

And yet, it moves: Lobbying Regulation in the Council of Ministers of the European Union

Erik Schmidt-Meinecke¹

ABSTRACT

This study aims to explain the commitment of the Council of the European Union to the Inter-Institutional Agreement on a common Transparency Register for interest representatives with the Commission and European Parliament in 2021. To scrutinize this surprising turn in the hitherto transparency-averse position of the Council, this study draws on a set of elite interviews with Council sources and transparency stakeholders. The emerging data are analyzed through a theoretical framework grounded in institutional theory, grouped in a strategic, institutional, and ideational dimension. Evidence on a strategic dimension suggests a transparency-averse majority in the Council that explains the overall skepticism of the institution towards advancing lobbying transparency. The institutional dimension reveals the Council as compelled by norm-entrepreneurship and a logic of appropriateness instilled by other institutional actors in the Inter-Institutional Agreement. Lastly, the ideational dimension reveals shifting notions of transparency, as well as effective change agency and knowledge sharing through pro-transparency actors within the Council. The study concludes that, while a merely strategic analysis of institutional change fails to explain reform, a holistic institutionalist perspective, considering different dimensions of institutional change, is well suited to explain the advance of lobbying transparency in the Council. Further research could draw on the tentative findings of this research and attempt a longitudinal assessment of drivers and inhibitors of lobbying transparency in the Council.

1. Introduction

In spring 2021, the European Commission (Commission), European Parliament (EP) and Council of Ministers of the European Union (Council) concluded an Inter-Institutional Agreement on the introduction of a common Transparency Register (TR). The act aims to establish “transparent and ethical interest representation” (Council of the European Union 5655/21, p.7), as a means to “maintaining the trust of Union citizens” (p.2) by enhancing the transparency and accountability surrounding the EU legislative process. The recent agreement falls into a global trend of lobbying regulation and general transparency reform in governance (Billet, 2011; Chari et al., 2007; Crepaz, 2017; Grigorescu, 2007; Holman & Luneburg, 2012).

Scholars situate the motives for introducing lobbying regulation in the erosion of trust in governments, propelled by scandals over undue influence (Holman & Luneburg, 2012; Kretschmer & Schmedes, 2010). Lobbying regulation is thus often characterized as a bid to regain public trust by enhancing policy-makers accountability through transparency. The reasoning suggests that by revealing contacts with interest representatives to the public, the electorate’s capacity to hold governments to account is strengthened (Dinan, 2021). Indeed, the same rhetoric was adopted by the Commission since 2005 (Bunea, 2018), postulating lobbying regulation as an indispensable element of the Union’s democratic legitimacy. This is particularly interesting, because the Commission increasingly frames such regulation as a way of tackling the Union’s eternally debated democratic deficit (Smismans, 2014).

¹ Erik Schmidt-Meinecke received a bachelor degree in European Studies at Maastricht University in 2021. At the moment he works at Gauly Advisors GmbH. Contact: e.schmidtmeinecke@yahoo.com

While one might thus expect the EU to be a natural case for advancing lobbying regulation, the recent Inter-Institutional Agreement (IIA) is arguably far from a commonplace. Specifically, the novelty of the Council joining the agreement can be considered a paradigmatic shift. The Council's reputation as the EU's most secretive "black box" (Borońska-Hryniewiecka, 2015, p.1) is rooted in its traditionally diplomatic and intergovernmental culture of member state (MS) representation. Consequently, it has hitherto often fought advancing transparency practices tooth and nail (Borońska-Hryniewiecka, 2015). Indeed, the Council declined the EP's invitation to join inter-institutional negotiations on a common TR in 2008, joining deliberations in 2017, yielding results only in 2021. Thus, it can be argued that the Council's eventual entrance into the common scheme is surprising, given its traditionally transparency-averse culture and the apparent internal and external contestation of the issue.

Indeed, academic literature fails to address this puzzle. While considerable attention has been devoted to the global turn towards lobbying transparency (Chari et al., 2010; Crepaz, 2017; Holman & Lunenburg, 2012), the unit of analysis has most commonly been states. Moreover, the stimulus for lobbying regulation is often situated in scandals over undue influence or national administrative cultures that facilitate transparency reform (De Francesco & Trein, 2019). On all three accounts, the Council turning towards lobbying regulation remains puzzling. Firstly, the Council's *sui generis* nature at the crossroads of being a legislative and a diplomatic body (Naurin, 2017, p.89) makes it a relevant but so far hardly addressed case of lobbying transparency research. Secondly, the absence of major EU-wide scandals over undue interest representation in the relevant timeframe from 2016 to 2021, raises questions on the immediate political pressure for the Council to act. Thirdly, the diversity, and often non-existence of national administrative cultures in regulating lobbying amongst the 27 member states suggests that agreeing on a common scheme was politically heavily contested.

Thus, analysing what led the Council to join the IIA on the Transparency Register and its concrete commitment to the scheme, addresses a dual gap in the literature. Firstly, it adds an empirical study on the inhibitors and facilitators of lobbying regulation in a unique case, considering the Council's distinct institutional nature. Secondly, it contributes to the emerging literature on the Council's institutional transparency reform, that has so far addressed different dimensions of transparency like trilogues and access to documents, but hardly lobbying transparency. Moreover, the research puzzle is of great social relevance, as the Council's consideration of appropriate lobbying regulation hints at a new notion of democratic accountability hitherto unheard of in this secretive institution. Analyzing the drivers of such change is pivotal in exploring policy makers' changing (self-)perception of accountability. This study aims to fill this need by answering the research question; how can the Council's participation in the Inter-Institutional Agreement on a common Transparency Register be explained?

