Journal of European Public Policy

ISSN: 1350-1763 (Print) 1466-4429 (Online) Journal homepage: https://www.tandfonline.com/loi/rjpp20

Stakeholders wanted! Why and how European Union agencies involve non-state stakeholders

Sarah Arras & Caelesta Braun

To cite this article: Sarah Arras & Caelesta Braun (2018) Stakeholders wanted! Why and how European Union agencies involve non-state stakeholders, Journal of European Public Policy, 25:9, 1257-1275, DOI: 10.1080/13501763.2017.1307438

To link to this article: https://doi.org/10.1080/13501763.2017.1307438

Published online: 05 Apr 2017.

JOURNAL OF EUROPEAN PUBLIC POLICY
2018, VOL. 25, NO. 9, 1257–1275
https://doi.org/10.1080/13501763.2017.1307438

Routledge
Taylor & Francis Group

Stakeholders wanted! Why and how European Union agencies involve non-state stakeholders

Sarah Arras[a] and Caelesta Braun[b]

[a]Department of Political Science, University of Antwerp, Antwerp, Belgium; [b]Institute of Public Administration, Leiden University, The Hague, The Netherlands

ABSTRACT
This article examines why and how European Union agencies involve non-state stakeholders – such as non-governmental organizations (NGOs), business associations or trade unions – via three access instruments: public consultations; stakeholder bodies; and representation in management boards. We assess how the use of these instruments varies across agencies, and how they are linked to different motivations driving the demand for stakeholder participation. We present two alternative sets of hypotheses, first focusing on agencies' need for information, organizational capacity and reputation, and second, considering stakeholder involvement as an instrument of legislative control. We draw on a new dataset of stakeholder involvement practices of the full population of EU agencies, compiled via document analysis and interviews. Our findings indicate that stakeholder involvement is a double-edged sword, contributing to agency accountability and control, but with an inevitable risk of dependence on the regulated industry.

KEYWORDS Access; agencies; European Union; interest groups; stakeholders

Introduction

Independent agencies have become an important part of the European Union's (EU) institutional architecture over the last two decades, rapidly rising both in sheer numbers and expansion of their powers (Busuioc 2009; Curtin and Dehousse 2012; Kelemen and Tarrant 2011; Levi-Faur 2011; Rittberger and Wonka 2011; Wonka and Rittberger 2010). While some have limited informational or executive tasks, others have far-reaching regulatory powers, such as the European Medicines Agency (EMA) authorizing medicinal products or the European Banking Authority (EBA) setting rules for financial institutions throughout the EU (Busuioc *et al.* 2012). As part of a general trend towards private actor involvement in regulatory processes, stakeholder engagement has become an important aspect of EU agencies' governance structures (Ayres and Braithwaite 1992; Grabosky 2013). Indeed, 78 per cent

CONTACT Sarah Arras sarah.arras@uantwerpen.be

of all EU agencies actively involve non-state stakeholders – such as firms, industry associations, NGOs or trade unions – via formal arrangements like advisory committees or public consultations.[1] Following a diverse set of theoretical frameworks, including responsive regulation, regulatory capitalism, horizontal accountability and agency governance, stakeholder involvement is supposed to serve responsive, effective and legitimate regulation (Abbott and Snidal 2013; Ayres and Braithwaite 1992; Bernauer and Gampfer 2013; Coglianese *et al*. 2004; Gornitzka and Sverdrup 2015; Martinez *et al*. 2013; Ottow 2015; Verbruggen 2013). This should be especially acute for EU level agencies, given the combination of a horizontal (delegation of competencies to non-majoritarian institutions) and upward shift of responsibilities (delegation of competencies to supranational governance levels). According to agency capture theory, stakeholder involvement threatens agencies' responsiveness, effectiveness and legitimacy. The expectation is that stakeholder involvement will be biased towards well-endowed business groups, leading to regulation serving private rather than public interests (Carpenter and Moss 2014; Stigler 1971).

To our knowledge, there are currently no systematic analyses of how EU agencies interact with non-state stakeholders and the motivations driving these interactions (but see Borrás *et al*. 2007; Thiel 2014). With this article, we contribute to the literature on stakeholder involvement in regulatory governance, in particular *vis-à-vis* EU independent agencies, by answering the following research question: *why and how do EU agencies involve non-state stakeholders*? We examine whether organizational arrangements to involve stakeholders, which we term access instruments, are associated with the most important motivations for stakeholder involvement. Following the logic of delegation processes, we first expect stakeholder involvement to serve agency needs. More in particular, we expect individual access instruments to fulfil different agency needs best. Public consultations are linked to informational needs, participation in stakeholder bodies to the need for organizational capacity and, finally, participation in management boards most likely serves reputational concerns. As an alternative explanation, we expect stakeholder involvement to be primarily an instrument of legislative control. To examine our expectations, we draw on a novel dataset of access instruments used by the full population of 31 EU independent agencies, constructed via document analysis, and 27 semi-structured interviews with EU agency officials.

Two important findings stand out. First, although the main instruments for stakeholder involvement indeed serve informational needs (public consultations), organizational capacity (stakeholder bodies), as well as agencies' reputation (participation in management boards), our findings also reveal the impact of legislative control, not only in terms of legal requirements but also in a more indirect way, for instance in the need to balance different interests. Second, we find that EU agencies with regulatory competences more extensively involve stakeholders. This implies that rather than being independent and insulated from external pressures, as the idea of delegation to experts suggests, EU regulatory agencies are strongly embedded in a network of stakeholders. In sum, our findings indicate that stakeholder involvement at EU agencies can be considered a double-edged sword. On the one hand, as an instrument of legislative control, the participation of – especially non-business – stakeholders can contribute to agencies' accountability and oversight. On the other hand, however, as stakeholder participation also seems to fulfil certain agency needs, especially a need for expertise, it brings along an inevitable risk of dependence on the regulated industry.

