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# Interest groups and patterns of lobbying in Brussels.

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## **Chapter 16: Interest Groups and Patterns of Lobbying in Brussels**

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### **Abstract**

Political institutions in democratically orientated political systems interact with interest organisations to enhance the legitimacy of their policies, whether through greater acceptance of them (inputs) or to enhance efficiencies (outputs). The remoteness from civil society of transnational organisations makes them particularly reliant upon interactions with interest groups and the like, reinforced by shared outlooks and background of personnel. Transnational organisations also use interest groups as political messengers to national governments, as sources of political support for their policies, and as surrogate agents for 'civil society'. The use of interest groups for legitimacy purposes, and the extent of dependence upon them, makes public confidence in exchanges between political institutions and interest groups of critical importance, and international organisations therefore have systems in place which ensure a presence for NGOs through funding regimes, and which regulate exchanges for transparency and formal equality of access. Beyond this there is variation, between poles of corporatist style accreditation for an elite few through to pluralist regimes founded upon competition between a teeming population of interest groups.

The balance of EU competencies towards the regulatory type demands highly technical input, and predicts underlying interest group politics. The European Union has an elaborated system of interest representation which is pluralist in character. An underlying regulatory structure has been developed by the European Commission which stimulates competition between groups and nurtures constituencies of supporters. The extent of its funding regime for NGOs is remarkable. The Commission has also developed instruments to equip interest groups to perform accountability functions on political institutions otherwise missing from consensually orientated political systems. A series of procedures which structure interaction between EU political institutions and interest organisations have emerged since the turn of the century which compare favourably with measures in place in the member states. These procedures are informed by agendas of both 'better regulation' and of 'participative legitimacy'.

## **Introduction**

Whilst most developed political systems have substantial interactions with stakeholders, the EU is remarkable in a high degree of dependence upon organised interests to achieve systemic goals, manifested by a high degree of EU funding for NGOs. Before examining specificities of the EU system of interest representation, a first section of this chapter contextualises a set of more generally applicable issues about the role of interest groups in political participation. This helps to place the factors informing the extent of EU systemic dependencies upon organised interests in the EU political system, as well as the principles which inform the instruments used by EU political institutions to structure their relationship with interest organisations.

### Typologies of interest group roles in political participation

Participation in the political decision making of democratic systems can be bifurcated between two poles. In one pole, participation is viewed as undermining the role of political institutions designed to represent the common interest, through the potential to skew decision making in favour of special interests (Schumpeter, 1943; Majone, 1996). This outlook is commonly found among civil society in southern Europe and in central and eastern European countries, where 'lobbying' is viewed in pejorative terms, and where even the contribution of NGOs is seen in terms more sceptical than positive (Eurobarometer Flash, 2013). At the opposite end of the spectrum is Pateman's 'no democracy without participation' (Pateman, 1970), a tradition of supplementing representative channels in which 'stakeholder participation' is seen as an element of 'good governance', aimed at enhancing output (effectiveness) and input (participative) legitimacy. Stakeholder participation is commonplace in a variety of territories across the globe, where instruments of consultation inform regimes of 'better regulation' as well as the concept that participation in itself provides for better acceptance through knowledge of the reasons which inform subsequent choices made by political institutions. Instruments for consultation can also provide the space for

political institutions to 'divide and rule' by acquiring a wide range of diverging viewpoints which are then presented in follow-up consultation reports. Stakeholder participation ranges from corporatist traditions in Germanic and Nordic countries, to Anglo-US pluralist traditions (from where the word 'lobbying' originates) where a teeming population of interest groups are encouraged to act as checks on the power of each other, as well as upon the state. In this tradition, any form of engagement – including critical perspectives - is open to interpretation as support for the wider political system. Checks on excessive powers – whether by states or by other forces – thus becomes a democratic function. Participation in a 'market-place of ideas,' where argument and advocacy is subjected to scrutiny, tests of robustness, and counter-argument, is interpreted as contributing to foundations of legitimacy. Political institutions might undertake measures to stimulate the breadth of participating interests, such as funding for NGOs, justified on the basis of enabling a counterweight to business, creating a ready constituency of support for political institutions for policy proposals likely to encounter opposition by entrenched interests, and providing a flow of information into the political system. Information can be of a political nature in testing whether legislative proposals are likely to survive to become law, and technical for making proposals workable or to provide street-level feedback which demonstrate policy failure.

