Of Principal(s’) Interest? A Disaggregated, Multiple Principals’ Approach to Commission Discretion*

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Abstract
How much discretion does the Commission enjoy in the European Union? To address this question, we draw on principal–agent theory and propose ‘interest in a decision’ by principals as a proxy for agent discretion. This has three advantages over existing approaches. First, it overcomes the high-conflict bias of case studies. Second, it accounts for the phenomenon of rational anticipation. Third, it allows for a more fine-grained measurement than analyses of the act of delegation. Empirically, we disaggregate the Transatlantic Trade and Investment Partnership (TTIP) into 27 chapters and account for multiple principals. We use surveys and interviews with Commission negotiators, which we triangulate with publicly available data sources. Our findings paint a picture of a Commission that is constrained rather tightly. While the Council follows all chapters and acts as a ‘safety net’, citizens and the European Parliament act as fire alarms and focus on selected, often overlapping, chapters.

Keywords: European Union; principal–agent; rational anticipation; Commission discretion; trade agreements

Introduction
The Transatlantic Trade and Investment Partnership (TTIP) negotiated with the United States sparked fierce controversy across the European Union (EU). Its proponents underline the agreement’s economic and geopolitical benefits, while its critics point to negative environmental and social effects. While perhaps conducive to the creation of a European public space, controversies over TTIP often revolve around the European Commission (henceforth, ‘Commission’) allegedly abusing its position as lead negotiator to forge deals favouring big business over citizens. Meanwhile, the involvement of the Council of the EU (‘Council’) and European Parliament (EP) is overlooked, as is the ability of citizens to influence the EU’s negotiating stance. This debate is reflected in the principal–agent (PA) literature.

How much discretion does the Commission enjoy when negotiating Free Trade Agreements (FTAs)? In this article, we ‘disaggregate’ TTIP into 27 chapters to capture Commission discretion across all its component parts. Moreover, we account for multiple

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principals, namely the Council and EP as ‘proximate principals’ and the citizens as the ‘ultimate principal’. We cannot trace discretion all the way to the final outcome given that TTIP has not been concluded. However, we overcome this problem by conceptualizing, operationalizing and measuring agent discretion through ‘interest in a decision’ by principals. Interest is a necessary condition for control and a crucial element in the PA relationship given the central position of asymmetrically distributed information in these models. Where agents learn that principals ‘follow’ their work, the former can be expected to pre-emptively heed the latter’s concerns to avoid a showdown. Put differently, if a chapter fails to kindle interest from principals, the agent’s margin of manoeuvre is less likely to be restricted.

We select TTIP as our case study for two reasons. First, it became the focus of public attention across Europe which makes it a substantively interesting case in and of itself (see De Bièvre and Poletti, 2017; De Ville and Siles-Brügge, 2015; Morin et al., 2016). Second, and relatedly, because TTIP has received such high levels of attention it is a least-likely case for Commission discretion in the way we define it. If the Council, EP or citizens show little interest in a chapter in TTIP, it is likely those chapters will not arouse greater interest in other FTAs.

Our results suggest that the Commission is constrained rather tightly in the negotiations. While the Council scrutinizes every aspect of the negotiations, the EP and citizens are more selective in their attention. The EP is interested in services (such as water, health, education), foodstuffs (market access for agricultural products, animal and plant health, and geographical indications), and – later – investor-state dispute settlement (ISDS) and sustainable development (SD). Citizens are concerned with food safety (albeit not with agricultural tariffs or geographical indications), ISDS, and SD. We thus find considerable overlap between the EP and citizens, which suggests that citizens influence the Commission indirectly by blowing the whistle on the EP. The Council is best conceived of as a police patrol or ‘safety net’ in the negotiations, sniffing out fires undetected by these ‘fire alarms’.

Our contribution to the literature is threefold. First, we introduce ‘interest in a decision’ as an alternative proxy for agent discretion. This avoids an undue focus on high-conflict cases, which have a hard time accounting for rational anticipation. Mark Pollack’s observation that ‘few make any … attempt to deal systematically with the consequences of the “law of anticipated reactions”’ (2002, p. 212; italics added) still rings true today. This is a contribution to PA literature at large that can be extended to other policy areas and, indeed, beyond the EU. Second, we contribute to the literature on EU trade policy-making. Past research often focused on individual – typically salient – chapters. In doing so, authors often made the implicit assumption that the selected chapter is exemplary for the entire agreement. We systematically look for across-chapter variation in Commission discretion across the whole breadth of the negotiations. While FTAs have been disaggregated earlier (Dür et al., 2014; Horn et al., 2010), this approach was never linked to Commission discretion. Third, while Commission discretion in trade policy has been assessed with respect to the Council, we incorporate the EP and citizens. Since the EP’s role was historically limited, analysts have often excluded it. Moreover, trade policy was long characterized by a ‘permissive consensus’ among the general public. Today, FTAs are more politicized and citizens can have an independent effect on the negotiations. Our work thereby also contributes to the literature explaining variation in relative interest across different actors (Beyers et al., 2017).
We rely on multiple original data sources for this article. At the heart of our project are 28 standardized surveys and 11 interviews with Commission officials involved in the TTIP negotiations. To triangulate this material, we cross-check the data with publicly available sources. For the Council, we coded the directives adopted at the beginning of the negotiations. For the EP, we coded 443 written questions submitted to the Commission and Council by members of the European Parliament (MEPs) and two resolutions targeted at the Commission during the negotiations. For citizens, we coded the meeting reports of the TTIP advisory group and conducted a content analysis of German newspapers. To help interpret the data, we resort to a series of Spearman rank correlation coefficients. The remainder of this article is structured as follows. Section I presents our theoretical framework. Sections II and III explain how the data have been gathered and analyzed, respectively. The final section concludes.

