

# Regulating Lobbying Through Voluntary Transparency Clubs: the Connoisseurs' Assessment. Evidence from the European Union.

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Adriana Bunea, University of Bergen  
Vlad Gross, University of Antwerp

## Abstract

Regulating private actors' participation in policymaking is key to democratic governance. Across political systems, targeted transparency is used to regulate lobbying activities. We examine the extent to which primary regulatory targets (organizations with frequent access to policymakers) support the architecture of lobbying regulation regimes set up as voluntary transparency clubs. Our empirical testing ground is the European Union. We conceptualize the EU Transparency Register as a Voluntary Transparency Club, elaborate on its club goods, and derive a set of theoretical expectations about its members' evaluations of the club's transparency standards, membership size, and monitoring and enforcement mechanisms. We find significant differences between members and non-members' assessment regarding the regulatory performance of this transparency club. Members with frequent access to executive policymakers criticize the club's transparency standards and do not consider the Register a useful regulatory instrument. Yet, they support expanding its regulatory remit and increasing the club membership.

## Introduction

Regulating interest groups' participation in policymaking constitutes an indispensable prerequisite for transparent, accountable and legitimate democratic government. Across political systems, different regulatory regimes are used to manage lobbying and private actors' interactions with decision-makers. These regimes vary in regulatory stringency and instruments, but they all have the same goal: increasing the amount of public information about interactions between public and private actors, and the latter's attempts to shape and influence decision-making (Holman and Luneburg 2012). Lobbying regulation constitutes thus a form of *social disclosure policy* in which the costs of regulation are concentrated on the private actors that disclose information publicly, while the benefits are widely dispersed across the general public (Bunea 2018). A classic argument made in the literature on the politics of regulation is that an uneven distribution of regulatory costs and benefits usually leads *regulated actors* to systematically *oppose* and *criticize* the regulatory regime (Wilson 1980). For lobbying regulation, this argument holds true especially for those interest organizations seeking frequent access to decision-makers. For them, lobbying regulation is highly salient since it may create additional access barriers, registration costs and administrative hurdles. However, the

more recent literature on transparency and information disclosure as a regulatory policy indicates that the regulated targets ‘often end up supporting’ regulatory regimes that are based on disclosure of public information (Graham 2002: 140). Reputational concerns, a motivation to avoid more excessive forms of regulation or an interest in increasing the amount of information ‘about their competitors and potential partners’ may contribute towards increasing the motivation of regulated actors to endorse and support lobbying regulatory systems that entail information disclosure (De Fine Licht and Naurin 2016: 222).

We examine this theoretical puzzle in the case of the EU lobbying regulation regime, a system of governance relying exclusively on information disclosure and targeted transparency to regulate interest groups’ participation in policymaking with the help of a Transparency Register (TR) (Smismans 2014). We ask *to what extent do interest groups with frequent access to decision-makers support the architecture of the EU lobbying regulation system and its further institutionalization recently proposed by the European Commission?* We focus analytically on organizations with frequent access to high-level officials in the EU executive body. We build conceptually on a well-established line of research exploring private actors’ access to policymakers and institutional venues as a key (explanatory or dependent) variable in studies of lobbying and executive politics (Beyers 2004, Eising 2007, Binderkrantz et al. 2015, Dür and Mateo 2016). We contribute to this literature by investigating the effect of frequent access to policymakers on private actors’ expressed preferences on specific policy issues. Specifically, we examine how access levels shape actors’ perceptions of and preferences for a certain design of lobbying regulation. We consider these actors to be analytically and empirically different from *policy insiders*, which denote a structurally more sophisticated and powerful category of stakeholders than those with frequent access to decision-makers.<sup>1</sup>

Organizations with frequent access to high-level Commission officials are in our view in a uniquely interesting and relevant position to evaluate EU lobbying regulation. First, they have a high stake in its regulatory design and enforcement mechanisms since they incur directly the costs of information disclosure. They are legitimate ‘affected actors’ (Fung 2013). By having frequent direct access to the regulatory agenda-setter, they are in a unique position to advise on and potentially shape the structuring of the regulatory regime as ‘prominent’ affected actors (Halpin and Fraussen 2017). Second, they have extended direct experience with the

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<sup>1</sup> Bunea (2017:58, 2018:393) presents a compelling discussion of this distinction, arguing that *policy insiders* are actors enjoying a special (structural) status in EU policymaking because they possess several distinctive characteristics: they are part of exclusive consultations forums, have immediate and direct access to policymakers, possess a broad representative mandate and have a keen and consistent interest in certain policy issues, becoming key actors in policy networks articulated in specific policy areas. Insiders possess more relevant features than just frequent access to policymakers.

regime and have developed in-depth knowledge about its dynamics, following repeated interactions with decision-makers within the boundaries of this regulatory framework. They are thus ‘the best source of information’ for decision-makers, which should give them ‘a degree of leverage over regulatory arrangements’ and proposed regulatory reforms (Knill and Lenschow 2004). Third, they are key players in the successful implementation of the regime since they are actors that must comply with its requirements. Organizations with frequent access are both competent and highly interested to perform a systematic evaluation of the EU lobbying regulation status quo and reform. Their evaluation provides valuable insights into how existing regulatory measures balance the public interest against private actors’ costs of regulatory compliance, contribute to good governance by ensuring proportionate regulation and succeed in providing positive public externalities by reducing the risk of corruption and biased representation in policymaking.

Understanding these key actors’ positions on matters of supranational lobbying regulation is essential given the high stake of regulating private actors’ participation in policymaking for the legitimacy and accountability of the EU system of governance, and the ever-present theme of ‘regulatory capture’ raised in the literature on regulatory governance when discussing regulators-regulatees interactions (Stigler 1971). Furthermore, lobbying regulation has important consequences for policy representation and inequality (Davidson 2017). The literature on US lobbying regulation indicates that the stringency of lobbying regulations has significant effects on levels of political inequality (Flavin 2015) and bias in interest representation (Ozymy 2010). Observing the support (or lack thereof) of actors with frequent access to decision-makers offers thus indirect insights into their assessment of levels of inequality and bias in EU interest representation. From an economic perspective, lobbying regulation also matters: by managing access to policymakers, it may indirectly contribute to preventing economic inefficiencies and harmful distribution of taxpayers’ money to certain industries and producers, and the pursuit of protectionist trade policies (Berndt and Svendsen 2016).

