficiency of non-equity markets (Federation of European Securities Exchanges 2011). More specifically, they asked for significant waivers from the publication of pre- and post-trade data, delays for the publication of data and the customisation of the rules to the nature of the specific debt instruments. The risks to market liquidity were raised for instance by brokers arguing that "*the proposed scope of the Commission's transparency regime would be extremely broad, and as such would not prove sufficiently sensitive to different asset classes or the fact that particular segments of the market trade much more frequently than others*" (International Swaps and Derivatives Association 2011). The Association for Financial Markets in Europe even commissioned a report on the pre-trade transparency proposals for the bond market to TABB, a global financial market research group, in an effort to highlight the consequences that the Commission proposals would have on order execution and companies' ability to raise capital (Association for Financial Markets in Europe 2012). The study was based on a survey of over 100 market participants and comprehensive set of interviews with investors, trading venues, investment banks, and most importantly corporates and government issues that resort to debt markets (also called fixed income markets) for their financing needs. Its findings highlighted how the suggested transparency rules would not necessarily improve the price formation process while they would reduce competition in bond markets, particularly in reducing primary issuances i.e. making it harder for companies to successfully issue bonds and/or raising their financing costs.

To take these concerns onboard, the Commission inserted significant waivers into the final proposals, specifying how the pre-trade transparency regime would be adapted to the specific market, the characteristics of the trading activity and its liquidity profile, and the size and type of the orders made; officials therefore acknowledged that their original proposals might have been ill-suited for the totality of non-equity markets, which are characterised by huge variability in terms of liquidity levels and other features and thus required transparency rules to also be targeted. Another area where the Commission's final legislative draft reflected stakeholders' feedback was post-trade transparency rules for equities, which as aforementioned the policymaker had suggested to adjust by reducing maximum publication delays and make trading information available sooner to the market. Investment banks however stated that capping the publication delay by the end of the trading day would create issues for firms' risk management, and highlighted that according to market data only 0.1% of trades (representing 4.4% of value traded) deferred publication beyond the day the trade takes place; the proposal would therefore be largely inconsequential as it would affect a minimal number of transactions (Association for Financial Markets in Europe 2011a). Commission officials reacted to this information by removing this proposal, and instead commissioned ESMA to prepare an annual report on the use of post-trade deferrals from publication by trading venues. Furthermore, the Commission had also sought to strengthen the pre-trade transparency regime for systematic internalisers by requiring them to publish their quotes; following stakeholder feedback the final proposals only required publication in the case of liquid instruments, whereas in other cases the systematic internaliser would just disclose the quote to prospective clients upon their explicit request.

The Commission also proposed a significant expansion of transaction reporting to supervisory authorities in its MIFID II consultation paper: the scope of reporting would be broadened to all instruments admitted to trading or traded on multilateral trading facilities and organised trading facilities, as well as all instruments whose value is correlated with these, which would cover many derivatives that were trading over the counter. Market data was also perceived as a problematic issue: there were commercial obstacles hindering consolidation in the market, many data providers offered these services and the cost of market data was considered unduly high by most firms both on the sell and buy side. To remedy this, the Commission proposals envisaged the creation of a common consolidated tape for post-trade data, an electronic system which gathers data on sales volume and price from exchanges and broker-dealers and combines it into a continuous live feed, providing summarised data across all securities markets. The Commission consultation included several options to achieve this, majoring on the possibility to mandate the provision of a consolidate tape by either a non-profit seeking entity (like a public authority) or a commercial provider to be appointed following a public tender.

Following the consultation, the Commission abandoned its most far-reaching proposals to make the consolidated tape for post-trade data mandatory, and instead retained the least controversial option of defining in legislation the conditions that must be met for its provision, hoping to accommodate most stakeholders' views while still creating the conditions for a commercial provider to emerge. This change in stance followed doubts raised by several stakeholders who either opposed its creation altogether or expressed concerns on its possible mandatory nature. More specifically, the former position was taken by stock exchanges, who strongly argued that the mandatory option would stifle competition in the data market without necessarily improving data quality (Federation of European Securities Exchanges 2011); banks and brokers' associations thought that a commercial provider would be potentially better placed to provide this service than a public authority, and a range of other stakeholders held mixed views on the consolidated tape proposal. The draft rules also foresaw a requirement to unbundle the cost and provision of pre- and post-trade data, as well as a better definition of "reasonable commercial basis", in the hope of bringing down the cost of data provision in MIFID II. Trading venues usually sold pre-trade and post-trade data as part of the same package, and the Commission argued that this bundling practice made pricing opaque and contributed to the high cost of market data; similarly the existing requirement that data should be provided on a "reasonable commercial basis" had not been effective in reducing cost, so the policymaker intended to provide a more detailed definition.

Some of the most significant revisions were put forward by the Commission around investor protection, chiefly to remedy the perceived problem of investors being advised unsuitable products or otherwise not fully appreciating the risk of their chosen investments. Investor protection was also arguably the area where the Commission changed its draft proposals the most as a result of feedback provided by stakeholders. Firstly, the Commission proposed to bring into the scope of MIFID both the sale of structured deposits and any direct sale made by banks and investment firms (with no parallel provision of investment advice), so that business conduct and investor protection rules would apply. Secondly, the Commission suggested removing the "execution only" regime, which allowed firms to sell "non-complex" financial instruments without conducting an appropriateness test of whether these were suitable for the investor's needs. The policymaker intended to abolish the "execution only" regime to strengthen investor protection requirements and to counter misselling; its removal would result in all brokers needing to perform an appropriateness test and assess the client's financial capabilities, knowledge and experience before executing the trade. The proposed abolition was supported only by some of the retail investor associations, while the overwhelming majority of stakeholders (banks, exchanges, asset managers and service providers) argued in favour of its maintenance. Interest groups notably highlighted how the execution-only regime can represent a beneficial trading method also for retail clients who are experienced and confident in trading, and removing it would hinder timely access to markets thus impeding investors' ability to react to events in an effective manner; similarly they underlined how even under execution-only firms are required to issue a warning about the risk of the investment (Investment Management Association 2011). Upon receiving this information on the benefits of the regime for markets, the Commission finally decided to drop the proposal and maintain the possibility of execution-only sales.

The provision of investment advice was also to be considerably tightened, as firms would need to not only explain to their clients the basis on which they were providing their advice, they would also need to regularly review the suitability of the advice provided for the client's specific needs. Investment advisers would need to assess a broad range of financial instruments from different providers before recommending investments to their clients, review their suitability on a regular basis and thoroughly explain to their clients the basis on which advice was given. Stricter rules would apply to complex products, which the Commission suggested should be subject to an in-depth analysis of their risk and valuation profile as well as quarterly valuation and reporting to the client. Respondents to the Commission consultation raised several concerns on these proposals, and despite the policymaker's aim to better protect retail investors, even some associations representing the latter underlined how the proposals could unduly raise costs for retail investors or lead to unwarranted and too frequent changes in the client portfolios following the revision of suitability assessments. Separately, ISDA argued that these rules should not be applied to professional investors, who "*are able to conduct their own due diligence*" and would find the requirement unduly burdensome (International Swaps and Derivatives Association 2011). Asset managers' associations went further, with EFAMA arguing that advisory duties should not be expanded to include longer-term advisory assistance, as this would blur lines with the different service of portfolio management, and it would not be practical given the costs of undertaking a yearly suitability assessment and having to procure information on a client's financial situation at regular intervals (European Fund and Management Association 2011). The Commission took on board the stakeholder feedback on the impracticability of its proposals, and in its final draft only mandated advisors to inform their clients whether the advice was given based on a broad or restricted analysis of the market, and to similarly inform them whether a review of the investment's suitability would be undertaken regularly (without this being however mandatory).

With the same aim of investor protection, the consultation proposed to limit the "eligible counterparty" regime, a category of investors subject to less onerous investor protection requirements similarly to professional ones. Municipalities and other public authorities in particular could under MIFID I "opt up" to be treated as professional investors rather than retail ones, implying an assumption of higher levels of knowledge and experience. The Commission was worried about some alleged cases of misselling of complex derivative contracts to municipalities and other public clients, and in its draft foresaw that all non-financial companies, certain financial ones and municipalities could no longer "opt up" and choose to be treated as eligible counterparties. Respondents to the consultation nevertheless convinced the institution that some municipalities and authorities have the necessary financial knowledge and as such should not be prevented from making more sophisticated investment decisions if they choose to do so; furthermore, local authorities could similarly request a change in client status to be "opted down" and treated as non-professional clients. Additionally, interest groups explained that treating public bodies necessarily as retail clients would be problematic as firms are often unable to carry out extensive due diligence to ascertain their knowledge and financial experience, given these bodies' necessity to guard confidential information and the inherent difficulties in assessing the knowledge of a collective body rather than an individual client (International Swaps and Derivatives Association 2011).

Also in the investor protection area, the Commission proposed an inducement ban for portfolio managers and independent advisers, so they would not be subject to third-party pressure to sell specific products unbeknownst to the client receiving advice; inducements could take the form of fees, commissions or non-monetary benefits. Stakeholders raised significant doubts on the proposal, particularly as the existing MIFID regime did not provide a definition of inducement; they also stated that non-monetary benefits can actually enhance the provision of the investment advice given so a better option would be more comprehensive disclosure of all inducements received to the client. While retaining its consequential proposal on the inducement ban, the Commission took the latter feedback on board as its final draft maintained the possibility for portfolio managers and independent advisers to receive limited non-monetary benefits from third parties on the condition that these would not impair their ability to pursue the clients' best interests; such non-monetary benefits could for example take the form of training on the features of a specific investment product. In order to better inform clients about complex investment products, the Commission had additionally proposed to mandate quarterly valuation and reporting of these, assess and regularly review their risk/gain and valuation profile in different market conditions, and inform the client in a timely manner of any material modification in the situation of the financial instrument. The institution however dropped these specific rules for complex products from its final proposal, notably accepting the input from stakeholders that it would be difficult for firms to anticipate how instruments perform in various market conditions.

