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It Ain't Over 'Til It's Over: Interest-Group Influence in Policy Implementation

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Abstract

Current research on interest-group influence in the European Union tends to focus on just one stage of the policy cycle, being agenda setting, the legislative process or (some aspects) of the implementation stage. We argue that this bifurcation of the research agenda is a serious shortcoming, as lobby dynamics may vary throughout different consecutive policymaking stages. As a consequence, lobby gains or losses in the legislative stage can be overturned in the implementation. This research note therefore explores how the influence of interest organisations travels across different stages of the policy cycle, most importantly between the legislative stage and the implementation stage. First, we observe that as policymaking is a continuous rather than a static process, also lobbying tends to stretch beyond the legislative stage. Second, we argue that the specific characteristics of the implementation vis-à-vis the legislative stage may structurally favour business and resourceful organisations over smaller groups and nongovernmental organisations. Third, we illustrate the plausibility of our argument by means of an in-depth case study: the European Union Industrial Emissions Directive. We conclude with a call for a more integral approach to researching lobby powers throughout the policy cycle and provide a preliminary agenda for future research.

Keywords

interest groups, influence, implementation, policy cycle, evidence-based policymaking, lobbying

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Introduction

What does lobbying look like in the different stages of a policymaking process? And does interest-groups' ability to influence policy differ across these different stages? Current research on interest-group influence in the European Union (EU) tends to focus on just one stage of the policy cycle (but see Coen et al., 2021), being agenda setting (Klüver, 2013), the legislative process (Dür et al., 2015) or (some aspects) of the implementation – most

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importantly by looking at lobbying at regulatory agencies (Arras and Beyers, 2020a, 2020b; Arras and Braun, 2018; Redert, 2022; Schrama and Zhelyazkova, 2018). Due to this bifurcation of the research agenda, it is difficult to assess which types of organisation have been most influential in EU governance processes, as lobby influence in one stage can be overturned in another. In this research note, we therefore explore how the influence of interest organisations travels across different stages of the policy cycle, most importantly between the legislative stage and the implementation stage.

In so doing, we make three key contributions to the literature. First, we argue that in studies focussing on the influence of interest groups in EU politics, the implementation stage in general has been mostly overlooked, compromising the assessment of the *overall influence* of interest organisations in EU governance. Although there are numerous studies that analyse mobilisation patterns of interest groups around EU regulatory agencies, which are central to the monitoring and implementation of policy, these studies do not analyse the influence of interest groups at such venues in the EU (but see Dür et al., 2019). And although similar studies in the US context do study interest-group influence in regulatory agencies more frequently, research hitherto does not compare the influence in the implementation with the influence in earlier stages of the policy cycle – neither in the EU nor the US context. We argue that this forms a serious omission in our understanding of lobbying, because the implementation stage can indeed majorly determine the overall power of interest groups throughout the policy cycle. Simply put, what interest groups may have won during the legislative stage of the policy cycle, we argue, can easily be lost during the subsequent implementation stage, and vice versa.

With regard to our second contribution, we argue that the implementation stage is inherently much more *business friendly* than the legislative stage. Generally speaking, once legislation is adopted after a period of political and technical debate, policy enters the more administrative and technical implementation stage. We combine this observation with the observed trend of evidence-based policymaking and implementation in the EU (see Lee and Kirkpatrick, 2006: 23), which arguably enhances the a-political and technical character of the implementation compared with the legislative phase. Based on these insights, we argue that there are three particular factors that are inherent to the implementation stage – and arguably even more so for evidence-based policy implementation – that all favour wealthy business organisations over less resourceful interest groups. These factors are that (1) the implementation is a much longer process than the legislative stage, (2) implementation requires predominantly (highly) technical information and (3) implementation processes tend to be less politicised than the legislative process and generate limited public and media attention. This is expected to lead (resourceful) business groups to be able to dominate the implementation stage more than the legislative stage.

Our third contribution is that we illustrate our argument by analysing the EU's Industrial Emissions Directive (IED) as a case study that spans lobbying in *both* the legislative and the implementation stage, highlighting the importance of the latter stage vis-à-vis the former for lobby influence. We thereby explicitly explore the importance of the three conditions of the implementation stage that we spelled out above, and review how this changes our assessment of the type of actors that are able to influence policy across the cycle from the legislative stage to the implementation stage.