Stakeholder involvement and EU agencies

A functional explanation of delegating tasks to independent agencies follows from the well-known principle of credible commitment. Governments put regulatory or executive competences in the hands of independent agencies because expert-based regulation and implementation is considered to have more credibility (Maggetti and Verhoest [2014]; Rittberger and Wonka [2011]; see Gilardi [2005] and McNamara [2002] for sociological institutionalist explanations). In the case of EU agency creation, the limited resource capacity of the European Commission (EC) to effectively ensure and oversee implementation of EU legislation, strengthened this rationale of credible commitment (Dehousse 1997; Wonka and Rittberger 2010). Delegation theory thereby suggests two important, yet alternative sets of hypotheses concerning the motivations for stakeholder involvement, namely either addressing agency needs or serving legislative control. We discuss each in turn.

Agency demand for stakeholder involvement

Two important assets for independent agencies are a strong expert base and sufficient operational capacity to be capable of formulating effective rules, as well as monitoring and ensuring compliance (*cf*. Hood *et al*. 2001; Rittberger and Wonka 2011). From these core assets follow three main motivations for involving stakeholders. First, one of the most important motivations is that agencies need expertise. As Coglianese *et al.* (2004: 277) put it: 'information is the lifeblood of regulatory policy'. Agencies need expertise to formulate regulatory proposals that effectively meet industry innovations and trends, and take into account the potential impact on the regulated sector. Incorporating industry expertise in the regulatory process is one of the most important characteristics of many co-regulation arrangements, by involving both private and public actors to varying degrees (Ayres and Braithwaite 1992; Coglianese *et al*. 2004).

Involvement of non-stake stakeholders to obtain their expertise resonates in the interest group literature as part of a resource exchange perspective; the most important mechanism explaining interest group access to public decision-making. Within this perspective, interactions between policy-makers and stakeholders are conceptualized as an exchange relation (Bouwen 2002; Braun 2012; Coen and Katsaitis 2013). Interest groups, or stakeholders more generally, offer relevant policy goods required by policy-makers in return for access and the possibility of having influence. Information is one of the most important goods interest groups have to offer to policy-makers, and ranges from technical expertise, legal and administrative information (see De Bruycker [2016] for a discussion) to so-called 'political intelligence' (Hall and Deardorff 2006), which helps public authorities to more effectively design and implement legislation.

Besides expertise, independent agencies can also benefit from stakeholders' organizational capacity to facilitate and monitor compliance. Involving stakeholders early on in the regulatory process and providing opportunities for their input is argued to ensure higher levels of ownership and compliance among regulatees, adding to cost-reduction and effective implementation (Martinez *et al*. 2013; Ottow 2015). In addition, interest associations can function as an intermediary between public officials and private firms. This intermediary function is important, given the limited resource capacity of regulatory authorities to engage with all relevant stakeholders individually. This more inclusive interpretation of policy goods beyond mere informational needs, as is dominant in the interest group literature (Bouwen 2002), is reflected in the concept of regulatory enrolment (*cf*. Black 2003). 'Enrolment occurs when a regulator chooses to engage with actors that possess resources relevant for regulation and enforcement, such as information, expertise, financial means, authority, or organizational capacity that the regulator itself might lack' (Verbruggen 2013: 524).

A complementary motivation for stakeholder involvement refers to an overall capacity of agencies to achieve so-called *de facto* autonomy (Maggetti 2007) and, hence, their capability to regulate and enforce compliance. This idea of political capacity refers to how well agencies are embedded within networks of both state and non-state actors, and their capability to forge such networks over time in such a way that it benefits their authority to draft and enforce regulation. Such strategic embeddedness speaks to reputational strategies (Carpenter 2001, 2010; *cf*. Maggetti and Verhoest 2014). Carefully managing stakeholder involvement by balancing and strategically exploiting certain interests may serve an agency's reputation of fairly and strictly monitoring regulatory norms (Carpenter 2010; Wilson 1974). It also fits within a reputational-based approach to accountability, which 'is about sustaining one's own reputation vis-à-vis different audiences', including societal stakeholders (Busuioc and Lodge 2016: 248). In this regard, engaging in extensive horizontal accountability mechanisms, exceeding formal requirements, can serve a sound reputation and contribute to organizational legitimacy (Busuioc and Lodge 2016; Koop 2014).

In sum, the core organizational characteristics of independent agencies, namely expert-based formulation of regulatory norms combined with decisive enforcement capacities, suggest three important motivations for involving non-state stakeholders, namely because of the need for expertise, organizational capacity, as well as reputation-building.

The motivations discussed above focus on *why* agencies interact with non-state stakeholders. We now turn to the question of *how* agencies design stakeholder involvement to address these specific needs. How agencies involve stakeholders refers to their usage of formal arrangements, which we term access instruments. Generally, one can distinguish between open and closed instruments to grant access to non-state stakeholders, which vary in the degree of inclusiveness and intensity of interactions (Pedersen *et al.* 2015). Open access instruments usually concern public consultations, equivalent to those organized by the EC, for which access is in principle unlimited and *ad hoc*. Anyone can participate by responding to a specific consultation, generating possibilities for a wide variety of stakeholders to get involved. The European Food Safety Authority (EFSA), for instance, organizes public consultations on draft scientific opinions. Two types of closed instruments apply to EU agencies. First, agencies can provide access to stakeholders as observers in meetings of the management board. The European Medicines Agency's (EMA) management board, for instance, includes patients', doctors' and veterinarians' organizations.[2] A second closed type of stakeholder involvement is stakeholder bodies, i.e., permanent entities within the agency where a substantial number of the members are stakeholders, which meet on a regular basis. An example is the Banking Stakeholder Group of the European Banking Authority (EBA), including representatives of the banking industry, consumer organizations and academics.[3] A limited set of stakeholders is involved for a longer period of time and access is restricted, as the agency, or in some cases the EC, decides which stakeholders have access.