Another controversial proposal which was however retained by the policymaker was the best execution reporting requirement, which would mandate trading venues to publish reports on whether they are achieving the best possible results for their clients and hence complying with their best execution obligation. The Commission was concerned in particular that investors were receiving insufficiently clear information on firms' execution policy, and decided to maintain its proposal despite stakeholders' views that producing these reports would be challenging given the lack of OTC data and the difficulty in comparing execution quality as different venues used a variety of key metrics to judge it, such as liquidity spreads and implicit costs (Deutsche Börse 2011). Finally, the policymaker also suggested the creation of a civil liability framework to allow investors to sue firms for breaking various conduct rules governing the firm-client relationship.

Another issue which the Commission wanted to tackle in its MIFID II proposals was the wide fluctuation of commodity prices, which according to many was linked to price speculation on commodity derivatives markets. The consultation suggested to classify commodity derivatives (such as for example futures contracts based on the price of oil) and emission allowances as financial instruments, in order to bring these into the scope of MIFID conduct requirements. Commodity traders would also need to report their positions, and more importantly regulators would be able to impose position limits on commodity derivatives; specifically authorities would be enabled to request any person entering a commodity derivative transaction to reduce the size of its position to address disorderly trading and the alleged use of derivatives to speculate on commodity prices. After the consultation, the Commission retained its proposal to classify commodity derivatives as financial instruments but otherwise took onboard stakeholders' feedback and considerably modified its most far-reaching measures, notably its original proposal to impose straight position limits on commodity derivatives trades and thus set an overall cap on this market. The final draft indeed foresaw only the regulatory reporting of trading positions and a monitoring role for supervisors, which would thus receive data on derivative positions and could oversee these markets: while the Commission had intended all commodity derivatives to be subject to position limits, stakeholders underlined that a position management regime coupled with supervisory reporting would achieve the same policy objective of market oversight. The final proposal still maintained the power for competent authorities to impose position limits on commodity trades, but this was much less far-reaching than the original draft, as position limits were meant to address specific cases and only exercisable under very strict conditions: they could only be imposed in exceptional circumstances, where objectively justified and proportionate, and would be subject to a time limit of six months.

The Commission had also sought to limit the existing MIFID exemption for firms engaging in trading as an "ancillary activity" to their primary, commercial business; these firms were notably oil and other natural resources producers trading on financial markets to hedge their exposure to price and interest rate fluctuations. With this provision, the policymaker wanted to ensure that commercial traders could not resort to trading derivatives for their own profit seeking but only for legitimate hedging purposes, for example to manage the risk of widely fluctuating oil prices. Stakeholders and particularly corporates that would have been hurt from the tightening of this exemption fought back against the proposal: for instance, the European Federation of Energy Traders (EFET) argued that "*the impact on the overall size of the market and liquidity*" would be severe if more firms were brought into MIFID scope, as they would be unable to hedge their underlying commercial exposure because of the accompanying regulatory requirements or even have to exit the wholesale traded market (European Federation of Energy Traders 2011). Furthermore, commodity firms pointed out that it would be inadequate to treat energy trading firms as financial institutions, as these only have "one-sided" positions in certain commodities depending on the underlying business (production or supply of commodities), deal in financial instruments with the primary purpose of managing price risk, and do not give rise to consumer protection concerns as they do not provide investment services to retail clients or take deposits from the public. Firms also explained that the ancillary activity exemption was often used by energy companies to provide price hedging to their business customers, giving them the possibility of risk managing their energy positions as an integrated part of an energy delivery contract. Finally, energy firms underlined how the removal of the exemption would run counter the Commission's drive to create competitive and efficient European energy markets (E.ON 2011, Eurogas 2011, ExxonMobil 2011, GDF Suez 2011). Taking on board this information on the use of the ancillary activity exemption by energy firms and the unsuitability of having them subject to MIFID II, the Commission abandoned its most far-reaching proposal to only allow the exemption for hedging purposes, but decided to clarify in legislation what could be considered "ancillary" using a range of quantitative criteria.

Finally, the consultation paper put forward proposals on compliance and "fit and proper" obligations, suggesting that the related requirements on investment firms' executive directors be expanded to cover the entire membership of company boards. Stakeholders however raised the issues this would create for corporate governance, and the final proposals only extended the requirements to the executive members of management bodies, in a similar move to what had been done in the case of credit rating agencies' corporate governance rules and acknowledging that non-executive directors often do not need or possess the same technical expertise required of executive ones. According to the Commission proposal, other conflict of interest rules would also be tightened, and all fines and sanctions imposed by national competent authorities for violation of MIFID obligations would need to be publicly disclosed. The supervisory intervention powers of both national supervisors and ESMA were also to be broadened, as authorities would be able to directly suspend or ban the sale of financial instruments if these created concerns for investor protection, the orderly functioning of markets or systemic risk. The powers were maintained in the draft legislation despite concerns raised by many advocates, however their exercise was linked to a much higher threshold of "threat" to the orderly functioning of markets, which supervisory authorities would find much harder to meet and justify in practice.

Table 16. Comparison of Commission initial and final proposals on MIFID with stakeholder feedback

Issue	*Commission original proposal (pre consultation)*	*Stakeholder feedback*	*Commission final proposal (post consultation)*
Market structure – Organised Trading Facilities	Creation of a new regulated venue (Organised Trading Facility or OTF) for trading of non-equity instruments (bonds, derivatives etc)	OTFs could not adequately capture the variety of trading models in over-the-counter and non-equity markets	No significant change from proposal
Derivatives	Obligation to trade sufficiently liquid derivatives on regulated venues; proposal to cap total amount of OTC derivatives trading	The derivatives trading obligation would be problematic because of the insufficient liquidity and high customization of derivative contracts; it would be important to preserve investors' choice where to trade including on OTC markets	No change in the derivatives trading obligation proposal, but the Commission dropped the proposal to limit overall OTC trading
Transparency rules	Extension of pre- and post-trade transparency requirements to non-equity instruments; tightening of waivers (publication deferrals)	Extending the scope of the transparency regime so broadly would be inadequate for the various asset classes and damage the efficiency of bond markets; publication deferrals are crucial for risk management and only represent a tiny fraction of trades	The Commission inserted significant waivers in its proposals to extend the transparency regime and customise it to the various asset classes; the proposal to disallow publication deferrals was replaced with a monitoring report by ESMA
Market data	Possible mandatory creation of a common consolidated tape for post-trade data	A mandatory consolidated tape would stifle competition without necessarily	Definition of the criteria a commercial provider would need to follow to offer a

		improving data quality	(non-mandatory) consolidated tape
Investor protection: advice, eligible counterparties, execution-only regime, inducement ban	Abolition of the execution-only regime; removal of the possibility for public authorities to opt up to eligible counterparties status; investment advisers would need to explain the basis for advice, assess a broad range of instruments and regularly review suitability assessments. Investment advisers would be banned from accepting inducements from third parties	Execution-only can help confident investors react to market events quickly. Public authorities have more financial knowledge than retail clients and can always opt down. The investment advice requirements would be impracticable and raise costs for investors. Some form of inducements (non-monetary benefits) can be helpful and improve the quality of advice	Maintenance of the execution-only regime and of public authorities' possibility to opt up. Disclosure to clients of whether advisers assess full range of products and if suitability assessment is undertaken regularly (but no mandatory requirement to do so). Inducement ban except for minor non-monetary benefits
Commodity derivatives	Position limits on commodity derivative contracts; strengthening of the ancillary activity exemption	No evidence of market failure on commodity derivatives that would warrant limits; commodity firms should not be in MIFID scope as they do not raise investor protection concerns	Position management regime for commodity derivatives with supervisory reporting; clarification of the ancillary activity exemption
Compliance and supervisory powers	Extension of "fit and proper" requirements to all company directors; supervisors' product intervention powers to suspend or ban sale of financial instruments	Non-executive directors do not need the same skills as executive ones; supervisory intervention powers should be clarified and only exceptional	Extension of "fit and proper" requirements only to executive directors; product intervention powers exercisable only in emergency situation and threat to market functioning

As shown in table 16 above, it is apparent that the Commission took many of the stakeholder positions onboard in its wide-ranging MIFID II proposals. It tweaked the transparency rules for non-equity financial instruments and abandoned its initial intention to put a maximum limit on OTC derivatives trading, to reduce the eligible counterparty regime and remove the execution-only option. It also scaled back its proposal on investment advice considerably, abandoned its intention to mandate a consolidated tape for market data, turned the foreseen limits on commodity derivatives positions into a position management regime, decided to continue allowing the ancillary activity exemption for own account trading (albeit with clearer criteria) and made it more difficult for supervisors to exert the new product intervention powers. On the other hand, some very significant proposals were maintained, such as the creation of OTFs and general reorganisation of trading venues, the expansion of the transparency regime beyond equity instruments, the derivatives and share trading obligations and the inducement ban for investment advisers.

While it is difficult to analyse in depth all the stakeholder positions and tweaks made by the Commission due to the extremely wide scope and complexity of the proposals, this high-level overview is consistent with quantitative evidence (an average lobbying success score of 1) as it has shown a generally high level of success for interest groups in influencing the institution's MIFID II proposals. This level of lobbying success is also higher than advocates' success in influencing Commission rules on credit rating agencies (lobbying success score of 0.9 on average), which supports my third hypothesis, namely that policymakers' demand for information and consequently advocates' success are higher when a policy is more complex. This section has provided evidence on the role played by information capacity in heightening interest groups' success and showed that the institution took onboard stakeholder feedback particularly in areas where it possessed limited in-house expertise. This is notably the case for the suggested rules on over-the-counter markets, which had been until then outside of regulatory and supervisory purview and which therefore the Commission had limited information on, or the suggested extension of the transparency regime to non-equity markets, which the Commission maintained but subject to various adjustments necessary for the different asset classes. Another clear example of this would be the change in the policymaker's proposal on the inducement ban or its dropped suggestion to bring commodity firms into the MIFID II scope, which followed the information received respectively on the role played by non-monetary inducements and the use of the ancillary activity exemption in commodity derivatives markets.

