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Constraining the European Commission to please the public: responsiveness through delegation choices

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ABSTRACT



When and how does public opinion affect the delegation choices of legislators in the EU? We argue the European Parliament and the Council of Ministers limit the discretion of the Commission in response to EU-wide scepticism and politicisation of EU policies. Public opposition to EU policies, their contestation, and potential scrutiny motivate the EU legislators to minimise the discrepancies between the adopted and implemented policies. They do so to avoid bearing the costs of disregarding public preferences over the level of EU integration. Our analysis of legislation adopted between 2009–2019 relying on a novel dataset on public policy preferences and agency discretion supports this expectation. The results offer evidence of previously unexplored responsiveness of the EU institutions emerging in the policy implementation that might entail efficiency losses.


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KEYWORDS Delegation; European commission; public opinion; principal-agent; politicisation

Introduction

The burgeoning literature on institutional responsiveness underlines the role of public attitudes in structuring legislative output and institutional behaviour in the European Union (EU). Literature shows that there is a link between public opinion and EU legislative output (Bølstad, 2015; De Bruycker, 2019; Toshkov, 2011; Wratil, 2019). The EU institutions account for the preferences of the population when formulating their positions during decision-making processes, negotiations, and voting on legislation (e.g., Hagemann et al., 2017; Lo, 2013; Rauh, 2019; Wratil, 2018). Furthermore, the influence of public preferences over EU integration emerges at various

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stages of the policy-making process: they affect the priorities of the EU legislators at the agenda-setting stage (Alexandrova et al., 2016), and shape the speed of transposition of the EU laws (Williams, 2018).

Most studies, however, see the adoption of the legislation as a final stage at which institutions can respond to public demands. Yet, the legislative process does not end until policies are implemented. In each adopted legislative act, the EU legislators – the Council of Ministers and the European Parliament (EP) – determine the rules of implementation and can empower an agency, and in particular the European Commission, to introduce policy measures on the ground across the member states.

In doing so, they seek to minimise the differences between ‘policy-as-adopted’ and ‘policy-as-implemented’ (Steunenberg, 2019). Both ministers in the Council and the Members of the European Parliament (MEPs) are subjects to electoral sanctions, which motivates them to adopt responsive policies (e.g., Franchino et al., 2022; Hobolt & Wratil, 2020; Schneider, 2019; Wratil, 2018). Yet, the EU legislators have then to assure that these policies are also implemented as close to the agreed output as possible to avoid audience costs, especially when faced with critical public opinion and policy politicisation.

How can then legislators preclude a substantial divergence of the policy outcome from the adopted policies? One way to facilitate that is to constrain the implementing agency. By imposing stricter limits on the level of agency discretion the Council and the EP reduce the extent to which the implementing agent can deviate from the agreed measures. Assuming that the adopted measures already reflect public attitudes, this reduces the risk of implementing measures deviating from the citizens’ preferences. We, thus, hypothesise that when public support for EU action in a policy domain, i.e., the expansion of EU policy authority, is low, the EU legislators impose stricter controls and limit the discretion of the implementing agent to a greater extent, and vice versa.

This specifically applies to the level of discretion to implement policies that the EU legislators choose to grant to the Commission. As a supranational institution that is inclined to seek deeper integration rather than scaling integration back or maintaining the status quo (Koop et al., 2022; König & Pöter, 2001; Rauh, 2019), the Commission may be prone to agency drift resulting in implemented policies being more integrationist than originally envisioned by the EU legislators. In other words, the policy-as-implemented may end up being more ambitious than the policy-as-adopted (Steunenberg, 2019), and conflicting with the public preferences (Koop et al., 2022).

Similarly, we expect that when EU policy is politicised – i.e., when it becomes salient for the citizens, polarises the society, and mobilises the involvement of different actors in the policy process (Hutter & Grande, 2014) – the EU legislators will opt for a more cautious implementation path and impose

more constraints on the supranational agency's discretionary power. The politicisation of EU policies fosters the level of policy responsiveness (De Bruycker, 2019). Due to the embedded accountability mechanism within the EU, the increased politicisation of the EU policies motivates the EU legislators to secure carefully crafted policy measures that ensure the congruence of the policy-as-implemented with the policy-as-adopted.

Our analysis of legislation adopted between 2009–2019 relying on a novel data-set on public policy preferences and agency discretion supports these expectations. The results offer evidence of responsiveness of the EU legislators, and show that the influence of public opinion permeates all stages of policy-making and shapes delegation decisions.

Delegation logic in the EU

Across political systems, the Principal-Agent (PA) framework has been a cornerstone for the analysis of delegation decisions. It posits that principals transfer the authority to an agent to reduce transaction costs of a specific task by exploiting agency expertise (Epstein & O'Halloran, 1999a; Gailmard & Patty, 2012; Thomson & Torenvlied, 2011).

Delegation is generally portrayed as a 'conditional grant of authority from a principal to an agent that empowers the latter to act on behalf of the former' (Hawkins et al., 2006, p. 7). When delegating the authority to the agent, the principals balance the extent of power they delegate and the degree of control they maintain. The combination of imposed controls and delegated power defines the level of agency discretion. From the principal's perspective, this discretion should ideally allow the implementing agent to maintain flexibility to adapt the policy to unforeseen circumstances (Epstein & O'Halloran, 1999b; McCubbins, 1999). Research shows that the level of power delegated to the agent is shaped by the preference conflict between agents and principals (Bendor & Meirowitz, 2004; Epstein & O'Halloran, 1994; Kiewiet & McCubbins, 1991), the degree to which principals disagree with one another (Epstein & O'Halloran, 1994; Huber & Shipan, 2002), as well as by policy complexity and need for agency expertise (Franchino, 2007; Gailmard, 2002; Gailmard & Patty, 2012; Miglioni, 2021).