The discussion of three overall motivations for stakeholder involvement and three distinct types of access instruments results in several research expectations concerning agency needs. First, from an overall agency perspective, we expect to find variation between regulatory and non-regulatory agencies. Regulatory agencies have a direct impact on EU policy, playing a key role in the preparation and implementation of regulations in complex policy domains, such as the safety of chemicals or the stability of financial markets (Wonka and Rittberger 2010). Given these complex regulatory tasks and the need to formulate rules compatible with the day-to-day operations of the regulated sector, regulatory agencies have larger informational needs than agencies with limited competences. Moreover, studies of interest group access demonstrate that higher levels of government activity and wider competences are positively correlated with interest group mobilization and hence with more frequent interactions with a larger set of groups (Leech *et al.* 2005). As the work of agencies with regulatory competences has a larger and more direct impact on stakeholders, levels of mobilization will be higher, making the need to canalize interactions with stakeholders via formal access instruments more acute. Hence, we expect that:

> H1: EU agencies with regulatory competences are more likely to employ access instruments to involve non-state stakeholders than EU agencies without regulatory competences.

We further expect that agencies employ distinct instruments to accommodate the three agency needs discussed above. The public consultation instrument stands out as particularly serving informational needs rather than other agency needs. Since access is not restricted, public consultations provide the opportunity to get as broad an input as possible. Agencies in need for stakeholders that can offer organizational capacity, i.e., that can either serve as intermediate or help facilitate the implementation process, are likely to employ access instruments that will tie such organizations to them over a longer period of time. Most suitable for this purpose are stakeholder bodies, permanent entities within the agency structure that enable sustainable interactions with stakeholders. Involving stakeholders as observers in the management board, where the general lines of the agency's work are set out and high-level decisions are made, can signal openness and is expected to foster the agency's reputation as an authority. These observations lead to the following hypotheses:

> H2: Public consultations more likely serve informational needs than other agency needs.

> H3: Stakeholder bodies more likely serve the need for organizational capacity than other agency needs.

> H4: Stakeholder representation in management boards more likely serves agencies' reputational concerns than other agency needs.

Stakeholder involvement as an instrument of legislative control

The hypotheses formulated above are derived from an agency perspective, emphasizing what agencies need from stakeholders. The act of delegation, however, suggests an important alternative explanation, from the perspective of legislators, who want a certain degree of control over the agencies they have created (Busuioc 2009; McCubbins and Schwartz 1984). In this view, participation of societal stakeholders is considered an instrument of legislative control over non-majoritarian organizations, deliberately put at a distance from the political process to benefit from their independent expert role (Furlong and Kerwin 2004; Majone 1999). Involving stakeholders can help legislators exercise control on the bureaucracy and avoid agency drifting, by so-called fire-alarm mechanisms (Kelemen 2002). Fire-alarm oversight refers to a system of rules, procedures and informal practices allowing citizens and interest groups to examine agency activities and demand remedies from agencies, courts or parliament itself, should agency activities violate legislative goals. Such procedures, rules and informal practices usually provide citizens and interest groups access to information on the administrative decision-making process and a certain standing to be able to charge agency decisions, or address imbalances in collective action potential (McCubbins and Schwartz 1984: 166). Recent trends to non-hierarchical forms of accountability, that go beyond the principal–agent control relation (Bovens 2007), fit within such fire-alarm oversight. This so-called horizontal accountability 'refers to forms of accountability where the accountee is not hierarchically superior to the accountor', i.e., accountability to third parties such as non-state stakeholders, journalists or independent evaluators (Schillemans 2011: 390). Legislators with limited resources might prefer these indirect control mechanisms relying on external actors, rather than more expensive police patrol oversight where legislators themselves regularly examine agency activities (McCubbins and Schwartz 1984). This is especially acute for the EU level, given the horizontal and vertical delegation of competencies and the limited resources of the EU institutions. It is therefore likely that stakeholder involvement arrangements are primarily the result of legal requirements set by the EU institutions when designing independent agencies. More in particular, after the EP gained more powers in the Maastricht, Amsterdam and Lisbon Treaties, it took up a more prominent role in the design of new agencies and voiced increasing concerns about their transparency and accountability (Curtin 2005; Kelemen 2002). We expect that these concerns are reflected in the institutional design of agencies where the EP was involved in their establishment, either via formal requirements or informal practices. These agencies will have more open and formalized administrative procedures where non-state stakeholders are allowed access (Kelemen 2002). These considerations of stakeholder involvement as an instrument of legislative control result in the following hypotheses:

> H5: EU agencies employ access instruments to involve non-state stakeholders primarily as a result of legal requirements set by the EU institutions, rather than following from agency needs.

