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Introduction

The relationship between European institutions and interest organisations differs from those of comparable administrations in the extent of reliance upon them for both output and input legitimacy. The European Commission's roles in policy formulation, implementation and monitoring make for the most important relationship among EU institutions and interest organisations, in which its use of interest groups as political supporters and messengers is also noteworthy.   The Commission has developed a system over the past decade to structure its relationship with 'interested parties', in which two-way information flows are central. Does detailed scrutiny of the procedures involved find information exchange regimes designed (the 'constitutive politics') and operationalised (the 'operational politics') to maximise benefits in favour of the Commission?   To what extent does the emergence of the rules and the ways in which they are translated into practice reflect changing goals by the European Commission of its information exchange regime? These questions are answered by identifying and assessing the changing constitutive and operational politics of the main procedural regimes involved: impact assessments, together with their embedded consultation component as well as procedures for use of expertise; and transparency related regimes of access to information, as well as the Transparency Register of 'interested parties'. **The European Commission and Interest Organisations**

The need of any administration for technical and political information is well noted.   For the European Commission, the compact size of the administration relative to the functions it undertakes (Nugent, 2010), as well as systemic remoteness from civil society, places a premium on easily available sources of information. Interest organisations in Brussels provide a ready source for both formal and informal types of information. So as to avoid over-dependence upon a single organisation, it has helped to build a teeming population of interest groups, through which it can, inter alia, subject the information which it receives to detailed scrutiny by countervailing interests. This information helps it to work out whether and which policy proposals are likely to work and to succeed in the political process. The Commission's intense need for political support arises from the skew of EU competencies towards regulation and the ways in which these distribute costs and benefits upon different groups of stakeholders. Where its proposals concentrate costs, the Commission needs to counteract lobbying from entrenched interests by mobilising the often diffuse and latent constituencies likely to benefit from its proposals. It therefore devotes substantial energies to nurturing the establishment of a well populated interest group community. Stakeholders interested in the likely outcomes of European integration can also be used as political messengers aimed at influencing the positions which member states take up in EU decision making, and for expanding the frontiers of the EU through further competencies in the Treaties.

Because citizens are poorly connected with the Commission, there is reliance upon interest groups as a proxy. The unusual extent of this reliance is most evident from the resources provided by the Commission to maintain non-governmental organisations (NGOs), with the key 'umbrella' groups receiving more than three-quarters of their income from the Commission (Greenwood, 2011b).   The reliance upon 'outside interests' is evident in a variety of Commission communications of varying status dating from 1992 (European Commission, 1992; 1997; 2000, 2001), in which the Commission progressively seeks, in the title of the first of these, 'an open and structured dialogue between the Commission and special interest groups'. The last of these, the 2001 White Paper on Governance, was a landmark change in which a drive towards participation was intended to enhance the legitimacy of European governance as well as its effectiveness (Heidbreder, 2012). This led to the development of a system of procedures for the involvement of 'interested parties', the Commission's currently preferred term to denote a wider reach than interest groups, in which civil society is both an active policy collaborator in governance and an agent of a European public sphere (ibid.). Nonetheless, the lack of popular engagement with the EU means that many of the procedures since the 2001 White Paper have been centred on pluralist principles of checks and balances, with groups well equipped with technical knowledge in their field as well as detailed knowledge of the political procedures of the EU. These also perform wider democratic functions, by acting as a check and balance on the power of each other, as well as acting as an 'unofficial opposition' in a political system otherwise lacking one. Thus, procedures for access to documents, for instance, empower requesters to acquire documentation from EU institutions and enhance the ability of civil society to act as systemic accountability agents, but in practice require interest organisations with sufficient resources for full time staff with EU policy knowledge to trawl through registers of documents on *Europa*. Whilst a variety of different services of the Commission have their own structures to communicate with interest organisations, these operate within a system of rules generally applicable across the Commission.

Impact Assessments with Consultation

An analysis of the constitutive politics of the regime for impact assessments of legislative proposals, in which systems of consultation are embedded, is followed by an outline and review of the operational politics of these schemes. Impact assessments (IA) provide the Commission with an analysis which seeks to justify its legislative proposals in concept and detail to civil society, while the consultation component provides a flow of information to the Commission in the other direction. Partly for this reason, the operational politics of the two procedures are considered under separate sub-headings below; the other reason is that consultation procedures are also applied outside of the context of impact assessments, such as when Green Papers are issued.