To this end, a series of semi-structured elite interviews was conducted with permanent representation officials and stakeholders in lobbying transparency. To analyze the empirical evidence, institutionalist theory is applied to establish a holistic account of interdependent drivers of the phenomenon. To this end, the research proceeds as follows. First, the academic debate on the introduction of lobbying regulation is discussed, to identify applicable trends of lobbying reform. Second, a theoretical framework is established, drawing on institutionalist theory, to craft a suitable analytical lens through which the process can be operationalised. Third, the research methodology is discussed, detailing data collection and analysis. Fourth, the analysis introduces the data gathered, which are subsequently discussed in the findings section. Lastly, the conclusion summarizes the research findings to provide a comprehensive answer to the research question.

2. Literature Review

To approach the research question, two strands of literature are examined. This review first establishes a definition and motivation for lobbying regulation connected with the research on drivers of such reform. Thereafter it discusses theoretical approaches to negotiations and transparency reform in the Council, to facilitate the construction of a theoretical framework.

Lobbying regulation has attracted considerable scholarly attention. Particularly literature discussing the introduction of lobbying regulation has grown in the last two decades, keeping pace with the exponential rise in the adoption of such legislation globally (Crepaz, 2017; Kretschmer & Schmedes, 2010). While 'lobbying' is itself a notoriously fuzzy term, definitions frequently carry some notion of "strategic communication [...] to those political actors who have the power to substantially influence public policy outcomes" (Anastasiadis et al., 2018, p.208). As the communication of interests to policy makers, lobbying is accepted as essential for representative democracy (Chari et al., 2010; Keeling et al., 2017). As the "interface between citizens and representative government" (Karr, 2007, p.74), the input of interests from society is indispensable to avoid public policy forming in a vacuum.

Despite this essential role in representative democracy, lobbying can impede the accountability of policymakers. Scholars conceive the ability to monitor policy processes ('transparency'), as a precondition to the effective scrutiny of policymakers ('accountability') (Settembri, 2005, p. 652; Bovens, et al., 2014). Since unregulated lobbying happens outside the public eye, monitoring whether policymakers are unduly influenced through lobbying is hampered. Lobbying regulation emerged as a remedy, as it renders the "behavior of lobbyists observable" (Crepaz, 2017, 232), shedding "light on the aspects of the policy-making process where interest groups are involved". Such transparency regulation has been lauded to increase public trust in political institutions, disincentivize corruption and increase political accountability (Chari et al., 2010; Holman & Luneburg, 2012; De Francesco & Trein, 2019).

As lobbying regulation is increasingly introduced globally, scholars have sought to identify conducive and inhibiting factors to the introduction of such legislation (Crepaz, 2017). Policy diffusion, the spread of knowledge on policies from one political setting to another (Crepaz, 2017, p.234; Dolowitz & Marsh, 2000, p.5), specifically in international organizations (IO), can explain the adoption of lobbying regulation. According to this view, members of an IO that promotes lobbying regulation are more likely to adopt such measures themselves through "policy recommendations and best practices" (Crepaz, 2017, p.235). Moreover, the likelihood of the adoption of lobbying registers is shown to change with systemic factors, like administrative culture or perceived corruption (De Francesco & Trein, 2020, p.117). Although empirically challenged by Crepaz (2017), a common source of lobbying regulation is identified in scandals (Holman & Luneburg, 2012). These conducive factors for the introduction of lobbying regulation may be offset or weakened by inhibiting factors, which will be discussed below.

Factors inhibiting the adoption of lobbying regulation can be divided into political and technical scepticism. Naurin (2007) and Chari et al. (2008) argue that political actors might avert lobbying regulation to avoid increasing scrutiny and maintain legislative control, fearing "unforeseen consequences, leading to a regulatory avalanche" (Hogan et al., 2008, p.129). On a technical side, policymakers might want to circumvent the administrative burden of introducing additional transparency measures or creating barriers to entry for interest representatives through convoluted administrative practices (Hogan et al., 2008).

The second element of the research question, the negotiation outcome of the Council that resulted in its participation in the Transparency Register must be theoretically addressed. As the arena of legislative inter-state negotiations in the EU, the Council is often characterized as intergovernmental (Moravcsik, 1993). Accordingly, rationalist, and intergovernmental accounts of Council negotiations perceive states as central actors, which aim to realize their preferred outcome, which is determined by their power *vis-à-vis* other states. Thus, negotiation outcomes should resemble the preferences of a majority or particularly powerful states (Bailer, 2010). This rationale appears insufficient considering the case of the IIA, since the Council has hitherto appeared averse to increasing transparency. Indeed, Bjurulf & Elgström (2014) voice a similar critique, arguing that intergovernmental theories fail to explain advances in Council transparency, which often move against majority preferences.

To remedy this theoretical shortcoming, institutionalist theory has expanded the focus from actors to the institutional context in which they engage. Institutional theory departs on the premise that “both formal structures and informal norms, [...] influence the bargaining strategies of the actors and, indirectly, the result of the negotiations” (Bjurulf & Elgström, 2004, p.250). States as actors are not irrelevant, but the realization of their interests through power resources is both enabled and constrained by the institutional and social context in which they engage. Dür & Matteo (2012) argue that a more institutionalized negotiation setting leads actors to favour integrative over purely self-interested bargaining. Similarly, Battilana et al. (2009) suggest that institutionalism explains “that patterns of action and organization are shaped by institutions, not solely by instrumental calculations” (p.72).

This reasoning has found support among scholars, utilizing the benefits of merging different institutionalist assumptions into research designs on EU institutional transparency thereby favouring a broad theoretical approach over rigid concepts (Hillebrandt et al., 2014; Cini, 2008). For example, Roederer-Rynning & Greenwood (2021) identify considerable “calls within the institutionalist scholarship to bring the role of actors and agency back into constructivist or sociological accounts of EU institutions and processes” (p.491). Arguing that the Council position on the IIA cannot be explained from a purely rational account, this theory is deemed promising for its explanatory value.