Drawing on these arguments, Hug (2003, p. 62) shows that in the EU 'delegation to agents is clearly dependent on the differences in preferences between principals and agents'. In his prominent study, Franchino (2007) further examines the patterns of delegation and discretion in the EU. In line with the US-focused studies (Epstein & O'Halloran, 1994; Kiewiet & McCubbins, 1991), he shows that the principals in the Council of Ministers are likely to constrain the Commission acting as an implementing agent if its preferences diverge from their own. They do so to minimise policy slippage and bureaucratic drift. Focusing on the post-Lisbon legislation,

Yordanova and Zhelyazkova (2020) also show that the relative proximity of the principals' preferences to those of the Commission shapes the level of discretion the latter is granted.

The EU legislative principals – the European Parliament and the Council of Ministers – also seek to offset the costs of policy complexity through delegation (Thomson & Torenvlied, 2011; Wonka & Rittberger, 2010). For instance, Migliorati (2021) shows that in the post-Maastricht period, policy complexity results in a higher likelihood of delegating power to supranational agencies. Similarly, the Commission tends to get more leeway when its generalist skills are required for the implementation of a policy (e.g., Franchino, 2007).

However, the literature offers competing perspectives about the effects of conflict *between* the principals on the extent of agency discretionary power. On the one hand, scholars argue that when multiple principals cannot agree on a policy outcome, they opt to limit the discretion of the implementing agency to prevent it from pursuing policies that are worse than the status quo, which the principals would not be able to agree to correct by re-legislating (Hammond & Knott, 1996; Bendor & Meirowitz, 2004, for EU focused discussion see Pollack, 2003). As Junge et al. (2015) explain, the prospect of a gridlocked legislature enables the Commission to exploit its discretionary powers as it anticipates the legislative principals to be less likely to overrule its actions by *ex-post* control mechanisms.¹ On the other hand, Franchino (2007) shows that conflict in the Council leads to a higher relative discretion granted to the Commission (when the Council decides by qualified majority voting), which is perceived to facilitate implementation by acting as an impartial agent. This also allows governments to avoid prospective costs of having to implement unpopular policies.

This article adds to this literature by developing a new perspective on the logic of delegation in the EU. Besides preference configurations and policy characteristics, we propose that legislators adjust the leeway of the agency in response to public opinion, or, in particular, due to the level of policy politicisation and public attitudes towards the expansion of EU authority in different policy domains. In line with the literature (Abbott & Snidal, 1998; Börzel, 2005; Hagemann et al., 2017; Hooghe et al., 2017), we conceptualise EU authority expansion as an increase in the scope of its governance competences by 'establishing EU legislation or programmes in previously unaffected areas' or an increase in the level of EU existing governance competences within a policy domain relative to the national authority 'by delegating new decisional powers to supranational bodies or agencies' (Hagemann et al., 2017, p. 855)

Responsiveness, politicisation, and delegation choices

Research shows that in representative democracies, governments react and adjust policies to public opinion (Soroka & Wleziën, 2009). The burgeoning

literature on EU policy responsiveness generally points towards similar conclusions. For instance, studies show that the EU policy-makers modulate the volume of the Union's legislative output in response to fluctuations in public support for the EU with some variation over time (Toshkov, 2011) and across country groups (Bølstad, 2015). The adoption of policies is more likely when EU citizens express preferences for policy change, conditional on the salience they attach to it (Wrátil, 2019) and politicisation dynamics (De Bruycker, 2019).²

Related research further analyses the impact of politicisation on the responsiveness of the EU institutions to public preferences. Understood as a process, in which a policy issue at hand becomes salient, polarises the society, and provokes a mobilisation of actors (Hutter & Grande, 2014; Wilde & Zürn, 2012), politicisation brings the actions of EU institutions under scrutiny and compels them to account for public opinion when they legislate. For instance, the Commission considers the degree of issue politicisation when it prioritises legislation (Koop et al., 2022) and announces proposals' withdrawal (Reh et al., 2020). Likewise, Hobolt and Wrátil (2020) show evidence that Ministers respond to public opinion in Council deliberations when the policy issue is salient on the domestic level (e.g., Mühlböck & Tosun, 2018; Schneider, 2019).

Despite the growing scholarly attention to EU responsiveness only a few studies look beyond the stage of formal policy approval and trace the influence of the public on policy implementation. For instance, Williams (2018) finds that aggregate levels of Euroscepticism are likely to slow down the transposition of the EU policies. In contrast, Toshkov (2019) finds no systematic relationship between policy compliance in the EU and the Eurosceptic moods of the public. However, to the best of our knowledge, no study has yet looked at the responsiveness of EU institutions to the public mood at the point in the policy-making process that links policy adoption and policy implementation, i.e., the point at which the EU legislators choose how much discretion to grant to the supranational implementing agency. The EU legislators can attempt to pursue a responsive policy at this stage with their delegation choice.

Delegating authority to the agency, be it the Commission or national administrations, the EU legislators permit these institutions to adjust the adopted policy within the bounds of their discretion. The discretionary leeway brings uncertainty over the extent to which implemented policy will correspond to formally agreed political measures (Calvert et al., 1989). Constraining the agency discretion enables the EU legislators to maintain more control over the implementation of agreed policies by limiting the agent's ability to steer the policy-as-implemented away from the policy-as-adopted and away from the one favoured by the public. Assuming that the adopted policy responded to public preferences, to begin with, this assures that policy outcomes remain responsive to the public.