Constitutive politics: the originating frames

A key distinction concerns the role of outside interests in policy initiation versus their role in policydrafting. In the former, potential beneficiaries of proposed regulation use the European Parliament and the Council of Ministers to feed ideas and frames into the system in a rather unstructured way, seeking to use their leverage upon the European Commission's sole right of initiative.   When the Commission drives the direction of policy, so the need for detailed input to firm up its options and sharpen legislative proposals, as well as broader legitimacy, requires

intensive input from a wide range of outside interests (see also the chapter by Gornitzka and Sverdrup in this volume). It is therefore in the policy drafting stage that a structure of procedures has emerged to ensure that everyone has a chance to make their voice heard.

The origins of the drive for procedures can be traced back to a High Level working group in 1992, which had complained of inadequate and intermittent information flows as well as ad-hoc consultation, leading to an unpredictable and confusing process, and a wider public which was ill-informed (Sutherland Report, 1992). This had created a situation where stakeholders needed to locate the relevant policy-makers and develop their own bilateral relations with them, requiring resources for intensive networking. The Secretariat General's response, *'An Open and Structured Dialogue between the Commission and Special Interest Groups'*, sought to 'place these relations on a more formalised footing which will make them more transparent for the benefit of all concerned' as well as 'broadening participation in the preparation of Commission proposals' (European Commission, 1992, p.1). The 2001 White Paper on Governance (WPG) developed this latter participatory theme 'to connect Europe with its citizens' (European Commission, 2001, p.3) through 'better involvement and more openness' (ibid., p.4). The WPG also has discourse about how to manage participation, noting how 'consultation helps the Commission and other Institutions to arbitrate between competing claims' (European Commission, 2001, p.15).

Whilst the orientation of the WPG was more towards input legitimacy, another important strand of contributory thinking emerged which shaped the information exchange regime between the Commission and outside interests. The High Level Mandelkern Report of 2001 was established in response to member state criticisms of the quality of policy initiatives from the Commission (Radaelli, 2004), and whose recommendations came downstream in a regime for impact assessment embedded within a frame of 'better regulation'. Impact Assessments are presented on the Commission web site as a means to 'guide the policy-making process through an open analysis of the options and provides a discipline to ensure that economic, social and environmental factors are fully taken into account' (European Commission, 2012a).

Thus, the WPG concerns with input legitimacy were mixed with the Mandelkern concern with output legitimacy. Both of these aspirations are clearly evident in the detail of the regimes structuring information flows between the Commission and outside interests, in which a 'system' is clearly visible for the entire process of interactions. In 2002 a series of standards were introduced for the use of expertise, and for consultation, and which became embedded in a regime of Impact Assessments introduced in 2003 aimed at ensuring that policy options were informed by a sound evidence base. These procedures have developed through a series of incremental reforms, each reflecting predominant concerns at the time with output or/and input legitimacy. Whilst the procedures have become standard policy norms, they are not underpinned by legal provisions, although the extent to which they might be viewed as enforceable in the event of a test case before the Court of Justice remains an open question (Tanasescu, 2009).

Legislative notification and Impact Assessments

The first step in the legislative process is for all new initiatives to be announced in advance through the annual publication (available on the internet) of a forward 'Commission Legislative Work Programme' (CLWP), ensuring that knowledge of future regulatory initiatives is provided in sufficient

time for actors not among the 'usual suspects' in Brussels.   The CLWP notification includes an 'Impact Assessment Roadmap', within which the proposed means of consultation is laid out, ranging from public to specialised consultation or mixes of these. The results from such consultations are published within an Impact Assessment report alongside the final legislative proposal, and should include an explanation as to how they influenced the policy choices taken. Whilst the final impact assessment report is not subject to consultation, stakeholder organisations and member states sometimes undertake their own impact assessments, and make these available within the public domain as a basis to seek to amend a legislative proposal. In an exceptional case involving a highly politicised issue,the Council presidency created a forum for discussion of these (Tanasescu, 2009).