In conclusion, the literature has shown that lobbying regulation may or may not occur due to a variety of systemic or exogenous factors. Theoretical considerations on Council transparency reform suggest a broad range of influential factors, embedding actors in structural contexts. These two strands of literature indicate that the advancement of lobbying regulation in the Council will likely depend on a plethora of factors, rather than clear determinants. Thus, this research adopts an eclectic institutionalist approach, aiming less at rigid theory testing but an exploratory investigation drawing upon a loosely grouped assortment of previously established concepts. This synthesis will be elaborated in the following section.

3. Analytical and Theoretical Framework

In approaching the Council’s decision to join the IIA, this research draws on an eclectic set of institutionalist theories. Concretely, the theoretical framework is established by synthesizing Meijer’s (2013) theoretical approach to “the complex dynamics of government transparency” (p.429) and case studies by Cini (2008) and Hillebrandt et al. (2014), which investigate transparency reform in EU institutions and the Council. This theoretical foundation is chosen since their analytical approaches to government transparency allow a suitable approximation in the absence of literature on lobbying regulation reform in the Council. While

Cini (2008) explores advancing lobbying regulation in the Commission, Meijer (2013) and Hillebrandt et al. (2014) investigate transparency as 'access to documents' in the Council. Considering the research question, Cini (2008) thus covers the appropriate policy issue (lobbying regulation) while Meijer (2013) and Hillebrandt et al. (2014) explore the appropriate venue (Council). A synthesis of their designs is facilitated by their remarkable similarities, which serve as the research's theoretical point of departure. Institutional theory grapples with the paradox of "embedded agency" (Bakir & Jarvis, 2018, p.25), wherein either the role of actors supersedes the impact of the institutions in which they are embedded or *vice versa*. Bakir & Jarvis (2017) suggest studying institutional entrepreneurship through a "process-oriented, context contingent, dynamic and integrative framework" (p.472). To address this conundrum, the research distinguishes three dimensions of lobbying regulation in the Council: a strategic, institutional, and ideational dimension through which negotiations can be analyzed.

The **strategic dimension** most closely resembles rational choice institutionalism, in the sense that reform or stasis in lobbying regulation in a specific forum depends on the strategic consideration of actors. Meijer (2013) advocates examining actor's preferences and the "nature of the power game" (p.431), as "powerful actors will generally be able [...] to steer developments" (p.431) in transparency reform. Similarly, Hillebrandt et al. (2014) suggest considering actors' powers and preferences as a point of departure, while Cini (2008) emphasises the role of change agents and veto players. As this research aims to elicit the origin of the Council position, the institution is understood not as an aggregate actor, but as steered by the preference and power distribution of its constituent parts, the member states (MS). Accordingly, the strategic dimension of analysis establishes which powers and preferences concerning lobbying transparency shaped the formulation of a common Council position. Power resources may entail "hard voting power, or soft persuasive power" (Hillebrandt et al., 2014, p.7), noting that "in the Council context, the presidency and voting weight are highlighted as particularly impactful arrangements" (p.7).

The **institutional dimension** of analysis covers formal institutional rules and informal social structures resulting from institutional contexts and their impact on the formation of the Council's position towards lobbying regulation under the IIA. This includes "constitutional structures (such as the European Treaties)" (Hillebrandt et al., 2014, p.9) as well as normative "value patterns" (Meijer, 2013, p.432) which are embedded in a "logic of appropriateness" (March & Olsen, 1995) innate to an institutional context. Considering the research case, the roles of the EP and Commission in influencing the Council are subsumed in this dimension. While they are certainly actors with powers and preferences, such conception expands beyond the research scope. The reduction is justified in the case at hand since EP and Commission are considered as factors conditioning the Council's behaviour rather than being the focus of scrutiny themselves. The analysis of this dimension will thus consider the influence of explicit legal norms and implicit institutional norms, steering actor behaviour through what is considered appropriate.

Lastly, **the ideational or cognitive dimension** of transparency reform asks how actors think about and perceive transparency. Positive and negative perceptions and lessons learnt may shape actors' relations to specific forms of transparency (Cini, 2008, p.747). Moreover, actors might engage in persuasion or advocacy, changing policy-makers perspectives. Similarly, especially when regarding lobbying transparency, scandals may create "external catalysts" (Hillebrandt et al., 2014, p.8) that change the perceived appropriateness of transparency practices. Thus, attention will be directed to the varying and developing relations that policymakers have towards lobbying regulation.

This theoretical framework provides a lens through which to view the data collected. Table 1 summarises how the three analytical dimensions enable and constrain change agents, favouring increased

lobbying transparency in the Council and veto players that are averse to reform. The following section embeds the research case in a brief contextualisation before the methodology is explained.

Table 1: Theoretical Framework

Actors (independent variable)	Factors (intervening variable)	Outcome (dependent variable)
Change agents: pro-transparency Member States in the Council	Strategic dimension: preferences and power resources	Council commitment to the Inter-Institutional Agreement establishing a common Transparency Register
	Ideational dimension: influence of advocacy (NGOs, interest representatives), public expectations, scandals, changing frames of lobbying transparency	
Veto players: transparency-averse Member States in the Council	Institutional dimension: formal institutional rules and informal value patterns in the institutional context, influence of others institutional actors (EP, Commission, Ombudsman)	

4. Methodology

4.1 Contextualising the case

The Transparency Register originates from the European Transparency Initiative (ETI) in 2005 and was introduced by Commission Vice-President Kallas. In close exchange with the Alliance for Lobbying Transparency and Ethics Regulation (ALTER-EU), a collective of transparency NGOs, Kallas identified an accountability gap in EU policy-making i.e. a lack of transparency surrounding Brussels’ estimated population of 15,000 lobbyists (Milicevic, 2017, p.82; Greenwood & Dreger, 2013). Thus, a voluntary registration of lobbyists was introduced, in which entities would disclose “who they represent, [...] their mission and how they are funded” (Milicevic, 2017, p.83). This prompted a renewed debate over lobbying regulation in the EP in 2007, culminating in calls for an inter-institutional joint TR (Dinan, 2021). While EP and Commission invited the Council to join negotiations in 2008, it declined, indicating lacking political will. Meanwhile, Commission and EP concluded consecutive IIA’s in 2011 and 2014 on iterations of a joint TR. While several scholars provide intricate accounts and evaluations of this process, the focus of this research lies not in policy-evaluation but in tracing the Council’s entry to the stage (Dinan, 2021; Greenwood & Dreger, 2013; Milicevic, 2017). The three notable elements emerging from the context are the EP’s and Commission’s institutional entrepreneurship in advancing lobbying regulation, the pronounced role of NGOs and the increasingly assertive narrative of addressing a lack of accountability in the EU through increased lobbying transparency.

