

And It Does Listen – Sometimes Public Debates Can Influence the Politics of the EU Commission

Christian Rauh

“Brussels” is more than the name of a city. Brussels can be a political provocation. In the discussion on democracy beyond the nation state, the European Commission is the bogeyman in chief. It is often accused of largely eluding public scrutiny while allowing itself to be instrumentalized by discreet lobby interests. Recently, however, this unforthcoming stance has contrasted with periods of intense politicization of the EU. The public visibility of European politics then increases markedly, public opinion diversifies, and the political demands addressed to decision-makers in Brussels are mobilized to great public effect. This is accompanied by scepticism about more EU powers and even led to opposing majorities, for example in referendums on the Constitutional Treaty in France and the Netherlands. Can we really expect the Commission to ignore such public contestation?

European consumer policy, one of the fastest growing areas of supranational activity, offers a pertinent testing-ground in this regard. In this domain, the Commission has long since been pursuing the imperative of market creation, has often undermined national consumer protection rules, and has thereby served the interests of cross-border industry and commerce. But at the same time these decisions affect the direct interests of almost 500 million consumers in the EU. In this field we can thus observe how the Commission positions itself between special and widely distributed interests. Does it adapt its positions to the politicisation of the EU and its individual policies?

General politicisation was measured by a monthly index that brings together the visibility of the EU in newspapers, the polarisation of public opinion on EU membership, and the number of public protests for or against EU policy. Public attention for consumer policy issues – consumer rights, product safety, and food safety – was gauged on the basis of how much attention was devoted to them each month in the national press. Along these time series, the drafting of 17 EU consumer policy initiatives between 1999 and 2008 was reconstructed. Sources included not only internal documents and position papers of external interests but, in particular, 41 interviews with involved Commission officials. For each of the initiatives examined, we can show whether and in what policy contexts the Commission redistributed rights and duties between special producer interests and widely distributed consumer interests.

One example is the 2001 initiative on air passenger rights, the results of which are now displayed at every check-in counter. Against the backdrop of growing public criticism of poor customer service in air transport, the Commission Directorate General (DG) Transport and Energy launched a broad information campaign on air passenger rights. Even though the Commission’s proposals for stricter legislative rules were initially intended only as a warning, they earned a great deal of applause in the media and stepped up public pressure on the airline companies. And the companies did in fact meet the concrete demands. In May 2001, they signed a voluntary agreement to provide better consumer information and to curb overbooking. However, already in the summer of 2001, the political context began to change. Persistent reports on increasing air traffic coincided with an unprecedentedly lively general discussion on the European Union. At issue was ratification of the Nice Treaty; at the same time protests against globalisation took a violent turn on occasion. In this atmosphere, the DG

Summary: The European Commission faces little public control; its decisions are easily biased towards specialized interests. However, the societal politicisation of European integration pushes the Commission to pander to public interests. In consumer policy, the Commission redistributes rights from industry to the consumer side when high levels of EU politicisation meet the public salience of the issues in question.

Transport and Energy suddenly declared it was no longer satisfied with the voluntary industry agreement. To the disconcertion of industry, it put forward surprisingly far-reaching legislation that would quadruple compensation for consumers affected by overbooking. Moreover, the initiative provided for compensation and support services for late or cancelled flights, even though the airlines were often not to blame and there had hitherto been no corresponding rules. At a time of high public attention and strong politicisation of the EU, the Commission had thus decided to intervene clearly in the market and to redistribute rights to the advantage of consumers.

Another example of this pattern is the 2008 Commission revision of the Toy Safety Directive. It had to date been a flagship of the so-called *new approach* in European product regulation, with minimized authoritarian intervention and left elaboration of actual safety standards up to the market. DG Enterprise and Industry, which was responsible in this field, did not intend to change these fundamental principles. A deregulation approach met the aims of the responsible Commissioner Verheugen, who had made the reduction of red tape his primary political mission. And an early commitment to the *new approach* was meant to get a grip on a smouldering turf conflict with DG Health and Consumers which wanted to regulate products in accordance with the consumer perspective rather than in line with industrial policy. Thus, during the first five years of the process the fundamental principles of minimal interventionist market regulation were not called into question. It was only in the final months that things suddenly changed. While the EU itself was in the headlines with negotiations on the Lisbon Treaty, in the summer of 2007 a number of toy scandals attracted public attention. Sweeping recall measures in several EU countries, provoked, for instance, by lead paint in toys for infants and Barbie dolls focused the public eye on product safety as regulated by the European Union.