Our contribution is relevant for the burgeoning literature on the influence of interest groups on politics in general, and in the EU in particular. Over the past decade we have come to learn more about the nature of interest groups' political influence in the EU than

in the few decades before. A growing number of studies seek to identify why some organisations are more successful in policymaking processes than others and what conditions may mediate these differences (Baumgartner et al., 2009; Dür et al., 2015; Gilens and Page, 2014; Klüver, 2013; Truijens and Hanegraaff, 2020). One – rather unexpected – conclusion is that business groups are not structurally more influential than citizen groups in EU politics (De Bruycker and Beyers, 2019; Dür et al., 2015, 2019; Klüver, 2013). In this research note, we argue and show that the conclusion may have been different if these studies, that all focus on the legislative process, had included the implementation stage as well. As such, a stronger link between what happens during the legislative and implementation stage should lead to a more complete understanding of business power in EU policymaking. Note that while our study focusses on the EU, the logic of the argument should also travel beyond this particular polity.

In what follows, we first describe the current literature related to interest-group activity and influence during the implementation stage. We subsequently conceptualise the context of this stage of the policy cycle, highlighting how its specific characteristics may benefit certain types of organisations over others. We then present our case study, after which we end the research note with an agenda for future research.

State of the Art: Interest Groups in Policy Implementation

The implementation stage is an important part of the policy cycle, and lobbyists are well aware of this. In a study on lobby activity of interest groups in policy implementation in the US, Hye Young You (2017: 1170), for instance, shows that almost half of all lobby activities between 1998 and 2012 happened *after* Congress passed legislation; no marginal amount of attention by any stretch. Most of the current research that focusses on lobbying during the implementation stage looks at interest groups' addressing regulatory agencies. This research has a particularly strong tradition in the US, where the work of Susan Webb Yackee is probably most well-known. Her seminal work consistently highlights how interest groups forcefully lobby regulatory agencies and are often successful in their endeavours to amend at least the interpretation of adopted policy lines (Haeder and Yackee, 2015; Lavertu and Yackee, 2014; McKay and Yackee, 2007; Yackee, 2012, 2015, 2022; Yackee and Yackee, 2006).

The issue, however, has received far less attention in the EU context, although we have seen a recent surge of research on lobbying regulatory agencies (Arras and Beyers, 2020a, 2020b; Arras and Braun, 2018; Redert, 2022; Schrama and Zhelyazkova, 2018). This literature stresses the institutional importance of these regulatory agencies for interest-group mobilisation and strategies. A prominent example is Arras and Braun's (2018: 1257) general finding that interest-group involvement in these agencies is 'a double-edged sword, contributing to agency accountability and control, but with an inevitable risk of dependence on the regulated industry'. Another example is provided by Fraussen et al. (2020) who highlight high density and diversity of interest-group involvement in EU regulatory agencies. Finally, Redert (2022) shows how this involvement has increased over time, implying an even greater emphasis on regulatory agencies by interest groups.

While this literature has expanded our understanding of the broader involvement of interest groups across many different venues and policy stages, we see three key issues still missing in this literature. First, the studies mentioned here take a quantitative approach to look at the numeric balance between groups involved in these agencies. As also Arras and Beyers (2020a: 851) note, this leaves the more qualitative questions of the

power relations between types of stakeholders and between stakeholders and policymakers, and the impact that this has on policy, unaddressed. As a consequence, second, these EU-focussed studies do not address the question which actors were more *influential* during the implementation stage. Indeed, whereas several studies in the US context do focus on influence at regulatory agencies – based on an original dataset of over 30 rules and almost 1700 public comments from four US federal agencies, Yackee (2022) for instance concludes that business interests dominate lobbying at regulatory agencies at the expense of the broader public – such studies on the influence in regulatory agencies seem to be generally missing for the EU context. Third, also missing, both in the US and in the EU, is a comparative link between the legislative and implementation stage – a link that has not frequently been theorised, and has hardly ever been explored empirically. Coen et al. (2021) do analyse lobby mobilisation and strategies used by business actors across different stages of the policy process, but they do not link this to their influence.