In international organisations, interest groups are often used as surrogates for 'civil society' and agents to assist with policy delivery (Mercer 2002, Ottaway 2011). Because international organisations are adrift from civil society, interest groups act as proxies and surrogate democratic mechanisms, playing a de-facto role of 'unofficial opposition' within a political system lacking a system of government and opposition, popular parties or an engaged public. International organisations need to regulate because of the extent of their reliance upon 'participation by lobby groups' coupled with the degree to which this is open to pejorative interpretation, as well as to establish the 'rules of the game' for political participation. This can range from accreditation arrangements resembling

corporatist structures, through to a series of rules aimed at ensuring a 'level playing field' of competition between groups and access to political institutions, much in the way in which 'free' markets require rules to structure market exchange.

### The EU system of interest representation

The EU system is contextualised by the needs of international organisations as reviewed above, but is distinct in its pluralist traditions with underlying regulation to ensure structured competition between a teeming population of groups. This differs from the United Nations, World Health Organisation, and Council of Europe, where accreditation arrangements restrict access to the political system to an elite set of interest groups. In the EU system there is explicit discourse which excludes accreditation arrangements on grounds of anti-elitism (JTRS, 2012). This is a similar outlook to perspectives which place the principal emphasis upon the density of interest group populations as countervailing forces and sources of debate in a public space, where it makes little sense to erect obstacles to group formation through regulatory requirements such as 'representativeness' or accreditation (Kohler Koch, 2010). The underlying regulation is instead articulated on the basis of 'transparency for public legitimacy' (Kallas, 2005), through a 'Transparency Register' (dating from 2011, but with earlier predecessor schemes) because, in the words of the scheme,

'European institutions interaction with citizen's associations, NGOs, businesses, trade and professional organizations, trade unions, think tanks, etc. is constant, legitimate and necessary for the quality of democracy, for their capacity to deliver adequate policies, matching needs and reality. 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' (JTRS, 2013).

With 28 member states, EU decision making can only be founded upon consensus. Consensually orientated decision making systems are in particular need of an opposition, and interest groups in a system where there are three decision making institutions but no system of 'government and opposition' provide a ready constituency to fulfil this task. Policy-makers at an early stage of preparing policy initiatives need signals about how policy proposals are likely to be received by governments in the member states. In the EU system, the regulatory character of much policy making enhances the role of interest groups through their capacity to act as support mechanisms for political institutions with supranational outlooks. The European Commission has long stimulated the formation of groups capable of supporting its regulatory policy proposals in the face of entrenched opposition by producer interests (Young, 2010), and ultimately for the development of European integration itself. Most of the Commission services administer budget lines with funding streams aimed at supporting NGOs, either by providing core operating grants or through project instruments broadly aimed at underpinning European integration. NGOs which receive a grant from EU political institutions obtain, on average, 43% of their income in this way (Greenwood and Dreger, 2013).

The most intensive relationship with interest groups involves the European Commission because of its roles and interests in policy formulation and implementation, coupled with its lack of resources relative to the functions it undertakes. The European Parliament's role as co-legislator also makes it hungry for expertise, and for allies. Because of their interests and difficulties in connecting with civil society, these institutions are somewhat reliant upon interest groups as surrogates for civil society. Various interpretations place the role of organised interests in the EU system somewhere between participatory governance and attempts to stimulate a European public sphere (Heidbreder, 2012). In a quest for a variety of different types of legitimacies, an infrastructure has arisen to formalise exchanges with 'interested parties' using devices commonly found elsewhere. 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' (a term often used by the European Commission 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.):

'The Commission talks about "interest representatives" and "representing interests" because these are neutral terms, in keeping with its positive approach to the activity of representing interests. It uses them in preference to "lobbyist" and "lobbying" which for some people carry negative connotations' (European Commission, 2013).

This outlook reflects a concern with democratic legitimacy, rather than an instrumental focus upon symbolic consultation or upon simply satisfying its information needs. 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, they operate within a system of minimal standards applicable across the Commission. The sections which follow review the details of these schemes and assess their orientation. The European Parliament has relatively few rules to structure its interaction with interest organisations, other than an access pass scheme within the framework of the Transparency Register, an instrument reviewed in further detail later in this chapter.