The decision as to which types of initiatives require an Impact Assessment is made on an annual basis, but the extent of reach of applicability of IAs is evident from the 'Impact Assessment Guidelines' (European Commission, 2009a):

> *'In general, IAs are necessary for…all legislative proposals of the Commission's Legislative and Work Programme (CLWP) and for all non-CLWP legislative proposals which have clearly identifiable economic, social and environmental impacts (with the exception of routine implementing legislation) and for non-legislative initiatives (such as white papers, action plans, expenditure programmes, negotiating guidelines for international agreements which define future policies). It will also be the case for so called implementing measures (so called 'comitology' items) which are likely to have significant impacts. '* (European Commission, 2009a, p.6).

The guidance manual accompanying production of IAs comprises 66 pages, revealing a highly detailed process involving the production of a report with seven sections of approximately thirty pages in length, plus appendices, (European Commission, 2009a). These sections require details of: consultation undertaken with interested parties; a justification of why the problem needs to be resolved at EU level (the 'subsidiarity test'); the policy options; an analysis of the economic, environmental and social impacts, constituting the longest section; a comparison of the options; and arrangements for monitoring and evaluation.   The impact analysis section of the guidance manual requires the identification of 'winners' and 'losers', and sub- sections for analysis of the effects upon, *inter alia*, social inclusion, gender equality, participation and governance. On such matters the guidelines instruct that the consultation of NGOs is essential, with the publicly available manual ensuring that such standards will be enforced.

The production of an impact assessment report is accompanied by mechanisms of support and oversight. The different services of the Commission have a designated Impact Assessment (IA) support unit for reference about the analysis of impacts upon their own policy field, while the Secretariat General has a centralised support unit. A member of the support unit for the service responsible for producing the IA has to participate in an Impact Assessment Steering Group (IASG), alongside members drawn from different departments of the Commission whose remit is affected by the policy proposal under consideration, or where the Commission has pledged to integrate a particular concern (e.g. gender) by 'mainstreaming' it into all policy proposals. The Steering Group is formed at the start of the process and is involved throughout the different phases of impact assessment. The minutes of the final IASG considering the final report are then appended to it and

forward to an Impact Assessment Board (IAB) for oversight of the process undertaken and quality of the report, comprised of Commission officials from economic, social and environmental departments. The Board holds a formal hearing, preceded by meetings with the authors of the Impact Assessment report. Boards are empowered to require a re-start of the impact assessment process or to re-design elements of it (European Commission, 2009; European Commission, 2010), and the final report must include details of how the proposers made changes to the report following the Board's comment. A positive evaluation is required from the IAB before being sent to the responsible Commissioner to consider if a legislative proposal is necessary and what form the instrument might take, and before any proposal enters into inter-service consultation. The scrutiny of the quality of each Impact Assessment is published online, and includes the assurance of conformity with consultation standards developed in 2002. The work of IABs is in turn subject to scrutiny by the Court of Auditors, as well as an increasingly active oversight role exercised by European Parliament Committees. Together, these procedures ensure thorough consideration of policy options based on informed analysis and public reasoning of alternatives.

The first Commission guidelines were produced in 2003, with revisions to reflect incremental reforms to the regimes issued in 2005, 2006 and 2009. Impact Assessment Boards were introduced in 2006, and their role strengthened in 2009. An external evaluation conducted in 2007 resulted in implementing recommendations for targeting the use of analytical resources in proportion to the significance of the proposal, the initiation of IAs earlier in the policy cycle, and improved access to data sources. One change introduced to implement the latter has involved extending the use of external consultants to increase the plurality of views, and ensure that IAs would not be tailored to predetermined policy choices

A Strategic Review in 2008 involving public consultation on the IA process resulted in changes being introduced to the 2009 Guidelines involving: reinforcement of feedback mechanisms and the importance of seeking alternative approaches from NGOs; improving the assessment of social impacts, those involving fundamental rights, impacts upon SMEs as compared to large firms, and impacts upon regional and local authorities; greater quantification of impacts; and greater use of external expertise to validate methodologies (European Commission 2008; 2009b). Annual reports on the impact assessment process include examples of the ways in which legislative proposals have been halted or downgraded as a result of conducting IAs, together with scrutiny from IABs. Over one third of reports required resubmission during 2011, and 41% of reports required substantial changes (European Commission, 2012c).