Against this backdrop the Council changed first from an observer to the TR reform in 2012 to entering inter-institutional negotiations in 2017. This change of mind and the consequent arduous negotiations, culminating in a tripartite IIA including the Council in December 2020, remain puzzling, particularly considering the Council’s initial lack of enthusiasm in 2008. Dinan (2021) argues that even in 2016, EP and Commission “have shown little political appetite to move this forward and deal with the exclusion of the Council” (p.240). Moreover, negotiations stalled entirely in 2018, resuming only after the 2019 EP elections under a new Commission.

This assessment of political lethargy and apparent contestation makes the eventual agreement in 2021 puzzling. Nevertheless, under the agreement adopted in 2021, the Council commits its General Secretariat to a principle of conditionality whereby officials may only meet registered lobbyists. Moreover, registered lobbyists are granted access to thematic briefings and access to Council premises. Most interestingly however, as it touches upon the diplomatic services of the MS themselves and is thus the least expected commitment, a voluntary political declaration was issued that commits forthcoming and sitting Council Presidencies to apply conditionality to the respective permanent representatives and their deputies. Thus, permanent representatives may only meet registered lobbyists six months prior to and during their Presidency. While the commitment of including the Secretariat is not particularly astounding as it does not infringe on national sovereignty, the inclusion of top-level diplomats, albeit it voluntary and time-restricted, remains a puzzling outcome that warrants closer scrutiny.

The Council joining the Transparency Register is considered a landmark step for the institution in terms of lobbying transparency. From this follows that the research focuses on a single-case study design that is idiographic in nature to satisfy the complexity of the unique phenomenon (Rickert, 1915; Windelband, 1894/1904). Hence, the idiographic scope allows this research to provide an in-depth and explanatory analysis of the specific case at hand instead of deducing nomothetic patterns for a wider population of cases (Lindlof, 2008; Tsoukas, 1987).

Therefore, touching upon a novel development, the research presents a unique case, raising the question of defining the case specifically, rather than its selection. While one might conceive the entire timespan from the EP's invitation for the Council to join negotiations in 2008 as one ongoing process, this research instead delineates the case from the formulation of the Commission proposal initiating negotiations in 2016 to the eventual agreement in 2020. This case selection combines the analytical value of a timespan of intensive deliberation in the Council with the practical feasibility of available interviewees.

4.2 Data Collection & Analysis

To approach the research question, semi-structured elite interviews were chosen as the primary source of data. This is underpinned by both theoretical and pragmatic concerns. Non-random sampling of elite interviewees is a suitable choice for the research design, as the research aims at "identifying the individuals or institutions responsible for causing particular action" (Mosley, 2013, p.113). While Richards (1996) points out the potential pitfall in establishing 'truth' based on inherently subjective elite interview data, their subjectivity is arguably a strength considering the research goal. Recalling the study's aim to scrutinize actor behaviour as influenced by ideational and institutional factors, welcoming actors' "perceptions, beliefs and ideologies" (Richards, 1996, p.199) enables the analysis to consider influential factors that are rarely officially documented. Indeed, this research considers elite interviews a valuable source as "accurate and honest reflection of [...] beliefs, activities and opinions" (Monaghan, 2008, p.46; Bouza Garcia, 2015) providing a "means to probe beyond official accounts" (Tansey, 2007, p.767).

With reliability as the maxim, a sample of interviewees was selected. Concretely, the General Affairs Working Group (GAG) was identified as the locus of deliberation on the Council's position towards the TR. Accordingly, all 27 permanent representations were contacted, outlining the scope of the research and requesting interviews with the officials responsible for the file. Interviewees were encouraged to propose suitable contacts themselves, to increase the validity of the interviews through snowball sampling (Goodman, 1961; Goldstein, 2003). While ten permanent representations replied, due to availability or recent personnel changes on the relevant post, a total of nine officials from six different permanent

representations (Finland, Netherlands, Sweden, Austria, Portugal, Luxembourg) was interviewed. An insider sample was established, consisting of permanent representation officials that were engaged with deliberations on the TR on a frequent basis, affirming their reliability as first-hand witnesses (Tansey, 2007). To triangulate the data, a second sample of transparency stakeholders outside the Council was identified. Drawing on prominent actors in the debate on EU lobbying regulation, the Ombudsman's office, the EP Committee on Constitutional Affairs, public affairs organizations, and NGOs were contacted (Dinan, 2021). This yielded a sample consisting of an inquiries officer at the Ombudsman's office, an EP legal advisor, two NGO campaigners from TransparencyInternational and the ALTER-EU steering committee and the president of SEAP, a major public affairs organization.

The choice for semi-structured open-ended interview questions was informed by two considerations. Firstly, Aberbach & Rockman (2003) argue, that open-ended questions are particularly helpful in research based upon little existing literature. Since the research investigates "abstract and complex issues in a relatively uncharted area" (Aberbach & Rockman, 2003, p.674) open-ended questions favour the exploratory nature of the research. Secondly, open-ended questions are arguably the most valid data source for an institutionalist approach that considers actor preferences but also their perception of institutional and social norms. In aiming to elicit actors' considerations it is thus indispensable to allow them to "organize their answers in their own frameworks" (Aberbach & Rockman, 2003, p.674).