A study perhaps lying closest to our aim in this research note is provided by Dür et al. (2019: 107). While the bulk of their seminal book covers the influence of interest groups in the legislative stage of EU policymaking, three of their case studies also explore the role of interest groups in the implementation. They conclude that business interest had an advantage in the implementation in at least two of the three cases they studied. They argue that business influence should be greatest in this stage when policies are complex and regulatory capacity is low (see Godwin et al., 2012, for a similar type of conclusion based on US cases). An omission in this study, however, is that the authors do not seek to determine the conditions or reasons why the implementation stage may *structurally* favour more resourceful actors – as this is simply not the intent of the book.

In sum, we see that there are quite some studies that analyse the involvement of interest groups in regulatory agencies, which are important institutions in the implementation stage of the policy cycle. Outside of the US, we see hardly any studies that analyse the *influence* of interest groups in policy implementation, let alone studies that link this back to influence in the earlier stages of the policy cycle. This omission prevents us from assessing whether the ostensible absence of business bias in the legislative stage may be structurally compensated during the implementation stage.

The Argument: Who Wins during the Implementation Stage?

The notion that interest groups can have considerable influence during the implementation stage of the EU lobby process fits broader insights from literature related to EU policymaking. As this literature stipulates, EU legislation tends to spell out the generic policy lines, leaving much room to implement, interpret and adapt these policy lines depending on various specific (national or local) institutional contexts. Moreover, (interpretation of) legislation may be adapted over time when contexts change. This way, policies are flexible enough to last over time and can be adjusted (slightly) without a new legislative round (cf. Kohler Koch and Rittberger, 2006; Sabel and Zeitlin, 2010). As discussed in various bodies of literature, this process of implementing the more generic policy lines and recursive revisions and continuous adaptations of implementation efforts has become increasingly evidence-driven, especially, but not exclusively, in the EU's multilevel polity (see, for example, Haug et al., 2010; Head, 2008; Kohler Koch and Rittberger, 2006; Parkhurst, 2017; Sabel and Zeitlin, 2010). In line with this development, agencies that are responsible for the implementation in many cases have the autonomy to make adjustments if needed.

Our argument is that the unique opportunities for lobby influence provided by each policy stage could significantly shift the balance of power between business and non-business groups across the legislative and the implementation stage. That is, we expect that the specific characteristics of the implementation stage should mostly favour the more resourceful (often business) groups and organisations. Building this argument, we start from the premise that, as main characteristics, implementation phases (1) are continuous processes that require long-term engagement (cf. Arras and Beyers, 2020b), (2) are monitored and facilitated by highly specialised agencies that require highly technical expertise as input or lobby ‘currency’ (cf. Dür and Mateo, 2016) and (3) tend to be less politicised than the legislative stage and generate limited public and media attention (cf. Yackee, 2022). We discuss these points, in turn, and argue why this can be expected to structurally benefit wealthier business groups.

The first argument for our thesis that post-legislative lobbying deserves thorough research attention is that implementation is a *lengthy process*. Whereas the legislative stage has a natural ending point when legislation is adopted, the implementation has a more continuous character. Even though legislative processes may at times take well over 3 years (the EU’s 2016 General Data Protection Regulation even took 4 years), the implementation is a continuous process that keeps determining policy impact in practice for many years after legislation has been adopted. Since long-term policy engagement requires extensive resources, this longevity hampers the effectiveness of interest representation by organisations which lack the necessary resources to stay meaningfully involved during the implementation stage (see Arras and Beyers, 2020b: 576). Moreover, even if citizen groups have the necessary means to invest in implementation, it is still unlikely that they are as *willing* as much as their business counterparts to spend it on the implementation stage. As former research shows (Hanegraaff et al., 2016), nongovernmental organisations (NGOs) are more strongly driven by a logic of membership, which means they need to legitimise their activities to their members and donors more than business organisations. This implies that citizen groups cannot spend all their resources on a process that takes lots of time without concrete results to show to their members. At least some of the resources that citizen groups have should be spent on more short-term gains, preferably associated with high media attention (also see our third argument below). As citizen groups have more limited resources and need to balance the resources that they have more carefully across policies producing long-term effectiveness and short-term success, these groups cannot match business groups in their long-term engagement with the implementation stage. This should lead wealthy business groups to be more influential during this stage.