To answer the research question, we build on the club theory perspective developed by Potoski and Prakash (2009) to explain the design and performance of voluntary environmental programs (VEPs). We conceptualize the EU lobbying regulation regime as a ‘transparency club’ whose members are interested in building a good organizational reputation by producing positive social externalities (public goods) in the form of information disclosure and increased transparency about private actors’ participation in policymaking (see also Năstase and Muurmans 2018). We elaborate on the ‘club goods’ provided by this transparency club and derive a set of theoretical expectations about members’ evaluations of the club’s (transparency)

standards, membership size, and monitoring and enforcement mechanisms. We argue that actors with frequent access to policymakers have incentives to support creating and maintaining a good *club brand name* and *reputation* in three ways: by supporting stringent transparency standards; advocating the expansion of club's membership; demanding stricter monitoring and enforcement mechanisms of transparency standards. We test this argument on an original dataset providing information about interest groups' evaluations of the EU TR and their direct meetings with high-level officials reported on the EC's website. We find that 'club members' with frequent access criticize the transparency standards status quo regarding the quality of information disclosed by regulatory targets and the online medium used to provide this information. They strongly support the inclusion of the broadest set of organizations in the regulatory remit of the Register, advocating an increase in the club membership size. No significant differences are observed regarding their support for stricter monitoring and enforcement mechanisms of club's transparency standards. We also find that the interest type represented is a strong predictor of an organization's evaluation of TR's performance. Public interest organizations are significantly more critical regarding TR usefulness as a regulatory tool, and more likely to advocate the adoption of stricter measures aimed at naming and shaming non-compliant actors. Organizations representing public authorities strongly oppose the expansion of this transparency club's membership to more organizational entities such as (elected) local or regional authorities.

Our study speaks to the literature on regulatory governance (Christiansen 2011) and that on the design and evaluation of lobbying regulation regimes (Chari et al. 2010, Greenwood 2011, Greenwood and Dreger 2013, Smismans 2014, Bunea 2018). We contribute to the literature in three ways. Conceptually, we significantly develop a line of research proposed by Năstase and Muurmans (2018) that uses the lenses of the economic club theory to conceptualize the EU lobbying regulation regime as a voluntary transparency club. This approach helps us provide a new and more nuanced understanding of regulated actors' incentives structure regarding the design and performance of this regulatory regime. Theoretically, we develop an innovative argument that takes into account *club goods* and *reputational benefits* of membership in a 'transparency club'. This explains how different constituencies of interests position themselves regarding the design and implementation of lobbying regulation through targeted transparency depending on a key aspect of their lobbying experience: the frequency of direct meetings (access) to policymakers. This explanatory approach is currently missing in the literature on lobbying (Bunea and Baumgartner 2014). Empirically, we analyze an original dataset and conduct one of the very few empirical analyses of the substantive consequences of having access to policymakers on interest groups' expressed policy positions (evaluations) on

a key and very specific governance issue, i.e. lobbying regulation. We provide the first systematic empirical test embedded in a large-n research design of some of the key observable implications resulting from conceptualizing the TR as a voluntary transparency club. Different from Năstase and Muurmans' qualitative analysis of reputational and instrumental motivations for members to join this club, our study is able to examine the evaluations of both TR-members and non-members regarding its performance as a transparency club and to examine the effects of club membership on perceptions of club's performance.

We proceed in four steps: we first present the conceptual and theoretical framework in sections one and two. Section three presents the research design, and section four the analyses. Section five concludes.

### **Lobbying Regulation as a Transparency Club**

The EU regulates interest groups' participation in policymaking through a targeted transparency system whose main regulatory instrument is a state-of-the-art online Transparency Register. A Joint TR Secretariat, managed in collaboration by staff of the Commission and the Parliament, administers it. Formally, joining the Register is voluntary but in practice decision-makers do not meet non-registered organizations. This informally makes the Register de facto mandatory and in a recent policy development (December 2017), the Council of the EU agreed that its General-Secretariat would be covered by a new Interinstitutional Agreement on a Mandatory TR. The Register asks organizations to provide information about their organizational profiles, number of staff engaged in lobbying, policy areas of interest, membership in expert groups and advisory committees, aggregate information about yearly lobbying expenses. From an *institutional perspective*, the Register constitutes an *imperfect compromise* solution to a long-standing deadlock marking the interinstitutional dialogue over the design of supranational lobbying regulation in which the Commission, the Parliament and the Council hold different preferences regarding the architecture and stringency of the regulatory regime (Bouwen 2007). Consequently, the Register was criticized for its voluntary nature (Greenwood 2011), poor quality of information disclosed (Greenwood and Dreger 2013), ineffectiveness in redressing the information asymmetry between citizens and interest groups (Bunea 2018), and its limited contribution to legitimizing supranational decision-making (Smismans 2014).

We analyze the TR from the perspective of its primary regulatory targets, namely organizations that seek and get (frequent) access to EC high-level decision-makers.<sup>2</sup> These actors constitute a specific subset of the entire population of actors lobbying or interested in lobbying EU institutions and policymakers that represent the overall population of regulatory targets. They are in a particularly relevant and theoretically interesting position to evaluate the Register for reasons outlined in the introduction.