I. Theoretical Framework: Multiple Principals’ Interest

PA theory is a popular offshoot of rational choice institutionalism and is principally concerned with the practice of delegation, which is the conditional transfer of decision-making authority from one actor (‘principal’) to another (‘agent’). A degree of leeway (‘discretion’) is an essential feature of delegation since functional benefits associated with it, such as overcoming collection action problems, are foregone if the mandate is designed too restrictively. This, in turn, can give rise to agency losses, which refers to agents using their authority to bring about outcomes departing from the principals’ preferences. Therefore, principals will carefully consider which agent to select ex ante and (attempt to) control the agent ex post in the form of monitoring mechanisms and/or (the threat of) sanctions. While this theory is not without critique (see Kassim and Menon, 2003), it is still widely used (see Delreux and Adriaensen, 2017).

Using ‘Interest in a Decision’ as a Proxy for Agent Discretion

Agent discretion can be captured in various ways. Perhaps the most widespread approach is to use the formal act of delegation. Discretion can be viewed as, for example, the design of the appointment procedure (Wonka and Rittberger, 2010) or the authority delegated minus all control mechanisms (Franchino, 2007; Pollack, 2003). Here effects of rational anticipation, i.e. the agent’s inclination to account for the principals’ preferences preemptively to avoid sanctions, are less problematic as they can be expected to increase with the number and efficacy of control mechanisms. Moreover, this approach avoids an undue focus on high-conflict cases and thus selection bias. Its most serious shortcoming is intimately linked to this strength, in that it yields identical levels of discretion for a large class of decisions based on the same mandate. For example, an analysis of the Treaty qua act of delegation would suggest the same level of Commission discretion across all trade negotiations (and chapters). Therefore, it is only a first step for assessing agent discretion in the post-delegation stage and thus, essentially, a proxy. Acknowledging that discretion is not about the mere inclusion of control mechanisms in the mandate but their (perceived likelihood of successful) activation in specific instances, numerous PA scholars have conducted in-depth case studies. While this requires considerable effort to assess the agent’s and principals’ ideal points, the extent to which these are represented in the
outcome, and the sequence of actions to establish causality, it also comes with a narrow focus on high-conflict cases where rational anticipation has failed. With no intention to diminish the important contribution these approaches make to comprehensive PA analyses, we propose ‘interest in a decision’ by principals as an alternative proxy for discretion situated between those two extremes.

Our focus on interest overcomes certain methodological challenges connected to the law of anticipated reactions. In the PA literature, rational anticipation has mostly been dealt with as part of the debate on ‘observational equivalence’ (Weingast and Moran, 1983, pp. 766–770; see also Damro, 2007, p. 887), which means that the absence of conflict may indicate both agent autonomy and principal supremacy. In this sense, rational anticipation produces ‘invisible’ effects (Pollack, 2002, p. 206). To address this problem, scholars have been advised to dig deeper into cases using process tracing (Delreux, 2009, pp. 724–725; Pollack, 2003, pp. 61, 68). While this would imply (also) selecting non-conflict cases, in-depth case studies often focus exclusively on high-conflict cases since process tracing requires information more likely to be found in conflictual contexts. This biases findings against rational anticipation and underestimates its importance. Our approach helps to reduce this bias and trades off precision for breadth. Yet, our findings are not as sweeping in nature as approaches focusing on the act of delegation to avoid the problem of observational equivalence (see Elgie and McMenamin, 2005, p. 537). While we also measure discretion only indirectly, our focus on interest yields far more fine-grained results.

Interest is a necessary condition for control because it reduces the information asymmetry between principals and agents, which is among the most important sources of agent autonomy (Bendor et al., 2001, p. 240; Pollack, 2003, p. 26). The nature of delegation is such that many agent decisions will go largely unnoticed by principals, giving the agent considerable leeway. However, if agents learn that principals follow a decision taking shape, they are more likely to anticipate control. The mere expression of interest can thus suffice to constrain agent actions, at least to a certain extent. In fact, agents require signals from principals to learn about their ‘zones of possible agreement’ (Delreux and Laloux, 2018) and for rational anticipation to work successfully. In the absence of such signals, even an entirely neutral agent may attempt to rationally anticipate the principals’ preferences but simply misinterpret them. Universal interest in all decisions is hence not necessarily a sign of ‘distrust’ in agents since principals could just, innocuously, voice their preferences. Still, limited resources and opportunity costs require principals to follow only selected decisions, which can be empirically measured. The higher the interest intensity and the number of principals following a chapter (‘aggregate interest’), the lower we conjecture agent discretion to be. While parallel interest by multiple principals with heterogeneous preferences could result in more agent discretion, we subscribe to the notion of multiple principals as potential veto players (Pollack, 1997, pp. 112–113).

1 Pollack (2003, p. 11) serves as an example: ‘I select cases which feature an open dispute or conflict between supranational organizations and ... member governments. Although such cases do not qualify as a representative sample of all supranational behaviour, much of which is mundane and uncontroversial, they nevertheless present the advantage of … illuminating the conditions under which member states are able … to rein in their agents’.