The Transparency Register has been the focus of globalised lobby regulation activists seeking the development of ever higher regulatory standards orientated towards instruments in the USA as a benchmark standard. They are led by a professionalised social movement organisation which emerged from the counter-globalisation tradition and arrived on the Brussels scene after the 'Battle of Seattle'. There is now a family of 80 organisations combining 'insider' and 'outsider' orientations, sourcing substantial funds to employ a large number of staff working from the large (4000m<sup>2</sup>) purpose renovated '*Mundo-B*' eco-building in Brussels with shared facilities (conference centre, café, etc) and within easy walking distance of the European Parliament. Their presence is both cause and consequence of a shift from regulatory EU competencies (in which there is a premium upon technical information) towards those which have more salience in electoral politics. Nonetheless, virtually all types of legislative policy making requires expert resources, and the Parliament's now almost complete set of powers as co-legislator enable it to make its mark. The expert resources available in the European Parliament to support its legislative work do not match those of the European Commission, with the inevitable result that a number of amendments sponsored by Members of the European Parliament (MEPs) bear the hallmarks of lobbying organisations. Those which are intensively involved in preparing the parliament's political response to legislative proposals – the Rapporteurs and their shadows from other parties, all drawn from the lead committee(s), use the pluralistic forces of interest groups more systematically by checking out technical information with opposed sets of stakeholders, or by using groups as political messengers and supporters.

The size of the population of organisations which lobby EU institutions is subject to political contestation by lobby regulation activists. The Transparency Register seems to cover around three-quarters of the population of EU business related organisations lobbying the EU, and 60% of NGOs (Greenwood and Dreger, 2013). The Register also contains a sizeable segment with nothing to do with lobbying EU institutions but instead use it as free publicity space. There were 3577 organisations on



the Register at the start of 2013 which identified 'European' as among their territorial level of interest represented (Greenwood and Dreger, 2013). Around two-thirds of these (64.76% - 2316) were business related organisations, and one quarter (23.04% - 824) were NGOs. Of the constituency of 3577, 2095 had an address (whether main or supplementary) in Brussels; when those with an address in neighbour countries to Belgium are included, the total reaches 2240. This seems to be the core of organisations lobbying EU institutions (Greenwood and Dreger, 2013). At the start of 2013, there were 1,179 organisations with at least one individual accredited to the European Parliament, accounting for 2,733 individuals.<sup>i</sup>

The most recent measure developed by the EU aimed at connecting with civil society is the 2012 European Citizens' Initiative. This agenda-setting measure seeks to develop a European public sphere, representing something of a break from the past by seeking to separate it from interest groups. It insists upon the creation of 'Citizens' Committees' as organising agents rather than interest groups, in which one million citizens from at least seven member states can request the Commission to bring forward a legislative proposal. The measure has mobilised a number of campaigns from the member-state which are clearly set apart from the Brussels circuit. However, at the time of writing, only one of these looks set to pass the one-million threshold within the permitted twelve month time frame, a measure backed by an interest group organised at EU level. Once again, the systemic dependence upon interest organisations is emphasised.

### **Impact Assessments with Consultation**

Impact assessments (IA) are used by the European Commission to justify legislative proposals in concept and detail to civil society. These are informed by consultations with a wide range of outside interests, collecting detailed input to firm up policy options and sharpen legislative proposals, as well as attempting to acquire broader legitimacy. A structure of procedures has emerged to ensure that everyone has a

chance to make their voice heard. The origins of these 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 are required practice and 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 to enter the process. The CLWP notification includes an 'Impact Assessment Roadmap', within which the proposed means of consultation is laid out, and where the audience ranges from the general public to technical discussions held with target groups of stakeholders. 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 consultation influenced the policy choices taken. As with similar instruments in many other contexts, there is predictable scepticism among seasoned practitioners as to the extent to which impact assessments are responsive to their input, or which simply justify a policy choice taken well before formal consultation procedures commenced, and in which consultation responses are used as ammunition for 'divide and rule'. These criticisms can only be scrutinised by examining the operational detail of such schemes.

All legislative proposals, as well as white papers, action plans, expenditure programmes, guidelines which define future policies, and implementing measures (other than those which are highly technical and limited in impact) require an impact assessment (European Commission, 2009a).