To analyze the amassed interviews, they were transcribed and coded with both deductive codes previously established as probable determinants in the theoretical framework, and inductive codes, where trends emerged from the data that were not theoretically anticipated (Wisker, 2009, p.92). Consequently, groups of codes relating to similar phenomena were axially coded (Corbin & Strauss, 2008; Rubin & Rubin, 2012) and subsequently assigned to the three analytical dimensions established in the theoretical framework. In analyzing the data, interviews were triangulated along two criteria. Firstly, accounts from different MS that hold diverging transparency preferences were compared to mitigate bias. Indeed, the responsiveness of permanent representations had introduced a pro-transparency bias, overrepresenting pro-transparency MS (Netherlands, Sweden, Finland). Secondly, Council interviewees were critically compared with outsider interviewees to assess convergence and differences. This reduces the distortive effect of individual actors misrepresenting their position (Monaghan, 2008) and from faulty memories (Richards, 1996), which are both significant risks considering the ethical sensitivity of lobbying regulation and the large timeframe of negotiations. The following section explores the obtained original data analytically.

5. Analysis

This section explores the data obtained from semi-structured interviews through the indicated analytical lens. Hence, interview data is examined according to a strategic, institutional, and ideational dimension. Moreover, interview data are triangulated amongst each other and with secondary sources, as well as tentatively related to existing concepts from the academic debate.

5.1 Strategic Dimension

To identify preferences of MS concerning joining the TR as the Council, I draw on the responses from nine officials of six permanent representations. All interviewees were asked for their MS's perspective and underlying motivation on the issue, as well as their perception on the distribution of other state

preferences. Generally, one can distinguish between overarching preferences towards lobbying transparency of a political nature, and technical preferences concerning functional details.

Comparing the Commission proposal and the Council's revision thereof, the primary preference of the Council becomes evident. The Commission foresaw a principle of conditionality, requiring officials to meet only with registered lobbyists, to extend to Member State's permanent representatives and their deputies during and before their Council Presidency (Commission, COM (2016) 627). Conversely, the Council's revision ruled out any binding consequences of the IIA influencing MS officials, claiming their conduct an exclusive national competence (Council of the European Union, 15332/17). This primary concern to preserve MS sovereignty over the conduct of their diplomatic affairs featured prominently in interviews. Universally, interviewees stressed that MS were not willing to concede control over their diplomatic services to institutional control outside their capitals. While "some Member States had less problems with more binding rules" (Interview Sweden) even traditionally fervent transparency champions had reservations, as a Swedish source discloses "we do not want things to go into a federal direction in that sense [...] we were quite keen on a voluntary commitment". This dimension mirrors the tension of the Council being a supranational legislative organ while preserving its intergovernmental nature. Indeed, the conditionality principle was identified universally as the main token in an institutional tug of war. Thus, the collective aversion of MS to cede this control in the IIA can be firmly established as the dominant preference of MS collectively.

Beyond this broadly shared aversion, more nuanced preferences emerge shifting towards more concrete aspects of transparency. A decisive emphasis was placed on a "national administrative culture" (Interview Portugal), or a "transparency and openness culture" (Interview Sweden) throughout most interviews, as the determinant of MS' preferences. Accordingly, MS with a tradition of strong freedom of information (FOI) laws or other forms of comprehensive domestic political transparency practices were identified as more supportive of lobbying transparency. Conversely, MS with less established transparency practices were generally more sceptical of lobbying transparency, with a Portuguese source indicating:

It is mostly the Nordics who are in favour, the Scandinavians, less so to the South and the East, you can put them in groups really.

This closely resembles the preferences identified by Hillebrandt et al. (2014), Bjurulf & Elgström (2004) and Grønbech-Jensen (1998) relating to other forms of Council transparency. Indeed, these studies similarly identify a small coalition of Scandinavian and Northern-European MS opposite a majority of rather transparency-averse MS.

Considering strategic calculations, two preferences emerged prominently. First, both transparency-averse and pro-transparency interviewees repeatedly stressed their concern for the administrative burden that commitments to lobbying transparency could entail:

It was important for us to see how much of an administrative burden [...] it would put on those MS, especially their permanent representations. (Interview Luxembourg)

This argument features similarly in literature on the introduction of lobbying regulation. A second concern was that of creating barriers to entry. This emphasises the administrative burden imposed on interest

representatives approaching the Council. Accordingly, some MS were concerned with penalizing less organized or funded interests, through arbitrary registration efforts. A Swedish source recalls:

We really wanted to have clarity, that if you are on the other side and you want to have access to policy makers, how much time and resources does it take to get this access.

While this is mirrored in earlier studies on the introduction of lobbying regulation (Crepaz, 2017; Chari et al. 2010), outsider sources question the argument's validity. Notably, both a campaigner of Transparency International and Wes Himes, President of SEAP, indicated that while 'barriers to entry' might be advanced as an earnest argument, they are similarly easily used as excuses by transparency-averse actors. However, both Council sources that raised this argument admitted, that their scepticism faded after assessing the limited scope of the entries to barrier created.

Having established the most prominent preferences, attention must be paid to the power structure underlying those preferences. Interviewees were asked for the general distribution of support for the TR in the Council, with probes raising the role of Presidencies, veto threats and coalition-building. While some respondents claimed a general political willingness of the Council, interviewees indicated that there was only a small "proactive group of member states" (Interview Portugal) pushing for lobbying transparency, while other MS "were more sceptical" (Interview Finland). Indeed, an outsider source suggests achieving convergence in the Council "must have been quite challenging" (Interview SEAP).