Second, whereas policymakers in the legislative stage may be in need of input on both technical information and political and societal preferences (see, for example, Dür and Mateo, 2016; Head, 2008: 5; Klüver, 2013), the implementation tends to revolve less around such political preferences and much more around *technical* information. When dealing with complex policy issues, implementing agencies usually require highly specialised expertise and data – especially when policy process is explicitly evidence-based (e.g. Haug et al., 2010). Such specialised ‘technical information’ can refer to actual technologies, as well as to information about business models and financial risk in a particular sector, and knowledge based on (best) practice or experience (Head, 2008: 5). Importantly, however, ‘technical evidence may be irredeemably value-laden’ (Greenhalgh and Russell, 2009: 308), meaning that it matters tremendously *whose* evidence is delivered and used as a basis for implementation procedures (cf. Parkhurst, 2017; Torriti, 2010). The key insight here is that not every type of stakeholder is equally equipped to gather and deliver

the necessary data: '[research-based] forms of knowledge primarily comprise the work of professionals trained in systematic approaches to gathering and analysing information' (Head, 2008: 6) – be it independent research institutions or designated research departments of businesses and business organisations. As such, technical input can generally be expected to be delivered by those resourceful business actors from sectors that are targeted or affected by the policy (cf. Dür and Mateo, 2016: 5, 154–155; Head, 2008: 6–7; Truijens, 2021: 213–214).

The argument that the implementation stage has a more technocratic character (i.e. driven by technical information and 'evidence' rather than political preferences) means, third, that this post-legislative stage is generally rather *depoliticised* compared with the legislative stage. Indeed, mostly taking place in the shadow of the public eye, policy implementation tends to be much less salient than policy formulation. Such low salience should, according to, for instance, Woll (2016), Kastner (2018), and Rasmussen (2014), be in the benefit of private business interests. As, for instance, Dür et al. (2015), Schimmelfenning (2020) and De Bruycker (2020) argue, public and non-business demands stand a better chance of influencing policy outcome in more politicised and salient issues, while business interests find their way to the policy outcome more easily in less politicised issues (De Bruycker, 2020: 3–4; Dür et al., 2015: 3). The underlying mechanism, as argued by, for instance, De Bruycker (2020: 5), is one of political responsiveness and public accountability, which makes policymakers more inclined to favour public interests when operating in full stage lights. De Bruycker furthermore argues that as European policymaking is being increasingly politicised, non-business interests groups generate a better position to influence policymaking (De Bruycker, 2020). Yet, if the level of politicisation has an effect on which type of interest can more easily influence policy outcome, then lobbying in the depoliticised implementation stage of the policy cycle should be thoroughly researched.

These three characteristics of the implementation underscore the need for more information about the influence of interest organisations during this stage, if we are to grasp the influence of different types of interests on public policymaking in full.

Empirical Illustration: The EU Industrial Emissions Directive

In this section we empirically demonstrate the plausibility of our arguments for researching lobbying throughout the different policymaking stages on the basis of the EU's IED. After explaining the case selection and methodology, we will briefly introduce the governance framework of the IED as articulated in the legal text of the legislation, which will show a rather explicit role for interest-group engagement in the implementation. This is followed by a discussion of the main lobbying issues that arose in the legislative stage of the IED. Based on primary empirical data obtained through semi-structured interviews with policymakers and interest-group stakeholders, we subsequently look at the influence that stakeholders have in the post-legislative stage. This discussion focusses on the abundant representation of industry actors in the Technical Working Groups (TWGs) in which concrete emission limits are determined.

The IED can be seen as a *typical* case of 'new' horizontal, iterative, and stakeholder and evidence-driven governance (Truijens, 2021: 56). The findings are thus insightful for similar governance frameworks in and beyond the EU. Since this mode of multilevel governance, including a technical and evidence-based approach to implementation and

continuous adaptations, is arguably increasingly applied in EU policymaking and implementation (see, for example, Kohler Koch and Rittberger, 2006; Sabel and Zeitlin, 2010), one can also argue the IED to be a *crucial* case (cf. Gerring, 2007: 89–90). Indeed, as the IED constitutes a rather developed case of this new mode of governance, in which all institutions and procedures for interest representation in evidence-based implementation are in place, the way in which power relations work here is arguably exemplary for how it works *in optima forma*. Issues with power and influence dynamics found ‘even here’, may thus be expected to also occur in less institutionalised cases.