> H6: EU agencies established by co-decision are more likely to employ access instruments to involve non-state stakeholders than EU agencies not established by codecision.[4]

Data and method

To examine why and how EU agencies involve stakeholders, we constructed a dataset of access instruments used by all 31 EU agencies that were operational on 1 January 2015.[5] The EU website describes them as 'decentralized agencies' designed 'to perform technical and scientific tasks that help the EU institutions implement policies and take decisions'.[6] These agencies are established without a specific time span, and operate relatively autonomously from the EC (Ongaro *et al.* 2012: 402). For every agency, we analysed the website to code the presence or absence of: (1) public consultations; (2) stakeholder bodies; and (3) stakeholder representation in the management board. In addition, to assess the expectation on legal requirements, we examined all agencies' founding regulations to see whether the EU institutions included arrangements for stakeholder involvement in their design. Agency competences and establishment by codecision were coded based on information from the agencies' websites, and double-checked in the interviews. We replicated the coding by Wonka and Rittberger (2010) for regulatory versus non-regulatory agencies and applied their coding to newly established agencies not yet included in their dataset. According to this classification, agencies with regulatory competences are directly involved in the preparation and implementation of EU regulation. An example is the European Chemicals Agency (ECHA), which implements the REACH (Registration, Evaluation, Authorization and Restriction of Chemicals) legislation. Agencies without actual regulatory competences can have informational or executive tasks. The European Environment Agency (EEA), for instance, gathers and disseminates scientific information on the environment, which the EU institutions and national authorities can use when drafting environmental legislation. The EEA does not, however, directly support the preparation or implementation of regulation. An example of a non-regulatory agency with primarily executive tasks is EUROJUST, which co-ordinates criminal investigations and prosecutions involving at least two countries.[7]

To examine the motivations behind EU agencies' interactions with stakeholders and how these relate to the three different access instruments, we conducted 27 interviews with either the stakeholder relations officer or someone who regularly interacts with stakeholders. We selected these respondents as they were best placed within the agencies to provide us with an overview of the main motivations for involving stakeholders. The response rate was 87 per cent, as four agencies declined.[8] The reasons for declining were a combination of time constraints and the – according to them – very limited interactions with non-state stakeholders. These four agencies are all non-regulatory, carrying out informational or executive tasks. Based on their founding regulation and website, none of them seem to involve non-state stakeholders. We conducted in-person interviews, either face-to-face or via Skype.[9] The interviews lasted an hour on average and were carried out between February 2015 and April 2016. The motivations of agencies to involve non-state stakeholders were operationalized via questions probing into the main reasons for (1) public consultations, (2) stakeholder bodies and (3) representation in the management board. We coded these motivations as either informational needs, organizational capacity, reputational concerns, or other aspects. Mentions of 'expertise', 'information' or 'facts and figures' are categorized as *informational needs*. Reasons including 'implementation', 'compliance', 'execution of policy' or 'intermediation' fall in the category of *organizational capacity*. *Reputational concerns* include mentions of 'credibility', 'reputation', 'trust', 'accountability', 'transparency' and 'authority'.

Examining stakeholder involvement by EU agencies

We start by conducting an agency-level analysis to examine how the usage of the three access instruments varies across different types of agencies. To do so, we take into account the difference between regulatory and non-regulatory agencies (Hypothesis 1), and agencies established by the codecision procedure or not (Hypothesis 6). To examine whether these between-group differences are significant, we executed Pearson chi-square tests.[10] We also examined whether the usage of the three access instruments is legally required or voluntarily organized (Hypothesis 5). Table 1 shows the number of agencies employing public consultations, stakeholder bodies or stakeholder representation in management boards, first split up for regulatory versus non-regulatory agencies, second, for agencies co-established by the EP or not, and third, making a distinction between mandatory and voluntary access instruments.

The left columns of Table 1 show that, as hypothesized, all three access instruments are more often employed by agencies with regulatory competences. The differences between regulatory and non-regulatory agencies are significant for public consultations ($\chi^2 = 13.839$, $p = 0.000$) and management board representation ($\chi^2 = 7.888$, $p = 0.005$). None of the non-regulatory agencies organize public consultations, but 10 out of 16 regulatory agencies do. While 63 per cent of the regulatory agencies have representatives of non-state stakeholders in their management board, only 13 per cent of the non-

Table 1. Number of agencies using the three access instruments ($N = 31$).

	Regulatory	Non-regulatory	Co-decision	No co-decision	Mandatory	Voluntary	Total
Public consultations	10 (63%)	0 (0%)	10 (56%)	0 (0%)	5	5	10
Stakeholder body	12 (75%)	7 (47%)	13 (72%)	6 (46%)	13	6	19
Management board	10 (63%)	2 (13%)	6 (33%)	6 (46%)	10	2	12
N	16	15	18	13	31	31	31

regulatory agencies employ this access instrument. A Pearson chi-square test does not show a significant difference between regulatory and non-regulatory agencies with regard to the use of stakeholder bodies ($\chi^2 = 2.620$, $p = 0.106$), but the frequencies indicate that also this access instrument is more often employed by agencies with regulatory competences. Additionally, regulatory agencies are more likely to combine different access instruments, as 12 of them employ more than one instrument, while only one non-regulatory agency does.

We now turn to the results on the codecision procedure, presented in the middle columns of Table 1. Whether the EP was involved in the establishment of an agency is unrelated to the likelihood of having stakeholder representation in the management board ($\chi^2 = 0.523$, $p = 0.470$). With regard to the use of stakeholder bodies, the frequencies show that this instrument is more often used by agencies established by codecision, but the chi-square test does not indicate a significant difference ($\chi^2 = 2.162$, $p = 0.141$). Interestingly, we do find a significant difference between agencies co-established by the EP or not with regard to the use of public consultations ($\chi^2 = 10.661$, $p = 0.001$). The 10 agencies that organize public consultations are all regulatory and were all established by codecision, meaning that the combination of these two agency characteristics perfectly predicts the use of this access instrument.