To theorize these actors' support (or lack thereof) for the Register as a regulatory regime we build on the theoretical framework proposed by Potoski and Prakash (2009) to explain the creation and performance of voluntary environmental programs (VEPs) by conceptualizing them as voluntary clubs. These programs 'require participants to produce environmental public goods beyond the requirements of applicable government laws' (Prakash and Potoski 2013: 400). By 'voluntary' the authors refer to 'the absence of any state mandate or legal requirements that firms must join these programs' and indicate that 'participation is "voluntary" even if participants' stakeholders employ legal means to persuade or otherwise induce participation' (Idem). This approach defines voluntary programs 'as efforts to correct a failure in the market for environmental virtue [...] by mitigating information problems between firms and their stakeholders' (Ibid: 401). This theoretical perspective starts from the assumption that the production of the environmental public goods entails some costs that private actors are willing to incur so as to increase their environmental reputation with *regulators* and the *general public*, who are *external stakeholders* in the environmental policy. These stakeholders are interested in monitoring and rewarding with their appreciation firms with highly environmental-friendly practices, but they cannot do it because they lack sufficient information to discern between environmental-friendly and environmental-polluting firms. VEPs adjust and redress this information market failure: they allow environmental-friendly firms to signal the public and regulators their virtuous, environmental-compliant behavior and thus increase the amount of information available to the public to discern between environmental leaders and laggards, and to reward them accordingly with their consumer choices and regulatory measures. As voluntary clubs, VEPs produce *public goods* (environmental protection) and *club goods* that are excludable and non-rival, such as a good reputation for being an environmental-friendly economic actor.

Building on this framework, we conceptualize the EU TR as a regulatory regime that resembles a *voluntary transparency club*: the *public good* produced is increased transparency

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<sup>2</sup> Commissioners, cabinet members and Directors. The Commission does not yet provide a similar list of meetings for lower-level policymakers, despite their relatively high frequency.

about private actors' participation in decision-making, and the opportunity to avoid corruption and biased interest representation and policymaking. The main *club good* provided to its members is a *commendable reputation* for being ethical, socially responsible and politically accountable organizations. Additional, indirect club goods are also provided: the club allows members to avoid stricter (and consequently costlier) forms of lobbying regulation, to gather information about other actors lobbying policymakers, to get timely information provided automatically by email to Register members about upcoming policy initiatives and consultations, and to get access to policymakers.

Several aspects justify this innovative conceptualization. *First*, clubs are 'institutions or rule systems' that are (voluntarily) joined by private actors because they provide their members with a set of excludable 'club goods' that cannot be enjoyed by non-members (Potoski and Prakash 2009: 20). The most valuable club good is the club's brand name: its *public reputation*. Affiliation with a club's brand constitutes a valuable reputational asset and signals relevant information about non-observable behaviors that club-members want to convey to external stakeholders (decision-makers and the public) (Kotchen and van't Veld 2009: 68). Voluntary clubs establish thus a 'new market for [...] reputation - one could perhaps call it a market for virtue' (Vogel 2005, cited in Potoski and Prakash 2009: 5). Their club good is both *excludable* and *non-rival*: 'members' association with the club does not necessarily diminish the value others receive from the brand. Indeed [...] one firm's membership can often enhance the value that other members receive' (Idem: 2). Or at least for as long as shirking does not occur and stains the club's reputation (Potoski and Prakash 2011: 90).

The EU TR constitutes an institutional arrangement set up to ensure ethical and transparent lobbying practices and to keep its members accountable and compliant with a set of information disclosure standards and Code of Conduct norms. Although there is an informal rule that decision-makers would not meet non-registered organizations, the voluntary nature of the Register resides in the fact that organizations' 'behavior is voluntary in the sense that it is not coerced by the state via regulation or statute' (Potoski and Prakash 2009: 17) and it's voluntary despite institutional incentives to join (information and access). As a transparency club, the Register requires its members to publicly disclose information about lobbying activities, interests, coalitions and financial resources. Given its high publicity and consolidated online profile, it provides its members with an *important club good*: the reputation of law-abiding and ethical actors that are complying with certain transparency requirements. Similar to other voluntary clubs, the Register provides its members with the political and public 'license to operate' and participate in policymaking (Idem: 20).

*Second*, clubs seek to shape actors' 'cost-benefit calculus to channel their private self-interest in ways that lead to the reduction of negative externalities and/or production of [social] positive externalities' (Idem: 3). The 'membership fee' is 'the cost of producing this positive social externality' or *public good* (Idem: 21). The TR aims increasing the amount of public information about interest groups' interactions with decision-makers. In exchange for a commendable public reputation, organizations are asked to actively contribute to producing the public good of increased transparency. The membership fee is information disclosure in an electronic format. Stakeholders external to this transparency club (policymakers and the public) are beneficiaries of this public good which helps bridging the information gap between them and lobby organizations about the latter's participation in policymaking. Furthermore, a commendable public reputation is likely not an end in itself, but a means to obtain very tangible benefits when it comes to public scrutiny and policy demands: not only that club members are perceived as open and transparent by the public (thus gaining public trust) but they are also perceived as such by policymakers, gaining their confidence too. This confidence might increase instead chances for lobbying success.

*Third*, since a club's brand reputation depends extensively on how much members comply with its standards, clubs set up *monitoring and enforcement mechanisms* to 'ensure that the members live up to their program obligations' and 'signal to club members that their adherence to club obligations is under scrutiny and shirking will be sanctioned' (Potoski and Prakash 2009: 9). These mechanisms are aimed to prevent classic collective action problems such as shirking and free-riding. A club's credibility depends on its members' compliance with its requirements. Therefore, the TR operates a monitoring and enforcement mechanism that relies on 'sanctioning by the program sponsor' (Idem: 26): staff members of the Joint TR Secretariat scrutinize online the quality of information provided by joining organizations and how well members comply with the registration and updating requirements. For example, a key sanction administrators use is the unilateral removal of non-compliant actors from Register.