2 While the ratification procedure is established only at the very end, all principals included in our analysis could probably derail TTIP during the ratification stage, even if citizens would have to mount enough pressure on either the EP or their national government first. The credibility of applying sanctions therefore does not lose value in our approach but, rather, still forms the background against which the PA relationship unfolds.
We propose a broad conceptualization of interest. It can manifest itself empirically in several guises, such as principals simply following decisions by passively taking in information provided by the agent on its own initiative, principals requesting additional clarification, or principals issuing instructions and signalling preferences before disagreement with the agent has broken out. Interest thus conceived focuses on principals’ desire to oversee the authority delegated and can be viewed as a loose form of control. Moreover, *actual* interest by principals may be less important than how interest is *perceived* by the agent – and both may diverge due to actors’ cognitive limitations.\(^3\) We therefore put a survey with Commission officials at the centre of our empirical investigation. Nonetheless, in order to triangulate our findings, we consider it reasonable to assume that actual and perceived interest will usually overlap and can be gauged through alternative channels. This assumption is also (mostly) borne out by our series of Spearman correlation coefficients.

*Expectations about Multiple Principals’ Interest*

In order to lay the ground for our empirical analysis, we formulate three short expectations on the pattern of interest among principals. First and as was mentioned previously, scarce resources and opportunity costs will generally require principals to use police patrols sparingly. This constraint, however, weighs more on some principals than others as administrative capacities are distributed unequally. The Council and its member states have the largest bureaucratic machinery, providing it with the greatest opportunities to follow Commission decisions (see Adriaensen, 2016). In trade, this happens most prominently through the Trade Policy Committee (TPC), which is today active at all stages of the negotiations (Gastinger, 2016). Nevertheless, much of the literature on EU trade policy seems to point in the direction that member states focus on a limited number of chapters such as agriculture (see Conceição, 2010; Larsén, 2007), vehicles (Elsig and Dupont, 2012), or also political conditionality (Szymanski and Smith, 2005).

In terms of the breadth of EP interest, the opportunity-cost argument is even stronger given its inferior administrative capacity. In the past, it has focused on data protection (Ripoll Servent, 2014), intellectual property rights (Dür and Mateo, 2014) but also tried to influence the negotiations on vehicles with South Korea (Elsig and Dupont, 2012, p. 498). In the case of TTIP, it has bundled its resources and set up a ‘special monitoring group’ (Jančič, 2016, p. 900), which suggests a more widespread role. Finally, citizens have no direct bureaucracy to draw on in their pursuit of controlling agent decisions. While it can be argued that news media or non-governmental organizations (NGOs) perform similar monitoring functions for citizens at least in salient negotiations, they are hardly comparable to the centralized police patrols available to political principals. In summary and although TTIP has been in the limelight of all principals, we would still formulate:

H1 (opportunity-cost hypothesis): The Council is interested in more chapters than the EP, which itself follows more chapters than citizens.

Second, a specific pattern in the distribution of interest can be predicted by relying on the ‘chain of delegation’. The chain’s ends are easily defined by the ‘ultimate principal’

\(^3\) We owe this point to an anonymous referee.
(citizens) and the ‘ultimate agent’ (the Commission; see also Gastinger, 2017). But defining its intermediary steps is complicated by the EU’s multi-level nature, which gives rise to complementary, or even competing, chains of delegation (Dür and Elsig, 2011, pp. 331–332; Proksch and Slapin, 2011, pp. 56–57). Along this chain are nested PA relationships, with nodes being connected by ‘proximate principals’ able to modify the agent’s mandate (Nielson and Tierney, 2003, p. 249). In the case of EU trade politics, this refers to the Council and the EP. Citizens can either ‘leapfrog’ the Council and the EP to sway Commission decisions directly; or act as fire alarms by blowing the whistle on either of the two proximate principals. In fact, increasing the EP’s powers over trade can be viewed as the attempt to improve access for civil society (Meunier and Nicolaïdis, 2011, p. 282). Since the chain of delegation connecting citizens to the Council is far longer than the direct link with the EP, we expect citizens and the EP to reveal similar interests across chapters.

H2 (chain-of-delegation hypothesis): The EP and citizens are interested in largely the same chapters.

Third, we generate a hypothesis from the literature on the political economy of trade. Originally, trade agreements mostly dealt with ‘at-the-border’ measures such as tariffs, which limited mobilization largely to affected producers. Through the inclusion of regulatory ‘behind-the-border’ issues, trade agreements affected desired public policy objectives such as environmental protection and activated societal actors to engage in policy decisions (Young and Peterson, 2006, pp. 800–802). This in turn spurred research on citizens’ preferences, which can be driven by material or normative considerations. Materially, one can follow Heckscher-Ohlin or Ricardo-Viner models to predict that low-skilled workers or those employed in losing sectors should mobilize against trade agreements (see Mayda and Rodrik, 2005). Recent research, however, calls this reasoning into question and suggests that normative factors better predict opposition to trade liberalization, which has unclear distributional consequences and stokes up fears of lower environmental, labour or consumer standards (see Rho and Tomz, 2017; Spilker et al., 2016). Given the EP’s close link with citizens we would expect a largely similar dynamic in its case. For the Council, we expect a stronger focus on chapters with greater expected economic effects since affected producers will put pressure on governments to exercise control over agent actions to secure benefits and avoid losses (De Bièvre and Dür, 2005).

H3a (preference hypothesis): Citizens and the EP are interested in normative chapters.

H3b: The Council is interested in chapters with material effects.