To obtain a profound understanding of what power dynamics and interactions between actors look like in the implementation stage, and to demonstrate our theoretical argument that these dynamics are related to the specific features of (evidence-based) implementation, we consider an in-depth single case study suitable. Although a comparative multi-case study may have allowed us to establish robustly *that* the dynamics among lobbying stakeholders and between stakeholders and public actors differ in different stages of the policymaking cycle, our primary concern is to argue *why* that might be the case. Indeed, we are equally interested in observing the difference between the policy formulation and the implementation stage as we are in exploring the nature of this difference. It is therefore not our goal to develop and test a complete and exhaustive theory on implementation lobbying, but rather to substantiate that implementation lobbying is important to research.

To that end, within the single case we follow a *process tracing* methodology – a method focussed on detailed reconstruction of decisions by, and interactions among, multiple actors, with explicit focus on their subjective interpretations (cf. Truijens, 2021: 39–40). Rather than connecting a cause to an effect, process tracing allows for disentangling interactions, interpretations and intentions that may explain the nature of the relationship between the cause(s) and effect(s) (cf. Beach and Pedersen, 2013; Gerring, 2007). In doing so, it takes context seriously to the extent that causes can lead to different effects in different situations (which is also why it explicitly rejects the *ceteris paribus* assumption, Gerring, 2007: 172–173). And it is exactly the effects of these contextual factors of the implementation stage that we want to understand and which lie at the heart of our argument for investigating lobbying in the post-legislative stage.

The case study is based on semi-structured interviews with relevant NGOs, business representatives, and public officials (among which a representative of the responsible DG Environment and the director of the European Integrated Pollution Prevention and Control Bureau (EIPPCB) in Sevilla). Compared to large-scale surveys or fully structured interviews, this type of data collection indeed allows for discussing intentions, interpretations and interpretations behind observable actions. In total, 12 formal interviews were conducted, supplemented with personal attendance of, and informal conversations during, two stakeholder rounds for the IED Evaluation, organised by the European Commission in Brussels in 2020.

The Governance Framework of the IED

The IED, which in an earlier iteration was called the Integrated Pollution Prevention and Control (IPPC) Directive, sets broad emission reduction goals for heavy industries across the EU. The exact emission levels per industrial sector are to be determined throughout the implementation on the basis of the so-called *best available techniques* (BATs). Characterised by a ‘gradual departure from traditional command-and-control instruments based on the setting of uniform, legally binding emission limit values (ELVs)’ (Koutalakis

et al., 2010: 331), the IED uses BATs as context-dependent and continuously updated benchmarks for determining the level of emissions that an individual installation can produce. Based on these BATs, so-called BAT-reference documents (BREFs) conclude on a range of emission levels that is deemed appropriate and reasonable.

The process of determining BATs and writing BREFs takes place in TWGs, which are organised and coordinated by the EIPPCB in Seville, Spain. The European Commission initiates a BREF-writing or BREF-revision process for particular industrial sectors (e.g. the Iron and Steel BREF or the Ceramic Manufacturing Industry BREF). Different relevant state and non-state stakeholders – Member State representatives, interest groups representing industry and environmental NGOs – sit together with Commission representatives in the TWG to produce these BREFs. Discussions should be based on empirical and factual data about (the latest) emission reduction techniques and related reasonably achievable emission levels. The BREF concludes with the BAT-Associated Emission Levels (BAT-AELs), which is the *binding* range of emissions that national competent authorities have to consider when issuing operation permits to industrial plants in their Member State.

Lobbying the Policy Formulation Stage

Since the legislative process leading to the 2010 IED concerned a revision of the older IPPC Directive, which over time had already seen a number of institutional developments and mid-term revisions, the scope of lobbying issues was relatively limited. The main concerns were clarifications of the legal status of the BAT-AELs in issuing permits and the room for derogating from these emission levels under special local circumstances. Environmental NGOs, led by the European Environmental Bureau (EEB), called for binding BAT-based permits with narrow room for derogation. A coalition of industries, united in the IPPC Alliance of Energy Intensive Industries, instead lobbied for BATs that merely guide but do not define emission levels. The IPPC Alliance moreover stressed that there should be significant room for derogation to allow healthy industrial operations and avoid bankruptcy due to policy (see position paper: www.eurofer.org). As their goal to give the Directive ‘teeth’, policymakers preferred as much clarity as possible, meaning binding BAT-AELs and little room for derogation for the sake of coherence and proper functioning of the legislation (interview Serge Roudier, EIPPCB; interview DG Environment).