The consultation regime is defined by a Commission Communication in 2002 with reference to Amsterdam Treaty Protocol 7, making it an obligation that 'the Commission should consult widely before proposing legislation' (European Commission, 2002b). The 2002 reference document states that the guiding principle for the Commission is that of 'a voice but not a vote' for interested parties. There are five general minimum standards:

- the content of consultation is clear;
- relevant parties have an opportunity to express their opinions;
- the Commission publishes consultations widely in order to meet all target audiences, in particular via the web portal "Your Voice in Europe", which is the Commission's single access point for consultation;
- participants are given sufficient time for responses; and
- acknowledgement and adequate feedback is provided (European Commission, 2002b)

The Commission's internal guidance manual for the conduct of Impact Assessments does not suggest an instrumental approach to these information exchanges. In 2010, the period for public consultations was extended from 8 weeks to 12. Advice to would-be policy-makers demonstrates the Commission's interest in maximising and broadening information flows. It includes recommendations such as to ensure to engage all affected stakeholders and to treat them on an equal footing, and to make sure that consultation covers the entire policy-making process.

The 2002 Communication reinforces the Commission's wish to pluralise information sources by stating that "the Commission will avoid consultation processes which could give the impression that 'Brussels is only talking to Brussels" (European Commission, 2002b, p.12). A very recent review of consultation procedures reflects the general direction of travel in commenting that 'it is essential to seek the whole spectrum of relevant stakeholders' views so as not to be unduly influenced by any specific interests' (European Commission, 2012b, p.12). Notable, moreover, is a change of discourse over time, with a preference now for the term 'interested parties' rather than 'special interest groups', and in which the term 'citizens' now always precedes that of 'stakeholders' or 'interest groups'.

Consultation instruments can be grouped together into two categories: those open to the general public, and 'focused' consultations targeted at more specialised audiences. Historically, focused consultations have predominated, partly based on a legal obligation to consult with comitology committees in certain circumstances, but there is now a presumption towards public consultation (European Commission, 2009). Open public consultation was used in three quarters of all impact assessments (European Commission, 2012b), with 90% of all impact assessments also involving targeted stakeholder consultation, often during later stages of impact assessment. These are considered in turn.

Public consultations are conducted in written form, where explanatory papers (Communications, Green Papers) have structured questionnaires which accompany them, or where comment is invited through a structure of specific questions.   The centrepiece of public consultation is a website, *'Your Voice in Europe'*, in which policy documents are placed and responses invited. An apparent anomaly

is that this website is hosted by DG Markt, whereas the concept and practices of participatory governance, including impact assessments and relations with civil society, are hosted and driven by the Secretariat General. This reflects the dual heritage of consultation instruments as rooted in both output and input legitimacy concerns.

A 2012 open public consultation survey on the revision of the tobacco products Directive attracted a record high of 85,513 responses. With such a volume, the impact of an individual response is likely to be minimal, such that diversity of responses provides room for manoeuvre for political institutions. Quittkat and Kotzian argued that participation in online public consultations by the 'usual suspects' in Brussels was primarily to be seen to be 'playing the game' hoping to get access to, or a role in, the second tier of focused (non-public) consultations (Quittkat and Kotzian, 2011). This follows an earlier line of reasoning by Broscheid and Coen, casting the procedures as seeking to accommodate a growing demand for public participation, but which are in reality little more than a façade, behind which a dialogue continues with insiders in more specialist consultative fora (Broscheid and Coen, 2003). As is argued later, the first stage does more than this in that it pluralises sources of information flows for both input and output legitimacy purposes.