Let us end this section on a cautionary note. We argue that interest is a key determinant in the PA relationship and a valid predictor of agent discretion most of the time. Nevertheless, we do not argue that interest always translates into lower agent discretion directly. Where principals learn that the agent’s actions diverge from their preferences and the agent does not budge to the principals’ demands, other factors move to the fore (such

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4 Since the thrust of TTIP is the establishment of closer regulatory co-operation and investment rather than ‘classical’ market access issues such as tariff reductions, gauging its economic impact is fraught with difficulty. However, the Sustainability Impact Assessment suggests that most sectors such as agriculture, energy, or services would be affected only marginally. The biggest winners would be textiles, vehicles, and chemicals, while sectors losing out comprise electrical machinery and (ferrous and non-ferrous) metals (Ecorys, 2017).
as tighter monitoring, threat of sanctioning mechanisms, agent strategies countering control efforts). In short, interest is a necessary but at times insufficient condition for reining in the agent. While mindful of this qualification, interest better accounts for the effects of rational anticipation and can be employed homogeneously across 27 chapters and multiple principals. This opens up interesting prospects for studying agent discretion, as we shall show in the remainder of this article.

II. Data: Disaggregating FTAs

When gauging interest across principals, the actor best placed to make such an assessment from a comparative perspective is the agent. Therefore, our primary source of information is 28 standardized surveys filled in between January 2016 and March 2017 by Commission officials negotiating TTIP. Since only around 100 Commission officials have been involved, our sample size represents around 30 per cent of the total population. Moreover, we triangulated this material with publicly available documents. We coded the Council negotiating directives, two EP resolutions, 443 written questions, and the meeting reports of the TTIP advisory group. Finally, we conducted a content analysis of German newspapers. We transformed numeric values into four equally-sized bins to measure interest intensity from high (H) over rather high (RH) and rather low (RL) to low (L).

To measure interest intensity across chapters, we had to break up TTIP into its component parts. Despite existing contributions splitting up FTAs (see, for example, Dür et al., 2014; Horn et al., 2010), we followed the classification used by the Commission to talk to our informants using familiar terms and to reduce the risk of conceptual misunderstandings. The negotiations were organized in 24 chapters grouped into three baskets. Mirroring the actual negotiating process, we refined the chapter on ‘trade in goods and customs duties’ into ‘trade in goods’, ‘trade in agriculture’, and ‘wine and spirits’, taking us to 27 chapters overall. Whenever possible, we avoided horizontal chapters (‘trade in goods and customs duties’ and ‘regulatory coherence’) in favour of more specific ones.

Surveying European Commission Officials

We approached the Commission in the summer of 2015. By January 2016, we had been offered the opportunity to circulate the link to an online survey per email (and one reminder three weeks later) to ‘nearly 100’ Commission officials directly involved in the negotiations. By 8 March 2016, we received 13 valid responses spread across 8 chapters. After the summer of 2016, we switched strategies and approached negotiators directly to gather data for the outstanding 19 chapters. By March 2017, we conducted 11 interviews of between 20 and 90 minutes.

5 The files necessary to reproduce all findings reported in this article are available as an online supplement from the publisher’s website or from Gastinger and Adriaensen (2018).
6 Commission email, 8 January 2016, on file with authors.
7 For one chapter we had three surveys, for three chapters two. In these cases, we computed the mean to report one value per chapter. Moreover, we do not provide answers for individual statements but report aggregate values to guarantee the anonymity of our respondents.
8 To identify individuals, we relied on two lists of TTIP negotiators published online by DG Trade on 20 October 2014 and 5 March 2015. These lists have since been taken offline.
9 One interview was a follow-up with someone who had earlier completed the online questionnaire. Once we asked an official to fill in two surveys given the limited number of negotiators for these two chapters.
at the publisher’s website, provides further details. Our survey material covers 23 of the 27 chapters.  

At the start of the survey, respondents selected one chapter and were asked to link their answers to that chapter specifically. Respondents were then presented with a series of statements asking them whether they ‘entirely agree’, ‘mostly agree’, ‘somewhat agree’, ‘neither agree nor disagree’, ‘somewhat disagree’, ‘mostly disagree’ or ‘entirely disagree’ with them. We had three to four statements per principal and measure interest intensity through the extent that respondents agree with them (see Table A2 in the online Appendix). Two caveats should be added. First, these data are prone to volatility due to the small total population, which means that we have mostly only one respondent per chapter. However, a series of Spearman correlations across our various indicators suggests a generally good fit with our survey data (except for the Council). Second, our respondents may have experienced a social desirability bias, leading them to over-report interest. As one interviewee verbalized, while the EP showed only little interest in the chapter ‘let’s pick somewhat agree here not to step on anyone’s toes’ (Interview, ID 37; similarly expressed by ID 20). The anonymity guaranteed to respondents should reduce this bias.

**Triangulation with Publicly Available Data**

For the Council, we coded the directives adopted before negotiations begin. Whether these directives constrain the Commission is unclear. Meunier argues that the level of flexibility granted to the Commission varies with member states’ desire to retain control (2005, p. 37). Others stress that directives are broad and the Commission enjoys a first mover advantage (see Delreux and Kerremans, 2010, pp. 369–370). We argue that negotiating directives could give us an indication of how interested member states are in individual chapters. The more time, effort, and eventually space member states reserve for an issue, the greater interest intensity can be argued to be. For the most part, the Council negotiating directives were the easiest document to code since member states and the Commission stuck closely to the structure of the negotiations. If in doubt, we consulted the Commission’s (2015) chapter-by-chapter guide to discriminate between chapters. If this did not resolve the issue, we discussed ambiguous passages until we arrived at a reasoned consensus. After cutting our teeth on the directives, we proceeded to coding other documents.