7.4 Lobbying success at ESMA level

This section analyses stakeholders' success in influencing the draft Level 2 rules prepared by ESMA under MIFID II. As the amount of Level 2 mandates under MIFID II was unprecedentedly high, I focus on the first set of technical standards, which ESMA consulted upon over the course of 2014 and published in June 2015. It should however be noted that this is only a subset of the Level 2 rules under MIFID II, as the authority continued working on some outstanding standards over 2016 and 2017. The research concentrates on a subset of MIFID Level 2 rules as the whole range of technical standards drafted by ESMA under this policy covered hundreds of pages, so it would not have been feasible to analyse the full swathe within a single case study; therefore, this chapter analyses qualitatively only a part of the ESMA rules on MIFID II that are included in the quantitative analysis. The latter indicated that stakeholders achieved an average lobbying success of 0.76 when trying to influence ESMA MIFID II rules (higher than the score for CRA policy, equal to 0.38), and I argue that the higher success score experienced by stakeholders is a function of the authority's demand for information, which was heightened by the high complexity of this policy compared to CRAs. This section analyses the first set of ESMA MIFID rules qualitatively to cross-check whether the regression analysis produced reliable results, but most importantly to establish how ESMA's information capacity affected its decision to take on board stakeholder feedback and correspondingly alter its proposals following the public consultation. In line with the quantitative results of low lobbying success, I expect that the institution's high in-house expertise meant that its final rules were not significantly altered to reflect respondents' feedback. However, given the expectations on policy complexity and in line with quantitative findings, I also expect stakeholders' success in influencing ESMA rules to be higher in the case of MIFID compared to CRAs given the technicality of the former.

In the area of market structure, one consequential Level 2 mandate concerned high-frequency trading, as the Level 1 MIFID II directive introduced an authorisation requirement for traders engaging in this technique. High frequency is a special category of algorithmic trading where computers make decisions to initiate a trading order based on information they receive electronically, before human traders are able to process the information they observe and take a related trading decision; HFT therefore monitors markets to find trading opportunities and places orders to take instant advantage of these opportunities. ESMA proposed two different approaches to clarifying the definition of algorithmic HFT, one based on a quantitative calculation of orders and the second based on relative positioning of trading venue members (European Securities and Markets Authority 2014d). Under the first option, a high frequency trader would need to meet a range of requirements which signal the use of specialised systems designed to minimise latency (the delay, or time difference between the order reaching the exchange and the market data that triggers it) and enable the immediate transfer of large data volumes to a venue, such as the server's location in proximity to the venue or an ultra-fast bandwidth allowing faster messaging. These criteria would characterise the use of specific infrastructure enabling high trading frequency, and ESMA suggested to define as generated by a machine and therefore HFT any trading frequency surpassing 2 messages per second over the trading day. Under the second option, the classification as HFT would be based on a relative calculation made by the trading venue to identify the median daily lifetime of cancelled or modified orders; in other terms any traders who have a particularly high proportion of order modifications/cancellations compared to the other venue members would likely be high-frequency algorithms rather than human traders.

The majority of stakeholders supported Option 1, as they considered it more straightforward and objective, since it was only dependent on the characteristics of the investment firm itself rather than based on a comparative analysis; they however noted that the proposed threshold of 2 messages/second was too low and could capture firms that are not HFT, and that generally the option's quantitative criteria could quickly become obsolete due to technological developments. Some stakeholders supported Option 2 as they considered the focus on relative criteria to better meet the test of technological advancement over time, but noted that this definition would require a constant reassessment of firms' positioning against each other and cause them possibly to fall in and out of HFT status; furthermore they underlined how this option needed a "floor" or each venue would identify HTF participants which do not necessarily use this technique just in view of their lowest lifetime of orders. Based on the responses received from stakeholders, ESMA tested the various proposals with its existing trading data and reworked some elements, but ultimately left its advice to the Commission open, as it recommended choosing between two reworked versions of Option 1 and Option 2, which reflected some stakeholder comments such as the need to calculate thresholds on an instrument rather than venue basis under Option 1. The authority considered the technical arguments put forward by respondents and acknowledged in particular that both approaches would lead to a number of "false positive" and "false negative" identifications and had some unintended consequences it had not accounted for.

More importantly, ESMA was asked to further specify the criteria under which a share would be considered liquid, a highly consequential definition as any "liquid market" triggered pre- and post-trade transparency requirements, as well as the quoting obligation for systematic internalisers; for example, the waivers from publication of trading data are different depending on whether the market in the relevant share is considered liquid or not, and rules mandate higher transparency and restrict the possibility of "dark" trading for highly liquid shares. Level 1 rules did not specify the detailed thresholds, but set out the four criteria to identify a liquid market in a financial instrument, namely a) the free float (a company's shares which are traded on public markets), b) the average daily number of transactions in those financial instruments, c) the average daily turnover for those instruments, and d) whether the share is traded on a daily basis. In its consultation paper, ESMA sought views on the need to simultaneously meet all four criteria for a liquid market and suggested to lower the already existing quantitative thresholds to ensure that the policy aim of greater transparency would be achieved. As a basis for setting the new thresholds, ESMA conducted a data analysis exercise on almost 4000 shares traded on EU regulated markets and proposed to set the free float threshold at €100 million (rather than the existing €500 million), the average daily number of transactions at 250 and the average daily turnover at €1 million (rather than €2 million). Several respondents agreed with these new thresholds for equity, but many were concerned that the lower figures would significantly harm small and mid-sized companies. Nevertheless, ESMA noted that all four criteria needed to be met cumulatively and hence decided to dismiss these concerns and retain its original proposal.

In respect to equity-like instruments, ESMA proposed the same quantitative thresholds for depositary receipts (instruments similar to shares which allow investors to hold participations in the equity of foreign companies) but tweaked them for exchange traded funds or ETF (a type of investment fund traded on stock exchanges, whose value therefore fluctuates following market forces), for which the free float criterion was not adequate and hence replaced with a *de minimis* threshold (a minimum

100 units issued for trading). The average daily number of transactions suggested was also lower for exchange traded funds (20 rather than 250 as for shares and depositary receipts), to reflect the nature of the instrument, since trading in units of these funds is less frequent than trading in shares. Stakeholders however raised important concerns on ESMA's preliminary data analysis, arguing that it was not representative of trading patterns in exchange traded funds, as most of the transactions occurred on over-the-counter markets and ESMA had used only data obtained from regulated trading venues. Stakeholders underlined how the proportion of exchange traded funds units exchanged on regulated venues represented only a maximum of 20-30% of the total ETF trading volume, on which the authority only had estimates and limited information given the "dark" nature of OTC markets. To reflect the concerns raised during the consultation on the peculiar nature of the exchange traded funds market, ESMA lowered in its final proposals the average daily number of transactions from 20 to 10. Therefore after the consultation ESMA only changed its proposals on the definition of a liquid market in the case of exchange traded funds, the only market segment where it had limited information and supervisory data due to the preponderant OTC nature of trading; in contrast the authority could rely on its in-house supervisory experience and regulatory data to suggest thresholds for other instruments (shares and depositary receipts) that it need not modify to reflect stakeholder feedback.

ESMA was also mandated to specify systematic internalisers' (SIs) quoting obligation; as a reminder, systematic internalisers are investment firms that execute client orders against their own instrument inventory on a substantial, organised and systematic basis but do not operate a multilateral system. MIFIR obliges systematic internalisers to make public quotes – bid and offer prices - for equity and non-equity instruments (bonds, structured finance products, derivatives) for which there is a liquid market; when there is no liquid market, SIs are only required to disclose quotes to their clients upon request. More specifically, the Level 1 rule asserted that SIs needed to publish quotes on a "regular and continuous basis" during normal trading hours, and ESMA suggested that these should be defined as those of the main regulated market (stock exchange) in the relevant Member State. Similarly to the Level 1 regime, the policymaker's intention was to enhance markets transparency and enable more competition among firms by forcing them to make more information publicly available rather than just sharing it with a prospective client. ESMA's approach to the definition of "normal trading hours" was supported by about half of the respondents, but others – including broker firms acting as systematic internalisers – argued that SIs should be able to define freely their normal trading hours. More specifically, systematic internalisers explained that the alignment of "normal trading hours" with the operating hours of the main relevant stock exchange would be problematic if the SI firm decides to make available its quotes through an alternative external publication arrangement such as a data reporting service, and this feedback was taken onboard by the authority in its final rules.

One of the most sensitive issues related to data was the MIFID provision stating that the cost of data, usually provided by stock exchanges, should be based on a "reasonable commercial basis". The European Commission and most financial industry participants, both on the sell and the buy side, thought that market data was too expensive, especially if its cost was compared with its price in the United States. Banks and the buy side therefore called for prices to be fixed at marginal cost plus a reasonable cost margin, while exchanges argued that their existing charging schemes were reasonable and already based on a commercial basis. ESMA explored two approaches in its consultation, one based on principles and one that would limit prices by referring appropriate benchmarks such as cost or revenues, to guarantee that only a reasonable profit could be made by the data provider. ESMA's Secondary Markets Standing Committee discussed the issue with its consultative working group, and received two different external reports on the issue, further demonstrating its polarising nature and significance to stakeholders. A study commissioned to the consultancy Copenhagen Economics by brokers advocated the necessity of a price cap for the supply of raw data, while another study commissioned to Oxera by stock exchanges – who being the main providers of data had an interest in maintaining high prices - concluded that there was no economic rationale for regulating trading venues' data prices and strongly opposed any form of price-based regulation (Copenhagen Economics 2014, Oxera 2014).