The guidance manual accompanying production of IAs reveals a highly detailed process requiring the production of a report with seven sections providing 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; a comparison of the options; and arrangements for monitoring and evaluation (European Commission, 2009a). Consultation with stakeholders on impact assessments begins at an early stage in the process so as to enable the data generated to inform analysis. 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 status of the manual ensuring that such standards will be enforced by advocacy organisations.

The production of an impact assessment report is accompanied by mechanisms of support and oversight. Minutes of the (support) Impact Assessment Steering Group (IASG) considering the final report are forwarded 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. A Board holds a formal hearing, preceded by meetings with the authors of the Impact Assessment report. Boards are empowered to require legislative developers to re-start the impact assessment process or re-design elements of it (European Commission, 2009; European Commission, 2010), and the final report is required to 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 within the Commission. 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.

A Strategic Review in 2008 involving public consultation on the IA process resulted in changes involving: reinforcement of feedback mechanisms and the importance of seeking alternative approaches from NGOs; improving the assessment of social impacts; impacts upon SMEs as compared to large firms; greater quantification of impacts; and greater use of external expertise to validate methodologies, pluralise expertise, and provide independent assessments (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, 2012b).

The IA regime seems to have grown in depth, surrounded by procedures progressively developed to strengthen the system. The use of IAs in practice has been extended far beyond circumstances for which they are required, and in comparison to systems adopted in the member states the EU is a clear leader (Jacobs et al, 2008). The operational politics do not suggest a symbolic regime or one 'hijacked' by special interests, but rather a process which provides an account of how information generated during consultation processes is used to arrive at policy choices.

### Consultation

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. Among the general minimum standards is a stipulation that as well as having an opportunity to express their opinions, adequate feedback is provided (European Commission, 2002b).

There is now a presumption towards public consultation prior to more specialised forms of consultation (European Commission, 2009). Open public consultation is used in three quarters of all impact assessments (European Commission, 2012c), with 90% of all impact assessments also involving targeted stakeholder consultation, often during later stages of impact assessment. The centrepiece of public consultation is a website, *'Your Voice in Europe'*, in which policy documents are placed and responses invited. 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', not expecting that their contribution would make very much impact due to the relatively large number of other voices, but hoping to get access to, or a role in, the second tier of focused (non-public) consultations (Quittkat and Kotzian, 2011).

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. A browse through the list of open consultations on *'Your Voice in Europe'* confirms the largely technical nature of 'everyday policy-making' in the EU. Specialist consultative fora can include meetings of/with experts (Gornitzka and Sverdrup, 2011), 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. In terms of composition, the numbers participating in expert fora from civil society is approximately even between producer and non-producer interests (Gornitzka and Sverdrup, 2011). 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 approaching two thirds of all consultations (European Commission, 2012c). 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 more recent analysis states a higher level, with 58% of summary consultation reports published in 2011 (European Commission, 2012c).

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). Notably, the CEPS study noted how stakeholders who had participated in a targeted consultation were more likely to assign the outcome as legitimate when compared to participants in open public consultations. 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).

Tanasescu therefore concludes that

*‘when consultations are conducted in a timely and correct manner, stakeholder input does make a difference and is reflected in the final version of the IA Report’* (Tanasescu, 2009, p.223).

There has been a growing focus over time in Commission procedures with input legitimacy in addition to its traditional needs for output legitimacy, Taking impact assessment related policies as a whole, a key point is that the Commission has led the development of its procedures at some inconvenience to itself, in a way which increases its workload, pluralises its power by policies geared towards both output and input legitimacy, which require it to engage it transparent public explanation for its actions, and which enhances the ability of others to monitor it and call it to account. There is no disguising an upward drift in the standards of impact assessment related policies as a whole towards those consistent with input legitimacy purposes.