On the role of Presidencies, two themes emerge. Firstly, interviewees suggested that Presidencies utilize agenda-setting to keep issues relevant. Notably, the Dutch and Finnish Presidencies were identified as keen promoters of a transparency agenda. However, most interviewees stressed that the power of the Presidency lies rather in deal-brokering, than influencing the content of agreements substantively. The institutional norm of having to act as "honest brokers" (Interview Portugal) was recurrently emphasised. Notably, beyond a political interest in transparency, interviewees also pointed out the incentive of concluding agreements as a driver for Presidencies promoting the IIA:

When preparing a Presidency, [...] they want to finish a negotiation, they want to conclude legislation. They will pick and prioritize issues that they know they can conclude. (Interview Sweden)

The German Presidency was mentioned repeatedly, as having efficiently led negotiations to a conclusion. As Germany is not traditionally a strong proponent of lobbying transparency, this was most likely due to identifying the IIA as a Presidency "deliverable" (Interview Luxembourg). Indeed, an interviewee indicated the power resources used to that end:

Germany [...] they have a weight in the Council, and because of that influence they can make bridges and ask people to engage. (Interview Portugal)

Bailer (2010) identifies a MS's voting weight, resources and bargaining skills as important powers for an effective "mediator-strategy" (Howard Grøn & Wivel, 2011, p.536). The German Presidency ticks all these boxes in the case at hand, with interviewees suggesting that Germany's respective size, manpower on the

file, and intricate knowledge of inner-Council positions were decisive in concluding negotiations (Interview Portugal; Interview Sweden).

Strategic veto-threats as a power resource in Council negotiations (Finke, 2007) did not emerge in interview responses. While some sources mention that sceptical countries were weighing their options, no divergence to a general Council position emerged so sharply as to warrant a veto (Interview Luxembourg). This was likely averted by the sceptical majority of MS, that ensured that no drastic institutional change was probable. Coalition-building on the other hand featured very prominently, with an interviewee disclosing “we did have exchanges with like-minded countries” (Interview Sweden). While a pro-transparency coalition can be readily identified, having issued two non-papers on transparency in the Council in 2015 and 2020, the remaining MS appear rather diffuse. An Austrian source indicates that “rather interesting coalitions formed” hinting that on the issue of lobbying the dichotomy between pro- and anti-transparency MS established in other domains of Council transparency (Hillebrandt et al., 2014) was less pronounced. Similarly, “there was no coordinated response, rather individual objections” (Interview Sweden). This might be due to the patchwork nature of lobbying regulation in Europe or the relative novelty of the issue in the Council, resulting in less stable preferences. Indeed, Hillebrandt et al. (2014) show how entrenched positions on transparency take time to develop.

Concluding, preferences in the Council can be summarised on a political and technical level. Accordingly, a majority of MS fundamentally opposed ceding sovereignty over the conduct of their permanent representatives. Beyond this universal conviction, different coalitions emerged which favoured or opposed lobbying regulation on grounds of their domestic administrative culture, with a majority of MS sceptical of change. Technical concerns over the administrative burden and potential barriers to entry were raised as inhibiting, but not insuperable. Concerning power distribution, the voting weight of the transparency-averse majority explains the cautious approach of the Council well. This convergence of sceptical preferences also explains the absence of veto-threats. However, agenda-setting of transparency-minded Presidencies and the conclusion-oriented bargaining of the German Presidency emerged as facilitators that progressed the file.

5.2 Institutional Dimension

Considering the analysis of preferences, a purely rationalist explanation of the commitment to lobbying transparency remains puzzling. Thus, contextual factors arising from the institutional setting are considered. Three main trends emerge from the data on institutional considerations that influenced the Council position on the IIA. The first is the influence of the Commission and the EP in shaping the Council position. Secondly, the legal structure of the IIA as both a facilitator and a constraint to agreement is discussed. Thirdly, the values of sincere cooperation and the resulting logic of appropriateness are elaborated.

As an inter-institutional agreement, the Council can be expected to be influenced by the co-signatories of the agreement. The roles of Commission and EP are thus examined in turn. After issuing the invitation for the Council to join a common lobbying regulation scheme in 2008, the EP was expected to constitute a “champion of EU transparency” (Hillebrandt et al., 2014, p.21) *vis-à-vis* the Council. However, most interviewees indicated that the EP was constrained in pushing the Council for concessions by much of the same concerns as those voiced inside the Council. Indeed, the EP quite fervently defended its freedom of mandate (Interview EP Advisor), liberating MEPs (to some degree) from binding obligations concerning their meetings with interest representatives. This insistence on an institutional prerogative

arguably mirrors the Council's defensive discourse on its institutional specificities surrounding sovereignty. Moreover, a legal advisor in the EP suggested that while the left-leaning party spectrum was uniformly asking for more comprehensive transparency provisions, there was considerable political contestation in the centre-right party spectrum weakening the EP's common voice significantly. The interviewee indicated that:

There is a clear centre-left to centre-right divide on this issue, and even a cross-country difference in the Parliament. (Interview EP Advisor)

Thus, the EP was constrained as a scrutiny actor *vis-à-vis* the Council due to a mix of internal contestation and insistence on its own institutional particularity.

As initiator of the proposal opening inter-institutional negotiations in 2016, the Commission takes a prominent role as policy entrepreneur. Particularly, the agency of President Juncker and Commissioner Timmermans on invoking the TR deliberations were emphasised in interviews. However, Council sources unanimously assessed the Commission's approach as strong-arming, which resonated badly within the Council. It was mentioned, "There was a sense that we would have to follow the orders of the Commission" (Interview Sweden), which antagonized Council actors. Consequently, Timmermans' ambitions were frustrated by a reluctance to comprehensive reform in EP and Council. Both institutions' insistence on their respective institutional prerogatives exempting permanent representatives and Members of the EP from the conditionality principle lead to an abandonment of negotiations until the election in 2019 (Interview Finland). Universally, Council interviewees indicated that the new Commission proved a catalyst for negotiations, adopting a *laissez-faire* approach to institutional peculiarities. "From here on, it went fairly smooth" an Austrian interviewee says. Notably, also "the legal architecture, which was very debated, changed" (Interview Portugal) allowing institutions to conclude individual decisions complementing the IIA. This was pointed out as beneficial, as "[Vice-President] Jourova agreed taking into account the specificities of each institution" (Interview Portugal) servicing the Council's perspective that "the Commission should commit to what they think, and we should be able to define what we think" (Interview Sweden). In conclusion, a change of portfolios in the Commission and a more *laissez-faire* negotiation approach, facilitated convergence.