We test this argument using the example of the European Commission acting as a supranational implementation agent. Unlike national administrations, which are also involved in EU policy implementation, the Commission tends to hold preferences in favour of deeper integration (Koop et al., 2022; König & Pöter, 2001; Rauh, 2019). It may thus steer adopted policies in a more integrationist direction during the implementation stage than may have been envisioned by the EU legislators. Therefore, constricting its discretionary leeway is essential for the EU legislators seeking to appease the public critical of EU policy authority. Furthermore, extant studies maintain that the institutional setting of the EU limits the amount of *ex-post* control the EU legislators can maintain over the actions of the Commission (for the discussion, see Bendor & Meirowitz, 2004; Ershova & Popa, 2020; Franchino, 2002).³ Hence, the decision to curb its discretionary leeway should be particularly likely when the public mood toward EU policy integration, in general, or the scope of EU authority in a given policy domain, in particular, is more sceptical. This leads us to the following hypothesis:

H1: The higher the public opposition to EU action in a given policy domain, the less discretionary power the EU legislators will grant the European Commission in that domain.

However, not all EU policies are equally important to the public. As EU politics and policy-making become increasingly politicised (Schmidt, 2019; Winzen, 2020) – as characterised by increasing policy issue salience, society polarisation, and actor mobilisation – more political matters become ‘a subject of public discussion, debate and contestation’ (Schmidt, 2019, p. 1018).⁴

Increased public engagement and heightened salience characterising the policy domain make it more challenging for the decision-makers to ignore its demands for given policy action. Specifically, as the public starts attributing higher salience to the policy domain, EU co-legislators face higher pressure to deliver the policy outcome that would satisfy the public demands. The failure to address these demands in salient policy domains increases the likelihood of electoral punishment (Schneider, 2019, p. 70). Hence, having reached an agreement on the policy measures in policy domains that are highly salient for the European public, the legislators are motivated to avoid costs emerging as a result of agency drift during the implementation process. Therefore, we hypothesise that:

H2: The higher the salience of a policy domain, the less discretionary power the EU legislators will grant to the European Commission in that domain.

Politicised issues are also characterised by public polarisation which may foster political discord. The polarised public constrains the extent of the legislators’ leeway in coining a policy as the agreed measure is bound to generate dissatisfaction by one of the opposing societal groups. As polarisation increases, the political elites have to account for divergent interests among

their audiences. These competing demands pressure the EU legislators to respond to potentially conflicting interests, which, in turn, limits the range of policies that could be approved and a compromise is hard to find. Once legislators have reached a policy agreement, they are motivated to constrain the agency's discretion and to keep close tabs on the mode of policy implementation to ensure that the policy-as-adopted follows closely the approved statutes and does not forfeit the promises they have committed to (Ershova & Popa, 2020; Pollack, 1997). Therefore, we posit that:

H3: The more polarised the public is over issues in a given policy domain, the less discretionary power the EU legislators will grant to the implementing agency in that domain.

Lastly, politicisation is characterised by actor expansion or mobilisation. An increased number of stakeholders has been portrayed as a means to increase the responsiveness of the institutions and political actors to public opinion (De Bruycker, 2019; Giger & Klüver, 2016). Additional engagement of stakeholders results in clearer communication of political choices to the public, which diminishes the opaqueness of the policy-making process. Actor mobilisation could thus strengthen public control over the actions and choices of the legislative decision-makers. This, in its turn, increases the prospective domestic costs for non-responsive behaviour that the legislators would face. Yet, we only expect general and not specialised interests to advance public interests and communicate policy choices to the public in this way.

Studies concerned with the influence of interest groups stress that specialised interests, such as business groups, tend to transmit a limited amount of information on public preferences to policy makers (Flöthe, 2020; Giger & Klüver, 2016), and their positions are generally less supported by the public (Flöthe & Rasmussen, 2019). Studies also stress that business groups and firms are less likely to inform policymakers about the preferences of constituents, but rather focus on the transmission of technical information, allowing them to tilt regulatory rules in their favour (Flöthe, 2020; Klüver, 2011). Further, business group mobilisation, in contrast to the mobilisation of the civil society actors, disincentivizes EU elites to address citizens' interests in their media statements (De Bruycker, 2017). Thus, we expect in particular the mobilisation of non-specialised interests, including various civil society groups, to motivate the responsiveness of policy choices by exposing them to public scrutiny. Given higher mobilisation of such general interests, including various civil society groups, in line with De Bruycker (2017, 2019), we argue that EU legislators have incentives to pursue a responsive policy and then seek a way to avoid deviations from this policy during the implementation stage by decreasing agency discretion.

H4: The higher the general actor mobilization across the Union on issues in a given policy domain, the less discretion the EU legislators will grant to the European Commission in that domain.

The temporal sequence of our hypothesised effects is illustrated in [Figure 1](#). First, we depart from the model proposed by Bressanelli et al. (2020, pp. 331–332) and De Bruycker (2019), and argue that exogenous and endogenous policy-related events – such as the Commission’s policy proposals and EU policy outputs, crises, domestic and/or international policy developments – induce policy politicisation (at $t-2$). This politicisation is followed by the (re-)formulation of bottom-up pressures (public opinion on the issue at $t-1$), and then a policy response to these pressures (at t). According to our theory, such responses include the decision whether and, if so, how much discretion to delegate to the implementing agent, or in our case to the Commission (at t). We argue that in this sequential setting, the decision to delegate implementation discretion is affected by both politicisation and public mood. The former enhances the need for policymakers’ responsiveness, while the latter indicates the publicly desired scope of EU engagement in a policy domain. The hypothesised effects are illustrated by the solid lines.

Data

We draw on several sources of data to test our expectations. We obtained information on all the legislative acts approved under the ordinary legislative procedure (OLP) between 2009–2019 from EUR-Lex. Our sub-sample covers all the Regulations and Directives, resulting in a total N of 789 acts.⁵

As our goal is to analyse the level of discretion the EU legislators grant to the Commission for the implementation stage across policies, we next categorised EU legislation into policy domains using the CAP-EUPAP categorisation developed by the Comparative Agenda Project (CAP),⁶ and the EuroVoc descriptors associated with each legislative act (see Appendix II.2).