Finally, we observe our results on legal requirements, the columns at the right side of Table 1. The data show that stakeholder bodies and stakeholder representation in management boards is indeed for many agencies (13/19 and 10/12 respectively) the result of legal requirements laid down in the regulation establishing the agencies. Also the public consultation instrument seems to serve the mechanism of legislative control to some extent, as it is mandatory for five of the ten agencies using this instrument. Given that for a substantial number of agencies stakeholder involvement is in the first place a legal requirement, we cannot assume that agency needs for certain policy goods are the sole driver of interactions with stakeholders. Yet, the results on public consultations show an interesting phenomenon. While the combination of regulatory competencies and being established by the codecision procedure perfectly predicts the usage of public consultations, only half of the agencies are actually formally required to use this instrument. Moreover, a legal requirement in the founding regulation as main motivation was only mentioned by four respondents, three related to management board representation and one to the use of public consultations (see Table 2 for an overview of the interview data). This indicates that there is room for agency needs as well, which we will examine in the next section.

Table 2. Expected and observed motivations related to the three access instruments ($N = 27$).

Access instrument	Expected motivations	Observed motivations	Additional findings
Public consultations	Information	Information (6/10)	Reputation (3/10) Legal requirement (1/10)
Stakeholder bodies	Organizational capacity	Organizational capacity (13/19)	Balance of interests (13/19) Information (6/12)
Management board	Reputation	Reputation (5/12)	Information (4/12) Legal requirement (3/12)

Note: Number of respondents linking a certain motivation to a specific access instrument between brackets.

Examining EU agencies' demand for stakeholder involvement

We now examine to what extent the three types of access instruments are related to the expected agency motivations (Hypotheses 2, 3 and 4). Starting with public consultations, over half of the agencies using this instrument (6/10) confirmed that the main benefit is to gather expert information, rather than serving other agency needs. Illustrative for this informational demand is the following quote from a regulatory agency: 'We have an important input from the industry, so we depend on their expertise to certain extent, they provide us with information on certain issues, technical, legal or administrative issues. We depend on that information' (Interview 18052015).

This informational demand seems especially relevant for agencies with regulatory tasks, since nearly all of them (15/16) indicated to be dependent on information from stakeholders. Feedback on draft regulatory documents from those stakeholders that are affected is deemed crucial, since it helps agencies understand the consequences in the implementation. One official mentioned that consulting stakeholders works as a 'reality check' to probe whether a rule is 'realistic' and whether the affected industry will be able to comply with it (Interview 25022015). Another respondent described stakeholder involvement as a way to get a 'real world perspective' (Interview 07052015). For rules to be effective, agencies depend on the industry to comply with them. As one official stated:

> We do not want to be the authority that lives on the ivory tower that invents regulation without knowing how exactly what kind of impact it will have. It helps us to avoid the mistake when you make a regulation and then afterwards you have to change it because nobody is able to comply with this regulation. (Interview 11122015)

Respondents also indicated that public consultations and permanent stakeholder bodies are two complementary access instruments, used in different stages of the regulatory process. Agencies often start by presenting a draft document in the stakeholder body, to probe whether it is going in the right direction. The limited number of seats, and thus interests represented, enables deliberation and the formulation of a consensus position, but also inevitably means that not all interested stakeholders are able to participate. A public consultation allowing anyone to voice its position is an important additional instrument to reach a broader set of stakeholders. All six agencies also stressed that public consultations are used to reach 'the stakeholders who are the last one affected by the rule, the one in the field', since the stakeholder body members are often EU-level associations that do not possess the highly technical information individual companies have (Interview 24062015).

Interestingly, public consultations do not exclusively fulfil an informational need, as three respondents stressed that this instrument is mainly used as a means to ensure transparency and contribute to the agency's reputation. They mentioned transparency as a key value of the organization, which is fostered by openly consulting on draft documents and providing any stakeholder the opportunity to comment. As one of these three agency officials noted: 'It's a transparency issue. Because we want to be transparent on everything what we are doing, and by publicly consulting on the regulation we also fulfil our transparency goal' (Interview 11122015).

Our expectation that stakeholder involvement via permanent stakeholder bodies mainly serves to obtain organizational capacity is partly confirmed. Of the nineteen agencies with a stakeholder body, 13 indicated that this type of involvement eventually leads to a smoother implementation process. In the words of one of the respondents:

> One of the things that we try to do is to involve them as early as possible so that there is a certain consensus already at the beginning, so later on for example the same company says something different on a later stage, we can say: but wait a minute you agreed to it in the beginning. (Interview 24062015)

This confirms the regulatory enrolment logic we discussed earlier and suggests that involving stakeholders early on in the process facilitates the implementation process. Interestingly, these 12 agencies also stressed the importance of having different interests around the table, the possibility of dialogue and deliberation and how this leads to more acceptance of the decisions that are taken. In this regard, channelling interactions with stakeholders in a formal stakeholder body, which is integrated in the agency's organizational structure, is one way of ensuring a balance of interests. As one of the respondents observed:

> It is interesting that they offer more the other side of the coin, not just the industry side which we normally get through the normal stakeholders, but we get a consensus opinion on a topic. And because they differ so much they usually come to a more balanced opinion. (Interview 11122015)

The six remaining respondents from the nineteen agencies with a stakeholder body emphasized the importance of getting information via this instrument. Different from public consultations, where the aim is to reach as broad an audience as possible, stakeholder bodies are usually used to get a first feel of the most relevant stakeholders' reactions. One official described it as follows: 'First, we consult this group to know that what we do goes in the right direction, before we go for a wider consultation' (Interview 20042015).

As expected, stakeholder representation in management boards indeed serves agencies' reputational concerns, but there are other motivations as well. Five of the twelve agencies using this instrument indicated that board involvement is indeed organized to show accountability or a general reputation of openness. In this case it is mostly about providing information to stakeholders, rather than getting information from them. As one respondent said:

> I think that it's providing accountability, transparency. So they are aware of the state of play at the maximum level. … I think it is important that they are there and that they can hear exactly what is going on. (Interview 12052015)

Agencies' reputational concerns more generally seem to be an important driver of stakeholder involvement, not only specifically via management board representation. This is especially the case for regulatory agencies, since 81 per cent of them mentioned reputational concerns as a main motivation to interact with stakeholders, while only 27 per cent of the non-regulatory agencies did. Illustrative is the following quote on why the agency interacts with stakeholders in general: 'One objective would be to gather support, not for specific work, but to increase the credibility of the organization [i.e., the agency]' (Interview 06052015).