ESMA analysed three different options: (a) one based on principles, (b) one on revenue share limitation, and (c) one on cost regulation. Many respondents commented that charges by trading venues were only one part of the data cost, and that a measure solely targeted at trading venues would not be sufficient to reduce costs as users often obtain data from data vendors that are not subject to MIFID, to whom the requirements would not apply. Most stakeholders agreed with the less-costly principle-based option, while practically nobody supported the second option sounded by ESMA, whereby venues' data charges would be limited by a specific revenue share. The cost regulation option was also not particularly popular and attracted diverging views, being favoured by some but strongly opposed by exchanges who argued it had no economic justification. In light of the responses, ESMA decided to suggest the principle-based option, based however on detailed pricing principles and possible transparency of cost information. The authority acknowledged that the revenue-share limitation option would be difficult to implement in light of venues' varying business models and reliance on many product lines alongside selling market data; calculating the revenue share deriving from data would indeed be complicated given that trading venues have different products, product combinations and different markets. Similarly, ESMA took on board stakeholder feedback on the third option (cost regulation) that this approach would be incredibly challenging to implement, but most importantly that its administrative and monitoring costs would lead to increased pre- and post-trade data prices and thus defeat the policy aim to decrease the cost of market data for users; the authority explicitly stated in its final proposals that this option would not represent "*a workable solution as it would impose too burdensome a cost on venues and others, including their supervisors, and would present significant challenges to implement*" (European Securities and Markets Authority 2014f).

Concerning investor protection, ESMA was invited to specify the provision and content of information to clients about investment advice. MIFID II introduced several additional requirements: investment advisors must inform the client whether the advice is independent, based on a broad or restricted analysis of available financial instruments and whether a periodic assessment of their suitability would be provided to the client. Furthermore, the Level 1 text mandated the disclosure of additional risk warnings and information on whether the investments are intended for a professional or retail client market. ESMA's proposals on suitability assessments also required firms to explain to the client the range of investments assessed as a basis for their advice, including types and numbers of instruments and providers analysed. The majority of stakeholders were opposed to enhancing the suitability assessment regime, underlining for example how the requirement to propose to the client "the most suitable product" would oblige firms to analyse the whole universe of financial products available, and that this would create legal risk if the client complained about a cheaper or less complex product not being advised to them. Moreover, interest groups raised various concerns about the suitability reports, stating for example that clients were already burdened with information and that it would not be feasible to update these periodically to reflect ordinary market fluctuations. The authority rejected once again industry views that the information on suitability could consist in a general description of a firm's investment selection process and that it could be provided on its website as part of generic disclosure, noting that the policy intent of adequate transparency required more granular detail which needed to be shared with the client directly.

Finally, ESMA clarified that firms should inform clients about the "*frequency and extent of periodic suitability assessments*", a provision which was considered by some respondents as misleading given that MIFID II did not mandate such periodic assessment, but was nevertheless retained in the final rules; ESMA however clarified that the subsequent reports need not repeat all details of the initial suitability assessment but only changes in the instruments recommended or client circumstances, reflecting a point raised by both industry and consumer associations. Another area where MIFID II imposed additional transparency is information on costs and charges associated with the provision of advice, where ESMA consulted on the scope of the disclosure requirements, the aggregation of the information and its format and timing. ESMA notably proposed that the rules would apply to all categories of clients, giving the possibility to professional clients and eligible counterparties to opt-out in certain cases. Most stakeholders opposed this requirement and suggested an opt-in mechanism instead, arguing that applying the rule to all client categories was disproportionate and also difficult to apply given the high speed at which transactions take place with professional counterparties; applying the disclosure requirements to all client categories would be excessively burdensome and also conflict with other retail-focused pieces of EU legislation under development at that time (the PRIIPs Regulation). While noting the positions put forward, ESMA underlined that some financial institutions such as pension funds ultimately serve retail clients, and as such should receive all relevant information to act in their clients' best interest. Therefore, the authority maintained the spirit of its original proposals, but conceded that investment firms might be able to agree a limited application of the rules and provided for flexibility in that they could, with some exceptions, agree on a limited application of the detailed requirements with their professional clients and eligible counterparties. On the scope of the ex-ante disclosure itself, several stakeholders argued that ESMA's proposals went beyond the letter of Level 1 and the parallel proposals being developed under the PRIIPs Regulation; ESMA however again did not take on board stakeholder feedback, noting that the issue of consistency between the two pieces of legislation would better by solved by the Commission.

The other particularly sensitive area under investor protection was the aforementioned “inducement ban”, preventing independent investment advisers and portfolio managers to accept and retain any third-party commissions, fees or benefits. The Level 1 text maintained an exemption from the ban in the case of “minor non-monetary benefits”, which however to be legitimate needed to be disclosed to the client, enhance the quality of the service, and not affect the firm’s duty to act in clients’ best interest. In its consultation, ESMA proposed an exhaustive list of non-monetary benefits which could be considered minor and therefore acceptable, and clarified the conditions under which investment research could be considered as such and thus admissible. The proposals were met with strong stakeholder opposition, particularly the list approach as respondents thought it was rigid and lacked flexibility; moreover, interest groups underlined how the suggested list was not exhaustive as other types of non-monetary benefits were offered on the market which ESMA was not aware of, for instance software to calculate portfolios’ performance, participation in promotional events to enhance knowledge of funds, or travel and accommodation expenses to participate in training events. The concerns raised by stakeholders were however rejected by the authority, which thought that identifying specific items through a list could provide more clarity and legal certainty on the application of the criteria; however ESMA inserted some flexibility by proposing to supplement this list with guidelines that could be adapted more frequently. Interest representatives also disagreed with ESMA’s classification of investment research as an inducement, arguing that it enhances the quality of services provided and it is classified under MIFID as a specific ancillary service; furthermore, they emphasised that only research services provided for free could qualify as a benefit (and therefore as inducement) but this was not normally the case for research. Stakeholders including ESMA’s very own Securities and Markets Stakeholder Group argued that this classification would also have severe unintended consequences, such as a reduction in the quantity and quality of investment research, and specifically reduce its availability for smaller and medium enterprises. ESMA disagreed with respondents’ comments on its qualification of research as an inducement, advising nevertheless the Commission to clarify the conditions under which research would be not qualified as inducement and therefore permissible.

Table 17. Comparison of ESMA initial and final proposals on MIFID with stakeholder feedback

Issue	*ESMA original proposal (pre consultation)*	*Stakeholder feedback*	*ESMA final proposal (post consultation)*
Definition of high-frequency trading	Two options: quantitative calculation of orders or relative positioning of venue members	Most supported option 1, but asked ESMA to lower the suggested thresholds	Minimum changes to the proposals
Definition of liquid market	Four criteria to be met simultaneously for a market to be considered liquid; different thresholds proposed for equities, depositary receipts and exchange traded funds	Stakeholders underlined how criteria would be impracticable for ETF markets given their mostly OTC nature	Proposals mostly unchanged other than for the thresholds proposed for exchange traded funds
Quoting obligation for systematic internalisers (SIs)	SIs need to publish quotes on a "regular and continuous" basis during "normal market hours" defined as the stock exchange's operating hours	SIs should be able to determine their market hours, especially if they make quotes available through alternative providers	SIs can determine their own market hours for the purpose of the quoting obligation
Market data – definition of "reasonable commercial basis"	Three options: principle-based, revenue share limitation, cost regulation	Stakeholders raised several concerns on the second and third option	ESMA suggested the principle-based option
Investment advice: suitability assessment, cost and charges, inducement ban	Firms need to disclose to the client their suitability report, and if updated periodically this should reflect market developments. Information on cost and charges must be disclosed to all client categories. Exhaustive list of	It would be unfeasible to update reports regularly to reflect ordinary market fluctuations. Professional clients do not need information on costs and charges. A list of allowed minor inducements is not workable and	Suitability reports should only reflect changes in the instruments recommended or client circumstances. Investment firms can agree with their professional clients on a limited disclosure

	minor non-monetary benefits excluded from the inducement ban	research should not be classified as inducement	of cost and charges information. List of allowed minor non-monetary benefits can be updated flexibly with guidelines

To sum up, this section analysed whether and how ESMA took on board stakeholder feedback in relation to its draft MIFID level 2 rules. It should be caveated that this overview only related to a subset of the Level 2 rules, so there is a small chance it is not representative of their entirety: nevertheless, these qualitative results are aligned with the lobbying success score found in the quantitative analysis, which in this case equalled 0.76. This was higher than the CRA case, where advocates' average success at ESMA level was 0.38: in both cases process-tracing the results of the consultation validated these results, demonstrating indeed that ESMA generally did not reflect many stakeholder comments in its final position, but was nonetheless more receptive in the case of MIFID compared to CRAs, where tweaks applied to the original draft were minimal. In many core areas – such as the highly consequential definition of a liquid market triggering transparency requirements, or the quoting obligation for systematic internalisers – advocates were indeed not successful in influencing the authority's stance other than for minor tweaks. The latter happened for instance in the case of the definition of "normal market hours", where systematic internalises explained to the authority how a definition linked to a stock exchange's operating time would not be workable when the firm uses a different publication system for its quotes. Generally, ESMA had considerable in-house expertise on liquidity calculations thanks to its previous experience in supervising MIFID I and the data it had gathered from market actors and national competent authorities; the thresholds it put forward for the definition of liquid shares were therefore based on data it already possessed internally. Interest groups also enjoyed limited success in influencing the authority's draft on investment advice or the exemptions from the inducement ban. The areas where ESMA was more receptive to stakeholder feedback include some issues where it had originally set out multiple options, such as the definition of "reasonable commercial basis" underpinning the cost of market data; this was also an instance where the authority received two different studies from stakeholders (one commissioned to Oxera and one to Copenhagen Economics) providing qualitative and quantitative evidence on the feasibility (or lack thereof) of some of the options suggested, evidence that ESMA took on board. Similarly, the authority was receptive to stakeholder views for the calculation of liquidity thresholds for exchange traded funds, a particular asset class whose market it had limited data on, and where the information supplied by interest groups persuaded ESMA to adjust the proposed thresholds as a result.