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

Directive 1049/2001 on Access to Documents addresses information asymmetries by making the work of EU institutions, as well as those who provide documentation to them, more easily accessible to scrutiny. It is freedom of information measure facilitated by a web searchable register of documents, and a very short e-submission form, which allows requesters to obtain documents held by the institutions within 15 working days of asking for them. Of 6447 applications made to the European Commission in 2011, 80.2% of access requests were granted in full, and in a further 7.63% of cases partial access was granted; there was a revision of the institution's decision in more than half of the cases queried by applicants (European Commission, 2012d). Academics account for around one-quarter of applications, followed by interest organisations with one-fifth. 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 (CEO), 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). CEO is a *Mundo-B* tenant which has made considerable use of the measure, using the Court of Justice of the European Union (General Court) to successfully bring cases against the Commission for procedural failures in the access to documents regime<sup>ii</sup>. The measure – and its enforcement mechanisms – has brought a substantial workload to the Commission, but is one of the key tools used to empower civil society organisations to play the role of accountability agents. Paradoxically, it runs counter to the concept of bureaucratic self interest by empowering watchdogs at the expense of political institutions, providing for a considerable increase in their workload as well as their accountability. Yet the over-riding concern with democratic legitimacy is evident from both the development and implementation of the measure, extending to documentation originating with third parties.

### The Transparency Register

The Transparency Register primarily involves a flow of information in the other direction, i.e. 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 with regulatory effect upon lobbyists is the Transparency Register and its associated code of conduct.

The 2011 Transparency Register merges two preceding schemes; the European Parliament's *Accredited Lobbyist* scheme, based around 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 knowledge which can easily be acquired elsewhere. There are currently over 5,500 registrations, covering an estimated 75% of business related organisations, and 60% of NGOs, which have an address in Belgium (Greenwood and Dreger, 2013). However, a number of organisations from across the globe 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 Transparency Register, 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. This contributes to around 15% of entries in the NGO segment which would more accurately be categorised elsewhere, of which the majority are business associations (such as the European Tube Manufacturers Association) or even companies (such as Qantas Airways) (Greenwood and Dreger, 2013). Whilst there is guidance on the information to be included, some organisations enter obviously implausible data. Where the Joint Transparency Register Secretariat receive 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 is that of law firms providing political consultancy services. Although they are not large in number, their absence carries consequence in that they 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.' This has been resolved by a change of name for the 2011 successor scheme to '*Transparency Register*', within which lies 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 (de Castro Asarta, 2011). It is noticeable that discourse from the Green Paper (European Commission, 2006) introducing the ROIR about the 'legitimacy of lobbying' (de Castro Asarta, 2011) has disappeared completely from the Transparency Register.

## **Conclusion**

A common driver in any democratically orientated political system is a search by political institutions to enhance the legitimacies of its policies; interest groups provide a readily available source of supply. The disconnection of trans-national organisations from civil society, and the consensual nature of their decision-making, requires interest groups to perform roles as surrogate democratic agents. The twin demands of critic and ally seem paradoxical, but ultimately provide political support from within systemic parameters. Transnational organisations have particular needs for political supporters and messengers to achieve their policies, engaging with resistance from entrenched interests and by lobbying governments. Transnational organisations therefore develop key frameworks for groups to operate in, through funding and regulatory infrastructure. The EU has chosen a pluralist design centred upon a teeming population of interest groups, requiring a high degree of funding for NGOs. The predominance of regulatory policy making among EU competencies results in underlying interest group politics, centred on interactions often highly technical in content. Nonetheless, a feature of recent years has been the growth of political contestation by interest

groups, and the presence of professionalised social movements bridging 'outsider' and 'insider' tactics. The European Parliament, ever keen to make its mark, has increased the political content of technical regulation as a result of its now virtually complete powers as dual legislator.

The European Commission has developed an elaborated framework for groups to act as checks and balances, both upon each-other and upon political institutions. Extensive procedures have been developed for exchanges between political institutions (mainly involving the Commission) and interest organisations aimed at acquiring legitimacy for this dialogue. These procedures are of particular importance because of a high degree of systemic reliance upon interest organisations by EU political institutions. Centrepiece is impact assessment procedures in which consultation is an embedded component, as well as transparency measures. These, coupled with transparency measures, belie an emphasis upon seeking to develop mechanisms of political consultation in a public space, and seeking to moderate the potential for 'negative externalities' from a dialogue with 'lobbyists' – a term the European Commission prefers to replace with 'interest representation' as a frame to communicate what the EU seeks from the dialogue. Procedures to structure interactions with interest organisations have largely been developed since 2001, and compare favourably with instruments – where these exist – in the member states.

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<sup>i</sup> The European Parliament accreditation pass scheme is the one section of the register still growing significantly at the start of 2013; an updated figure at the end of March 2013 is 3383 individuals.

<sup>ii</sup> See, for instance, Case T395/10 of the General Court (Official Journal, 2011).