Consumer associations and DG Health and Consumers took advantage of this and now repeated their demands publicly, which had hitherto gone unheard. At the very last moment of drafting DG Enterprise and Industry made certain key concessions. Departing from the liberal course defended for many years, the final draft provided that, in formulating safety standards, producers had to take into consideration not only the intended use of the toy in question but also every possible misuse. Compared with earlier versions, the final draft again tightened the rules on chemicals, expanded labelling obligations, prohibited toys in foods, and by cross-reference made the markedly more restrictive product safety rules of the DG Health and Consumers applicable for the toy market, too. Again consumer protection was increased only when the EU in general and the subject matter of regulation in particular was in the public eye.

The policy-making processes on general product safety (2000), consumer loans (2003), and consumer contracts (2008) also followed this pattern. This was also the case for the proposed regulation of health claims on foods (2003) or of unfair business practices (2003), which also showed evidence of more industry-friendly adaptations when the general EU politicization declined in the meantime. With one exception, all of the examined legislation that redistributed rights in favour of European consumers had attracted great public attention during the drafting stage. Initiatives that failed to attract such attention, by contrast, such as measures on sales promotions (2001), pyrotechnics (2005), or food additives (2006) produced liberalizing positions or simply confirmed the status quo. In sum, these findings back the view often expressed by the interviewed officials themselves: the Commission makes a particular effort to win the public for Europe through the content of its initiatives when the European integration process and its policies come under public scrutiny.

This naturally is not the exclusive explanation for what the rules actually lay down and alternative explanations were controlled for. The nationality and political affiliation of the responsible Commissioners prove not to be decisive factors. The desire for protection against international competition explained the extension of consumer protection standards in two cases. A particularly frequent factor are turf conflicts between those Commission DGs that tend to take a market orientation and those that focus on social considerations. Particularly

at a time when the EU was more strongly politicized, however, such internal interests tended to be put on the back burner because the common interest in positive publicity for the Commission came first. And in almost all cases, the Commission made every effort at an early stage to sound out the prospects of securing a majority for its political options in the Council of Ministers. Member state positions did not determine the extent of consumer protection fully, but they do define the leeway available to the Commission for pursuing its own political concerns.

What do these findings tell us about democracy beyond the nation state? The technocrats in Brussels are apparently not as isolated and out of touch as is often assumed; they demonstrably react to public debates. When critical public attention focuses more intensively and increasingly on the European integration process, this can indeed bring the content of technocratically drafted policy closer to meeting the interests of the broad population. This also gives societal interests without a powerful lobby in Brussels the possibility of exerting influence. To publicly denounce deficiencies and ascribe political influence to the EU Commission is a promising strategy precisely when Europe is once again a subject of fundamental controversy.

But we cannot yet speak of any genuine democratization of the supranational right of initiative so far. If the Brussels machinery responds to short-term public pressure this does not yet mean that we can expect that policy will be enduringly oriented on the common weal. What is more, the logic underlying consumer policy cannot without further ado be transferred to other political challenges facing the Union. With more consumer protection the Commission can comparatively easily generate approval among the general public. However, in other policy areas such as social policy the Commission is confronted by less definite and sometimes even contradictory political demands. If such issues attract a great deal of public attention, the model discussed here would predict the Commission to hesitate in adopting a clear position at all.

In this light, it would be better to find an institutional response to the new public attention devoted to the EU and its policies. For example, top Commission staff bound by European campaigns and election could proceed on the basis of clear political mandates and would be better legitimated to make decisions unpopular in the short term. Although the fact that European policy is increasingly the subject of public discussion is an important corrective to hitherto purely technocratic decision-making processes, discussion alone does not make a supranational democracy.

References

Hartlapp, Miriam/Metz, Julia/Rauh, Christian: *How External Interests Enter the European Commission. Mechanisms at Play in Legislative Position Formation*. WZB Discussion Paper SP IV 2010–501. Berlin: WZB 2010.

Rauh, Christian: *Politicisation, Issue Salience, and Consumer Policies of the European Commission: Does Public Awareness and Contestation of Supranational Matters Increase the Responsiveness of Europe's Central Agenda-Setter?* Ph.D. Thesis. Berlin: Freie Universität Berlin 2012.

Rauh, Christian: *A Widening Audience, Ever More Interested and Active? The Public Politicization of European Integration in the EU 6, 1990–2011*. Mimeo. 2013.

Zürn, Michael: "The Politicization of World Politics and Its Effects: Eight Propositions." In: *European Political Science Review*, 2012, First View Article, pp. 1–25.



Christian Rauh is researcher in the WZB research unit Global Governance. He works in the field of the societal politicisation of European and international politics. He was involved in the WZB project "Position Formation in the EU Commission" in the framework of which the dissertation summarized here was written.

[Photo: Photoatelier ISO25]

christian.rauh@wzb.eu