### **Membership, Access and Evaluation of the Club's Performance**

This conceptualization has important observable implications for how different constituencies of interest organizations may differ in their evaluations of the Register as a lobbying regulation regime. A first intuitive difference is that between registered organizations (club-members) and non-registered organizations (non-members). Registered organizations are significantly more interested in the Register's brand reputation. Similar to most clubs, the Register's membership is heterogeneous: it includes actors organized as European federations,



national associations, regional associations or individual lobby organizations that represent a variety of socio-economic interests (business, labor, environmental, consumers, etc.). Some lobby more actively than others. A key implication is that *not all club members appreciate to the same extent the 'club good' of a good reputation*: members interested in getting frequent access to decision-makers attach a higher salience to the Register's brand reputation because they benefit more frequently and in a more straightforward fashion from it. A commendable reputation as a lobbying actor is far more consequential for them than for actors with less frequent access. Therefore, we contend that a theoretically relevant and conceptually interesting categorization of Register-member organizations is that between members with frequent access to decision-makers, members with less frequent access, and members with no access. Empirically, our analyses distinguish between Register *\*non-members*, *\*members with no access*, *\*members with some access* and *\*members with frequent access*.

Building on Potoski and Prakash (2009: 31; 2013), we argue that the Register's reputation as a transparency club depends on three analytical dimensions: the *stringency of transparency standards*, its *membership size*, and the *credibility of its monitoring and enforcement mechanisms*.

Actors with frequent access are particularly interested in the Register's brand reputation as a transparency club for reasons that emphasize the close link between *club reputation* and its members' individual *organizational reputations*. *First*, actors with frequent access are interested in repeated interactions with decision-makers and thus have strong incentives to cooperate with regulators to build a credible, long-lasting reputation that would persist throughout time and meetings. Since 'reputation building takes time and is expensive, the desire to benefit from an existing trustworthy reputation', or to systematically build one, is high (Potoski and Prakash 2011: 89). *Second*, the Register provides 'a low-cost tool for signaling commitment to producing positive social externalities' that allows external stakeholder to easily differentiate 'leaders from laggards' (Idem: 25) in complying with ethical lobbying rules. Actors with frequent access see the high reputational benefit that can be gained from a relatively low-cost opportunity, and prefer this form of soft, transparency-based lobbying regulation to a stronger (hierarchical, command-and-control) and potentially costlier form of regulatory intervention. *Third*, Register membership facilitates access to decision-makers and to timely information about policy initiatives and institutional opportunities to shape policymaking. For these actors, the club's membership is highly beneficial in light of their heightened interest in getting access to policymaking. Therefore, they have incentives to preserve a good brand reputation for this transparency club that they want to preserve and maintain. In light of heated debates about the democratic legitimacy and accountability of EU

decision-making and the elite pluralist nature of supranational interest representation, a commendable reputation for ethical and transparent lobbying is particularly important (Smismans 2014).

Therefore, we argue that TR-members with frequent access to decision-makers have particularly strong incentives to advocate for *stringent ‘club standards’ regarding the quality of information disclosure* in both substantive and procedural terms. Information that is accurate, easy to identify by external stakeholders and comprehensively covers a wide variety of lobbying activities represents a high quality public good and a social externality that enhances the reputation of the Register as a transparency club and consequently of its members. In addition, high quality disclosure standards increase the entry-cost for new members, which prevents the adverse selection of untrustworthy members that would not comply with the club’s transparency standards and thus spoil the club’s brand reputation. Equally important, club standards ‘critically shape’ the social externalities (public goods) produced by its members: more stringent standards are more likely to lead to a higher quality provision of public goods (Potoski and Prakash 2009: 31) and ‘correlate with the level of [external] stakeholder appreciation that club participants can expect to receive’ (Potoski and Prakash 2013: 403).

In light of consistent criticism of TR data quality and lack of regulatory effectiveness and sustainability, an observable implication of this argument is the expectation of a systematic pattern of negative evaluations expressed by actors with frequent access regarding the TR *status quo* describing its standards of information disclosure. The assumption is that a negative evaluation is an indirect demand/preference for higher transparency standards than ones currently ensured by the TR. Actors with frequent access are interested in maximizing the reputational benefits of their club-membership and making sure the TR’s public reputation is uncontested. They know that suboptimal, contested and criticized transparency standards bear a potentially high public reputation cost for them: organizations complying with contested standards can be accused of playing ‘shambolic politics’ transparency games and engaging in window-dressing.<sup>3</sup> We therefore expect that:

H<sub>1</sub> (Club Standards hypothesis): *TR-members with frequent access to decision-makers are more likely to support higher standards of information disclosure as part of the TR and are thus more likely to criticize its information disclosure settings.*

Another relevant ingredient of a club’s brand reputation is its *membership size*: ‘positive network effects create increasing returns to scale club membership: with every

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<sup>3</sup> Theoretically, actors wanting less stringent disclosure standards could also be more critical of current TR disclosure settings. However, we consider this a less likely scenario because these actors know that in the absence of current TR transparency standards, they run the risk of being subjected to harder (command-and-control) and costlier forms of lobbying regulation. For them, current standards are therefore a lesser regulatory ‘evil’.

additional member, the marginal benefit of being associated with club membership increases or ‘the marginal cost of creating benefits decreases’ (Potoski and Prakash 2009: 33). Having more club members allows ‘advertising a voluntary club broadly among [external] stakeholders’ and therefore ‘the value a club member derived from club participation increases with every additional firm joining it’ (Potoski and Prakash 2013: 403). A larger membership size enhances a club’s reputation by increasing its credibility and ability to provide the public good aimed for, thus having a more significant potential social/systemic impact, while also enhancing the opportunities for peer-monitoring amongst club members. An increased membership also means that the costs of information disclosure are more evenly distributed in the population of organizations interested in shaping and influencing supranational policymaking, and consequently that Register members do not incur a structural and informational disadvantage by revealing information about themselves that non-members could use to their advantage. In the case of such voluntary clubs, reputational benefits come from compliance with higher regulatory and behavioral standards and not from the exclusive character of the club. Since TR-members with frequent access are particularly interested in enhancing the Register’s club brand reputation, they have incentives to support measures that would increase its membership. We expect that:

H<sub>2</sub> (Club Membership hypothesis): *TR-members with frequent access to decision-makers are more likely to support extending the regulatory scope of the TR to more organizational entities and expand its membership.*