This analysis therefore provides strong evidence for my argument that policymakers' information capacity is a key driver of lobbying success, and for the role played by policy complexity in deepening an institution's demand for information. As seen earlier in the chapter, ESMA officers could rely on considerable in-house expertise and three dedicated teams of policy officers working on the MIFID II rules, so compared to the Commission its receptiveness to the information provided by stakeholders was significantly lower. However, there is a difference between the CRA case, where tweaks made by ESMA to the final rules were extremely marginal, and the MIFID one, where stakeholders despite unable to achieve their preferences still managed to obtain some wins, notably in areas the authority was less familiar with because they represented new requirements or areas where it had no supervisory data.

This chapter used MIFID II as a second case study to analyse stakeholders' lobbying success and how institutions' information demand drives it. First, the chapter provided evidence that information demand is an important mechanism behind lobbying success, as it established that the levels of in-house expertise on MIFID were much higher at ESMA compared to the Commission, in a similar fashion than for CRA policy. Second, the chapter qualitatively assessed the information provided by interest groups and how it was considered by the Commission and ESMA in turn, proving that lobbyists were better able to influence the Commission's final rules, as also shown by the text analysis included in chapter 5. Both the CRA and the MIFID case showed therefore a gap in lobbying success levels between the two institutions, cross-validating the results of the quantitative analysis. Once again, qualitative analysis allowed me to confirm a positive answer to the research question *does lobbying success vary by the targeted institutional venue?* and further supported my hypothesis that *lobbying success is correlated with policymakers' demand for information*: the difference in information demand can explain the "agency effect" of lower lobbying success. In parallel, as established both in the quantitative analysis and in this chapter, stakeholders were slightly more successful in influencing MIFID II rules than CRA ones. While in both cases they were better able to lobby the Commission than ESMA, the gap in lobbying success levels between the two was smaller in the case of MIFID II compared to CRAs: ESMA only made marginal tweaks to its CRA standards, but comparatively took onboard a larger proportion of stakeholder comments in the MIFID case.

The chapter showed through process tracing that for the complex MIFID II policy the information demand of both institutions was higher than for CRAs, which supports my third hypothesis that *lobbying success is higher as the complexity of the policy increases, as the latter deepens institutions' demand for information.* The effect of policy complexity on policymakers' demand for information, and in turn on stakeholders' lobbying success, is stronger for ESMA than for the Commission. This is apparent in the quantitative analysis through the positive coefficient on the interaction term *agency*complexity*, and in these case studies it is demonstrated by the extra steps taken by ESMA in seeking stakeholder input for the extremely complex MIFID II policy, and the higher quantity of feedback taken on board. In other words, the "baseline" demand for information is higher in the case of the Commission, and this can be explained by a combination of factors such as its reliance on policy generalists and the staff's rotation obligation. This means stakeholders are generally more successful in getting their views reflected in legislation by Commission officials than ESMA, which has a lower information demand thanks to its more specialised staff. However, then a policy is particularly complex stakeholders are slightly more successful in influencing both institutions: the effect is marginal for the Commission (the difference in average success scores between CRAs and MIFID was only 0.1 according to the quantitative analysis), but more significant for ESMA, as complexity significantly increases the authority's usually low demand for information.

Chapter 8

Conclusion

The research question motivating this thesis stemmed from two central gaps in the lobbying literature, namely the relative scarcity of research on the "demand" side of the lobbying relationship represented by the targeted policymaker, and the very limited literature on stakeholders' efforts to lobby independent agencies in the EU. The observation of these two literature gaps led me to focus specifically on the relationship between policymakers' demand for information and stakeholders' lobbying success, by applying resource exchange theory to the EU authorities. My research question asked *whether lobbying success varies by the targeted institutional venue and if so, whether the information need of the institutional venue is an explanatory factor*. To answer this, I drew from the key tenet of exchange theory, namely that the most crucial currency being exchanged between policymakers and interest groups is information, and focused on the relative information capacity and demand of the European Commission versus the European Securities and Markets Authority. My thesis therefore contributes to the lobbying exchange literature particularly as it delves deep into one EU agency's demand for information, showing that its considerable in-house expertise has significant effects for stakeholders' success chances, and adding to scholarly research which has so far not applied the lobbying exchange framework to authorities. By establishing how policymakers' information capacity affects their propensity to take on board feedback supplied by interest groups, the thesis contributes to existing research by shedding further light on the relationship between the targeted institutions and the success experienced by lobbyists. Moreover, while existing research has evidenced the importance for EU agencies in maintaining regular stakeholder engagement, to the best of my knowledge it has not provided an analysis of lobbyists' success chances or compared agency lobbying to advocacy activities targeted at other EU institutions; my thesis adds to the literature by providing this contribution. In addition, my findings on the role played by policy complexity and its interaction with policymakers' demand for information – and consequently stakeholders' lobbying success – add to the literature on the importance of contextual factors in lobbying, as they provide evidence that complexity has a bearing on lobbying outcomes and that an institution's demand for expertise is not fixed across policies. To sum up, my thesis contributes to scholarly research on lobbying as an exchange relationship, to the literature on agency lobbying in the EU, and to research on the role played by contextual factors in determining advocacy outcomes.

8.1 Overview of findings

This PhD thesis investigated whether stakeholders' lobbying success varies by the targeted venue, and whether the institutions' demand for information is an explanatory factor behind any potential such effect, by applying the resource exchange lobbying theory. It compared the European Commission with the European Securities and Markets Authority (ESMA), an independent EU authority with significant rulemaking powers in the field of financial services. The thesis analysed the Commission and ESMA as they are responsible for drafting respectively primary (Level 1) and delegated (Level 2) legislation, and both institutions routinely conduct extensive stakeholder consultation. The research was conducted with a mixed methods design, with an initial quantitative analysis followed by two process tracing case studies. I collected an extensive database of over 4000 consultation responses submitted by more than 1000 different stakeholders to the two policymakers over 2009-2017, a decade characterised by an intense legislative output in the wake of the financial crisis. Alongside this, I collected a second meetings database to further illustrate stakeholders' engagement patterns with the two institutions. The analysis of mobilisation patterns in both databases revealed that interest groups engage heavily with both the Commission and ESMA, and confirmed previous research findings that this mobilisation is both heavily biased towards business interests and influenced by policy characteristics.

Most importantly, I applied quantitative text analysis to my consultations database and found a significant difference in average lobbying success levels between the two venues: all else equal, targeting the agency visibly lowers stakeholders' success chances. On the other hand, the amount of information supplied by lobbyists has no bearing on their chances of achieving their preferred outcomes, nor does a higher amount of resources. Furthermore, a positive relationship was found between the level of policy complexity and lobbying success, a relationship which is stronger in the case of ESMA, and a general disadvantage for groups representing business interests. The two case studies confirmed that stakeholders were better able to influence Commission-drafted rules than ESMA rules on both CRA and MIFID policy, cross-validating the "agency effect" unveiled by the quantitative analysis. Process tracing additionally allowed to establish the difference between the two institutions' in-house expertise and show that their demand for information was a significant factor behind this difference in lobbying success levels: ESMA can count on considerably higher in-house expertise, and therefore need not rely on stakeholder-provided input to the same extent as the Commission, resulting in lower lobbying success for advocates. This is due to the generally higher expertise and specialised knowledge of its officials, also demonstrated by the limited reliance on extensive stakeholder consultation compared to the Commission, which in both cases took more steps to seek input pointing to its higher information demand. The evidence gathered supported my first hypothesis that *the European Commission has a higher information demand than the European Supervisory Authorities, due to the inherent difference in their in-house technical expertise*. I also found support for my second hypothesis that *lobbying success is correlated with policymakers' demand for information*: the difference in information demand can explain the lower lobbying success at agency level. Moreover, the two case studies showed that both institutions' information demand was higher for the complex MIFID II policy than the simpler CRAs regime, which supported my third hypothesis that *lobbying success is higher as the complexity of the policy increases, as the latter deepens institutions' demand for information.* The positive effect of policy complexity on policymakers' demand for information, and correspondingly advocates' lobbying success, is stronger for ESMA than for the Commission, as also unveiled by the quantitative analysis. The finding of a general business disadvantage in terms of lobbying success implies that the bias in lobbying mobilisation patterns towards industry interests, coupled with the underrepresentation of civil society interests in both consultations and meetings, does not necessarily give these industry interests a head start in achieving their lobbying goals.

8.2 Methodological, empirical and theoretical contribution

Methodologically, this research makes two contributions to the literature. First, the thesis provides a successful application of a mixed methods research design, which is still rare in political science research and many other academic fields. Most researchers ascribe to either quantitative or qualitative methodology and refrain from combining both tools in a single study, either for conceptual reasons or because of the practical challenges this may create. A mixed methods research design is indeed time- and resource-intensive, but I believe it can provide a great way to improve the external validity of results and combine the "what" and "how" within a single contribution. In my case, using a sequential design with a quantitative analysis followed by qualitative case studies enabled the triangulation of the finding of an "agency effect" in lobbying success, thus reinforcing the confidence in its validity. Furthermore, qualitative research allowed me to unveil the processes behind each case study, and to provide a level of in-depth analysis which helped complement the large-N databases that were analysed first. Finally, the thesis contributes to the debate on measuring lobbying success by drawing inspiration from spatial politics theories and exploiting the full information and positional data provided by quantitative text analysis. While in her seminal study on EU lobbying Klüver used an "*improvement to reversion point*" measure which takes the same value for all interest groups at one side of the policy outcome and the reversion point, the measurement approach adopted fully exploited the data yielded by *Wordfish* to measure lobbying success as "*relative improvement*" resulting in a continuous, granular variable able to capture various degrees of lobbying success (Klüver 2013, Bernhagen et al 2014). Applying recent scholarly advice on the use of positional data thus made possible to fully exploit the richness of the data and the possibilities offered by quantitative text analysis.