Besides the importance of reputation, four of the twelve respondents indicated that the main reason for stakeholder representation in their management boards is to get information. This is, however, mostly in terms of feedback on annual reports or multi-annual frameworks, rather than providing technical expertise to assist the drafting of regulatory documents. An overview of the expected and observed motivations related to the three different access instruments, as well as additional findings, are presented in Table 2.

In sum, our results show that regulatory agencies are more likely to involve stakeholders, via all three access instruments. Additionally, the findings on legal requirements and the role of the EP support the expectation that stakeholder involvement is to some extent an instrument of legislative control. Our expectations concerning the motivations behind the usage of different access instruments are partially confirmed. Public consultations are indeed mostly used to fulfil agencies' need for expert information, but in some cases to signal transparency and openness as well. Stakeholder bodies mainly serve agencies' need for organizational capacity to ensure a smooth implementation process, but are also used to get a first feel of the most important stakeholders' reactions on draft decisions early on in the process. Stakeholder representation in management boards often serves agencies' reputational concerns, but in some cases also the need for information in terms of stakeholder feedback on annual reports for instance. So, it seems that all access instruments serve in some way or another informational needs, whereas reputational concerns are not only addressed via interest representation in management boards, but also by public consultations. A balance of interests is an important additional motivation associated with stakeholder bodies. Comparing our findings on legislative control and agency needs suggests that while a substantial part of stakeholder involvement is legally required, employing access instruments is partially also a voluntary act. And, what is more, the motivations provided by agencies themselves rarely signal a legal requirement in the first place, but predominantly point to agency needs.

Conclusion

The aim of this article was to understand why and how EU independent agencies involve non-state stakeholders such as firms, industry associations, NGOs or trade unions. We hypothesized that stakeholder involvement could serve legislative control or fulfil agency needs. Our findings indicate evidence for both expectations to varying degrees. Stakeholder involvement is to some extent an instrument of legislative control, since our findings show that for a substantial group of EU agencies the use of access instruments is legally required by their founding regulation. However, most agency officials indicated agency needs as the main driver for interactions with non-state stakeholders. Especially informational needs seem key, as these are linked to all three access instruments to some extent. Agencies with regulatory competences engage more extensively with stakeholders, which could be the result of larger agency needs or an indication of stronger legislative oversight.

Our analysis is, to our knowledge, the first systematic investigation of why and how EU agencies involve non-state stakeholders and implies the need for a more specified theoretical model on stakeholder involvement *vis-à-vis* (EU) independent agencies. Our findings, for instance, seem to indicate that there is an interaction effect between regulatory competencies and certain motivations for involving stakeholders. Or, as a specification of our theoretical expectations, there might be interaction effects between different stages of the regulatory cycle and agency needs. While these are very plausible expectations, the limited size of the population of EU agencies did not allow us to properly test them empirically. They are, however, interesting hypotheses for further research on independent agencies elsewhere.

Our findings also suggest a complex interplay between mechanisms of legislative control and agency needs for stakeholder involvement, speaking to the overall question of responsiveness and legitimacy running through multiple theoretical frameworks. First, the observation that informational needs appear to be an important motivation and are, albeit to varying degrees, associated with all three access instruments, may be interpreted as a signal that agencies are likely to be dependent on the regulatees. As almost all (15 out of 16) agencies with regulatory competences indicated that they depend to some extent on information from the sector they are supposed to regulate, stakeholder involvement seems to bring along risks of limited autonomy. Extensive stakeholder involvement could grow into a restricted circle of privileged stakeholders or so-called 'insiders', which seems apparent in the function of stakeholder bodies and representation in management boards. Such stable patterns of inclusion and exclusion have profound effects on stakeholders' strategic behaviour and their likely policy impact, as well as on the responsiveness and accountability of agencies (Fraussen 2014; Fraussen *et al.* 2014). This can contribute to overly dependent agencies on a limited set of stakeholders over time, speaking to the agency capture literature (Carpenter and Moss 2014; Stigler 1971). On the other hand, a majority of the agencies with stakeholder bodies (12/19) mentioned a balance of interests around the table as a crucial asset of this access instrument, indicating a strong awareness of the risks associated with biased participation. The urgent question then is, of course, to what extent this balance of interests is truly reflected in regulatory output.

Second, the finding that reputational concerns resonate in multiple access instruments in conjunction with the observation that several agencies engage in voluntary stakeholder involvement, exceeding legal requirements, suggests the relevance of stakeholder involvement when considering agency autonomy and delegation processes. More specifically, our findings may be interpreted as an important instance of reputational and organizational accounts of accountability and agency autonomy (Buiusoc and Lodge 2016; Carpenter 2010; Koop 2014) and call for a more integrative approach that brings stakeholder involvement into the study of independent agencies.

Overall, given the increasing importance of EU agencies in what some have termed the 'Eurocracy' (Kelemen and Tarrant 2011), and the growing relevance of responsiveness and horizontal accountability to ensure legitimate and effective regulation, our findings merit further study into stakeholder involvement *vis-à-vis* EU agencies, particularly examining the impact of different access instruments on the number and type of stakeholders, and their eventual impact on regulatory outcomes.

Notes

1. Authors' own data source.
2. http://www.ema.europa.eu/ema/index.jsp?curl=pages/about_us/general/general_content_000098.jsp (accessed April 14, 2016).