Dependent variable

Our dependent variable is the level of discretion for policy implementation that the EU legislators decide to grant to the Commission in secondary legislation.

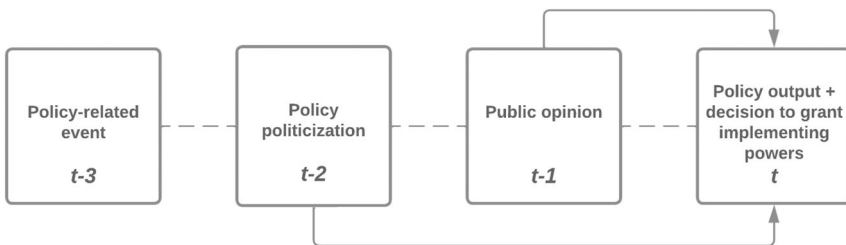


Figure 1. Model of policy-making in response to policy politicisation and public opinion. Note: Dotted lines capture temporal sequence. Solid lines represent hypothesised effects.

There are two dominant ways to estimate this variable: 1) operationalising the provisions empowering the Commission to adopt delegated and implementing acts (Brandsma & Blom-Hansen, 2017; Zhelyazkova et al., 2019) and 2) using the ratio of delegating and constraining provisions within each legislative act (Ershova, 2019; Franchino, 2007; Migliorati, 2021). The former approach is more appropriate when estimating the powers of the Commission to issue tertiary legislation (Brandsma & Blom-Hansen, 2017), while the latter focuses on a 'delegation in general' and captures the implementation of all common policies as established by the secondary law, including where no tertiary implementing or delegated are envisioned. We follow Franchino (2007) and operationalise our dependent variable – the discretion granted to the EU Commission in secondary legislation for the policy implementation stage of the policy-making process – as a combination of delegation and constraint ratios.⁷ One of the challenges with this approach is to implement it for a large population of cases. Previous studies (Ershova, 2019; Franchino, 2007) draw on a relatively small sample of hand-coded data, encompassing up to 250 legislative acts. Yet, the promising approach recently presented by Anastasopoulos and Bertelli (2020) allows constructing such a proxy on a larger scale. Relying on annotated data on the constraining and delegating provisions in major EU laws from Franchino (2007), the authors employed the Gradient Boost Tree (GBT) algorithm to identify text constraining or empowering the agents. Deviating from Franchino (2007), we follow Anastasopoulos and Bertelli (2020, p. 295) in using *an article* and not a provision as the unit of legislative text classification in our study due to the limitations of automated text analysis in parsing legislative acts into provisions. Instead, articles are clearly demarcated within the EU legislative texts and easy to parse.

We replicate their approach and applied the GBT classifier.⁸ Their results suggest that across the tested classification methods, the GBT algorithm shows the best performance, which is why we relied on it to identify articles that constrain or empower the Commission in the EU legislative acts adopted in 2009-2019.⁹ Thereafter, applying Franchino's index on the article level, we constructed our *dependent variable*, which captures the level of the Commission's implementation discretion envisioned in each legislative act (ranging between 0 and 1).¹⁰

Main independent variables

Public opposition to EU policy authority

Our main independent variable is *Public Opposition* to the expansion of EU policy authority across EU member states. It captures the extent to which the EU citizens oppose 1) an increase in the competencies of the EU to govern in that domain (scope of EU authority) (Börzel, 2005; Hagemann et al., 2017) or 2) a further increase in the existing governance competences of the EU within a domain relative to the national authority (level of EU

authority) (Börzel, 2005). It thus differs from existing measures estimating the general level of public opposition to European integration (public Euroscepticism) or opposition to the substantive content of given policies, other than their implications for the level at which policy authority is exercised (national or EU) or the scope of EU authority.

We measured the level of public opposition to EU policy authority expansion across policy domains using Eurobarometer surveys carried out in the period 2008-2019. We first identified the relevant questions within each survey that covered the entire population of the EU. Thereafter, the questions were hand-coded and classified into a CAP-EUPAP policy domain.¹¹ This measurement approach offers more fine-grained information on public preferences within a policy domain than relying on general citizen attitudes toward the EU and European integration (Hagemann et al., 2017). Next, we identified the responses which express support or opposition to the expansion of EU authority in a given policy domain. We consider these responses as indicative of support for or opposition to EU policy action, respectively. To construct the indicator for public opposition to EU policy authority expansion, we followed Wratil (2019) and operationalised the level of public opposition as the fraction of opposing responses out of the total number of meaningful responses in a survey question.¹² Thereafter, we averaged these values across all the questions within the same policy area and year.

Salience of the policy domain

Following Wratil (2019), we constructed an indicator of the *Salience* that EU citizens attach to a policy domain using the proportion of 'Don't Knows' and refusal responses as a share of total responses. We subtracted the resulting proportion from '1' so that a higher number indicates higher levels of salience.¹³ As with the public opposition measure, we then estimated the average of policy- and year-specific salience across member states and all relevant survey questions.

Actor mobilisation

To capture the Actor Mobilisation on the EU level, we turned to the Commission's Transparency Register (TR).¹⁴ It contains information on all organisations which registered their interest in various EU policies and can be consulted during the legislative process. The TR classifies registered organisations based on their area(s) of interest and describes the organisation type (see Table A6 in the Appendix). We obtained a complete list of the registered organisations from the TR and mapped their interest into CAP-EUPAP policy categories.¹⁵ To construct a proxy for the EU-wide mobilisation, we counted the number of organizations registered across countries within the specific year and policy domain.