Lastly, a club’s brand reputation depends considerably on the *quality of its monitoring and enforcement mechanisms*, which prevent free riding and members’ shirking from the club’s standards and obligations. A club’s reputation is only as good as its members’ collective and individual behaviors and reputations are: ‘[i]f shirking occurs with sufficient frequency, the reputation of the [club] is likely to suffer’ (Potoski and Prakash 2013: 404). Therefore, TR-members with frequent access are particularly interested to ensure that its monitoring and enforcement mechanisms are up for the task, able to keep club members to behaving ethically and transparent, and to prevent shirking. We expect that:

H<sub>3</sub> (Club Monitoring and Enforcement hypothesis): *TR-members with frequent access to decision-makers are more likely to support stricter monitoring and enforcement rules of lobbying regulation as part of the TR.*

### **Research design**

We test our argument on an original dataset providing information about interest groups’ expressed evaluations of the TR and their levels of direct access to high-level Commission officials. We built this dataset in two stages. First, we identified groups’

evaluations of the Register based on their responses to the EC public consultation conducted during March-June 2016 on its proposal for an interinstitutional agreement on a mandatory Register. This consultation employed an online questionnaire that allows estimating actors' responses to a set of 14 questions directly or indirectly linked to the stringency of TR transparency standards, membership size and its monitoring and enforcement mechanisms. We examine the responses of 632 organizations participating in the consultation and agreeing to make their answers public. Table 1 details the substantive content of the questions we used to measure our 14 dependent variables. Questions 1 to 11 allow estimating groups' support for the *stringency of transparency standards*: they ask respondents to indicate whether the register is a useful tool for regulating lobbying (q1), how they evaluate the Register's website features (q2-q6), if the right type of information is required from registrants (q7), how they evaluate the overall TR data quality (q8), whether the Code of Conduct is based on sound rules and principles (q9), whether further interactions with policymakers should be included in the TR regulatory scope (q10) and if the Council of the EU should be covered by a mandatory Register (q11).

Question 12 asked whether the scope of the Register should change to include or exclude some organizational entities (i.e. churches, local authorities, parties). Answers to this question provide information about actors' preferences concerning their desired TR (*club membership size*). Questions 13 and 14 asked whether the present procedure to deal with alerts and complaints for non-compliance with transparency standards is adequate, and whether a new sanction for non-compliance should be introduced, namely the public naming and shaming of non-compliant actors. Columns 2-4 in Table 1 present the categories of responses allowed by the closed-ended questionnaire and their frequency distribution across actors. Most answers were coded as ordinal categorical: 'disagree', 'partially agree', 'fully agree'; or 'poor', 'average', 'good'. Questions 10, 11 and 14 entailed dichotomous answers. Column 5 indicates the total number of 'no opinion' or 'no answers' which are treated as missing values in the empirical analyses. The number of missing values varies across questions, with some items displaying higher frequencies (e.g. q5 or q13). This is consistent with previous research indicating that stakeholders engage differently with various EU consultation items, and decide to express preferences regarding some issues while staying silent on others (Bunea 2017). Methodologically, the use of a consultation survey implies that classic approaches to address the issue of missing data (i.e. multiple imputations) are not available to our research, since we lack enough identification variables. Our decision to use this consultation survey despite these constraints is justified by the fact that such consultation surveys constitute a rich and fairly

well-established data source allowing the systematic study of EU stakeholders' policy positions (Bunea 2017).

### [Table 1]

In step two, we identified the total number of direct meetings organizations in our dataset had with EC high-level officials, as reported on the EC official website, by using a web-scraping method implemented in R. We coded information about all meetings reported between November 2014 (when this online reporting function was introduced) and the end of June 2016 (when the consultation ended). We chose this cut-off point as we are interested in exploring how having previously experienced various levels of direct access to decision-makers impacts groups' evaluations measured at a specific point in time.

We crossed-checked the reliability of our data against the meetings reported by LobbyFacts.eu and we found the same number of reported meetings for the examined organizations. In our dataset, 455 actors had no meetings with Commission officials for the considered time frame, while 177 actors had between 1 and 122 meetings. The average number of meetings per actor is 3.4 (sd. 10.28). Additionally, based on organizational self-reports, we know that at the time of consultation, 111 organizations were not registered in the TR, whereas 521 were. Therefore, we distinguish empirically between four categories of organizations: 111 actors were non-registered/non-members and with no access; 344 actors were registered but had no access (no meetings); 114 actors were registered and had some access (1-10 meetings); 63 actors were registered and had frequent access (11-122 meetings). Our explanatory variable is coded at organization level as ordinal categorical, indicating the actor was: \*TR non-member (not registered), \*TR-member with no access, \*TR-member with some access, \*TR-member with frequent access.

Table 2 presents the distribution of meetings per interest type represented by the organization and indicates that 45 of 63 actors with frequent meetings with Commission officials were business organizations (71.42%), while 13 were public interest organizations (20.6%). In the category of actors with some access (1-10 meetings), business actors were also the majority (55.26%), while public interest organizations represented 27.2% and professional organizations 9.65%. Amongst registered organizations with no meetings, 34.94% were public interest organizations, 24.4% business, 16.5% public authorities, 12.31% professional associations and 11.87% consultancy groups. The majority of non-registered actors were local public authorities.

### [Table 2]

Our analyses control for the interest type represented by organizations in our dataset. The literature indicates that this plays an important role in how actors evaluate lobbying regulation: actors representing public interests criticized the EU Register for its design and regulatory effectiveness, while business groups criticized its regulatory performance and sustainability (Greenwood and Dreger 2013, Bunea 2018). We identified this information based on the EC data file presenting the 2016 public consultation results and categorized respondents into six types of interests represented: business (219), consultancies (61), professional associations (71), public subnational authorities (78) and public interest organizations (203). We use this as a categorical variable.

### **Analyses**

We use binary and ordinal logistic regression analysis to test our hypotheses. Table 3 examines hypothesis 1, stating that TR-members with frequent access should support more stringent transparency standards and adopt a more critical stance regarding the information disclosure status quo.