Empirically, the thesis provides an application of the resource exchange model often underpinning lobbying studies and first adapted in the European Union context by Bouwen (Austen-Smith 1993, Bouwen 2002). The contribution focused on the "demand side" of this exchange, namely policymakers, and the role played by their demand for information in affecting interest groups' success. It suggests that resource exchange is an ever-valid theory to explain interactions between stakeholders and policymakers, and highlights the added value of looking closely at the often-neglected demand side of this exchange. While this research did not concentrate on the "supply side" represented by interest groups themselves, it did provide some evidence that advocates' resources or staff are not the only factors influencing their lobbying success chances, and that business is generally disadvantaged. As the question of stakeholder characteristics was not the fulcrum of the research question or explored in the qualitative analysis, further research would be required about what still seems to be an unresolved question in the scholarly literature on lobbying. The research is also closely linked to Chalmers' study on lobbying mobilisation at ESMA level, to which it contributes by going an extra step and studying lobbying outcomes, thus looking beyond stakeholders' participation patterns (Chalmers 2015). Furthermore, the thesis adds to the regulation literature by demonstrating the importance of interactions between independent authorities and stakeholders. It provides empirical evidence supporting the theory of delegation to non-majoritarian institutions, namely it shows that they can rely on considerably more specialised knowledge than their delegating principals (Thatcher and Stone Sweet 2002). It also shows that one of the very motivations behind agencies' establishment, namely the desire to overcome informational asymmetries and deal with complex technical issues, might make them more insulated and less responsive to affected stakeholders. Finally, the thesis contributes to research on EU financial services policy, in that it demonstrates how stakeholders' interests, while not necessarily a determining outcome, are often reflected in legislation (especially in Commission proposals) and should therefore be taken into account in a literature which often prioritises intergovernmental interests (Quaglia 2010, Quaglia 2014). On the other hand, the thesis provides a limited contribution theoretically in that it applies the existing lobbying theory on resource exchange rather than develop new theoretical insights.

8.3 Generalisation and limits

The results of this thesis pertain to the chosen empirical setting, namely a comparison of the European Commission with the European Securities and Markets Authority within EU post-crisis financial services policy. However, the findings could be generalizable beyond this scope and applicable to a variety of empirical settings. First and foremost, they can be applied to the other two agencies in EU financial services regulation, namely the European Insurance and Occupational Pensions Authority (EIOPA) and the European Banking Authority (EBA). While among the three authorities I decided to focus on ESMA for several reasons as outlined in chapter 4, none of these hinders the possibility that results are valid for the other two agencies. The results can also be applicable to other EU authorities beyond the field of financial regulation, as many have gained considerable powers over the years and are therefore likely to be lobbying targets for affected stakeholders. The European Union currently relies on 34 different decentralised agencies (ESMA, EIOPA and EBA being part of these), which have been established to perform technical tasks and help the EU institutions implement policies. While some of these agencies undertake mainly coordination, management or implementation-focused tasks, several play a crucial role in the EU policymaking process by providing the Commission with technical advice or contributing to the drafting of binding legislation and other rules. For example, the Agency for the Cooperation of Energy Regulators (ACER) helps formulate network rules on Europe's energy markets and takes individual decisions which are binding on regulated firms. The European Aviation Safety Agency (EASA), which is responsible for safety and environmental protection in air transport, drafts technical aviation rules thus performing a significant rulemaking role similar to the financial authorities. Other examples are ENISA (the European Union Agency for Cybersecurity), which helps draft EU policy and legislation on network and information security, or the European Union Agency for Railways (ERA), which works to develop technical standards for the railway industry.

Beyond the European Union, agencification is a common phenomenon both at national and supranational level, with hundreds of independent regulators across the globe that routinely interact with interest representatives. Independent authorities are active in a variety of policy areas, spanning from financial regulation to telecommunications, from food safety to chemicals, from agriculture to competition policy. For instance, the Organisation for Economic Cooperation and Development coordinates a network of economic regulators which brings together over 70 regulators from across the world operating in different sectors like communications, energy, transport and water. My results could speak to scholars interested in the intersection of lobbying and agency regulation in a variety of global settings. At the domestic level, one could expect similar findings on lobbying success when comparing for example a ministry of finance and the related independent financial sector authority, or a government department responsible for energy policy with the corresponding sectoral regulator. At the supranational level, many international bodies are responsible for developing non-binding policy and technical standards. In the field of finance, obvious examples are the Basel Committee of Banking Supervisors (which has indeed been already studied by lobbying scholars) or IOSCO, the International Organisation of Securities Commissions. To mirror my study of the European Commission versus ESMA, an interesting comparison would be the one between the G20 and the Financial Stability Board, as the latter was established by the former to work on international financial stability and has a less political nature in that it gathers central bankers and securities regulators, whereas G20 is a forum of state leaders. Beyond financial services, one could think of other prominent international organisations such as the World Health Organisation or the International Atomic Energy Agency.

Conversely, this research has some important limitations. One of these is directly linked to the chosen empirical setting, which despite spanning across almost a decade is confined to 14 policies in post-crisis financial services regulation. The finding on the limited success of business interests, while not the primary focus of my research, might potentially be linked to a peculiar scepticism of policymakers towards the financial industry in the direct wake of the global financial crisis. Some results might therefore reflect a peculiar timing where regulators might have been sceptical of the arguments put forward by stakeholders and keen to tighten requirements despite any potential pushback, although the primary finding on agency lobbying is not expected to be dependent on the timeframe of the data. Additionally, the analysis was limited to the drafting process of Level 1 and Level 2 legislative proposals, so it could only evaluate stakeholders' success chances during the policy formulation stage. However, Level 1 legislative proposals drafted by the Commission undergo the legislative negotiation process with subsequent adoption by both the European Parliament and Council, while Level 2 proposals drafted by ESMA need to be formally adopted by the Commission, for reasons linked to the Meroni doctrine and discussed in chapter 3. Therefore, to get a full picture of stakeholders' success, it would be necessary to look at the entire legislative process until adoption. For Level 2 specifically, it could be theoretically possible that interest groups would lobby the Commission to change the draft rules submitted by ESMA (or the other agencies): while any departure from the straight adoption of authorities' drafts is in practice a rare occurrence, one should bear in mind that the Commission's role in adopting all binding legislation potentially creates an additional window of opportunity for stakeholders to influence Level 2 rules. Moreover, the thesis did not analyse the position of public sector stakeholders, beyond the few authorities or ministries that participate in consultations and are therefore included in the quantitative database; the findings are therefore limited to private sector parties and cannot provide a full explanation of policy outcomes. Official sector stakeholders such as Member States or national competent authorities obviously have other, easier routes to influence legislation alongside those offered to private sector lobbyists such as hearings or online consultations: Member States are co-responsible for adopting all EU legislation through their representation within the Council, and national competent authorities sit on ESMA's Board of Supervisors, its formal decision-making body. Linked to this, interest groups can also target their lobbying activities at representatives of Member States sitting on the Council, and/or the national regulators sitting on ESMA's Board of Supervisors; this would represent an indirect way to influence rules drafted by the Commission and ESMA at a different point in the policymaking process. However, the thesis is limited to advocates' direct attempts to influence Commission and ESMA officials, so further research would be necessary to shed light on this.

From a methodological perspective, a potential limit of this analysis could be represented by the chosen lobbying success measure, which is the outcome variable of interest. While the thesis followed the steps of previous scholarly research by adapting an existing method and proceeded to carefully cross-validate the validity of this measure through the qualitative analysis, the heavy reliance on this single measure could conceivably limit the strength of the results. It is possible that this research could have yielded different results, had it operationalised lobbying success differently, or used other methods or data sources to calculate advocates' preferred positions. It would therefore be useful to complement these findings with additional sources of evidence, such as survey data or further policymakers' interviews, though one should caveat that it is challenging even for in-depth qualitative research to investigate the "internal cookery" of institutions and how they process the input supplied by interest groups. Moreover, having chosen a mixed methods design, this research could devote less time and resources to both the quantitative and the qualitative stage compared to a single-methodology design, which might have affected its accuracy. I expect this could have primarily affected the case studies, notably MIFID II as the related Level 1 and 2 legislation combined spans across hundreds of pages, and it was particularly challenging to summarise its main features in the space of a single chapter. Additionally, MIFID II policy, having been described as the "behemoth" in EU financial services regulation, could potentially be considered an outlier rather than an extremely complex policy, which would call for further research on the relationship between policy complexity and lobbying success.

8.4 Implications of the findings and future research

This concluding section highlights some potential implications of the thesis and lays out avenues for future research. The thesis has one overarching, clear implication for the European Union administration, stemming from the results on the link between institutions' demand for information and stakeholders' lobbying success. It showed that the Commission cannot rely on the same amount of in-house expertise and technical knowledge that ESMA counts on. While this knowledge gap is to a certain degree intentional, as the desire to build specialised technical know-how is a powerful driver behind the creation of any independent regulatory agency, scholarly research so far has been oblivious to the implications this has for lobbyists' influence. From an institutional perspective, one could wish to decrease this inevitable knowledge gap by enhancing Commission officials' expertise. The first clear way to do this would be to either remove or restrict the staff rotation obligation, which results in a loss of accumulated knowledge by regularly forcing officials to move to different roles or even Directorates-General responsible for a completely different policy area. The mandatory rotation rule, which is not part of EU agencies' human resources policy, seems to have a negative effect on levels of staff expertise, especially at head of unit level.

A second policy intervention could consist in a reform of the Commission's hiring practices, which for decades have predominantly relied on the generalist competition. Specialist competitions aimed at recruiting slightly more senior staff with specialised knowledge have only recently been launched, but could potentially become standard practice, or otherwise the generalist competition could be reformed to integrate some technical expertise among the required competences. It is however conceivable that the Commission might wish to maintain its typical reliance on policy generalists, due to their transferable skills or better flexibility to adapt to new political priorities. Another observation of this research with potential institutional implications is the high similarity of Level 1 and Level 2 rules in EU financial services regulation. While in theory delegated legislation (Level 2) is meant to fill in the technical details of regulations and directives (Level 1), in practice the two are very similar and the boundary is quite blurred. My interviewees confirmed the frequency of institutional or lobbying battles over whether to regulate a topic through Level 1 or Level 2, demonstrating that the level of technical detail is often not the main factor distinguishing the two. A better delineation of the boundary between Level 1 and Level 2 provisions might therefore be useful from an institutional perspective.