Regarding the legal architecture, "constitutional structures (such as the European treaties)" (Hillebrandt et al., 2014, p.9) are hypothesized as change-inhibiting in shaping Council transparency. Most interviewees disclosed that the question of an adequate legal basis, upon which to construct lobbying regulation was a cornerstone of deliberations. The Council successfully established that currently the Treaties do not suffice to introduce binding rules for MS on this issue. This was formalized in the Council's Legal Service's opinion in 2017 (Legal analysis 5151/17), ruling out the possibility of inter-institutional arrangements resulting in enforceable duties for MS officials. Interviewees indicated that this legal argument considerably facilitated their entry into negotiations as it significantly reduced the feasible scope of what the Commission had envisaged. Thus, this tightly circumscribed mandate left little room for negotiations to manoeuvre into a direction that was unfavourable to a Council majority. Notably, an outsider interviewee called the legal obstacle into question, dubbing it oddly convenient for transparency-averse actors:

I did not feel it was a particularly credible legal argument. It felt more like they [the Council] were looking for an excuse not to engage fully in these negotiations, than a serious legal concern. If there was an institutional will, they would have found a way, for something that is based in law. (Interview Ombudsman's office)

Similarly, legal experts on the Meijers Committee hold it to be "inconsistent with current Council practice laid down in the 'Guidelines for handling of documents internal to the Council' which are deemed applicable to member states as members of the Council" (2020, p.1). Conversely, the Council presented closed ranks on the issue. While one might expect that more transparency-supportive states would see more legal headspace, all Council interviewees confirmed their belief in the legal integrity of the opinion, stating to "believe it to be an honest obstacle" (Interview Finland). The legal opinion was Janus-faced since it prohibited comprehensive lobbying transparency in the Council, but significantly reduced MS's aversion to entering negotiations in the first place.

Moreover, two other -less formalized- elements emerged from the data that can partially explain why the Council joined the IIA despite diverging preferences, namely a sense of sincere cooperation and an emerging logic of appropriateness. Multiple interviewees stressed that through the precedent set by Commission and EP, who commonly integrated the TR into their transparency practices since 2011, there was a sense that the Council would eventually have to join, as "there was a notion that we would ultimately not evade this" (Interview Austria). This seems likely considering the *longue durée* of the Commission's call for a common TR, with the EP and Ombudsman chiming into this choir. Changing from the long-held observer role to participant to negotiations on the TR, was thus also an "act of good faith" (Interview Portugal). Once negotiations begun, the effort to find a common agreement was to a degree steered by the institutional "principle of sincere cooperation" (Interview Portugal), although the negotiation climate was described as rather hostile under the previous Commission. Thus, one can observe that a sense of what would be appropriate did steer Council considerations, despite the considerable reservations outlined in the strategic dimension. Thus, institutional structures seem to have shaped strategic calculations of the Council.

5.3 Ideational Dimension

The ideational dimension asks how actors in the Council perceived different ideas of lobbying transparency. Accordingly, actor's relation to new modes of lobbying transparency is considered. Such relations might be malleable to "the availability of information [that] frames and reframes debates" (Meijer, 2013, p.433). The diffusion of knowledge and changing frames of lobbying transparency are identified as possible influential factors on Council positions. In this case, the effect of advocacy, lobbying scandals, pre-existing frames, and knowledge-exchange in the Council are examined.

Dinan (2021) argues that the advancement of EU lobbying regulation has been fervently demanded by a vocal community of NGOs. Interviewee's assessments of the effect thereof on their positions seem to diminish this factor considerably. Interviewees on the Council commonly assessed the effect of advocacy on their position as "effectively zero" (Interview Sweden), which was affirmed by a Portuguese interviewee disclosing that "there was some pressure, but on these kinds of matters they do not have the effect they want to". NGO interviewees seem to confirm this, pessimistically comparing their efforts in talking to permanent representation staff about lobbying transparency to "nailing jelly to a wall" (Interview Lobbycontrol). However, the Netherlands and Finland indicated more structured contact with

pro-transparency NGOs, due to the convergence of their transparency goals. Indeed, a Finnish official confirmed exchanges with TransparencyInternational before the Finnish Presidency, which likely sought support for its transparency agenda. While the “drumbeat of transparency” (Interview SEAP) created by vocal pro-transparency groups and public affairs organizations, was likely heard by policymakers, evidence on its influence is ambiguous. Similarly, while scandals feature prominently as catalysts in literature on the introduction of lobbying regulation (Holman & Luneburg, 2012), no such case appears to have triggered a sense of urgency in the Council concerning the TR.

Relating back to the transparency-averse preferences examined under the strategic dimension, a frame of lobbying transparency held by some MS adds further depth to the role of domestic administrative culture in explaining the wide-spread reluctance towards more comprehensive reform. Namely, lobby transparency was framed as a potential danger and political burden. Interestingly, two interviewees emphasize a negative connotation of transparency:

Some MS, they do not want to show the influence of external factors. This kind of dark side being influenced by others, it is not supposed to be official. If you publicize those meetings, you get follow-up questions. (Interview Portugal)

We have a general experience in the EU, that when the word transparency is mentioned, it is never apolitical, it is always mentioned with someone in the sights. [...] So, when we are confronted with a big push on transparency, our first reaction is [...] trying to see where this goes exactly. (Interview Luxembourg)

This closely resembles what Meijer (2013) identifies as cognitive uncertainty. Particularly such MS with little domestic transparency practices might be averse to reform because of uncertainty of “what the effects of new forms of transparency will be” (p.431).