#### **[Table 3]**

Models 1-11 use as reference category organizations that were TR non-members (not registered). These models present a mixed and intriguing picture regarding hypothesis 1. They indicate a few, substantively relevant, significant differences between Register-members and non-members, and most importantly between TR-members with frequent access and all others regarding their evaluations of club's transparency standards.

In line with our hypothesis, model 8 indicates that TR-members with frequent access are significantly less likely than TR non-members to evaluate the overall quality of data currently disclosed in the Register as good. For these actors, the odds of a reply indicating a 'good data quality' are 0.13 of the odds of 'poor' and 'average data quality' responses combined. TR-members with some access adopt a similar stance relative to non-members, but the coefficient is not significant. We interpret this as evidence that actors with frequent access do not consider the current quality of information disclosure standards adequate and that they prefer better transparency standards. The additional analyses presented in the appendix (tables A1 and A3) indicate the finding is robust when using different reference categories for the explanatory variable.

Models 2 and 7 offer a potential explanation for this. Model 2 indicates actors with frequent access are significantly less likely than non-members to evaluate the TR website

design and structure as ‘good’. The odds of a ‘good website design’ evaluation are 0.46 of the odds of a ‘poor’ and ‘average website design’ evaluation combined. The results are robust when changing the reference category for the explanatory variable (tables A1 and A3 in appendix). Furthermore, Model 7 shows that actors with frequent access are less likely to indicate that the right type of information is required from registrants, although the coefficient is not significant. Note that TR-members with some access share this negative evaluation of current information disclosure requirements and the coefficient is significant at 0.05 level. Table A3 in appendix confirms that actors with some access are significantly less likely than all others in our dataset to positively evaluate these requirements. The quality of publicized data, the information disclosed about regulatory targets and the design of the regulatory instrument are all key aspects for ensuring commendable transparency standards and a good transparency (club) reputation.

TR-members with frequent access are also less likely to indicate the TR is a useful tool to regulate EU lobbying than non-registered actors (model 1). The coefficients are not statistically significant but point to a pattern of less favorable evaluations of the TR as an instrument for regulating transparency and lobbying behavior. This pattern is confirmed by the models presented in appendix: model 1 in table A1 indicates that actors with frequent access are significantly less likely than TR-members with no access to positively evaluate the TR as a useful regulatory tool (odds ratio: 0.26). Model 1 in table A3 indicates the same significant difference when comparing them to TR-members with some access (odds ratio: 0.42).

Furthermore, model 1 indicates that registered actors with no access are significantly more likely to consider the Register a useful tool to regulate lobbying activities (odds ratio: 2.72). This is consistent with the narrative that levels of access impact TR-members’ evaluations of the TR as a regulatory instrument: actors with no access and therefore less experience in accessing decision-makers are more positive about the Register than their more experienced counterparts.

Interestingly, model 4 indicates that although actors with frequent access do not like the overall TR design, they are significantly more likely to positively evaluate its online search function. The odds of them indicating a ‘good’ evaluation vs. ‘poor’ and ‘average’ evaluation combined are 2.74 times higher. This may indicate that these actors have incentives to use the TR online search function to inform their organizational activities and check on other lobbying actors, when attempting to identify policy allies or foes. Adding to the intrigue, model 10 indicates that actors with frequent access are less likely than TR non-members to support expanding the Register’s regulatory remit by making further interactions with decision-makers conditional upon registration, while model 11 indicates these actors were likely to support the

idea of including the Council of EU in a mandatory TR. Although the coefficients are not significant, the findings indicate a certain paradox in actors' preferences regarding the Register's regulatory remit: regulation should not be expanded to cover more categories of lobbying activities but should cover an additional institutional lobbying venue. This latter measure would increase the information and certainty about access to a lobbying venue that remains largely obscured to private actors and public scrutiny. The results are robust when using different reference categories for the explanatory variable.

Corroborated, these findings suggest actors with frequent access criticize the transparency club's status quo regarding the quality of transparency standards in line with the *Club Transparency Standards* hypothesis, but are equivocal regarding the expansion of the regulatory remit of these standards to other institutions and lobbying activities. They show that levels of access to executive policymakers matter for how organizations evaluate these standards but that they may affect actors' perceptions in more variegated ways than anticipated in our theoretical framework.

The analyses clearly indicate the main critics of the club's transparency standards are public interest organizations, which are significantly less likely to positively evaluate the TR website's information availability (model 3) and search function (model 4), less likely to agree that the right type of information is required from registrants (model 7), that the overall TR data quality is adequate (model 8) and the Code of Conduct is based on the appropriate rules and principles (model 9). However, despite these shortcomings, these actors are significantly more likely to indicate that more lobbying interactions should require TR-registration (model 10) and a mandatory TR should include the Council (model 11).

Organizations representing public (local) authorities are also significantly less likely than business to appreciate the TR as a useful tool for regulating lobbying (model 1), its website information availability (model 3) and its overall data quality (model 8). Professional associations were also significantly less likely than business to positively evaluate the TR website features (models 3, 4, 6) and its code of conduct, a view they shared with consultancies (model 9). Professional associations and consultancies (especially law firms) claimed on several occasions they have their own codes of conduct to guide their participation in public policymaking and do not need additional codes of conduct. This suggests that interest type plays a more relevant role in structuring actors' evaluations and preferences regarding EU lobbying regulation than the amount of access they have to policymakers.

Model 12 in table 4 tests the *Club Membership Size* hypothesis. In line with our expectation, the results indicate that actors with frequent access are significantly more likely to indicate that the Register should include more organizational entities. The odds of them



indicating that more entities should be included vs. responses indicating to ‘keep status quo’ and ‘exclude entities’ combined are 2.81 higher for these actors. TR-members with some access are also significantly more likely than non-members to support this option that would increase TR-membership size and the odds of a response indicating this are 3.78 higher for them. This measure was however strongly opposed by organizations representing (local) public authorities that advocated against them having to join the Register in light of their democratically representative mandate in EU policymaking. Tables A2 and A4 in appendix indicate there are no significant differences on this issue when comparing TR-members with frequent access to TR-members with no or some access only.