For the EP, we coded two TTIP resolutions. The first is from 23 May 2013 and precedes the Council negotiating directives by three weeks. The second resolution was adopted on 8 July 2015, just before the tenth negotiating round. We adopted the same approach as for the Council directives and used the number of words to measure interest intensity. Furthermore, we coded 443 written questions submitted by MEPs to the Commission and Council. Many questions concerned issues of transparency or procedure (e.g. whether TTIP will be mixed). However, MEPs also used written questions to learn more about individual chapters. We used the number of questions per chapter to measure

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10 The four chapters missing are: trade in goods and customs duties, trade in goods, wine and spirits (in the market access basket), and regulatory coherence. Since ‘trade in goods and customs duties’ and ‘regulatory coherence’ are horizontal chapters, we are less concerned about not having separate data. For cosmetics, the respondent did not answer all questions leaving us unable to report EP interest based on this data source.
interest intensity and coded one chapter per question, unless more issues were explicitly mentioned.

Citizens’ interest is the most difficult to operationalize. Ideally, one could rely on a representative poll among EU citizens, which is beyond the scope of this article. Eurobarometer polls are of no use since they only include a question on TTIP but not individual chapters. However, the Commission likely faces similar data constraints and will rely on indicators of (perceived) citizens’ interest itself. Civil society actors such as NGOs and journalists act as important catalysts (Dür and Mateo, 2014; Young, 2016) in this regard, which is why we focus on them in our empirical analysis. To approximate citizens’ interest, we first coded the meeting reports of the TTIP advisory group. This group institutionalizes access for civil society by bringing together 14 experts representing a balance between business and non-business interests. During each meeting, they get first-hand insight into the negotiations from Commission officials. The meeting reports are made publicly available online, which we coded across all 27 chapters. Since minutes are less carefully drafted than directives or resolutions and requesting information about a chapter is an instance of interest even if there were no new developments to report on, we coded whether chapters were discussed only in a binary fashion and used this information to measure interest intensity.

The advisory group’s composition could bias which chapters it follows. Since the meeting reports do not disclose which member was interested in which chapter, we have no indication of the size or direction of this bias. Therefore, we added a third indicator using the Lexis-Nexis academic database to conduct a content analysis of German newspapers. We picked Germany for two reasons. First, it is the biggest member state and has considerable influence in the EU. Interest among German citizens is therefore particularly likely to be noticed by the Commission. Second, it has seen some of the highest levels of politicization. Public support for TTIP is among the lowest three of all member states (European Commission, 2016, p. T90). This combination should guarantee that the Commission did feel constrained by citizens. By defining words representative of each chapter, we gauge interest intensity as mediated by the print media.

III. Analysis: of Principal (s’) Interest?

While FTAs are negotiated as package deals and each chapter is linked to all others, we find variation in principals’ attention across them. The Council’s level of interest is generally high and its role in the negotiations is best described as a safety net. By contrast, the EP and civil society are only interested in chapters such as agriculture, investment, and SD (see Table 1). Furthermore, the rather close fit (and timing) between EP and citizens’ interest suggests that the former provides scrutiny based on a fire-alarm system triggered by the latter. Two factors increase our confidence in the data. First, a series of Spearman correlations across our various indicators suggests a generally good fit between our surveys and the triangulated data (except for the Council). Had we not measured the same underlying concept (interest), we should not have obtained statistically significant results. Second, since the surveys take an explicit comparative perspective on the level of each individual chapter forcing the Commission negotiator (as ultimate agent) to evaluate interest of the Council, EP, and public side by side, it limits the likelihood that any differences observed are merely the consequence of our choice of measurement.
The Council as a Safety Net

Our survey material suggests that the Council’s interest in chapters is invariably (rather) high. Only for vehicles has Council interest been reported as rather low by the survey respondent (see discussion below). Member states are constantly informed through the TPC and Informal Technical Meetings. For example, in the SD chapter the Commission and Council set up an informal expert group organized by DG Trade that, while discussing trade agreements more generally, repeatedly discussed TTIP (Interview, ID 29). Moreover, there are technical debriefings with member states before and after each negotiating round on all issues subject to negotiation in that round (Interviews, IDs 20, 23, 27, 28, 36, 37, 38). Our interviews furthermore revealed inconsistencies as to whether these debriefings are viewed as formal or informal channels. While they are not a sitting of the TPC deputies, the individuals present are often identical and the rotating Council

Table 1: Variation in Principal Interest across Chapters as Indicated by various Data Sources