The outcome of the legislative process is that BATs are binding in issuing permits (interview DG Environment (b)). Derogations are allowed only on the basis of strict economic and technical arguments. Both NGOs and industry actors could in the end support this policy outcome:

I can imagine that [. . .] of course [environmental NGOs] would not all be pleased with too much flexibility. On the other hand when you explain it well and what is behind [it], it is not just a flexibility to leave a leeway for operators, because that is not the issue. The issue is that heterogeneous industry needs [flexibility]. I was under the impression that there was a general understanding for that. I did not see real oppositions (Interview Ann Dierckx, Cefic, Spring 2013).

This shift to what environmental NGOs argued for in the legislative phase was considered a big leap by the EEB, as clearer rules of the implementation would give the Directive as a whole more clout (interview Christian Schaible, EEB).

However, if we were to stop our analysis of lobbying influence here, it would seem as if business influence on the policy outcome did not outperform NGO influence, and that the outcome is rather balanced. However, as Patrick ten Brink of the Institute for European Environmental Policy (IEEP) suggests, the race is not run with the adoption of the Directive, as the implementation still requires most of the work:

It offers additional flexibility. So in some ways it really is a much better instrument than simply end-of-pipe solutions [. . .] The weakness is of course the making of the BREFs, because to do the BREFs you need a hell of a lot of input, information.

Stakeholder Involvement in the Implementation of the IED

Since the policy objectives as formulated in the IED itself remain intentionally broad and unspecified, with a logic to concretise emission limits recursively throughout implementation, the room for influencing concrete policy outcome *after* the adoption of the Directive itself is significant. In this section, we take a closer look at what this means in terms of power dynamics between different types of interests, and between private and public actors. Although we are aware that the IED may be somewhat exceptional in its openness to post-legislative lobbying, the case does provide clear and concrete arguments for our call for investigating interest representation beyond the legislative stage.

Resources for Long-Term Engagement [Argument 1]. A first, general observation is that all types of interest groups that were involved in the legislative stage are aware of the importance of *not* dropping out at the moment the Directive was adopted. As a general note on the strategic choice of interest-group actors to embrace also the implementation as an important phase in the policy cycle to influence outcome, Patrick ten Brink of IEEP comments:

Our approach before has always been in the pre-legislative and in the legislative formation phase. When it comes to implementation, historically we have done a bit less. But now of course the sort of implementation has become an ever-bigger issue. [. . .] So while it is our natural tendency to focus more upstream on the policy development side, we are moving towards an increased focus on policy implementation and tracking, because there is not much legislation that is going to come out for a while (Patrick ten Brink, IEEP).

By giving NGOs, alongside business and industry representatives, a seat at every TWG table, the presence of all those types of stakeholders is also formally facilitated. The next question then is whether they are also in a position to actually participate on a (somewhat) equal level. Concretely looking at mere distribution of resources (financial and staff), the position of environmental NGOs vis-à-vis industry is of central concern here. When asked whether everyone who will eventually be affected by a particular BREF has an equal opportunity to participate, discuss and negotiate, an industry representative replied:

Well I'm from a big industry unit, so I think 'yes' haha . . . But no, honestly and seriously, no. It's not a perfect process. It is not everybody at the table and there are reasons for this. The unit I'm coming from, we're employing 16.000 people, in Shell there are 300.000 people etcetera. [. . .] When it comes to manpower and resources, usually the larger companies can dedicate persons full time, in order to actually understand and get all this information. [. . .] Those people

in the smaller companies somehow need to find the time. I'm afraid this is just part of the process., & this problem is not easily solved. [. . .] It's a matter of resources (Interview Autumn 2017).

This elaboration emphasises the disadvantaged position of the smaller companies that are affected by a particular BREF compared to the bigger ones, as a consequence of the process simply taking very long and requiring a lot of time and resource investment.

This same problem regarding a disadvantaged position vis-à-vis the well-resourced big industrial actors also holds for NGOs. While the big industrial actors are abundantly represented, the EEB has to divide its scarce human resources over all TWGs. As the industry representative continues:

I mean, it sounds a little bit unfair, but industry easily outnumbers the representatives of the NGOs. But then again, one should also consider that in the EEB . . . they also have a limited number of people working there, working on various BREFs. But I really appreciate what they're doing, because they are preparing themselves very, *very* well., & sometimes I wonder how they manage! (Interview Autumn 2017).