In line with our theoretical argument, for our main analysis, we exclude business groups and companies from our measure of mobilised actors as they may not necessarily represent the citizens' preferences but rather stand for more concentrated special interests (see Binderkrantz et al., 2021).¹⁶

EU public polarisation

The process of politicisation is characterised by *Polarisation*. Specifically, we measured the polarisation of public opinion to capture the susceptibility of EU legislators to competing demands from EU citizens.¹⁷ To do so, we estimated the difference between the fraction of respondents who support EU authority expansion in the respective policy and the fraction of respondents who oppose it, out of the total number of meaningful responses. We then took the absolute value of this difference, and subtract it from '1', which resulted in higher values signifying higher polarisation: '1' indicating a maximum, 50:50, split, and '0' denoting homogeneity in public opinion about EU policy action. Hence, our measure captures how divided the public views on EU action in each policy domain are. Table A8 in the Appendix includes descriptive statistics for the main variables used in this analysis.

Control variables

To account for other confounding factors, we introduced a series of control variables. Following extant literature, we controlled for the *Inter-Institutional Conflict* as well as for the conflicts within the Council and within the EP. To measure these conflicts, we drew on the data from the Comparative Manifesto Project (CMP) (Lehmann et al., 2017). First, we estimated the positions of member states' governments and national parties with representation in the EP. By using a crosswalk between the CMP data and the CAP-EUPAP coding scheme (see Table A5 in the Appendix), we identified the relevant positive and negative CMP codes for issue categories for each CAP-EUPAP domain. With this information, we captured the policy positions of individual parties using the conventional log transformation developed by Lowe et al. (2011). With the data on the composition of national governments from the ParlGov dataset (Döring & Manow, 2020), we identified the cabinet parties and constructed governmental policy-specific weighted mean positions. The mean Council position for each legislative act was estimated by weighting the positions of the governments by population weights. Similarly, for the EP, we estimated the mean position of all represented parties by weighting them with their EP seat-share.¹⁸ Second, drawing on the obtained institutional positions, we calculated the absolute distance between them. This measurement captures the level of interinstitutional conflict and allows us to control for the difference in the EP's and the Council's preferences, which may shape the extent of agency discretion.

Next, using the party position in the EP, we constructed an indicator for *EP Polarisation*. To do so, we followed Ershova and Popa (2020) and relied on Dalton's (2008) Polarisation Index. Essentially, it accounts for the relative position of each decision-maker along the specified dimension, as well as for their size.¹⁹ This index allows capturing cases where a larger party holds an extreme position, which could have a more substantial effect on decision-making than a minor party with an outlying stance. To account for the party size, we use the parties' seat share in the EP. Higher values of the index suggest a higher degree of polarisation.

Lastly, to rule out the influence of conflict within the Council of Ministers, we collected information on the votes each member state cast during formal voting for each legislative act.²⁰ Thereafter, we estimated the extent of the *Council Dissent* by summing up the number of 'Abstain' and 'No' votes. Although some studies maintain that the signals behind the abstentions and explicit oppositions may differ (e.g., Hagemann et al., 2019), due to the qualified majority voting requirement in the Council under the OLP, they have a similar effect on the legislative process, and can (arguably) be employed as equally effective tools to stall the adoption of the proposal. Therefore, accounting for both types of voting strategies permits us to capture various degrees of conflict within the Council.

The PA framework suggests that the principals empower the agency to address complex tasks and to take advantage of the agent's expertise. Hence, we control for the *Complexity* of the legislative act. We followed Migliorati (2021) and used the length of the EuroVoc descriptor to capture the level of complexity of legislative acts. The underlying assumption is that the more terms are included in the EuroVoc descriptor, the more likely it is that the policy at hand touches upon several policy domains, suggesting higher complexity. Furthermore, we differentiated between *Amending* and new legislation to account for any implementation powers in the associated policy that the Commission may have already enjoyed. We obtained this indicator from Hurka et al. (2022). The degree of discretionary power may vary across policy domains as well as over time. Therefore, we include fixed effects for the policy domains and years.

Methods and results

To test our hypotheses, we relied on a fractional logistic regression²¹ which is suitable for modelling dependent variables like ours bounded between 0 and 1. Unlike normal multivariate regression, it does not make out-of-bound predictions (Papke & Wooldridge, 1996).

We relied on two model specifications to test our hypotheses, presented in Table 1. In Model 1, we examined the hypothesised relationships using all policy areas. In Model 2, we excluded the policy domains, in which the

Table 1. Fractional regression results: Testing the Hypotheses.

	M1	M2
Public Opposition $t-1$	-2.00** (0.02)	-1.90** (0.04)
Saliency $t-2$	-2.34*** (0.01)	-2.34*** (0.00)
Actor Mobilisation $t-2$ (excl. business)	0.04 (0.46)	0.01 (0.88)
Public Polarisation $t-2$	-0.93** (0.05)	-1.53** (0.01)
Complexity	0.01 (0.79)	-0.03 (0.58)
Council Dissent	0.02 (0.71)	0.06 (0.22)
Interinstitutional Conflict	-0.10 (0.67)	-0.15 (0.53)
EP Polarisation	-5.70 (0.13)	-8.56** (0.02)
Amending	-0.02 (0.88)	0.09 (0.57)
CAP FE	Y	Y
Year FE	Y	Y
Constant	2.13 (0.20)	5.01** (0.02)
Observations	506	433

Note: * $p < 0.1$; ** $p < 0.05$; *** $p < 0.01$. The cell entries are coefficients of the fractional regression, p -values in parentheses. M2 limits the scope of the analysis by excluding policy areas with higher N of missing values.