| Chapter             | Basket | Council | ND | EP | WQ | R13 | R15 | C | AG | MS |
|---------------------|--------|---------|----|----|----|-----|-----|---|----|----|
| Services            | MA     | H       | H  | RH | RH | H   | H   | H | RH | RL |
| TGCD                | MA     | RL      | L  | L  | L  | L   | L   |   |    |    |
| Trade in goods      | MA     |         | L  | L  | L  | L   | L   | RL|    |    |
| Agriculture         | MA     | RH      | L  | RH | RL | L   | L   | RH | L | RL |
| Wine and spirits    | MA     |         | L  | L  | L  | L   | L   |   |    |    |
| PP                  | MA     | RH      | RL | RL | L  | L   | RL  | RH | L | L  |
| Rules of Origin     | MA     | H       | L  | RL | L  | L   | L   | RL| RL |    |
| Chemicals           | RCOO   | H       | L  | RH | L  | L   | H   | RL| L  |    |
| Cosmetics           | RCOO   | RH      | L  | L  | L  | L   | H   | L |    |    |
| Engineering         | RCOO   | H       | L  | RL | L  | L   | RH  | L | L  |    |
| SPS                 | RCOO   | H       | RL | RH | H  | RL  | L   | H | RL | H  |
| ICT                 | RCOO   | H       | L  | RL | L  | L   | RH  | L | L  |    |
| Medical Devices     | RCOO   | RH      | L  | RL | L  | L   | RH  | RL| L  |    |
| Pesticides          | RCOO   | RH      | L  | RL | L  | L   | RL  | L | L  |    |
| Pharmaceuticals     | RCOO   | RH      | L  | RH | L  | L   | H   | RL| L  |    |
| RCOH                | RCOO   | RL      | RL | RL | RL | H   | L   |   |    |    |
| TBTs                | RCOO   | H       | L  | RL | L  | L   | L   | RH | RL| L  |
| Textiles            | RCOO   | RH      | L  | RL | L  | L   | RH  | L | L  |    |
| Vehicles            | RCOO   | RL      | L  | RH | L  | L   | H   | RL| L  |    |
| Competition         | Rules  | H       | L  | H  | L  | L   | RL  | L | L  |    |
| CTF                 | Rules  | H       | L  | RL | L  | L   | RL  | L | L  |    |
| ERMs                | Rules  | H       | L  | RH | L  | L   | RL  | H | RL | RL |
| GGDS                | Rules  | RH      | L  | H  | L  | L   | RL  | L | L  |    |
| IP&GIs              | Rules  | H       | RL | RH | H  | RL  | L   | H | L  | L  |
| Investment          | Rules  | H       | H  | H  | H  | L   | RL  | RH | H | H  |
| SMEs                | Rules  | RH      | L  | RH | L  | L   | H   | RL| L  |    |
| SD                  | Rules  | H       | H  | H  | RL | L   | RH  | H | H  |    |

Notes: Abbreviations: AG – advisory group, C – citizens, CTF – customs and trade facilitation, ERMs – energy and raw materials, GGDS – government-government dispute settlement, H – high, ICT – information and communication technology, IP&GIs – intellectual property and geographical indications, L – low, MA – market access, MS – media study, ND – negotiating directives, PP – public procurement, R13 – EP resolution 2013, RCHO – regulatory coherence, RCOO – regulatory cooperation, R15 – EP resolution 2015, RH – rather high, RL – rather low, SD – sustainable development, SMEs – small and medium-sized enterprises, SPS – food safety and animal and plant health, TBTs – Technical Barriers to Trade, TGCD – Trade in goods and customs duties, WQ – written questions.

Source: Authors’ own calculations.
presidency is in the chair (Interview, ID 14). Contacts with member states also occur *ad hoc* (emails, phone calls).

The negotiating directives present a very different picture. Here the Council appears to follow most chapters only cursorily, with interest peaking in trade in services, investment, and SD. The Spearman correlation coefficient between the directives and survey responses is rather low (0.24) and statistically insignificant (see Table A3 in the online Appendix), which suggests that the indicators do not measure the same underlying concept. In our interviews, we also raised the role of the negotiating directives. Generally, respondents declared that they are a useful guideline or, even more, the ‘basis for the whole negotiations’ (Interview, ID 14). However, officials also pointed out that directives only provide a ‘general orientation’ and lack necessary detail, which is supplemented by member states during the negotiations (Interviews, IDs 20, 24). Furthermore, negotiators can be expected to be aware that today negotiating directives can become public rather easily, be it through hacking, deliberate disclosing (‘leaking’), or requests by third parties such as the EP or citizens. This could entail that directives are no longer used exclusively as a form of Council control but drafted with a wider audience in mind. Overall, we tend to discount the negotiating directives as a valid indicator of Council interest.

The limited attention to vehicles expressed in the survey is rather surprising in light of past research (Elsig and Dupont, 2012). This could point in three directions. First, since this sector was identified as one of the biggest winners in the Sustainability Impact Assessment (SIA), it may have attenuated lobbying efforts since producers mobilize more against losses than in pursuit of gains. Second, since vehicles were a central sticking point in the recent negotiations with South Korea, the respondent may have ranked statements in relation to other trade agreements. Third, it could simply be a more cautious estimate of the survey respondent. On the whole, and considering that the mechanisms through which interest plays out are relatively well known to us (TPC, technical debriefings), we support the interpretation that member states attentively follow all chapters. That the Council is interested in the negotiations across the board confirms our expectation that, due to its superior administrative capacities, member states can scrutinize agent actions comprehensively. Since the Council is also interested in normative chapters, we can already refute H3b.

**The EP: Following Services, Foodstuffs, and (Later) ISDS and SD**

Our survey of Commission officials suggests that, generally, the EP shows less interest across all chapters. Its distribution, however, is more uneven with peaks for competition, government-government dispute settlement (GGDS), investment, and SD. For investment and SD, the peaks are largely confirmed by our alternative data sources. The peaks for competition and GGDS are more difficult to reconcile with our alternative data. Our interviews allow us to say more about these deviations. For GGDS, the EP was primarily interested in whether the United States could sue the EU over banning hormone-treated beef after TTIP (Interview, ID 27), which we generally coded as part of the Sanitary and Phytosanitary Measures (SPS) chapter, unless specifically focused on dispute settlement.13 For

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11 One interviewee categorically denied the existence of informal channels as such (‘there are no informal discussions; no hidden agenda’; Interview, ID 36). This shows how sensitive this question can be in the case of TTIP.

12 Unfortunately, we had no chance to interview the Commission official in question.

13 The European Commission’s (2015, p. 22) chapter-by-chapter guide similarly treats hormone-treated or genetically modified agricultural products as part of food safety rules.
competition, the EP really could be more interested behind the scenes than our alternative data suggest (Interview, ID 23).