Consultations focused on target audiences are an instrument of choice when the issues are of such a technical nature that they are inaccessible to a wider lay public. Specialist consultative fora can include meetings of/with experts (see also the chapter by Gornitzka and Sverdrup in this volume), and/or stakeholders, in formal and informal, regular and ad-hoc settings. The choice of stakeholders invited to attend informal settings is also vested in the Commission.   The new Transparency Register provides it with the discretion not to include those from organisations which are not registered, although this appears more designed to incentivise further registrations. In practice, participation in the fora is much sought after by stakeholders, because it is here where the fine detail of policy issues is debated.   In an analysis of the Health Policy Forum, hosted by DG SANCO of the European Commission, Greer found that the design of meetings was somewhat favourable to NGOs, with a section of the meetings reserved for discussion of items proposed by them (Greer, 2009). However, it is not only pluralisation of information flows which can be achieved through specialist consultative fora. From the Commission's perspective, it is here where stakeholder participants from quite different perspectives can engage in interactive discourse, and come to understand the variety of constraints to which the Commission is subject to in reaching its policy decisions. They are therefore of significant value in helping to build consensus.

Once a consultation is closed, on-line links are provided to a follow up page which is supposed to contain, inter-alia, information about consultation responses, a consultation report within the Impact Assessment, and the final legislative proposal. However, there are a number of issues with implementation. Practice in publishing the responses received to consultation exercises varies; in 2011, this happened in approximately two thirds of all consultations (European Commission, 2012b). Apparently, practice in publishing the reports on the consultation exercises themselves is also variable. A survey in 2008 by Hüller and Quittkat found that less than 40% of online consultation reports were publically available (Hüller and Quittkat 2009; Quittkat, 2011), despite the inter-institutional agreement of 2003 recording that the results of consultations will be made public (Official Journal C321/4 of 31.12.2003, paragraph 26).   The Commission's own figures state a higher

level, with 58% of summary consultation reports published in 2011 (European Commission, 2012b). Nonetheless, the latest review of consultation identifies the main problem for the consultation regime as a whole being one of implementation rather than conception, identifying measures designed to strengthen enforcement for publication of summary consultation reports (ibid.).

In a review of all impact assessments during the first three years of the regime, the Centre for European Policy Studies (CEPS) was able to trace from consultation reports how stakeholder input had made a difference in half of all IAs in the sense that it had resulted in a change to the choice of the regulatory option or a major change to the final proposal (Renda, in Tanasescu 2009, p.217). Hüller and Quittkat's review proved less able to identify from summary reports much beyond minimal reasoning as to how the consultation results influenced policy choices (Hüller and Quittkat, 2009). However, the CEPS study noted how stakeholders who had participated in a targeted consultation were more likely to rate the impact of these exercises as transparent when compared to participants in open public consultations, and the issue may therefore be one of communicating how stakeholder consultations made a difference. The conclusion of the CEPS study is supported by an external evaluation finding that stakeholder involvement improved the quality of impact assessments (Jacob et al, 2008; cf Tanasescu, 2009, p.223).

Undoubtedly, there has been a growing focus over time in Commission procedures with input legitimacy in addition to its traditional needs for output legitimacy, as well as a shift from regulatory EU competencies towards those which have more salience in electoral politics. The need to safeguard channels of specialist information (in which the needs for output legitimacy over-ride those of input legitimacy) may be less of a driving concern. In a similar vein, Bouza-Garcia sees in consultative procedures an original design orientated towards output legitimacy, but adapted over time towards input legitimacy purposes (Bouza Garcia, 2012). It is a *sine qua non* of the latter purpose that procedures demonstrate even-handedness, and the need to demonstrate this increases the extent to which the Commission can insulate itself from special interest pressures (Grande, 1996). The greater the degree of pluralisation, the more the sources of information diversifies and multiply, and the more the Commission's room for manoeuvre. In addition, the discretion for the Commission in choosing its consultative instruments strengthens its ability to control the flow of information to suit its purposes. Conversely, the implementation deficits in providing information from the consultation process inevitably limit the flow of information the other way.

Acquiring and Providing Information: Access to Documents and the Transparency Register

The 2001 Access to Document Regulation increases the flow of information from the Commission to interested parties as a means of increasing public knowledge and discourse, whereas with the Transparency Register the flow of information goes in the other direction, as well as to place information in the wider public domain about those seeking to influence the public policy making and implementation of the EU institutions.