This uncertainty was mitigated by two phenomena emerging from the interview data, namely norm entrepreneurship and sharing of knowledge. According to several interviewees the political declaration in which MS voluntarily sign up to implement the conditionality principle for permanent representatives and their deputies during and shortly before their Presidency, was the token that ultimately sealed the IIA. As the maximum that could be asked of skeptical MS, the voluntary nature and strict time-limit of twelve months made it digestible (Interview Portugal, Interview Luxembourg) while simultaneously satisfying the Commission as an act of good faith (Interview Portugal). While this implies successful change agency on behalf of Finland, which initiated the declaration (Interview Austria), its underlying success factors reveal even more nuanced dynamics. Arguably, the acceptance of the declaration in the Council presents the outcome of a “smart strategy” (Howard Grøn & Wivel, 2011, p.523), combining norm entrepreneurship, setting a credible precedent, and knowledge-sharing.

5.4 Discussion

Rather than establishing a positivist truth about the determinants of the Council’s commitment to lobbying transparency, this analysis has elaborated several interdependent dimensions. Following the outline of the analysis, the main findings of each dimension are discussed. Subsequently, an outlook on further development of the TR in the Council is explored.

The strategic dimension of analysis established prevailing preferences and power structures concerning the expansion of lobbying regulation into MS diplomatic services. Accordingly, political opposition to binding permanent representatives to mandatory transparency commitments emerged as a main interest. Moreover, the distribution of lobbying transparency preferences appears to resemble the pattern found in other transparency domains, such as access to documents of the Council, featuring a pro-active Nordic alliance and a restrictive majority. This explains well the Council's cautious approach prior to joining negotiations before 2017, as well as the restrictive response to the Commission proposal. However, this distribution fails to explain the eventual agreement.

The institutional dimension indicates ambiguous influence. On the one hand, the interpretation of the legal framework constrained the expansiveness of the eventual outcome significantly, by excluding binding commitments for permanent representations, thus narrowing the scope of change dramatically. On the other hand, in the absence of this restrictive legal interpretation, the Council would have been unlikely to negotiate at all. Moreover, interviewees stressed an increasingly pressing logic of appropriateness emerging from the precedent set by previous agreements between EP and Commission on a common TR. This appears to have constrained purely self-interested bargaining on behalf of transparency-averse MS.

The ideational dimension offers complex evidence. On the one hand, the effect of advocacy or catalytic events appears to be absent. On the other hand, actor's perceptions of transparency were shown to adapt somewhat. Notably in this respect, norm setting and practice sharing in the Council itself appear to have altered actor's perceptions. This allows for some speculation on the further development of lobbying transparency in the Council. While some respondents indicated that the skeptical spectrum of MS had committed to the maximum of what it was prepared to concede (Interview Portugal), others point to the self-propelling logic of having set a precedent. Quoting the surprising turn in voluntary commitments to the political declaration, some interviewees voice optimism for further incremental progress (Interview Sweden, Interview Finland). While transparency stakeholders, such as the consulted NGOs, SEAP and the Ombudsman's office unilaterally begrudge the outcome as a minimal compromise that failed to introduce a "great leap forward", they recognize this as a step in the right direction. Further reform must likely contend with the legal straitjacket incited by the Council and carefully consider the Council's unwavering insistence on the diplomatic sovereignty of its members. However, the political declaration, in essence resembling the original Commission proposal, but adopted through a revocable voluntary commitment presents a "fairly elegant compromise between the dimension of a European role as a legislator [...] and the national role of diplomatic representation" (Interview Luxembourg). The way ahead in lobbying transparency in the Council might for the foreseeable future depend on finding such pragmatic solutions.

6. Conclusion

This research aimed to explain the Council's recent commitment to lobbying transparency in the IIA on a common Transparency Register. This outcome was puzzling, given the traditionally transparency-averse demeanor of the institution. Particularly the outcome of a voluntary declaration restricting forthcoming Presidencies to meeting only registered lobbyists is surprising, as it touches upon the diplomatic sovereignty of MS.

To answer the research question, an original data set was constructed through thirteen semi-structured elite-interview that yielded indispensable empirical evidence on a previously unaddressed case of research. Applying a holistic institutionalist approach, the data were analyzed along a strategic,

institutional, and ideational dimension, revealing complex dynamics underlying the negotiation process of the TR.

The analysis showed that the general reluctance of the Council in approaching the issue of lobbying transparency roots in its self-conception as a diplomatic body, a majority of adverse preferences, and negative frames related to the administrative and the reputational burden of lobbying transparency. However, a logic of appropriateness emerging from the institutional context, regulatory precedents set by EP and Commission and the principle of sincere cooperation appear to have softened rational aversion to an agreement. Moreover, the role of norm entrepreneurship and effective bargaining by a pro-transparency coalition appears to have further diminished resistance. In this vein, knowledge sharing emerged as decisive in diminishing skepticism of Council actors. While advocacy and external events did not significantly affect Council members, a gradual shift in transparency preferences was observed, nonetheless. Thus, a complex picture of different interdependent factors emerges.

While the research is clearly limited in generalizability, owing to its small-N approach, it nevertheless unearthed rich data, which may serve as a launchpad for further research. Particularly, the changing cognitive relation of policymakers to lobbying transparency and the interplay between a domestic and EU transparency agenda warrant further research. Hence, the research addressed a considerable research gap, since lobbying regulation in the Council has previously not been approached analytically. Nevertheless, this study has some limitations. The most important limitation lies in the aforementioned limited sample that does not indwell all 27 representations thus bearing a certain bias. Additionally, the limited timeframe of the analysis does not consider the entire genesis of the TR. Consequently, this research encourages future research to build upon these findings and complement them to further increase its explanatory value.

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