The first EP resolution of May 2013 was very short, limiting itself primarily to trade in services (audiovisual and cultural, financial, maritime and air transport). By July 2015, the EP had drafted a resolution about three times longer than the first. Interestingly, however, the proportions dedicated to each chapter have changed only little. The only chapter improving by two grades (from L to RH) is SD, which includes environmental issues and labour standards. While this is confirmed by our survey material, SD has not been a major issue in the written questions (see below). This could point towards a declaratory purpose in the second resolution. Moreover, Spearman’s rho reveals that the second resolution correlates most strongly with the Council negotiating directives (0.71 significant at the 0.01 level). This value is lower for the first resolution (0.57 at the 0.01 level), which suggests that the EP became more conventional and moved towards the Council over time.\(^{14}\)

The second resolution also points to a serious weakness of our approach. While the investment chapter received scant attention as far as the number of words is concerned, it asked for a qualitative change in the negotiations by calling on the Commission to replace the ISDS with a more democratic version including independent judges, public hearings, and an appellate mechanism. While short on words, the political impact of including these demands in the resolution is difficult to overestimate.

While the resolutions are a product of the EP collectively, written questions allow MEPs to stay abreast of – and potentially influence – chapters on an individual basis.\(^{15}\) Services form a centre of attention also in the written questions. Importantly, this includes ‘services of general economic interest’ such as water, health, and education, which also feature prominently in the EP’s second resolution. This interest was also confirmed by the Commission (Interview, ID 39). The second focal point for MEPs can be summarized under the term ‘foodstuffs’, meaning the chapters on agriculture (market access), SPS, and geographical indications, such as Ardennes ham or Ragusan pecorino cheese. Almost one quarter of all questions were related to foodstuffs. Third, the preoccupation with ISDS comes out rather clearly. Generally, and again drawing on Spearman’s rank correlation coefficient, the written questions correlate above 0.5 and are statistically significant (at a 0.05 level) with the survey and resolutions. The highest correlation (0.66 significant at the 0.01 level), however, can be found with respect to German print media. This underlines the overlap between EP and citizens’ interest in the negotiations.

With respect to our opportunity-cost hypothesis, we can already confirm that the EP is interested in fewer chapters than the Council. Moreover, interest seems lower for more technical chapters that require specific expertise (and thus extensive administrative capacity), such as ‘Rules of Origin’ or ‘Customs and Trade Facilitation’. Whereas domestic regulation on pesticides (‘glyphosate’) has recently sparked off extensive debate in the EP, it did not trigger much interest in the TTIP negotiations. While the

\(^{14}\) While we generally do not account for longitudinal changes with our research design and focus fully on capturing variation across chapters, the fact that the two resolutions have been adopted around two years apart enables us to offer some observations on temporal dynamics.

\(^{15}\) Written questions are disproportionally used by MEPs of parties that are in opposition in their home states and regarding salient issues (Font and Durán, 2016; Proksch and Slapin, 2011). Since we are interested in variation across rather than within principals, we do not account for such factors in this research project.
EP was nevertheless interested in normative chapters such as SD and ISDS,\(^{16}\) it seemed also guided by more material concerns such as the protection of geographical indications and services, even if these sectors were, on a European-wide scale, not identified as big potential winners (or losers) by the SIA. We therefore tend to reject H3a for the EP.

The Citizens: Interested in Food Safety, ISDS, and SD

Our survey data suggest generally high levels of citizens’ interest across most chapters. However, we have reason to believe that these survey responses were biased upwards. When asking respondents whether they ‘organize’ meetings with civil society, some may have answered with the ‘Civil Society Dialogue’ in mind (Interviews, IDs 28, 29, 37).\(^{17}\) On average, however, our surveys seem to accurately capture citizens’ interest because Spearman’s correlation coefficient is rather high and statistically significant regarding our two alternative indicators, namely the advisory group and German print media study (0.57 and 0.54, respectively, both significant at the 0.01 level).

The advisory group’s interest peaks in services, regulatory coherence, investment, and SD. While distributed more evenly across chapters, the group nevertheless seems to reflect citizens’ interest better than we anticipated based on its composition. Our final indicator is a study of German print media, where interest clusters around three chapters. First, issues of food safety (part of SPS) feature highly in the newspapers. An iconic example is the ‘chlorinated chicken’, which has long been synonymous with TTIP in the German public debate. In contrast to the EP, geographical indications played virtually no role, which may be explained by our focus on Germany. Countries more dependent on agricultural exports may exhibit greater interest in this chapter.\(^{18}\) Second, ISDS was very much in the public eye. It was eventually replaced by the Investment Court System (ICS) championed by the Commission. Whether this is an instance of leapfrogging (citizens directly affecting Commission behaviour) or fire alarms (concerns picked up by the EP, which in turn steers the Commission) cannot be resolved from our data. However, the fact that the EP included this point in its second resolution points towards the latter. Either way, we see in this a notable example that citizens can impact international negotiations. Third, the SD chapter featured high in Germany. Here the debate focused on the environment. Labour standards played only a subordinate role.\(^{19}\)

Since citizens are clearly interested in the fewest chapters, we can confirm H1 at this point. The distribution of interest really seems conditioned by the underlying administrative capacities of each principal. Moreover, the specific pattern of interest between citizens and the EP clearly overlaps more than compared to the Council, therefore also confirming our chain-of-delegation hypothesis. Finally, we see H3a confirmed for

\(^{16}\) We consider ISDS more of a normative chapter since it was primarily framed in terms of sovereignty concerns, such as, preserving the EU’s ability to pursue legitimate public-policy objectives independent of foreign investors.