3. http://www.eba.europa.eu/about-us/organisation/banking-stakeholder-group (accessed April 14, 2016).
4. Agencies established after the Lisbon Treaty entered into force (1 December 2009), fall under the ordinary legislative procedure.
5. The Single Resolution Board and the European Public Prosecutor's Office are excluded, since they are not operational yet. The Translation Centre for the Bodies of the European Union is excluded, since a short telephone interview made clear that this agency is not involved in (the implementation of) EU legislation but is tasked with translation services for all other EU institutions.
6. https://europa.eu/european-union/about-eu/agencies/decentralised-agencies_en (accessed June 2, 2015).
7. https://europa.eu/european-union/about-eu/agencies/decentralised-agencies_en (accessed June 2, 2015).
8. The European Centre for Disease Prevention and Control (ECDC), the European GNSS Agency (GSA), the European Police College (CEPOL) and the European Union's Judicial Co-operation Unit (EUROJUST).
9. Two agencies provided written answers after we had tried to schedule an interview several times without success.
10. Logistic regressions provided similar results. A logistic regression with public consultations as dependent variable was, however, problematic, since there are no observations for the categories 'no codecision' and 'non-regulatory' agencies. Codecision and agency competences are not correlated ($\chi^2 = 1.551$, $p = 0.213$). We also included agency age and resources in the analysis, to control for a potential time trend and the expectation that agencies with more resources are better able to bear the costs of stakeholder involvement. The results show that management board representation is more likely for older agencies, while stakeholder bodies and public consultations occur more often at younger agencies. We did not find significant associations for agency budget. We also checked the associations between agency age, budget, competences and EP involvement. Only EP involvement and agency age are significantly correlated. This is not surprising, given that the EP was involved in the creation of the most recently established agencies.

Acknowledgements

We want to thank Jan Beyers, Iskander De Bruycker, the members of the research group on international governance from the Institute of Public Administration at Leiden University, and the two anonymous JEPP reviewers for their valuable feedback on earlier drafts of this article.

Disclosure statement

No potential conflict of interest was reported by the authors.

Funding

The research in this article is financially supported by grant G096512N from the Fonds Wetenschappelijk Onderzoek (Principal Investigator: Jan Beyers) and grant 452-14-012 from the Nederlandse Organisatie voor Wetenschappelijk Onderzoek (Principal Investigator: Caelesta Braun).

Notes on contributors

Sarah Arras is a PhD researcher at the Antwerp Centre for Institutions and Multilevel politics (ACIM), at the Department of Political Science at the University of Antwerp.

Caelesta Braun is an associate professor at the Institute of Public Administration at Leiden University.

References

Abbott, K. W. and Snidal, D. (2013) 'Taking responsive regulation transnational: strategies for international organizations', *Regulation and Governance* 7(1): 95–113.

Ayres, I. and Braithwaite, J. (1992) *Responsive Regulation: Transcending the Deregulation Debate*, New York: Oxford University Press.

Bernauer, T. and Gampfer, R. (2013) 'Effects of civil society involvement on popular legitimacy of global environmental governance', *Global Environmental Change* 23 (2): 439–449.

Black, J. (2003) 'Enrolling actors in regulatory systems: examples from UK financial services regulation', *Public Law* 2003(Spring): 63–91.

Borrás, S., Koutalakis, C. and Wendler, F. (2007) 'European agencies and input legitimacy: EFSA, EMeA and EPO in the post-delegation Phase', *Journal of European Integration* 29(5): 583–600.

Bouwen, P. (2002) 'Corporate lobbying in the European Union: the logic of access', *Journal of European Public Policy* 9(3): 365–390.

Bovens, M. (2007) 'New forms of accountability and EU-Governance', *Comparative European Politics* 5(1): 104–120.

Braun, C. (2012) 'The captive or the broker? Explaining public agency-interest group interactions', *Governance* 25(2): 291–314.

Busuioc, M. (2009) 'Accountability, control and independence: the case of European Agencies', *European Law Journal* 15(5): 599–615.

Busuioc, E. M. and Lodge, M. (2016) 'The reputational basis of public accountability', *Governance* 29(2): 247–263.

Busuioc, M., Groenleer, M. and Trondal, J. (2012) 'The phenomenon of European Union agencies: setting the scene', in M. Busuioc, M. Groenleer, and J. Trondal (eds), *The Agency Phenomenon in the European Union: Emergence, Institutionalisation and Everyday Decision-Making*, Manchester and New York: Manchester University Press, pp. 3–16.

Carpenter, D. P. (2001) *The Forging of Bureaucratic Autonomy: Reputations, Networks, and Policy Innovation in Executive Agencies, 1862–1928*, Princeton and Oxford: Princeton University Press.

Carpenter, D. P. (2010) *Reputation and Power: Organizational Image and Pharmaceutical Regulation at the FDA*, Princeton: Princeton University Press.

Carpenter, D. P. and Moss, D. A. (2014) *Preventing Regulatory Capture: Special Interest Influence and How to Limit It*, Cambridge: Cambridge University Press.

Coen, D. and Katsaitis, A. (2013) 'Chameleon pluralism in the EU: an empirical study of the European Commission interest group density and diversity across policy domains', *Journal of European Public Policy* 20(8): 1104–1119.

Coglianese, C., Zeckhauser, R. and Parson, E. (2004) 'Seeking truth for power: informational strategy and regulatory policy making', *Minnesota Law Review* 109(89): 277–341.

Curtin, D. (2005) 'Delegation to EU Non – majoritarian agencies and emerging practices of public accountability', in D. Geradin, R. Muñoz, and N. Petit (eds.), *Regulation Through Agencies in the EU: A New Paradigm of European Governance*, Cheltenham: Edward Elgar Publishing Limited, pp. 87–117.