From a practitioners' viewpoint, this thesis clearly shows that interest groups have better chances of influencing policy at the Commission than ESMA level, which could help inform their lobbying strategies. This would not be a surprise to them, as most of the financial industry advocates interviewed confirmed indeed their preference for Level 1 lobbying, and even their direct efforts at making sure that issues which are particularly crucial for them are dealt by the Commission rather than left to ESMA's drafting responsibility as Level 2 rules. Interviewees even confirmed that right after the establishment of the three European Supervisory Authorities (ESMA, EIOPA and EBA), they often directed advocacy efforts at making sure important topics would be left in the hands of the newly created agencies, hoping that it would be easier for them to lobby a venue with limited civil society participation. However, advocates soon realised that this was not the case, and that the underrepresentation of non-business interests at agency level made them no more likely to achieve their preferred outcomes. On the contrary, influencing the three authorities proved more difficult than initially envisaged as this research could confirm, and stakeholders soon changed their advocacy strategy to prioritise settling important issues directly at Level 1, which is easier for them to impact.

On a theoretical rather than policy level, this thesis could have implications for regulatory capture theory, which posits that regulatory outcomes can be "captured" and controlled by the special interests that are the very targets of the regulation (Stigler 1971, Laffont and Tirole 1991, Dal Bo 2006). Fears of regulatory capture, according to which independent agencies are likely to become beholden to the interests of the industry they are supposed to regulate rather than protect consumers, seem misplaced in the case of ESMA and EU financial markets regulation. The authority's specialised officials, who often have professional backgrounds in financial services, are in fact less responsive to the interests put forward by the financial industry than their colleagues at the Commission, contrary to popular belief. Generally, the thesis shows that ESMA officials are very unlikely to take stakeholder feedback on board, and only react to the preferences of interest groups in limited instances where the latter provide data or information that the authority does not internally possess. Empirical evidence therefore does not support the idea that powerful (financial) industry interests can easily control regulatory outputs, and suggests in contrast that regulated actors find it very hard to influence independent authorities; further research on this topic would however be warranted to provide solid and specific results.

In addition to the aspects already mentioned in this chapter, further research would be helpful on the link between institutions' information capacity and lobbying outcomes: future studies could notably focus on how the information provided by stakeholders is processed by policymakers, be it government departments or independent regulatory authorities. For instance, researchers could focus on the role that time pressure and resources play for officials' capacity to digest the received input, or on the effect of political priorities and constraints on policymakers' responsiveness to interest groups that are particularly well connected politically. Other fertile avenues for future research would include the so-called "Level 3" in EU financial services regulation, namely non-binding rules which also fall under the responsibility of the ESAs, as mentioned in chapter 3. They consist in guidelines and Q&As, and while devoid of binding effects they can be very helpful in interpreting unclear legislation or filling in its gaps, thus attracting considerable interest from stakeholders. The relevance of Level 3 was confirmed by many of the interest groups representatives interviewed for this thesis, and it is also demonstrated by the industry asks for involvement in their drafting process during the legislative review of the European Supervisory Authorities' Founding Regulations, completed in December 2019. More specifically linked to this contribution, future scholarly endeavours could devote additional attention to the role played by the policymakers (the demand side) in affecting lobbying outcomes, possibly looking at aspects other than their information capacity. Similarly and in line with the findings on policy complexity, further research would be helpful on the role played in lobbying by the various features of a policy, as literature findings on characteristics such as scope and salience are still inconclusive. Finally, it would be helpful to expand the empirical setting of similar lobbying studies to agencies and policy areas other than those in financial regulation, and possibly build a comparative study that could analyse policy-related and other contextual variables by bringing together multiple policy areas.

In conclusion, the central finding of this thesis, confirmed by both quantitative and qualitative evidence, is that advocates' lobbying success significantly varies depending on the targeted institutional arena. More specifically, interest groups are less likely to see their preferences reflected in draft rules when they seek to influence the European Securities and Markets Authority compared to the European Commission. The thesis showed that a significant factor behind this "agency effect" of lower lobbying success is the varying demand for information of the two institutions, as ESMA can rely on considerably higher technical expertise and thus does not necessitate information supplied by stakeholders to the same extent as the Commission. This finding corroborates the importance of demand-side factors in the study of lobbying as an exchange relationship, as it highlights how lobbying success cannot be solely explained by advocates' characteristics and how the policymakers' demand for the crucial lobbying "good", namely expert information, has significant implications for the former. Moreover, the thesis points to the importance of policy complexity as a contextual factor affecting policymakers' information demand, as lobbyists' success was found to be higher in the case of more complex policies, where the institutions needed additional external input and evidence to formulate their rules. This equally emphasises the importance of contextual characteristics in determining lobbying outcomes, and the role they play in affecting the targeted institutions' demand for stakeholder information.

Appendix

Flesch-Kincaid index as an alternative complexity measure

This appendix discusses the use of the Flesch-Kincaid readability score as an alternative measure to operationalise the policy complexity variable. The Flesh Reading Ease score, initially developed in 1948 and nowadays a standard in reading ease tests, has higher scores for texts that are easier to read (Flesch 1948). As an example, a Flesch reading ease score of 90-100 corresponds to a text suitable for a 5th grade student, while scores ranging between 0 and 30 are "college graduate" material, corresponding to documents suitable for university graduates. The readability index which I used to analyse the texts in the database, the Flesch-Kincaid Readability Score, is a modification of the original Flesch reading ease index which was developed in the 1970s and rescales the values to US grade levels (1-12), with higher values signalling more difficult texts (Kincaid et al 1975). The Flesch-Kincaid readability score is calculated according to the following formula:

Equation 4

$$0.39 \times ASL + 11.8 \times \frac{n_{sy}}{n_w} - 15.59$$

In the formula above, ASL represents the average sentence length (number of words divided by number of sentences), n_{sy} is the number of syllables and n_w is the number of words. The Flesch reading ease score and the Flesch-Kincaid readability score use the same core measures (word and sentence length), but their results correlate inversely, as a text with a comparatively high score on the reading ease test should have a lower score on the "grade level" test. I decided to use the Flesch-Kincaid readability score as its interpretation is more immediate for my purposes, given that higher scores indicate more complex (less readable) texts. First, I calculated the Flesh-Kincaid index to undertake a first descriptive analysis of the text database and explore the technicality and readability of the replies submitted by advocates to the Commission and ESMA consultations.

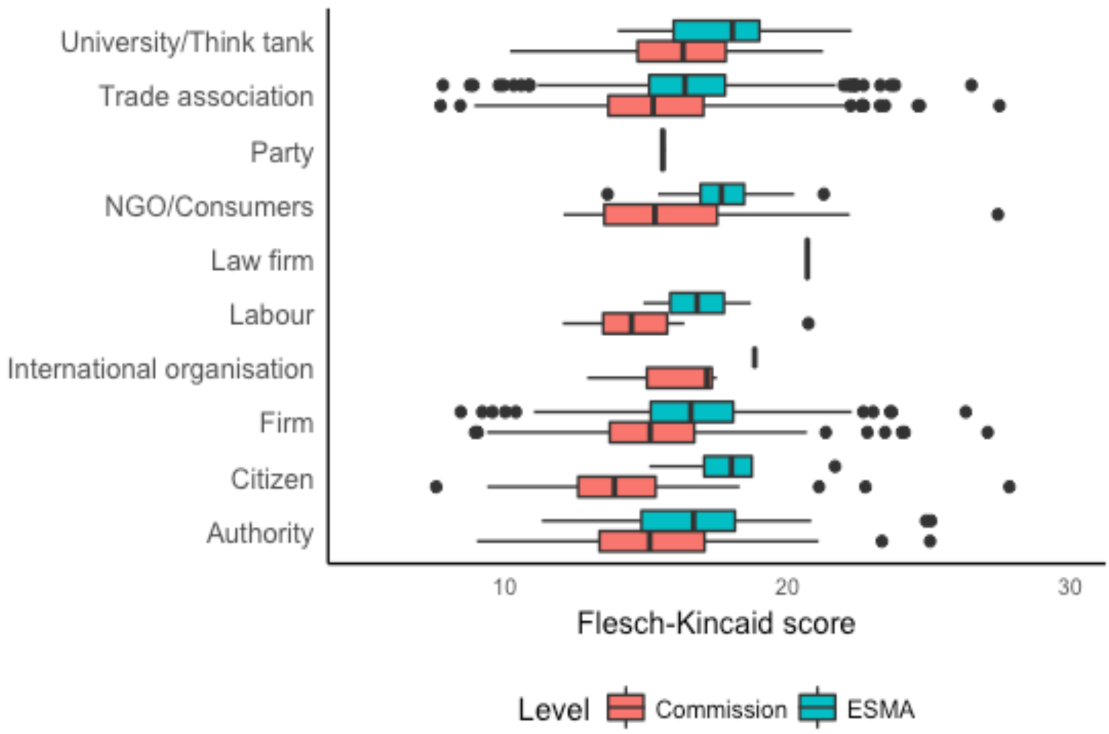


Figure 19. Flesch-Kincaid index according to stakeholder category

The texts in the database under analysis have an average Flesch-Kincaid index of 16, which is not surprising given the technicality and complexity of the financial regulation rules consulted upon. Importantly, the responses submitted to ESMA consultations, which are often described as being more technical in nature than Commission consultations (and rules), have a Flesch-Kincaid index which is only 0.5 points higher on average. Thus, the responses supplied by advocates to both venues, Commission and agency, are of a very similar nature in terms of readability and technicality level. The Flesch-Kincaid index does also not vary significantly according to the policy to which the consultation relates. Furthermore, the index does not vary meaningfully by advocate type, possibly indicating that consumer and citizen interests can master the required level of technicality when participating in consultations (see Figure 19). While the nature of stakeholder replies is not necessarily correlated with the nature of the legislative rules produced at the end of the consultation process, the difference in the Flesch-Kincaid index of Commission and ESMA texts was also found to be marginal (an average difference of 1) with as expected Commission rules being slightly less technical (more readable), but not in a statistically significant manner, as shown in Figure 20 below.