EB-based indicators contain a high number of missing values.²² Whilst this more conservative model has a narrower scope, it allows us to ascertain that the results are not driven by a potential selection bias due to the list-wise deletion of cases. Encouragingly, we find stronger support for our expectations (i.e., stronger effects in the hypothesised direction) in the analysis focused on the policy domains, for which we have more complete public opinion data. As the direction and the statistical significance of the effects in Models 1 and 2 are consistent, below we focus on interpreting Model 2.

We hypothesised in $H1$ that public pressure and specifically high public opposition to EU authority in a policy domain is likely to limit the degree of freedom the agency enjoys during implementation. The results support this expectation. As the level of public opposition to the EU action grows, the discretion granted to the Commission as an implementing agency declines. To interpret the substantive effect size, we scrutinised the marginal effect of public opposition to EU policy action on the discretionary power given to the Commission in legislative proposals. On average, as the level of EU opposition increases by 10 percentage points, the Commission's discretionary power drops by 1.29 percentage points. As the predictive margins in Panel (a) in [Figure 2](#) show, when public scepticism reaches its observed maximum (0.76), the Commission's discretion is about 9 percentage points more constrained in comparison to the cases when the public is supportive

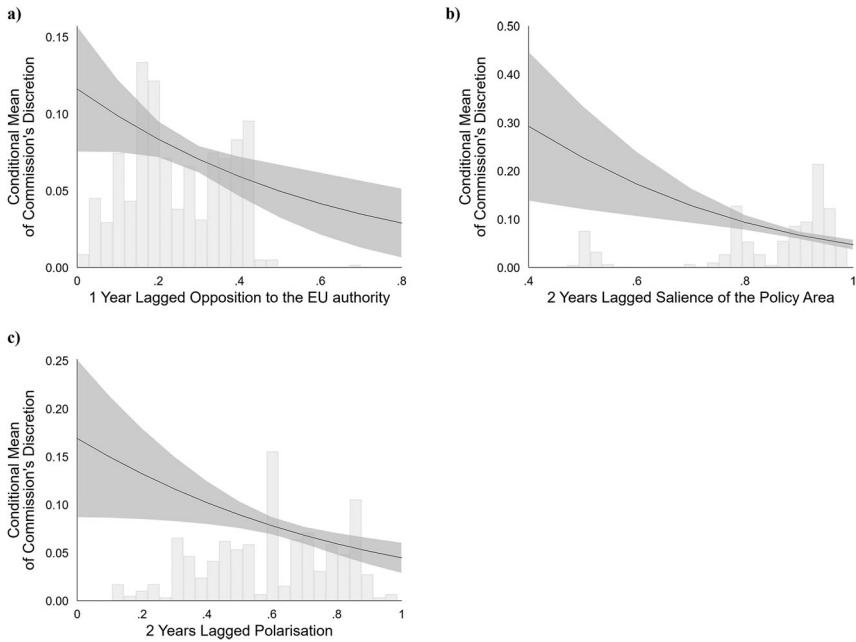


Figure 2. Predictive margins of Public Opposition, Salience, and Polarisation.

Note: The Figure is based on Model 2 in Table 1.

of EU policy action. However, one should interpret this effect with caution because the public opposition variable is skewed towards zero, and there are only a few instances where it exceeds 50 percent.

Next, in line with our hypotheses 2 and 3, the results suggest that higher public salience of the policy domain and societal polarisation limit the discretionary leeway granted to the European Commission. For every ten percentage points increase in salience, the Commission's discretion becomes more constrained by about 2.6 percentage points, on average (also see Panel (b) in Figure 2). These results suggest that public perception of the policy importance shapes the delegation decisions of the EU legislators. As the issue becomes more salient for the population, the EU legislators anticipate stronger punishment for unfavourable policy outcomes. Under such conditions, the Council and the EP opt to control the implementation of potentially contentious political measures by constraining the supranational agent and minimising the difference between policy-as-adopted and policy-as-implemented. Yet, the results should be treated with caution as we rarely observe in our sample policies that are not important to the public.

Similarly, the results indicate that when the EU public is more divided, the Commission's leeway for policy implementation diminishes. We posit that being caught between competing demands of large groups within the

population, the EU legislators tread lightly when it comes to delegating implementing powers. Having reached a policy compromise, the EU legislators impose more control over the agency's implementing powers. The average marginal effects indicate that for every 10 points increase in the polarisation, the Commission's discretion is constrained by 1 percentage point, on average. Hence, as polarisation reaches the highest levels, the legislators will limit the Commission's discretion by about 13 percentage points in comparison to cases when the public is homogeneous in its opinion (see [Figure 2](#), Panel (c)). This effect could be explained by the electoral strength of the opposing societal groups: as the share of the population opposing EU engagement in a policy area nears the share of the supporters, the implementation of the EU policy is likely to yield domestic costs for the legislators. Hence, by keeping some degree of control over the Commission's activities during the implementation, the EU principals seek to balance the need to please the public demands and to avoid policy drift as a result of implementation.

Our analysis suggests that the extent of actor mobilisation is unlikely to significantly affect the level of discretionary power available to the European Commission. It is possible that, to some extent, this effect is defined by our choice to exclude business and trade organisations from the count of the actors mobilised on the EU level. Therefore, we re-assessed our results using the count of all organisations registered with the Transparency Register. Table A11 in the Appendix summarises the results. Our findings are robust vis-a-vis alternative operationalisation of Actor Mobilisation. The decisions to empower the agency for the implementation stage remain relatively insulated from the pressure that actor mobilisation in a policy area may generate.