#### **[Table 4]**

Models 13 and 14 do not support hypothesis 3 stating that TR-members with frequent access are more likely to support stricter TR monitoring and enforcement mechanisms. Model 13 indicates that these actors (and those with some access) are less likely to indicate that current procedures for dealing with alerts and complaints are adequate (indirectly suggesting that better mechanisms are required), and the coefficient is not significant. Yet, when compared to TR-members with no access (model 13, table A2 in appendix), actors with frequent access are significantly less likely to positively evaluate the current procedures. The same is observed when comparing them to TR-members with some access although the difference is not statistically significant (model 13, table A4 in appendix).

Model 14 indicates that TR-members with frequent access were less likely than TR non-members to indicate that actors breaching TR rules should be publicized, but the difference is not statistically significant. The analyses presented in appendix show that TR-members with frequent access were significantly less likely than TR-members with no access (model 14, table A2) and those with some access (model 14, table A4) to indicate support for this measure. Corroborated, these findings go against our hypothesis and indicate these actors’ lack of support for stricter penalty measures to punish non-compliance with the club’s transparency standards.

Public interest organizations adopted instead a significantly different position: they were significantly less likely to positively evaluate the TR alerts and complaints procedure (similar to professional associations) and significantly more likely to indicate support for measures aimed at naming and shaming non-compliant organizations, thus advocating for stricter penalty measures.

## Conclusions

We conceptualized lobbying regulation regimes that rely on targeted transparency and information disclosure as voluntary transparency clubs. We investigated the extent to which membership in the transparency club affects actors' assessment of key dimensions of the club's regulatory set up and performance. We focused analytically on the perceptions of 'regulatory connoisseurs': organizations with frequent access to policymakers and thus with a long experience of the cost and benefits entailed by voluntary transparency clubs. We focused empirically on the EU Transparency Register, a quintessential example of lobbying regulation through targeted transparency. Adopting a cost-benefit analysis that emphasized reputational club goods, we argued that TR-members with frequent access to executive policymakers should advocate higher transparency standards, enlarged TR-membership and stricter monitoring mechanisms to enhance the club's reputation and signal external stakeholders their law-abiding lobbying behavior. These actors have a high stake in a good TR performance since their participation in policymaking is a repeated game in which reputation matters.

We uncovered a puzzling structure of connoisseurs' assessment of the club's status quo: they are significantly more critical of the EU Register as a regulatory instrument and of its transparency standards, while being less enthusiastic about introducing stricter monitoring and enforcement mechanisms that would improve the Register's regulatory effectiveness and reputation. These actors are instead vocal supporters of extending the regulatory scope of the Register to more organizations, a position they share with all other TR-members irrespective of their level of access. Joining the Register implies the cost of producing public goods in the form of public information disclosure, which members would like to distribute more broadly amongst all actors involved in supranational lobbying. Furthermore, actors with frequent access think they receive more scrutiny and may consider TR-membership an unfair competitive disadvantage in lobbying (Năstase and Muurmans 2018: 13), that they would like to ameliorate by including other lobbying actors in the TR remit. The perceived inadequateness of current disclosure requirements and a concern that stronger penalties will further constrain their lobbying may also contribute to their reluctance towards stricter enforcement.

Several implications follow. *First*, the institutional design of voluntary transparency clubs may sometimes lead to a suboptimal provision of club goods, which fuels club-members' dissatisfaction and potential shirking. The EU Register enjoys a state-of-the-art online interface but does not seem to provide substantive information that is sufficiently relevant and reputation-enhancing for its members. This may be partly due to the difficulty of identifying what 'relevant information' is in the case of lobbying regulation and on the market of 'virtuous participation' in policymaking. If for voluntary environmental programs it is relatively

straightforward to identify the indicators required to signal firms' environmental-friendly behavior, similar indicators are more difficult to define and identify when regulating lobbying. An additional, EU-specific challenge is that one important section of the external stakeholders, i.e. the general European public, that benefits from the public good of information disclosure, is perceived to be largely inactive and less engaged in monitoring the Register and private actors' compliance with its transparency standards. This questions the extent to which regulatory compliance and information disclosure pay off in reputational terms for compliant club members. *Second*, the case of EU TR also signals an interesting transformation that voluntary clubs may encounter under certain conditions of suboptimal club standards: members adjust to an imperfect setting and use it as a licensing scheme to participate in policymaking. This explains the exponential increase in the number of EU registered organizations in the last couple of years, despite incessant criticism of Register's settings and information-provision performance. *Third*, this assessment of primary regulatory targets adds to the complexity and drama of political negotiations that are underway for more than two years now on the adoption of a new EU interinstitutional agreement on a mandatory Register, and indicates that voluntary programs sponsored by government institutions may not be an optimal solution to ensure the regulatory governance of interest groups' participation in policymaking.

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**Table 1. Consultation questions used to measure interest groups' positions on the \*stringency of transparency club standards, \*membership size and \*monitoring and enforcement mechanisms.**

<b>Question</b>	<b>Frequency distribution of responses</b>			
<b>Stringency of transparency standards</b>				
1.Do you consider the TR a useful tool for regulating lobbying?	Not useful at all 22	Somewhat useful 335	Very useful 266	NA 9
2.What is your impression of the Register website design and structure?	Poor 29	Average 251	Good 324	NA 28
3.What is your impression of the Register website availability of information?	Poor 36	Average 256	Good 297	NA 43
4.What is your impression of the Register website ease of search function?	Poor 37	Average 185	Good 337	NA 73
5.What is your impression of the Register website accessibility?	Poor 27	Average 126	Good 137	NA 342
6.What is your impression of the Register website access via mobile devices?	Poor 32	Average 149	Good 122	NA 329
7.Is the right type of information required from the registrant?	Too little is asked 61	Fully agree 280	Too much is asked 61	NA 12
8.What is your impression of the overall data quality in the Register?	Poor 63	Average 145	Good 179	NA 245
9.The Code of Conduct is based on a sound set of rules and principles.	Disagree 6	Partially agree 72	Fully agree 333	NA 221
10.Do you believe that there are further interactions between the EU institutions and interest groups that could be made conditional upon prior registration?	No 109	Yes 241		NA 282
11.Do you agree with the Commission's view that the Council of the EU should participate in the new IIA on a mandatory register?	No 22	Yes 333		NA 277
<b>Club membership size</b>				
12. The scope of the Register should be?	Change to exclude certain entities 86	Preserve the same as currently 144	Change to include certain entities 281	NA 121
<b>Monitoring and enforcement of club standards</b>				
13.The present procedure for dealing with alerts and complaints is adequate.	Disagree 49	Partially agree 97	Fully agree 145	NA 341
14.Do you think that the names of organizations that are suspended under the alerts and complaints should be made public?	No 107	Yes 267		NA 258