This comment is very telling when it comes to having to follow a long-term and continuously demanding post-legislative process (answering to our first theoretical argument). This insight is furthermore backed by a comment of data protection and privacy NGO EDRI in a different case of EU legislation, who state that after legislation is passed all they can do is follow the implementation at the level of reading updates every now and then, as their limited resources forces them to 'pick their battles' – which generally leads them to focus on the next legislative process (Truijens, 2021: 147).

Specialised Data for Specialised Agencies (Argument 2). The strong emphasis on technical and factual data as the 'currency' for participation in the debates of the TWGs is a double-edged sword, especially when it comes to the position of NGOs. To be sure, negotiation on the basis of 'rationally motivated arguments' may be seen as a virtue in a deliberative democratic sense and can arguably prevent one type of interest from systematically dominating the process on the basis of mere *political* preferences. In practice, however, the data-heavy process, especially in this case where the level of technicality is extremely high, has its pitfalls for the balance between different types of actors.

One central issue to consider with respect to post-legislative lobbying is that the industry actors – who have a strong economic interest in the eventual emission levels – are themselves the primary source of data. It is critical to reiterate in that respect that the neither policymakers at the EU level nor the public actors in the EIPPCB possess the necessary data for drafting the BREFs: they have to rely on the input from the stakeholders. The detailed technical information concerns the operating processes of the plants, and for that reason it are those plants themselves that deliver the data on the basis of which eventually the emission levels are determined. As an interviewee in an analysis of the IED by Jens Kimmel puts it clearly: '[. . .] industry is always very active. But not always very active to bring information, sometimes they are active to make sure that the information does not arrive' (in Kimmel, 2016: 11).

Formally, the data that are delivered by the industrial plants are to be verified by national competent authorities. Moreover, another 'check' in this data provision is that third parties at the TWG table, like NGOs, are in theory able to follow the whole process from data to BAT-AEL. In practice, however, these checks are more difficult. First, the

level of technical detail, including the specific circumstances under which data are gathered (for instance, the weather conditions, but also the moment of measuring), makes it difficult for third parties to actually perform these checks. Second, operators can be reluctant to deliver the data because of competition concerns if data are commercially sensitive, in which case this information cannot legally be demanded from the stakeholders (Truijens, 2021: 76). Taken together, verification by third parties is in practice very difficult, and the EEB will generally have to be confident that the information discussed in the TWGs has been thoroughly crosschecked by either the Member State competent authority or the EIPPCB (interview Christian Schaible, EEB). Without stating that withholding data structurally happens, or that misrepresented data are in practice (consciously) delivered by industry actors, the point is that industry and business actors have almost exclusive control over the data that feed the implementation process.

In sum, the high technical detail level of the implementation of the IED gives a clear advantage to business interests, and as such, actual policy outcomes are much closer to these interests than originally expected based on merely looking at the legislation. Despite the IED's idiosyncrasies, the core issue here is that implementation – which often has a more technical and specialised character than the more political legislative process – almost by nature favours particular types of interests (and interest groups), as it favours those that possess and thus control the data (cf. Dür and Mateo, 2016: 154–155).

Negotiating in the Shadow of Politics (Argument 3). Our third argument for investigating lobbying in the implementation concerns the effects that low levels of politicisation and salience may have on interest-group influence. Although our IED case does not allow for empirically supporting the salience argument as such, it does show how the depoliticised nature of the implementation stage affects the power dynamics between different types of actors involved.

Going back to the architecture of the BREF-writing process, the importance of exclusively *technical* evidence and arguments – and not political statements – as input for the debate within the TWGs, is something that Head of the IPPC Bureau and BREF writer Serge Roudier cannot stress enough:

The [BREF-writing] process is not a political process – it is not designed and implemented to be a political process. [...] So this is where one of the main the challenges lies: to distinguish in those statements that are brought in the Technical Working Group, those that are supported by facts and sound techno-economical evidence from those that are not and that are more of a political nature (Interview Roudier).

Signifying the dominance of the technical discussion over any form of political preferences, Roudier comments:

It has never occurred that a political influence has changed the [BAT] Conclusions., & frankly I do not see such thing taking place, because stakeholders accept that it shouldn't. As soon as that would start, it would be the end of the Sevilla process (Interview Roudier).