\(^{17}\) DG Trade organizes about 20 meetings per year with civil society representatives.

\(^{18}\) We looked for literal translations (geschützte Ursprungsbezeichnung, geschützte geograﬁsche Angabe) and speciﬁc examples, such as (Spreewälder) Gurken, (Nürnberger) Lebkuchen, (Thüringer) Rostbratwurst or (Schwarzwälder) Schinken. Neither approach yielded a significant number of hits in Lexis-Nexis.

\(^{19}\) The two most frequent search terms in the SD chapter were Umweltschutz (environmental protection) and Umweltstandards (environmental standards).
citizens since they were not mobilized along material lines but responded strongly to ideational cues.

Conclusion

In this article, we have studied Commission discretion by relying on ‘interest in a decision’ by principals as a proxy for agent discretion. This allowed us to address the high-conflict bias of in-depth case studies running through much of the PA literature and better account for the ‘invisible’ effects of rational anticipation. At the same time, we measured discretion much finer than analyses of the formal act of delegation. Our empirical findings highlight that all chapters of TTIP have attracted considerable attention from at least one principal and that, as a result, Commission discretion should be considered rather limited. Moreover, the specific distribution of interest across chapters among multiple principals is a noteworthy finding of our work. The Council and its member states, with their extensive administrative apparatus, act as a safety net by maintaining rather high levels of interest across all chapters. This in itself already considerably curtails the Commission’s room for maneuver. While this form of sweeping police-patrol surveillance is costly, it also sharply reduces the potential for agency losses. The EP and citizens, despite according great importance to TTIP, focus only on selected chapters. This further limits Commission discretion by forcing it to operate in an even more densely populated policy space. EP interest seems driven by normative but also material concerns. Citizens, on their part, are not mobilized along material lines but respond strongly to ideational cues. Interestingly, citizens’ interest appears to be a sufficient condition for EP interest, underlining their direct link in the chain of delegation. Still, their selective attention can lead to a skewed perception of the value of FTAs overall.

Above and beyond questions of intra-principal variation (which member states, MEPs, citizens follow which chapters?) and how successful individual principals are in translating interest into policy influence, our study brings to the fore two venues for future research. In chapters not followed by the EP and citizens, reducing the PA relationship to the Commission-Council dyad remains a useful simplifying assumption. Given that the EP and citizens only focus on a small subset of issues, research exclusively focused on Commission-Council interactions should still feature high on our agendas. Nevertheless, while we have found widespread Council interest across all chapters for TTIP, future research should test whether this finding holds in a less politicized and more asymmetric context. It would also be interesting to probe whether the high interest in TTIP led to decreased Council interest in other decisions, as the opportunity-cost argument suggests.

Chapters followed by the EP and/or citizens, on the other hand, require more attention to inter-principal dynamics. If a chapter is followed by the EP and citizens and their preferences align (sooner or later), do the Commission and the Council (have to) concede the chapter? Is the EP’s success in shaping the negotiations, to some extent, conditional on backing from the civil society? Asking the other way around, can citizens directly affect the negotiations (‘leapfrogging’) or do they necessarily need the EP and/or Council (‘fire alarms’)? This goes to the heart of the question of whether the Commission looks towards civil society to determine its own course of action, as is suggested by new modes of interaction such as the advisory group. An understanding of which chapters are of whose principal(s’) interest is a good step forward for identifying such venues for future research.
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**Interviews**

ID 14, European Commission official, 15/11/2016 (telephone)
ID 20, European Commission official, 05/10/2016 (telephone)
ID 23, European Commission official, 11/11/2016 (telephone)
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ID 27, European Commission official, 09/11/2016 (telephone)
ID 28, European Commission official, 08/11/2016 (telephone)
ID 29, European Commission official, 11/11/2016 (telephone)
ID 36, European Commission official, 02/12/2016 (telephone)
ID 37, European Commission official, 08/03/2017 (telephone)
ID 38, European Commission official, 22/12/2016 (Brussels)
ID 39, European Commission official, 20/01/2017 (Brussels)
Please refer to the online Appendix for additional information.

**Supporting Information**

Additional supporting information may be found online in the Supporting Information section at the end of the article.

**Table A1:** Interview methods table with European Commission officials
**Table A2:** Exact wording of the statements included in the survey instrument
Additional information on sources used for triangulation
**Table A3:** Spearman correlation matrix for all indicators of interest reported in the article

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Data S1. Also available are the following files (replication_files.zip):

- **survey.csv**
  Chapter-by-chapter data on interest in the TTIP negotiations by the Council of the European Union, the European Parliament, and European civil society. Based on 28 standardized surveys with European Commission officials involved in the TTIP negotiations.

- **negotiating_directives.csv**
  Chapter-by-chapter data on the negotiating directives issued by the Council of the European Union for the TTIP negotiations.

- **EP_resolutions.csv**
  Chapter-by-chapter data on two resolutions adopted by the European Parliament concerning the TTIP negotiations.

- **written_questions.csv**
  Chapter-by-chapter data on written questions filed by Members of the European Parliament on the TTIP negotiations.

- **advisory_group.csv**
  Chapter-by-chapter data on discussions in the TTIP advisory group, based on their meeting reports.

- **media_germany.csv**
  Data on the prevalence of individual chapters in the German print media, extracted from Lexis-Nexis.

- **ttip.R**
  The R script.

- **sessionInfo.txt**
  Version information about R, the OS and attached or loaded packages.