**Table 2. Organizations by interest type and level of access.**

<b>Interest represented</b>	<b>Non-registered &amp; no access</b>	<b>Registered &amp; no access</b>	<b>Registered &amp; Some access (meetings: 1-10)</b>	<b>Registered &amp; Frequent access (meetings &gt;10)</b>	<b>Total orgs.</b>
Business orgs.	9	102	63	45	219
Consultancy	6	48	7	0	61
Professional orgs.	5	51	11	4	71
Public authorities	63	12	2	1	78

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Public	interest	28	131	31	13	203
orgs.						
<b>Total</b>		111	344	114	63	632

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**Table 3. Testing the Club Transparency Standards hypothesis.**

	<b>1.TR tool for regulation</b>	<b>2.TR website design</b>	<b>3.TR website info</b>	<b>4.TR website search function</b>	<b>5.TR website accessibility</b>	<b>6.TR website mobile access</b>	<b>7.Right info</b>	<b>8.Data quality</b>	<b>9.Code of Conduct</b>	<b>10.Further interactions</b>	<b>11.Council in mandatory TR</b>
<b>Level of access (Ref. category: non-registered organization)</b>											
Frequent access	-0.36 (0.43)	-0.78* (0.38)	0.47 (0.40)	1.01* (0.46)	0.41 (0.66)	0.88 (0.53)	-0.38 (0.59)	-2.02*** (0.57)	0.13 (0.65)	-0.19 (0.61)	0.86 (1.13)
Some access	0.49 (0.36)	-0.12 (0.33)	0.29 (0.34)	0.16 (0.35)	0.23 (0.49)	0.02 (0.47)	-1.35* (0.56)	-0.94 (0.53)	0.02 (0.58)	0.31 (0.57)	0.80 (1.00)
No access	1.00*** (0.31)	0.15 (0.28)	0.51 (0.29)	0.03 (0.30)	0.06 (0.40)	-0.15 (0.40)	-0.60 (0.52)	0.32 (0.49)	0.99 (0.54)	0.71 (0.53)	0.48 (0.86)
<b>Interest type (Ref. category: business)</b>											
Consultancy	-0.04 (0.31)	0.33 (0.31)	-0.07 (0.32)	-0.38 (0.31)	0.81 (0.44)	-0.44 (0.41)	-0.37 (0.35)	0.01 (0.36)	-1.42** (0.52)	0.26 (0.40)	1.57 (1.07)
Professional	-0.04 (0.29)	-0.37 (0.28)	-1.13*** (0.29)	-0.63* (0.29)	-0.67 (0.39)	-0.79* (0.38)	-0.33 (0.33)	-0.21 (0.35)	-1.47** (0.47)	0.62 (0.40)	0.77 (0.79)
Public authority	-1.05** (0.41)	-0.54 (0.35)	-1.56*** (0.37)	-0.52 (0.40)	0.99 (0.54)	-0.85 (0.57)	0.78 (0.72)	-2.02** (0.67)	-1.33 (1.14)	-0.07 (0.81)	-1.07 (0.94)
Public interest org.	-0.41 (0.21)	-0.13 (0.21)	-1.11*** (0.22)	-0.77*** (0.22)	-0.17 (0.28)	-0.57 (0.30)	-1.51*** (0.27)	-0.85*** (0.25)	-2.07*** (0.37)	1.14*** (0.30)	1.12* (0.56)
Log Likelihood	-397.49	-501.01	-482.81	-460.74	-263.67	-278.26	-359.03	-357.71	-177.84	-203.03	-77.78
N	623	604	589	559	290	303	433	387	411	350	355

Note: Ordinal logistic regression models. Models 1, 9, 10, 11 use logit regression analysis. For models 1 and 9 the initial ordered-categorical dependent variables were re-coded as dichotomous to account for the very low number of observations in the ‘not useful at all’ and ‘disagree’ response categories. Standard errors in parentheses. Significance levels: \*\*\* $p < 0.001$ ; \*\* $p < 0.01$ ; \* $p < 0.05$ .

**Table 4: Testing the Club Membership hypothesis (model 12) and Club monitoring and enforcement mechanisms hypothesis (models 13-14).**

	12.TR membership scope	13.Alerts and complaints	14.Publicize name of suspended orgs.
<b>Level of access (Ref. category: non-registered organization)</b>			
Frequent access	1.03* (0.50)	-0.91 (0.59)	-0.76 (0.66)
Some access	1.33*** (0.39)	-0.40 (0.57)	0.04 (0.64)
No access	0.60 (0.32)	0.81 (0.52)	0.02 (0.60)
<b>Interest type (Ref. category: business)</b>			
Consultancy	-0.21 (0.33)	-0.24 (0.46)	0.78 (0.44)
Professional	0.22 (0.33)	-0.91* (0.38)	0.08 (0.36)
Public authority	-4.09*** (0.48)	-0.91 (0.80)	0.23 (0.87)
Public interest orgs.	0.17 (0.23)	-1.29*** (0.30)	0.74* (0.29)
Log Likelihood	-379.48	-273.91	-215.02
N	511	291	374

Note: Models 12 and 13 use ordinal logistic regression. Model 14 uses a logit regression. Standard errors in parentheses. Significance levels: \*\*\* $p < 0.001$ ; \*\* $p < 0.01$ ; \* $p < 0.05$ .