Although on paper a norm-free, factual, and evidence-based discussion that feeds the BREF can be championed for leaving politics out of the equation, it is readily apparent that in practice politics cannot be filtered out of technical debates. Evidence that is delivered (as well as evidence that is *not* delivered) is not a norm-free and a-political process (see, for example, Mügge, 2011: 57, on the matter of facts as a norm-free category). In

short, the diminishing room for explicitly political debate and political manoeuvre in the process, means that the ‘factual’ discussion in the TWGs determines the policy outcome – a discussion that is typically in the advantage of industrial and business actors, not NGOs.

In line with what, among others, Dür and Mateo (2016) and Schimmelfenning (2020) have argued with respect to politicisation in the legislative phase, our point here is that implementation tends to be predominantly non-salient and depoliticised, which benefits particular types of interests in a similar way as it would in the legislative phase.

Conclusion

This research note has argued why the implementation stage is a fruitful environment for wealthy business to influence policy, and why it should therefore be studied in order to understand the influence of different types of interest groups throughout the entire policymaking cycle. Our empirical example has illustrated that if we would have stopped the analysis of lobbying influence at the end of the legislative stage, we would have vastly underestimated the influence of business groups on this Directive – or at least on its actual policy outcomes and impacts. Indeed, business has taken control over this issue only in the implementation stage, where ability to allocate resources to this much longer process and control over the required technical data determines their influence, and where low salience and low politicisation make it easier to have policymakers follow the business argument.

Our results are relevant for the extant literature on interest-group influence. This literature has identified the lack of business bias in legislative processes in the EU (and beyond), but has hardly paid attention to their influence during implementation stage (but see Dür et al., 2019). With this research note we aim to set the agenda for more attention to the study of lobbying influence during the later stages of the policy cycle. We know that lobbyists focus much attention to this stage (You, 2017), and as argued in this research note, we think a more integral approach in studying the influence of interest groups across the policy cycle is now needed. For the EU context specifically, a focus on the implementation stage to understand lobby influence is perhaps even more pertinent, as implementation-based governance, such as that of the IED, is argued to be the trend in EU policymaking (cf. Kohler Koch and Rittberger, 2006; Sabel and Zeitlin, 2010; Truijens, 2021: 216). We therefore hope more attention is paid to the implementation stage in future research, next to agenda-setting and legislative politics which have already received substantial attention.

Obviously, we are aware that one case does not allow us to make too bold statements about the influence of certain types of organisations. Yet, given the characteristics of the implementation stage it is not a stretch to assume that it favours business groups and resourceful organisations beyond this one case. This leads us to a research agenda for the future, for which we see three main avenues. First, our three arguments for possible structural bias are inexhaustive, as other factors may be relevant too. Follow-up research may identify a broader set of core features leading to influence bias, including conditional factors such as the policy field or the technicality of the policy issue. Second, we see much potential in further investigating to what extent lobby ‘gains and losses’ in the legislative phase are compensated in the implementation stage, so as to see whether our perception of who wins and loses changes. The observation that no less than half of all lobbying activities take place during the implementation stage (You, 2017: 1170), means

that not paying attention to this stage might mean we also miss half of the story on which interest groups are influential and which are not. Finally, as a policy cycle consists of more than two stages, extending this view to systematically analyse the influence of interest groups across the agenda setting-stage, to the legislative and the implementation stage seems like the logical endeavour (cf. Coen et al., 2021).

Finally, our results do not only have academic relevance. We also see important *normative* consequences which require further policy considerations. In popular media, implementation is hardly a topic of concern, yet the dynamics between interest groups and public actors may be significantly different when the negotiations happen in the shadow of politics, as our case demonstrates. And for concrete decisions that are made after the formal legislative process and adoption of legislation (the moment at which most lobbying research stops), the political accountability can become highly vague – which bears important relevance for the democratic legitimacy and checks and balances of policymaking. Although it is true that business actors are not necessarily *always* the bearer of the required technical information (consider, for example, expertise on education or labour markets), the mechanism of how this expert knowledge strongly favours a position in the implementation is the central issue here that asks broader attention. Note furthermore that in our argument, it are the structural characteristics of the implementation stage that may inherently favour one type of interest over others. This means that these effects are difficult to mitigate, but this makes it all the more important to consider them when designing governance structures – especially those that lean much on implementation (cf. Truijens, 2021: 217).

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