To check the robustness of our findings, we carried out several checks. Firstly, we reassessed the results using the politicisation index which combines the indicators for salience, actor mobilisation, and polarisation into a single measurement. The results are summarised in Table A10. Next, we reassessed the model specification and re-tested our hypotheses using a two-part regression and Generalised Linear Modelling (see Table A12-A13 in Appendix II.4-5). These tests allow us to account for a large number of zero values in the dependent variable and to ensure that the main results are not driven by them. We also considered that the EU legislators could hesitate to empower the Commission if a policy domain only recently fell under the EU's purview. To account for this, we have counted the number of years since the first legislation in a policy area and included this control in our analysis (see Table A17 in Appendix II.8). Our key findings withstand these tests.

Next, using a restricted sample of policy domains, we relied on imputations to fill in missing values for the indicators of public opinion, salience and polarisation, as well as the measures of the Interinstitutional conflict

and EP polarisation (for discussion see Honaker et al., 2011; Høyland & Hansen, 2014; Zimmer et al., 2005). Thereafter, we re-estimated our main models. As Tables A21 and A22 show, the level of discretion granted to the Commission is consistently susceptible to the influence of public views – as the opposition to the EU action grows, the legislators constrain the Commission's powers. However, we find little support for the effects of politicisation components – in both models, these variables fall short of statistical significance, warranting further scrutiny, possibly with the use of alternative indicators.

We assessed further the robustness of the effect of public opposition on the Commission's discretion by following Scotto di Vettimo (2022). Specifically, we applied the Bayesian item response theory (IRT) model to reconstruct the indicators for public opposition, salience, and public polarisation. The results of the analysis using these reconstructed indicators are presented in Table A20. They offer additional support for the hypothesised constraining effect of public opposition on the discretionary leeway of the EU Commission during the implementation of the policies.

Importantly, the results supporting *H1* remain stable to all robustness checks. The EU legislators tend to maintain more control over the supranational agency when the public is reserved about the EU involvement in the policy domain. Whilst the majority of the tests also support our initial findings regarding the effects of salience and polarisation on the delegation choices, we encourage the readers to treat them as provisional given some instability of the effects.

Concluding remarks

In this article, we examined the link between the level of discretionary power granted to the European Commission for the implementation of EU policies and public support for the EU policies as well as policy politicisation. This contribution takes the first step toward bridging the gap in our knowledge about the level of responsiveness of the EU institutions to the preferences of the population when it comes to the implementation of the policies across the Union.

Our results underline several crucial patterns in EU delegation politics. Firstly, we believe this is the first contribution to demonstrate that the influence of public opinion permeates beyond the steps of approving a policy and spills over into the delegation choices of the EU legislators. By unpacking the relationship between delegation choices and the variance in the public attitudes towards EU policy authority, we add to the growing literature concerned with the level of responsiveness in EU policy-making. Here, we have shown that the EU principals, the EP and the Council, consider the level of public support for the EU authority in a policy domain when

deciding on how much power to transfer to the EU Commission for the implementation of policy measures. They limit the supranational agency when the public support for EU authority expansion in the policy domain is low. This finding suggests that the EU legislators not only adjust policy measures to the public demands but also seek to ensure that these measures are implemented with as little deviation from the policy output as possible. These strategies to appease the public demands could indicate a previously unexplored EU policy-makers' responsiveness, where public views not only shape policies but also affect the way they are implemented. This result echoes the extant arguments in the literature that public opinion has become a key factor structuring political games and policy-making across the Union (Hooghe & Marks, 2009).

Secondly, delegation patterns appear to be susceptible to the influence of politicisation of EU policy-making. The heightened likelihood of public scrutiny of the EU politics that politicisation presents increases the pressure on the EU legislators and further strengthens their motivations to keep policy implementation under control. In our main results, we show that the Commission's discretion is particularly affected by the policy salience and the extent of societal polarisation in the Union. The salience of the policy domains increases the potential costs the legislators can bear for unfavourable policy outcomes, whilst the increasing divide within the society locks the legislators between competing demands. Both of these conditions introduce additional incentives to maintain more control over the actions of the 'run-away bureaucracy' during policy implementation. These findings contribute to our broader understanding of the impact of politicisation on the dynamics of policymaking in the EU. They add to knowledge from previous studies focused on the agenda-setting stage (Koop et al., 2022) or policy approval (e.g., De Bruycker, 2019), and demonstrate how politicisation can affect delegation choices, which in turn shape policy implementation and can limit the power of the supranational agency.

Taken together, our results add to a better understanding of the consequences of politicisation of the EU politics, and the role of public opinion in structuring EU policy outcomes. They flesh out the extent to which public influence shapes the responsiveness of the EU legislators' delegation choices. However, they question whether the political motivations of the EU legislators overpower the rational assessment of the necessary leeway available to the agent for successful and effective policy implementation. Trading off the flexibility of policy implementation for gains in public approval may yield unforeseen costs for EU-level legislators. Specifically, a lack of policy flexibility could limit the agent's ability to adjust the policy to exogenous shocks or unforeseen circumstances, thus hindering the effectiveness and consistency of policy implementation across 27 states. One may wonder whether this type of delegation is a symptom of 'politics trap'

(Laffan, 2021) or a means to circumvent the consequences of ‘constraining dissensus’ characterising EU policy-making (Hooghe & Marks, 2009).

Overall, this paper opens new avenues for future studies. To begin with, it concentrates on the choices of the EU legislators in response to the *EU-wide* public moods only. It does not scrutinise the incentives of individual states to create additional wiggle room during policy implementation by loosening control over the EU Commission when the domestic public has an outlying stance vis-a-vis the EU populace. This is an enticing avenue for future studies, while the extent to which individual states’ preferences can shift collective delegation decisions cannot be captured by the aggregate measure of discretion. One could engage in qualitative investigation and unpack the conditions that enable states to exploit domestic politicisation and public mood. However, this falls beyond the scope of the current article.