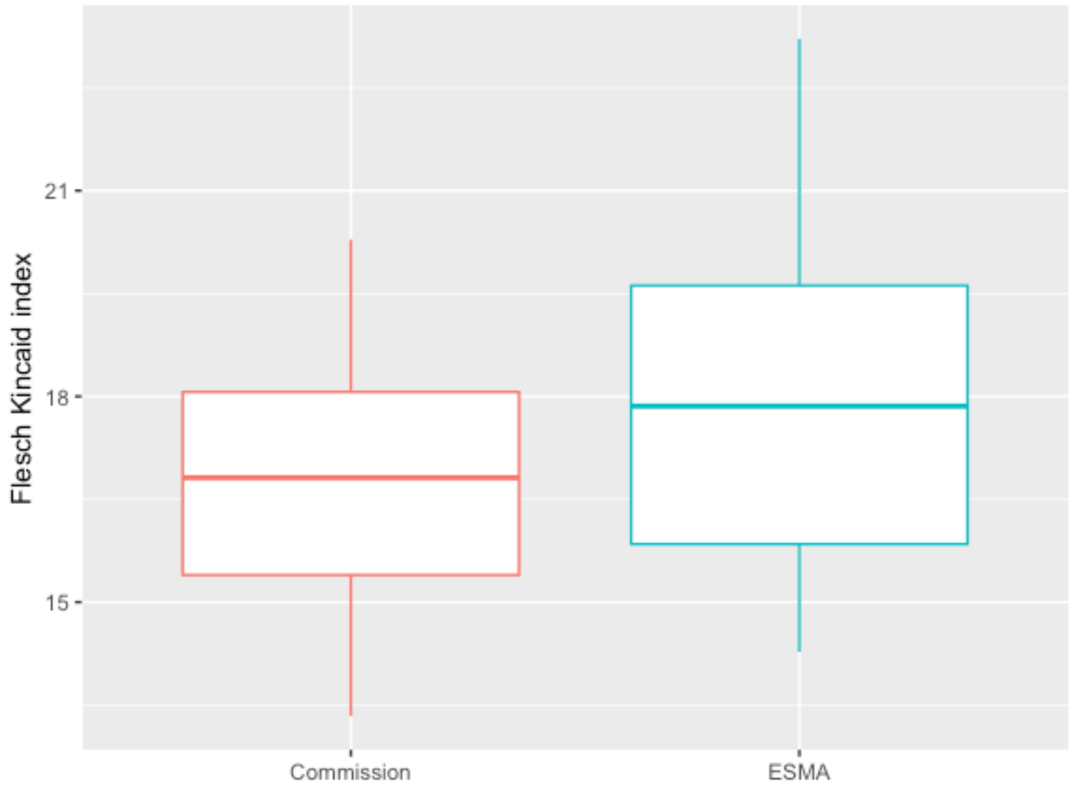


Figure 20. Average Flesch-Kincaid index of Commission and ESMA texts

This helps supporting my claim that that the difference between Level 1 (Commission) and Level 2 (ESMA) rules is negligible, contrary to widespread assumptions that Level 2 rules are significantly more technical in nature. As highlighted in chapter 3, Level 1 rules (Directives and Regulations) are supposed to set out the main principles and political choices for any given policy, while Level 2 rules should include the technical detail necessary to fill in Level 1, but remain devoid of a political or strategic nature. Moreover, Level 2 rules were created as part of the Lamfalussy structure to delegate the technical detail of legislation to the Commission (the responsibility for drafting them was only later handled to the European Supervisory Authorities, as explained in chapter 3), and one of the driving factors behind this delegation was the co-legislators' acknowledgment that Level 2 rules would imply a degree of complexity that they would not be equipped to manage themselves. However, as I argued earlier, the dividing line between Level 1 and 2 rules in terms of technicality is often blurred, and other considerations often take precedence over level of detail or complexity to determine whether an issue is settled directly at Level 1, or dealt by the authorities at Level 2. The marginal difference in reading ease levels between Level 1 rules drafted by the Commission and Level 2 rules drafted by ESMA provides empirical support for this claim.

As outlined in chapter 5, in my regression models I operationalise complexity – an intervening variable which I expect should deepen policymakers' information demand – as the number of questions each institution covers in the relevant policy's consultation paper. However, the Flesch-Kincaid index can also be considered an indirect complexity measure: while the number of words used and average sentence length do not necessarily indicate that the related policy is also complex, we can expect policy complexity and the relative consultation paper's reading ease score to be correlated, and thus use the Flesch-Kincaid index as an alternative operationalisation of the policy complexity variable to improve confidence in results. Figure 21 below shows how the Flesch-Kincaid index is correlated with the complexity variable, measured as (logged) number of questions as per my main regression models; as complexity is calculated at the policy level there are only 14 observations in the plot. While the highly complex MIFID policy has one of the highest Flesch-Kincaid scores, and conversely CRA policy has one of the lowest ones, the correlation between the two variable operationalisations does not seem to be statistically significant.

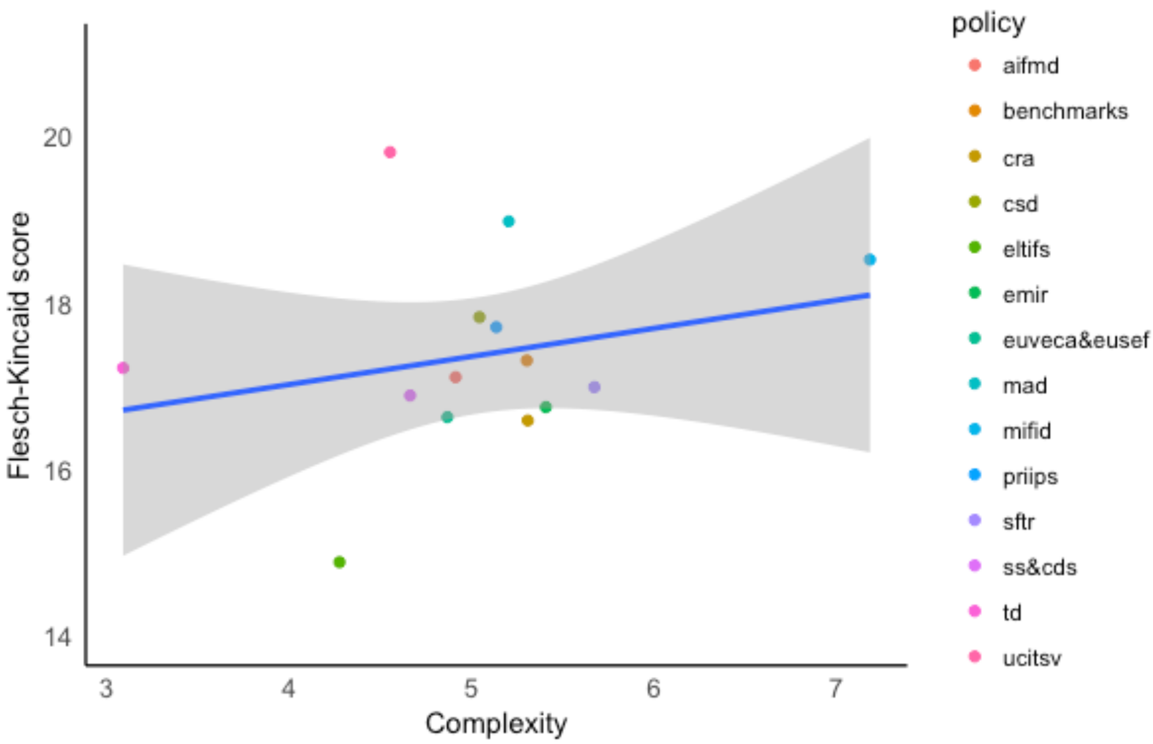


Figure 21. Relationship between Flesch-Kincaid index and complexity (measured as logged number of questions)

I proceeded nonetheless to re-estimate my regressions using the Flesch-Kincaid index as an alternative measure of complexity. Surprisingly, while the coefficient of the complexity variable was statistically significant, its sign was negative, meaning that advocates' success is less likely on more complex policies (where complexity is operationalised as readability). Readability indexes are however based on the number of words and average sentence length, and the readability of the consultation document pertaining to a policy is not necessarily a good proxy for the complexity of that policy. I therefore decided to use the number of questions asked by the policymaker as my preferred operationalisation of complexity, and included that in the main regression models discussed in chapter 5.

Table 18. Results of additional OLS models

	Dependent variable: Lobbying success	
	(1)	(2)
Agency	-0.217***	-0.725***
	(0.068)	(0.219)
Lobbying intensity	0.000	0.000
	(0.000)	(0.000)
Business	-0.130**	-0.129**
	(0.040)	(0.040)
Lobbying costs°	-0.003	-0.003
	(0.004)	(0.004)
Meetings	-0.001	-0.001
	(0.000)	(0.000)
Complexity (FK index)	-0.031***	-0.042***
	(0.005)	(0.007)
Salience°	0.028***	0.028***
	(0.002)	(0.002)
*Agency*Business*	0.080	0.084
	(0.069)	(0.069)
Agency*Complexity		0.029*
		(0.012)
Constant	1.315***	1.492***
	(0.107)	(0.129)
Obs	1459	1459
R2	0.183	0.186
Adjusted R2	0.178	0.181
Residual Std. Error	0.223	0.223
	(df=1451)	(df=1450)
F Statistic	40.55***	36.83***
	(df=8;1451)	(df=9;1450)

Note: *p<0.1; **p<0.05; ***p<0.01; ° are logged variables

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