Curtin, D. and Dehousse, R. (2012) 'European union agencies: tipping the balance?', in M. Busuioc, M. Groenleer, and J. Trondal (eds), *The Agency Phenomenon in the European Union: Emergence, Institutionalisation and Everyday Decision-Making*, Manchester and New York: Manchester University Press, pp. 193–205.

De Bruycker, I. (2016) 'Pressure and expertise: explaining the information supply of interest groups in EU legislative lobbying', *JCMS: Journal of Common Market Studies* 54(3): 599–616.

Dehousse, R. (1997) 'Regulation by networks in the European community the role of European agencies', *Journal of European Public Policy* 4(2), 246–261.

Fraussen, B. (2014) 'The visible hand of the state: on the organizational development of interest groups', *Public Administration* 92(2): 406–421.

Fraussen, B., Beyers, J. and Donas, T. (2014) 'The expanding core and varying degrees of insiderness institutionalized interest group involvement through advisory Councils', *Political Studies* 63(3): 569–588.

Furlong, S. R. and Kerwin, C. M. (2004) 'Interest group participation in rule making: a decade of change', *Journal of Public Administration Research and Theory* 15(3): 353–370.

Gilardi, F. (2005) 'The institutional foundations of regulatory capitalism: the diffusion of independent regulatory agencies in Western Europe', *The ANNALS of the American Academy of Political and Social Science* 598(1): 84–101.

Gornitzka, Å. and Sverdrup, U. (2015) 'Societal inclusion in expert venues: participation of interest groups and business in the European commission expert groups', *Politics and Governance* 3(1): 151–165.

Grabosky, P. (2013) 'Beyond responsive regulation: the expanding role of non-state actors in the regulatory process', *Regulation and Governance* 7(1): 114–123.

Hall, R. L. and Deardorff, A. V. (2006) 'Lobbying as legislative Subsidy', *American Political Science Review* 100(1): 69–84.

Hood, C., Rothstein, H. and Baldwin, R. (2001) *The Government of Risk: Understanding Risk Regulation Regimes*, Oxford: Oxford University Press.

Kelemen, D. R. (2002) 'The politics of 'Eurocratic' structure and the New European Agencies', *West European Politics* 25(4): 93–118.

Kelemen, R. D. and Tarrant, A. D. (2011) 'The political foundations of the Eurocracy', *West European Politics* 34(5): 922–947.

Koop, C. (2014) 'Theorizing and explaining voluntary accountability', *Public Administration* 92(3): 565–581.

Leech, B. L., Baumgartner, F. R., La Pira, T. M. and Semanko, N. A. (2005) 'Drawing lobbyists to Washington: government activity and the demand for advocacy', *Political Research Quarterly* 58(1): 19–30.

Levi-Faur, D. (2011) 'Regulatory networks and regulatory agencification: towards a single European regulatory Space', *Journal of European Public Policy* 18(6): 810–829.

Maggetti, M. (2007) 'De facto independence after delegation: a fuzzy-set analysis', *Regulation & Governance* 1(4): 271–294.

Maggetti, M. and Verhoest, K. (2014) 'Unexplored aspects of bureaucratic autonomy: a state of the field and ways forward', *International Review of Administrative Sciences* 80 (2): 239–256.

Majone, G. (1999) 'The regulatory state and its legitimacy problems', *West European Politics* 22(1): 1–24.
Martinez, M. G., Verbruggen, P. and Fearne, A. (2013) 'Risk-based approaches to food safety regulation: what role for co-regulation?', *Journal of Risk Research* 16(9): 1101–1121.
McCubbins, M. D. and Schwartz, T. (1984) 'Congressional oversight overlooked: police patrols versus fire Alarms', *American Journal of Political Science* 28(1): 165–179.
McNamara, K. R. (2002) 'Rational fictions: central bank independence and the social logic of delegation', *West European Politics* 25(1): 47–76.
Ongaro, E., Barbieri, D., Bellé, N. and Fedele, P. (2012) 'European Union (EU) Agencies', in K. Verhoest, S. Van Thiel, G. Bouckaert, and P. Lægreid (eds), *Government Agencies: Practices and Lessons From 30 Countries*, Basingstoke: Palgrave Macmillan, pp. 400–410.
Ottow, A. T. (2015) *Market and Competition Authorities. Good Agency Principles*, Oxford: Oxford University Press.
Pedersen, H. H., Halpin, D. R. and Rasmussen, A. (2015) 'Who gives evidence to parliamentary committees? A comparative investigation of parliamentary committees and their constituencies', *The Journal of Legislative Studies* 21(3): 408–427.
Rittberger, B. and Wonka, A. (2011) 'Introduction: agency governance in the European Union', *Journal of European Public Policy* 18(6): 780–789.
Schillemans, T. (2011) 'Does horizontal accountability work? Evaluating potential remedies for the Accountability deficit of agencies', *Administration & Society* 43(3): 387–416.
Stigler, G. (1971) 'The theory of economic regulation', *The Bell Journal of Economics and Management Science* 2(1): 3–21.
Thiel, M. (2014) 'European civil society and the EU fundamental rights agency: creating legitimacy through civil society inclusion?', *Journal of European Integration* 36(5): 435–451.
Verbruggen, P. (2013) 'Gorillas in the closet? Public and private actors in the enforcement of transnational private regulation', *Regulation and Governance* 7(4): 512–532.
Wilson, J. Q. (1974) *Political Organizations*, Princeton and Oxford: Princeton University Press.
Wonka, A. and Rittberger, B. (2010) 'Credibility, complexity and uncertainty: explaining the institutional independence of 29 EU agencies', *West European Politics* 33(4): 730–752.