Directive 1049/2001 on Access to Documents

The Access to Documents measure addresses information asymmetries by making the Commission's work, as well as those who engage with the Commission, more easily accessible to scrutiny, subject to various safeguards. It is facilitated by a web searchable register of documents, and a very short e-submission form, which allows requesters to obtain documents held by the Commission within 15 working days of asking for them.   Of 6127 applications made in 2010, 82.16% of access requests were granted in full, and in a further 5.37% of cases partial access was granted; there was a revision of the institution's decision in half of the cases queried by applicants (European Commission, 2011). Elites, such as journalists, academics and interest organisations, are the main users of the system.

A small number of interest organisations have been disproportionately responsible for generating access to documents requests. A niche NGO has been founded (as a branch organisation of a wider network) in order to increase usage of the regime by other NGOs, '*Access Info Europe*'. The European Ombudsman plays an oversight role, sometimes working in common cause with 'watchdog' NGOs to expand his territory. The 2010 Annual Report records that the service 'regularly receives complaints from the Corporate Europe Observatory (an anti-globalisation professionalised social movement in Brussels), which help us to identify shortcomings in the EU administration and to advise the EU institutions on how to rectify them' (European Ombudsman Service, 2010).

Whilst the measure empowers watchdogs at the expense of the Commission, the inclusion of third party documents has an impact both ways, in that it increases the ability of users to monitor interest organisations. This capacity is also substantially enhanced by measures addressed at the transparency of 'organisations and self-employed individuals engaged in EU policy making and policy implementation' (European Commission, 2012d), the constituency defined by the embrace of the Transparency Register.

The Transparency Register

The Transparency Register primarily involves a flow of information from interest organisations to civil society and to EU institutions, via self-disclosure in various categories of information in a public web database. The European Commission and European Parliament have a set of rules which regulate the behaviour of the lobbied (for appointed and elected officials, and those who assist and advise them), and lobbyists. The former are unremarkable, including transparency declarations and measures to avoid conflict of interest (or anything likely to be perceived as such), and under incremental development. The main instrument to regulate lobbyists is the Transparency Register.

The 2011 Transparency Register merges two preceding schemes; the European Parliament's *Accredited Lobbyist* scheme, based on the registration of individuals and dating from 1998, and the European Commission's 2008 *Register of Interest Representatives* (ROIR), based upon organisational registration. The Council has yet to join the scheme, despite signalling its intention to do so in June 2011. Registration is voluntary, but highly incentivised. The two strongest incentives involve the availability of a special access pass to the European Parliament building giving some roaming freedom (as opposed to access only for a specific meeting), and the possibility that non-registered

organisations will not be invited to consultations with target groups of stakeholders. 'Invitations' to join are also given to non-registered organisations at the start of meetings with Commission officials. A lesser incentive relates to information flows, allowing registered organisations to opt in to consultation alerts for elective topics, but this is knowledge which can easily be acquired elsewhere. There are currently over 5,500 registrations, covering an estimate 75% of business related organisations, and 60% of NGOs, which have an address in Belgium (Greenwood and Kulpa, 2013). However, some use the database as free advertising space rather than having any link to EU policy making or implementation; one-third of registrations do not check the 'European box' when asked to state the different territorial levels of interest represented. A major point of criticism is that there is no systemic check which prevents upload to a public interface if information is not provided, and a limited extent of random checks in specified data fields undertaken by the Commission. This is partly a question of a lack of monitoring resources in the institutions, partly a preference to follow the logic of a mutual system of checks and balances among those registered, and partly because the Secretariat General of the Commission sees checks on every entry as an accreditation scheme linked to arrangements for elite access. The result is that the quality of data in the register is somewhat variable, though gradually improving. In practice, the scheme relies upon interest organisations monitoring the information entered by others and filing complaints strategically, resulting in a good standard of information for the core set of organisations lobbying EU institutions. The reputational consequences for transgressing organisations can potentially be significant where a punishment involves suspension from the register, particularly in the case of commercial public affairs consultancies where a loss of client base will follow.