Lastly, the article demonstrates how the EU institutions ensure responsiveness of *implemented* measures. While undoubtedly such attention to public opinion is considered a positive feature of a decision-making process, it might reduce the efficiency of supranational decisions and limit the reform capacity of the EU. Future research could evaluate these potential downsides of responsiveness. Next, in this contribution, we do not differentiate between the incentives of the EU legislators or the extent to which the Council and the EP preferences dominate the decision to delegate the power to the supranational agent. As our focus lies on the legislation falling under the OLP, we treat both legislative chambers as co-legislators. Disentangling the motives of the Council and the EP could offer a fruitful avenue for future studies concerned with the responsiveness of individual institutions.

Notes

1. Junge et al. (2015) conceive the Commission’s discretion in terms of its ability to issue tertiary legislation.
2. Other contributions demonstrate the responsiveness of the various EU institutions during the legislative process. For the responsiveness in the Council, see Hagemann et al. (2017); Hobolt and Wrátil (2020); Mühlböck and Tosun (2018); Schneider (2019); Wrátil (2018). For evidence from the EP, see Lo (2013); Williams and Spoon (2015). For the studies on responsiveness in the Commission, see Rauh (2019); Reh et al. (2020); Williams and Bevan (2019).
3. For instance, the EU legislators could adjust a policy measure implemented by the Commission only by passing through a new legislative process, where the Commission acts as an agenda-setter, or by taking the EU Commission to the Court (see Joined cases C-14/06 and C-295/06).
4. While usually the impact of politicisation on the EU responsiveness and its institutions is assessed by using a so-called politicisation index (De Bruycker, 2019), where $politicisation = Saliency \times (Polarisation + Actor Expansion)$ (Hutter & Grande, 2014) or salience of policy as a proxy (Hobolt & Wrátil, 2020; Koop

- et al., 2022), we theorise how the individual components of politicisation interplay with the decisions to delegate policy implementation to the Commission.
5. Following the extant literature (for discussion see Migliorati, 2021; Franchino, 2007), we excluded the 66 Decisions adopted in the studied time period. Decisions are binding only for those actors they are addressed to and often-times are not relevant to the entire Union.
 6. EU legislation is frequently categorised into policy domains using the classifications from Comparative Manifesto Projects, or the Euromanifesto Study. However, in this paper, we opted to fine-grain the approach of mapping EU legislation into the more detailed set of policy domains in CAP-EUPAP and by further splitting Agriculture and Fisheries into two separate policy domains.
 7. Specifically, Franchino operationalises agency discretion as follows $Discretion = di/M - (Ci/Tc * di/M)$, where di stands for the number of delegating provisions in a legislative act i ; M is the number of major provisions in the act; Ci captures the number of types of observed constraints imposed within the act; whilst Tc is the total number of possible types of constraint imposed on the agency. For the discussion of possible types of constraining mechanisms, see Epstein and O'Halloran (1999b) and Franchino (2007).
 8. Anastasopoulos and Bertelli (2020) compared several text classification techniques, including 'GBT', 'Support Vector Machines', 'Naive Bayes', 'Random Forests', and 'Regularized Logistic Regression'.
 9. Anastasopoulos and Bertelli (2020) trained two separate classifiers which produced the estimates of delegation and constraints imposed on the Commission and the member states separately. Our paper focuses on the estimates of the discretionary power of the EU Commission.
 10. For details on the performance of the classifier, see Table A4 in the Appendix.
 11. For the sample of 154 questions coded by 4 coders, the inter-coder reliability was measured at $K\text{-alpha} = 0.81$, and coders' agreement = 70.3%.
 12. Specifically, we apply the following formula Opposition to the EU policy authority = $\text{Opposing responses} / \sum (\text{Supporting, Opposing, Neutral responses})$. The responses are weighted using EB 27/28 weights provided by the Eurobarometer.
 13. There is a long-standing debate on whether 'Don't Know' responses reflect a lack of issue salience or rather a lack of knowledge among the respondents. Arguably, though, if a person is not interested in the issue at hand, she would not be motivated to acquire knowledge about it. For discussion see Wratil (2019).
 14. <https://ec.europa.eu/transparencyregister/public/homePage.do>
 15. See Tables A6 and A7 for the detailed mapping of the CAP-EUPAP and the TR's areas of interest.
 16. Our key results are robust to using the count of all organisations registered across the EU in a specific year to measure Actor Mobilisation (see Table A11 in the Appendix).
 17. Specifically, we measure polarisation as following

$$\text{polarisation} = 1 - |\text{Share of Supporting Responses} \\ - \text{Share of Opposing Responses}|$$

18. To estimate the position of the 6th EP, we used a list of parties that were represented in the EP in the end of the parliamentary term. For the 7th EP term, we accounted for the accession of Croatia and estimated distinct positions for the

period before it (relying on a list of parties in the beginning of term) and after it (in this case, we relied on the composition of the EP in the end of the term); for the 7th EP term, we used the list of parties represented in the EP in the beginning of the term.

19. The original formula developed by Dalton (2008) for the Left-Right Dimension is as follows:

$$PI = \sqrt{\sum (party\ vote\ share_i) * \left(\frac{party\ vote\ share_i - party\ system\ average\ LR\ score}{5} \right)^2}$$

20. The Council voting records are available via VoteWatch.
21. We utilise clustered standard errors to address the potential issue of serial correlation in the indicators for public opinion. See Appendix II.1.3. for autocorrelation tests.
22. Specifically, we excluded acts in policy domains with the missing values for more than 20% of legislative acts within the policy domain. This led to the exclusion of the following policy areas: 'Culture', 'Fisheries', 'Transportation', 'Civil Rights', 'Health', 'Foreign Trade', 'Law and Crime' and 'Education', leaving us with a restricted sample of 560 observations for Model 2.

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