Of particular note is the wide embrace of the scheme, covering formal organisations and structures with no legal personality, and indirect as well as direct means of communicating messages to EU institutions. An organisation cannot claim to be covered by 'indirect registration', i.e. through its affiliation to another entity which is registered. Those embraced are asked to provide public information on: who is represented; contact and website information; mission; funding; lobbying personnel and expenditure. There is some variation of information requirements across different categories of actors, with questions about lobbying expenditure voluntary for NGOs and compulsory for business related organisations. Whilst there is guidance on the information to be included, some organisations enter obviously implausible data. Where the Joint Transparency Register Secretariat receives a complaint which it subsequently upholds it has a variety of options open to it, but most are settled by the offending organisations rectifying the data deficit.

The main gap in the register concerns law firms providing political consultancy services. Although not large in number, some law firms find a niche in attracting clients who do not wish their business to be disclosed, using the cover of 'client confidentiality' in professional codes as an excuse not to register. Many think tanks, and churches, were also reluctant to appear in the old (2008) Commission *Register of Interest Representatives* (ROIR) because they rejected the label of 'lobbyist' or 'interest representative', although this has been resolved by a change of name for the 2011 successor scheme to simply *'Transparency Register'*.

The Transparency Register has a short Code of Conduct attached to it as a condition of registration. The only noteworthy clause is one which places a duty upon those registered in the scheme to vouch

for the accuracy of information supplied to the European Commission. Change of name apart, there are other points of particular note in the new Transparency Register compared with its predecessor. Gone is the discourse from the Green Paper (European Commission, 2006) introducing the ROIR about the 'legitimacy of lobbying' (de Castro Asarta, 2011). Partly linked to this is a visible black bold line in the presentation of the register which separates producer related interests on the one hand, from NGOs, think tanks and research related organisations, churches, and public sector entities on the other, as a means of encouraging registrations among non-producer interests (de Castro Asarta, 2011).

The justification for the scheme, the first item up on the TR web page, is perhaps one of the most striking clauses newly introduced to the 2011 scheme. After justifying interaction with interest organisations in both output and input legitimacy terms, it notes that:

> *Citizens have a right to expect this process to be transparent and to take place in compliance with the law as well as in due respect of ethical principles, **avoiding** undue pressure, illegitimate or **privileged access to information or to decision makers'** (European Commission, 2012d; my emphasis).

Conclusion

Does detailed scrutiny of the procedures find information exchange regimes designed (the 'constitutive politics') and operationalised (the 'operational politics') to maximise benefits in favour of the Commission?   To what extent does the emergence of the rules and the ways in which they are translated into practice reflect changing goals by the European Commission of its information exchange regime? Informal interactions between interest organisations and political institutions will always place limits on the impact of procedures which regulate the flow of information. Nonetheless, the procedures to structure interactions between the European Commission and interest organisations increase its ability to insulate itself from special interest pressures by increasing the breadth of responses to its consultation exercises.   Through stimulating the formation of a teeming population of interest groups in Brussels it can insulate itself further from special interest pressures by increasing the range of pressures and opinion to which it is subject. The procedures it has developed help to make these pressures visible to the various stakeholders, and to build consensus. There is a comprehensive system of 'checks and balances,' in place, facilitated by both the constitutive design and operational implementation of information flows. Transparency related measures empower checks and balances in the system through increasing and pluralising information flows, as well as performing the traditional function of providing public information about its dialogue with interest organisations. And the maintenance of flows of quality information for output legitimacy purposes sit alongside participatory breadth and contestation for input legitimacy purposes through a dual system of open and specialist consultations. Interest organisations are central to these functions, particularly in a political system otherwise lacking in popular participation. Impact Assessments can provide for public reasoning as to the way in which the information generated was used, although here there is scope for improvement in implementing procedures to do so. Nonetheless, the development of IA procedures over the past decade and the successive reforms introduced have brought a robust and transparent basis to the way in which the

Commission appraises and selects its policy options, based around pluralising information flows from expert sources. These help to prevent it from special interest capture, but also to develop a growing concern with participative based legitimacy alongside a traditional emphasis upon efficient and technically workable public policies. The design, and operationalisation, of the procedures increase the ability of others to call it to account. The ways in which the procedures have developed do not suggest a political institution primarily concerned with administrative convenience or undertaking symbolic measures based around defensive postures of self-protection, but rather by a preoccupation driven by the acquisition of not only output legitimacy, but increasingly over time of input legitimacy also.

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